Prairie Band Potawatomi Nation
Government Center

November 3, 2026

The Honorable John Thune
Majority Leader
U.S. Senate
Washington, DC 20510

The Honorable Mike Johnson
Speaker
U.S. House of Representatives
Washington, DC 20510

The Honorable Charles E. Schumer
Democratic Leader
U.S. Senate
Washington, DC 20510

The Honorable Hakeem S. Jeffries
Democratic Leader
U.S. House of Representatives
Washington, DC 20515

Dear Majority Leader Thune, Leader Schumer, Speaker Johnson and Leader Jeffries:

On behalf of the Bodèwadmi Confederation of Tribal Nations, representing Tribal Nations located in Kansas, Oklahoma, Michigan, Wisconsin and Illinois, we recognize the importance of responsible development, efficient permitting, and affordable energy. However, these goals must not come at the expense of Tribal sovereignty, meaningful government-to-government consultation, or protecting sacred places, ancestral homelands, and irreplaceable cultural resources.

We urge Congress not to advance the Bipartisan American Affordability and Jobs Act (BAAJA). Legislation of this magnitude, which proposes substantial changes to longstanding federal protections affecting Tribal Nations, should not proceed without meaningful government-to-government consultation with the Tribal Nations whose sovereign interests, treaty rights, cultural resources, and ancestral homelands would be directly affected. Failure to engage Tribal Nations in developing these provisions is itself a fundamental concern that Congress must address before considering further legislative action.

If Congress nevertheless chooses to advance BAAJA, we strongly urge the Senate to strike Division B, Title III in its entirety. The proposed revisions to the National Historic Preservation Act (NHPA) would significantly weaken existing protections for Tribal sacred places and cultural resources, diminish Tribal Nations' role in federal decision-making, and undermine longstanding federal trust and treaty obligations.

Tribal Nations must not be placed in the position of negotiating away fundamental sovereign rights and protections to accommodate legislation developed without their meaningful participation.

The Importance of Section 106 and Tribal Consultation

Section 106 of the NHPA requires federal agencies to consider the effects of federal undertakings on historic properties and consult with affected parties, including Tribal Nations, to identify ways to avoid, minimize, or mitigate harm. The process does not prohibit development. Rather, it ensures that federal decisions are informed by the cultural knowledge and sovereign interests of Tribal Nations, including the significance of sacred places and ancestral homelands beyond current reservation boundaries.

Congress established national historic preservation protections in 1966 and expressly recognized Tribal Nations' roles in 1992. Division B, Title III threatens these longstanding commitments by narrowing protections, weakening consultation, and expanding federal oversight of Tribal Historic Preservation Offices (THPOs).

Consultation cannot be an afterthought, especially when Congress considers legislation that would diminish existing consultation requirements. Tribal Nations must have a meaningful opportunity to shape federal policies affecting their sovereign rights and cultural resources before Congress makes legislative decisions.

Six Fundamental Concerns with Division B, Title III

1. Expanded Federal Oversight Threatens Tribal Sovereignty. BAAJA would impose new evaluations, deadlines, audits, and penalties on THPOs, including potential suspension of funding and federal takeover of program functions. These provisions would expand federal control over Tribal governmental operations, undermine self-determination, and potentially create further delays without addressing federal staffing and capacity limitations.
2. Narrower Definitions Weaken Protection of Sacred Places. BAAJA would establish restrictive statutory definitions of culturally significant properties without Tribal consultation. These changes could exclude sacred landscapes, mountains, rivers, viewsheds, and places significant through generations of ongoing cultural and religious practices. Narrower definitions of federal undertakings and adverse effects could further limit protections. Tribal Nations, not federal agencies acting without their input, are the appropriate authorities on the significance of their sacred places and ancestral homelands.
3. Compressed Deadlines Undermine Meaningful Consultation. BAAJA would weaken existing consultation requirements and impose rigid timelines that disregard Tribal governmental processes, staffing limitations, and the complexity of identifying cultural resources. Federal agencies could make decisions without meaningful Tribal participation. A Tribal Nation's failure to respond within an arbitrary deadline must never constitute consent, waiver, or a determination that cultural resources lack significance.
4. Confidentiality Gaps Threaten Sacred Places. Proposed requirements involving sacred-place information and increased reliance on private applicants could expose sensitive

cultural information to unauthorized disclosure, looting, or desecration. Tribal Nations must not be required to disclose the precise locations or uses of sacred places to secure federal protections.

5. Unfunded Requirements Strain THPO Capacity. Additional reporting, auditing, and compliance obligations would place further burdens on already underfunded THPOs. Congress should address federal funding and staffing deficiencies rather than penalize Tribal programs for capacity limitations beyond their control.
6. Litigation Restrictions Weaken Accountability. Reducing the period for judicial challenges from six years to 150 days, limiting claims to issues raised during public comment, and restricting judicial remedies would significantly impair Tribal Nations' ability to challenge federal violations and prevent irreversible harm to sacred places and cultural resources.

A More Responsible Path Forward

The sweeping changes proposed in Title III are not justified by the available evidence concerning Section 106 implementation. Only a small percentage of projects experience lengthy Section 106 reviews, while insufficient staffing, funding, and agency capacity remain significant contributors to delays. Rather than addressing these challenges, Title III would weaken longstanding protections and impose additional burdens on Tribal governments. We reiterate our request that Congress not advance the Bipartisan American Affordability and Jobs Act (BAAJA).

Conclusion

The changes proposed in Division B, Title III are far-reaching and would fundamentally alter the federal government's responsibilities to Tribal Nations under the National Historic Preservation Act. Yet these provisions were developed without meaningful government-to-government consultation with the Tribal Nations whose sacred places, ancestral homelands, cultural resources, and sovereign authorities would be directly affected.

The failure to consult Tribal Nations before proposing such consequential changes is not a minor procedural oversight. It reflects a disregard for the unique political and legal relationship between Tribal Nations and the United States and raises serious concerns about Congress advancing legislation that would diminish the very consultation rights Tribal Nations have long relied upon to protect their interests.

The Bodèwadmi Confederation therefore urges Congress to refrain from advancing BAAJA until meaningful government-to-government consultation has occurred and Tribal Nations' concerns have been fully considered and addressed.

If Congress nevertheless moves forward with BAAJA, we unequivocally request that Division B, Title III be struck in its entirety. The six concerns outlined above are not minor technical issues that can be resolved through limited amendments. They reflect fundamental threats to Tribal sovereignty, the federal trust responsibility, meaningful consultation, and the protection of sacred places and cultural resources.

Tribal Nations should not be forced to choose between responsible economic development and the preservation of their sovereign rights, cultural heritage, and ancestral homelands. Nor should Congress advance legislation that would diminish longstanding federal protections without first engaging the Tribal Nations those protections were established to serve.

Permitting reform must not come at the expense of Tribal sovereignty, and Tribal Nations must not bear the cost of a legislative process from which they were excluded.

Sincerely,

Citizen Potawatomi Nation
Forest County Potawatomi Community
Hannahville Indian Community
Match-E-Be-Nash-She-Wish Band of Pottawatomi (Gun Lake Tribe)
Nottawaseppi Huron Band of the Potawatomi
Pokagon Band of Potawatomi Indians
Prairie Band of Potawatomi Nation