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October 27, 2026

Senator John Thune
Republican Leader
U.S. Senate
511 Dirksen Senate Office Building
Washington, D.C. 20510

Senator Chuck Schumer
Democratic Leader
U.S. Senate
322 Hart Senate Office Building
Washington, D.C. 20510

Senator Mike Lee
Chairman
Senate Energy and Natural Resources Committee
304 Dirksen Senate Office Building
Washington, D.C. 20510

Senator Martin Heinrich
Ranking Member
Senate Energy and Natural Resources Committee
304 Dirksen Senate Office Building
Washington, D.C. 20510

Senator Shelley Moore Capito
Chairman
Senate Environment and Public Works Committee
410 Dirksen Senate Office Building
Washington, D.C. 20510

Senator Sheldon Whitehouse
Ranking Member
Senate Environment and Public Works Committee
410 Dirksen Senate Office Building
Washington, D.C. 20510

Senator Alex Padilla
331 Hart Senate Office Building
Washington, DC 20510

Senator Adam Schiff
112 Hart Senate Office Building,
Washington, DC 20510

Ayukîi Leaders Thune and Schumer, and Senators Lee, Capito, Heinrich, Whitehouse, Padilla, and Schiff;

The Karuk Tribe ("the Tribe") is a federally-recognized Indian tribe with inherent sovereign authority over its members and territory. We write to express our strong opposition to several provisions of the Bipartisan American Affordability and Jobs Act (BAAJA, S. 5653), which includes deeply concerning changes to the National Historic Preservation Act (NHPA) and its requirement to assess potential impacts to historic properties caused by federal action in conjunction with Tribes (often referred to as Section 106).

Karuk People have managed over a million acres of our ancestral territory along the Klamath River for millennia, and we continue to do so. We have never ceded our rights to hunt, fish, gather, steward our lands, pray, or conduct our traditional ceremonies in our homelands.

We established our Tribal Historic Preservation Office (THPO) over 15 years ago, and have developed working relationships and engaged in the Section 106 process on many projects within our Territory. Notably, because of our engagement in the Section 106 process, there has been no project that

exposed human remains within our territory in over a decade. This is due to the knowledge held within our Tribal community of where burial sites are located, and our capacity to engage with the project proponents early in the development of their projects. We have also established capacity to be our own project proponents within our Aboriginal Territory, which enables us to proactively and collaboratively design projects in ways that not only mitigate damage but actually support and enhance the cultural and ecological resources upon which we depend.

We are not opposed to the concept of permitting reform, but it should be done in consultation and collaboration with Tribal Nations who will be affected by it. This is not the case with the proposed reforms in BAAJA.

While we have concerns about other provisions in BAAJA as described below, we primarily focus this letter on the proposed changes to the NHPA, which are in deep conflict with federal trust and treaty obligations to engage sovereign Tribal Nations in government-to-government Tribal consultation and to protect our irreplaceable sacred sites and cultural landscapes.

The proposed changes to the NHPA fail to respect our inherent sovereignty, self-determination, and Indigenous Knowledge. **We urge the immediate rescission of this language from the bill and ask that you instead consult with Tribal Nations on permitting reform that will bring Tribal Nations to the federal decision-making table early on in the process so that together we may guard against the further destruction of our sacred sites and cultural resources**.

The reviews required under Section 106 are vital to the continuity of Karuk culture, the practice of our religion, the protection of our sacred sites from irreparable degradation and ruin, and importantly, the restoration and revitalization of our historic properties, and traditional cultural landscape. It is through early and meaningful tribal consultation that we have been able to use our Indigenous Knowledge to show federal agencies how to better manage our traditional cultural landscape, to both its protection and revitalization, and for the benefit of all. After centuries of federal action designed to strip us of these fundamental rights, the NHPA created the Section 106 review process, which while imperfectly implemented, provides Tribal Nations with a mechanism and resources to help the federal government make better decisions that avoid the ongoing loss of our identities, ceremonies, and ancestors in the name of “progress” and “development,” and which also enable projects to move forward in better ways in the vast majority of cases.

Now, with the introduction of BAAJA, the federal government is proposing to facilitate the demolition of our heritage, a regressive action that ignores the progress made in the Tribal-U.S. relationship during the self-determination era and returns us to a place of U.S.-sanctioned encroachment and dispossession.

Permitting reform does not need to involve a binary choice between the pursuit of infrastructure and resource extraction projects and the protection of sacred sites and traditional cultural properties through the Section 106 review process. Together, we can craft federal policy that accomplishes both aims. When Tribal Nations are brought into federal decision making at its earliest stages, we can help guide project design to avoid irreparable harm and legal violations—allowing for faster and more durable decisions.

Indeed, without our Tribal experts, there is no way for a federal agency or project proponent—even with the help of archaeologists—to accurately identify our historic properties and the adverse effects on them. Additionally, without the early inclusion of our knowledge of how to manage them, we have

seen our lands, forests, and rivers similarly imperiled. As a result, we have built our capacity to lead as project proponents in collaboration with our local federal agencies, such as the US Forest Service, in order to design projects from the outset that have the benefit of being informed with Indigenous Knowledge of our culture, our landscape, and our local ecology. These projects are more effective *because* of our engagement early on. We must be part of the solution, not pushed away from the table.

Cultural sites and traditional cultural properties are not a resource that can be renewed or replaced. Once they are destroyed, they are gone forever. The only means for restoration is through landscape stewardship with the tribal communities that originally created them. This is the entirety of the intent of the National Historic Preservation Act, to prevent destruction and mitigate adverse effects, for the purpose of promoting restoration and the ongoing use and enjoyment of significant historic properties.

The changes to the statute create a reversion to a now antiquated relationship between the government and Tribal Nations. That relationship was based on the assumption that Tribes were no longer living communities and that the only experts were academics. Often these academics were making best guesses about cultural practices that were, in fact, still being used by Tribal communities. In reality, Tribal knowledge and continuity of practices have never ceased. Tribes are the true experts when it comes to our cultural practices and sacred places.

In addition to their negative impacts on our sacred places and culture, **the proposed changes in BAAJA will also make it more difficult to progress projects without delays** – due to the lack of early and meaningful consultation. As mentioned above, because of our current Section 106 processes and our engagement early on in project development, there have not been any human remains inadvertently discovered during project implementation within our territory in over a decade. Additionally, we fully expect Tribal people to continue to protect our sacred sites with whatever tools are available to us. If NHPA no longer includes appropriate legal tools, we will have to protect them in other ways, which could result in widespread and long-lasting conflicts that block projects –essentially, the proliferation of "Standing Rocks." None of us want to see that.

It does not need to be this way.

Early and meaningful consultation with Tribes and Tribal communities that is currently enshrined in Section 106 prevents significant and costly delays while also protecting our culture. **We stand ready to engage in conversation about how to make Section 106 better and address problems that exist**, but the language proposed in BAAJA is a complete gutting of the NHPA and our ability to meaningfully engage with projects that affect our culturally significant places. It is not a solution, and is likely to create even bigger problems and much longer delays as the voices of the community of impact (not just tribal, but especially tribal) find other means of being heard.

Our main concerns regarding the modifications to the NHPA in Section 2301 include the following:

- **Significantly Narrower Protections.** BAAJA greatly reduces when Section 106 is triggered, thereby reducing opportunities for Tribal Nations to be involved in federal decision making – in several key ways:
    - 1) Far fewer federal actions would count as "undertakings" subject to the NHPA, as BAAJA eliminates coverage for most federally funded activities, adds a new and undefined

requirement of "substantial Federal control and responsibility," excludes every part of a project outside of that control, and allows federal agencies to unilaterally remove entire categories of activities via "programmatic agreements."

- 2) Where the NHPA still applies, fewer places of cultural importance would qualify as historic properties, including the elimination of tribal cultural landscapes, and federal agencies would be able to effectively ignore historic properties that aren't on the National Register.
- 3) Finally, BAAJA significantly constrains the types of adverse effects that may be considered, by directing agencies to ignore all indirect impacts, cumulative impacts, and impacts that do not involve direct, physical alteration. We have several examples in our territory where we have been able to successfully avoid indirect impacts (such as noise, vibration, visual disturbance) to sacred places and ceremonies through consultation. Before such protection, armed conflict resulted as Tribal people tried to protect those places themselves. We do not want to go back to a time when Tribes had such little voice.
- These changes may affect our ability to even have knowledge that an undertaking is occurring, all but guaranteeing that construction through sacred places will proceed without the involvement of Tribal Nations. In addition to the damage and delays that result, this will result in increasing tensions and mistrust.

- **Sharp Limits to Tribal Consultation:**
  - The NHPA requires federal agencies to consult with any Indian Tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. While BAAJA doesn't remove this text, it changes the process so Tribes learn about the undertaking and adverse effects at the very end of the review process, which significantly limits our ability to meaningfully engage. Such late and limited consultation cannot fulfill the federal government's trust responsibilities.
  - Additionally, if an agency unilaterally determines that an action would result in no adverse effects—including if an agency failed to recognize a property of traditional cultural importance—BAAJA eliminates any obligation to consult with Tribes at all. This means that a federal agency could be the *sole* entity in determining whether a Tribal cultural property exists, despite Tribal Nations, our designated officials, and cultural experts being the only entities qualified to make these determinations on our behalf. This is unacceptable.
  - These limits do not reflect the reality of existing relationships between the Tribe and local agencies. Consistent, recurring, and collaborative meetings with our local partners could be threatened by these changes to the statute. Decades of relationship building, such as ours within the Western Klamath Restoration Partnership, where we are progressing Tribally-led active management on USFS-administered lands, and consistently avoiding litigation through proactive collaboration, could be undermined.

- **Threatens Tribal Historic Preservation Programs:** The capacity issues facing Tribal Historic Preservation Officers (THPOs) are well known and can be attributed to chronic federal underfunding and neglect. However, in response to a problem of the federal government's own making, this bill proposes to penalize Tribal Nations, contravening policies of self-determination and self-governance. For example, under this bill, missed review deadlines can result in the loss of THPO status and funding, as well as the deeply paternalistic assumption of THPO functions by the Department of the Interior, which is wholly unqualified and lacks the necessary expertise to perform these sacred and culturally-informed duties. THPO programs

are part of Tribal government and are an exercise of Tribal sovereignty; allowing the federal government to take them over is an egregious overstep.

- **Makes Judicial Review Meaningless:**
  - At present, when a federal agency fails to properly consult, Tribal Nations are at times left without recourse or options outside of the judicial system, if we are to protect our heritage and seat at the table. We do not seek to engage in litigation, nor are these 'nuisance' lawsuits. Any litigation represents our last attempt at preserving our cultural identities. Instead of acknowledging and mitigating federal failures, this bill attempts to shut Tribal Nations out of the court room. Most glaringly, it nearly eliminates any real remedies available to Tribal Nations by eliminating the possibility of a court-ordered vacatur of an agency decision, thus allowing projects to proceed while remand to address inadequate Section 106 review is ongoing. This means that even if Tribes identify clearly unlawful acts in implementation of the NHPA and seek to challenge agency action in court, BAAJA dictates that courts must leave the agency approval in place.
  - BAAJA also puts a thumb on the scale to uphold agency action, dictating that courts must afford "substantial deference" to the agency.
  - Finally, BAAJA dictates that cases must be brought in federal courts of appeal, likely eliminating the potential for fee recovery even if Tribes win.

Additional provisions of the bill raise related concerns. In BAAJA Section 2302, we are concerned about the grant program that will fund Tribes to share our cultural places on an online database with no confidentiality protections. It has been our experience that divulging such information typically leads to looting and desecration of sacred sites. If there is to be funding provided for THPOs (which this bill does not even secure), it should be to support their ability to engage meaningfully in project development.

Additionally, if states are authorized to assume certain federal consultation responsibilities in BAAJA Section 1304 under the Endangered Species Act, federally recognized Tribes must be eligible on equivalent terms. Tribal governments possess sovereign authority, place-based Indigenous knowledge, and capacity in environmental, natural-resource, and wildlife management that should be treated at least equally to that of states, with procedures adapted to respect tribal sovereignty and federal trust and treaty obligations. Given our longstanding history and knowledge of our homelands, and the fish and wildlife that inhabit them, and with whom we co-evolved, Tribes are actually better suited to take on these federal consultation responsibilities than many states. Tribes should not be required to waive sovereign immunity generally as a condition of participation.

BAAJA would also add subsections to section 401 of the Clean Water Act which would restrict the states' scope of review, limit reasons for denial, and add a burden of proof for the states that only "clear and convincing evidence" is cause for denial or the rationale for a condition in a certification. This is a nearly impossible standard. Under current statute, states can issue conditions that are more protective than similar measures proposed by federal agencies. Federal agencies cannot limit or change conditions in a certification. This language would make federal action a limitation on what states can require, which would be incredibly detrimental to water quality and fish.

It will also limit the scope of certifications to discharge of pollutants, and no longer protect designated uses like fishing. Under existing statute and precedent, states can include conditions in certifications to protect "designated uses" such as fishing, swimming, and boating, and to assure compliance "with any

other appropriate requirement of State law." When fishing is a designated use, this can protect fish spawning and migration. But BAAJA limits "water quality requirements" to sections of the Clean Water Act "that are applicable to discharges," not "uses." Under this interpretation, certifications could no longer require river flows or facilities that support such uses as boating or whose purpose is to support the life stages of fish.

While we support robust and strengthened national infrastructure, any infrastructure development, in Indian Country and beyond, must not occur at the expense of Tribal consultation, sovereignty, our fish, our water, or our sacred places.

Tribal Nations should not be forced to bear the brunt of these cultural and spiritual harms so the nation can further develop and transport its energy resources. We have already sacrificed the majority of our lands and natural resources—oftentimes through force or coercion—upon which the United States has become the world power it is today.

Early, robust, and meaningful consultation with Tribal Nations (that includes mitigation and avoidance requirements determined in collaboration) and meaningful increases in funding for Tribal historic preservation will result in faster infrastructure deployment and greater certainty in the permitting process.

Thus, we register our strong opposition to the Bipartisan American Affordability and Jobs Act as written. We urge you, in the strongest possible terms, to withdraw this legislation and work in collaboration with Indian Country on a more honorable alternative.

Such an alternative should:

- Preserve early, meaningful government-to-government consultation with Tribes on all actions that may affect historic properties of religious or cultural significance (of concern and as determined by the Tribe), including by ensuring timely notice, adequate response periods, and consultation when a Tribe timely identifies a resource of significance.

- Eliminate any authority for the Department of the Interior to suspend THPO funding or assume THPO functions without the express written consent of the Tribe; and replace recurring evaluations by those without the depth of knowledge required to conduct such evaluations with reliable ongoing funding, technical assistance, reliance on existing Indian Self-Determination and Education Assistance Act audit standards, and due-process protections limited to material misuse of funds. THPO functions should be part of a Tribe's compacted functions for self-governance tribes.

- Provide mandatory, dependable funding for THPO programs (rather than relying solely on future annual appropriations and competitive funding) and authorize mechanisms such as a Treasury-administered capacity fund that supplements (and does not supplant) the Historic Preservation Fund support and is distributed principally according to the land base and consultation responsibilities of each THPO.

- Provide staffing, training, and capacity for federal agencies to effectively and meaningfully engage in Tribal consultation and engagement.

Tribe exercises governmental authority or holds treaty-reserved rights.

- Within the context of the Clean Water Act, ensure that states can continue to issue conditions that are more protective than those proposed by federal agencies, and that states may include conditions in certifications to protect "designated uses" such as fishing, swimming, and boating.

- Maintain effective judicial review that does not automatically preserve approvals or impose heightened deference in a manner that nullifies tribal claims.

These changes would enable tribal expertise to be incorporated throughout project planning where it belongs, strengthen THPO capacity, reduce disputes caused by incomplete or incorrect identification or protection of sacred and historic resources, and improve overall project certainty.

Permitting reform and the protection of tribal cultural resources, sovereignty, and trust obligations are not mutually exclusive. Early, meaningful tribal consultation, engagement, and collaboration produces better decisions and more durable outcomes.

Tribes deserve a seat at the table when it comes to such significant changes to the National Historic Preservation Act and other foundational laws. This is part of Congress's treaty and trust obligation to Tribal Nations. We look forward to working with you on a more honorable alternative. For further engagement on any of the above, please reach out to Colleen Rossier, Director of Government Affairs, at crossier@karuk.us.

Yôotva (Thank you),

Russell "Buster" Attebery
Chairman, Karuk Tribe