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November 5, 2026

The Honorable Elissa Slotkin
291 Russell Senate Office Building
United States Senate
Washington, DC 20510

The Honorable Gary Peters
724 Hart Senate Office Building
United States Senate
Washington, DC 20510

Re: November 9th Vote on the Bipartisan American Affordability and Jobs Act

Dear Senators Slotkin and Peters:

I write on behalf of the Match-E-Be-Nash-She-Wish Band of Pottawatomi (also known as the Gun Lake Tribe), a federally recognized Indian Tribe with located within Allegan County, Michigan. The Tribe is formally opposed to the passage of the Bipartisan American Affordability and Jobs Act (BAAJA) (S. 5653) as it is currently written. While there are many ways to modernize and reform permitting processes, this proposed legislation fails to do either and instead threatens Tribal Sovereignty and further alienates Indian Tribes, States, and the public.

Over the last several decades, Indian Tribes have utilized three (3) bedrock environmental protection laws to protect our lands, waters, important species, and sacred places—the National Environmental Policy Act (NEPA), the Clean Water Act (CWA), and the Endangered Species Act (ESA). These laws, in partnership with many of the provisions of the National Historic Preservation Act (NHPA) and implementation of the NHPA's Section 106 regulations, have allowed Tribes to assert our sovereignty and engage in government-to-government consultation with the U.S. as reserved and enshrined by the Treaties signed by both our Tribal governments and the United States. The proposed legislation would gut these protections, limit Tribal Sovereignty, and limit the ability of Tribes to engage in consultation.

The Match-E-Be-Nash-She-Wish Band of Pottawatomi applied to the National Park Service to operate a Tribal Historic Preservation Office in 2018 culminating in a Memorandum of Agreement that identified the essential functions the Tribe would assume from the Michigan State Historic Preservation Office. In 2019, the position of Tribal Historic Preservation Officer was filled and by the end of that year, the Tribe had identified their first Traditional Cultural Place (TCP)—the Kalamazoo River Mouth, also known as the Zagitëk TCP—through an initial TCP study and ethnographic report. It was because of the NHPA requirements to consult with Tribes to identify properties of traditional religious and cultural importance that the Tribe and its Tribal Historic Preservation Office began efforts to document through a formalized process the Tribe's continued use and connection to the Kalamazoo River Mouth TCP which highlighted relatives like nméyek (Lake Sturgeon) and mnomen (wild rice) as a contributing resources to the TCP. This

work was guided by the current provisions of the National Historic Preservation Act and the National Park Service's National Register Bulletins 15, 16a and 26b, 38, 39, and NPS Preservation Briefs 36.[1]

The Act as proposed weakens the best available science standard for making Endangered Species Act (ESA) decisions making it more difficult for federal agencies to protect species and their habitats, transfers ESA Section 7 consultation authority to states which have varying levels of wildlife protection laws (not one with laws as protective as the ESA) and makes meaningful judicial review of Section 7 challenges much more difficult. While Lake Sturgeon are not listed as an endangered species by the U.S. Fish and Wildlife Service, they are listed as threatened species in the State of Michigan. In response to Tribal Citizens identifying the cultural and historic importance of nméyek in the early 2000s, the Tribe's Environmental Department began partnering with the Michigan Department of Natural Resources and several other organizations to rehabilitate the Lake Sturgeon populations in one of the Tribe's key historic watersheds—Giknamezo Zibé or the Kalamazoo River. In 2016, the Tribe assumed the lead responsibilities for the nméyek rehabilitation program and streamside hatchery and has continued to operate the program since that time collecting crucial data and conducting longitudinal research studies necessary to understand the best practices for rehabilitating a species with a life span longer than ours as humans. This work is constantly grounded in and guided by our traditional religious and cultural teachings.

It was an uphill battle to receive the necessary determination from external parties to confirm what the Tribe has known all along that Zagitëk is a Traditional Cultural Place. Much of this work was undertaken during President Trump's previous administration (2016-2020) with a determination of eligibility for the National Register of Historic Places being issued by the NPS Keeper of the National Register in November 2020. The United States Army Corps of Engineers (USACE) Detroit District was adamant that the Zagitëk TCP should not be considered as eligible for listing on the National Register of Historic Places. The agency was willing to "acknowledge the cultural significance that the MBPI attributes to plant, animal, and archaeological resources near the mouth of the Kalamazoo River… However, based on [their] review, the TCP does not appear to possess integrity of relationship with the cultural beliefs and practices identified, nor does it meet any of the four criteria of eligibility for listing in the NRHP." (USACE Detroit writ comms, June 23, 2020). Subsequently, before the Keeper's Determination of Eligibility was issued on November 5, 2020, the Michigan State Historic Preservation Office did not concur with the USACE Detroit's determination (August 2020), and the Advisory Council on Historic Preservation also provided an informal letter outlining their concerns with the USACE Detroit's determination and recommending that USACE Detroit revisit their determination (September 2020).

If the Bipartisan American Affordability and Jobs Act were to pass as written, this project requiring a federal permit that led to the Tribe needing to formally document the Zagitëk TCP would potentially not be considered a federal undertaking anymore and the Tribe would likely have never been consulted and various cultural resources contributing to the Zagitëk TCP would likely be destroyed or damaged, including a decade of Tribal, Federal, and State resources to rehabilitating the imperiled Kalamazoo River population of Lake Sturgeon. Additionally, as written, the Bipartisan American Affordability and Jobs Act would allow for the removal of the Zagitëk TCP's determination of eligibility for the National Register. As a reminder,

[1] For access to the National Park Service's guidance on historic properties and their identification and listing processes, please review the following website: https://www.nps.gov/subjects/nationalregister/publications.htm.

under the current National Historic Preservation Act, there are no current outright protections for this place, Federal Agencies are only required to consider the adverse effects to the TCP and resolve those effects by avoidance, minimization, and mitigation. The Tribe is willing to provide other examples and case studies how the National Historic Preservation Act has worked well by following processes outlined under the Section 106 regulations and how it has not worked and still would not be improved by new provisions under the Bipartisan American Affordability and Jobs Act.

National and individual office specific data supports that the current federal permitting process does not showcase the need for sweeping changes to the NHPA (or ESA) as these reviews are not major obstacles to federal permits. In our Tribal Historic Preservation Office's experiences, particularly in the last year after the sweeping losses to the federal workforce, review delays primarily stem from agency capacity and staffing constraints, not the implementing procedural process. We have provided the following data points as reference:

1. Of roughly 120,000 projects reviewed each year [under the National Historic Preservation Act], about 98% are designed to avoid harm to historic properties. Only the most damaging come under additional scrutiny" (National Parks Conservation Association).
2. In FY2025, our Tribal Historic Preservation Office reviewed 2,639 projects with 2,294 of the 2,639 projects meeting the current threshold of the NHPA-defined "federal undertaking." Our THPO issued 25 letters identifying the presence of historic properties with only 15 of the 25 letters identifying there would be adverse effects to the identified historic properties. For our office in FY25, 0.0065% projects received a determination of adverse effect to historic properties, including properties of traditional religious and cultural significance to the Tribe.

Additional threats to Tribal Sovereignty and the government-to-government relationship between Tribes and the United States are also included in the complete overhaul of the National Historic Preservation Act, including, but not limited to:

1. Unprecedented federal takeover of Tribal Historic Preservation Office functions by the Department of the Interior.
2. As referred to previously, the defining of Indian Tribe's traditional religious and culturally significant properties and redefining of historic properties.
3. Assignment of unrealistic deadlines and degradation of good faith effort to engage in meaningful Tribal consultation.
4. Insufficient safeguards to protect confidential Indigenous Knowledge and cultural resource/historic property information.
5. Fails to establish funding mandates and address inadequate historic preservation staff capacities, particularly Tribal Historic Preservation Offices.

Amendments should occur to prevent the new definitions that limit the categories of projects that undergo planning and review processes under both the National Environmental Policy Act and National Historic Preservation Act. Methods for streamlining many of these reviews already exist under both laws, and the projects requiring additional scrutiny are largely major, complex projects that will have various adverse effects. The purpose of these laws dating back to the 1960s and 70s was to allow for upfront engagement and planning, rather than addressing that many project proponents treat these reviews as an afterthought. The Bipartisan American Affordability and Jobs Act completely disregards the intent and purposes of these laws and many of the best practices we have learned from experience in implementing

the laws and their regulations over the years. No one benefits if permit certainty provisions are provided for projects with "non-federal sponsors" and federal analysis and decision making is frozen to the point of irreversibility after decisions are made in a time where new information and new science and technological innovation is developing at breakneck speeds. The expansive scope for non-Federal sponsored projects with permit certainty provisions is not solely restricted to "projects," but it also applies to any authorization or permits necessary for construction or full operation of a project, including, but not limited to, Clean Air Act and Clean Water permits for Rights of Ways, Biological Opinions, and Incident Take Statements.

The proposed legislation as written reflects an attempt to limit and prohibit Indian Tribes from participating in federal decision-making that is a direct affront to Tribal Sovereignty. The government-to-government relationship between the United States and Indian Tribes is not optional, it is foundational, as cemented in the Treaties signed by both of our Nations and the Treaty relationship was further enshrined in the U.S. Constitution. This legislation was developed in isolation and eliminated any consideration from Tribes and their daily practitioners who engage with and implement these law(s) and regulations. Some proponents of this bill have incorrectly stated that this bill is in support of Indian Tribes, and it is a better option that the revised Section 106 regulations being proposed by the Advisory Council on Historic Preservation. We wholeheartedly disagree. The Bipartisan American Affordability and Jobs Act was not written in the interests of Indian Tribes, and the Tribe does not support the passage of the bill as written. Without acknowledging the impact of huge reductions in the federal workforce and committed funding and direction to hire more staff and provide adequate resources to the Tribes, States, and municipalities that support the execution of this work, permitting reform will continue to be bogged down regardless of any changes in statute or regulations.

In summary, the Match-E-Be-Nash-She-Wish Band of Pottawatomi requests the following changes:

- Remove Division B, Title III—Historic Preservation from the proposed bill. The proposed changes are too extensive and cannot be fixed through amendments.
- Remove the restrictions related to judicial review and access to effective legal remedies, including retaining the courts' ability to stop work to determine if the proper review processes were followed, and the shifted and heightened burden of proof to defend protective conditions or permit denials in court.
- Remove all provisions related to permit certainty.
- Re-evaluate the proposed definition of "major federal action," including the change in federal involvement from "sufficient" to "predominate, and the previous "major federal action" carve out for Tribally approved projects on trust lands."[2]
- Maintain the provision of "special expertise" for cooperating agencies which in the past has allowed Indian Tribes to ability to participate in the NEPA review process as a form of early coordination and consultation.
- Remove bill language related to the provisions for the substitution of the NEPA review process with a State environmental review statutory process or compliance with another Federal law.[3] As mentioned previously, states, including Michigan, do not have laws or another legal mechanism

[2] Please refer to "BAAJA's Sec. 1102. Definitions" for the complete statutory definitions of these terms.
[3] Please refer to "BAAJA's Sec. 1105. Procedure for Determination of Level of Review "for the complete description of the NEPA substitution processes.

(treaty relationship or constitutionally stipulated) that requires them to consult with Indian Tribes. Additionally, there is a complete lack of clarity on what other Federal law(s) could substitute for the NEPA review and there is no identified standard for these agency determinations.

- Remove provisions that weaken agencies' abilities to utilize the best available science standards and data available, including the likely elimination of Tribal data and Indigenous Knowledge for permitting decisions at any time throughout the procedural processes.[4]
- Remove the de facto delegation to States to conduct the review and consultation with Tribal Nations to determine if projects will jeopardize species. There is an existing process under the ESA that allows for States to apply for this delegated authority but maintains a federal backstop authority to override state decisions that would jeopardize a species' survival. States, such as Michigan, do not have laws that require state agencies to consultant with Indian Tribes and nothing within the provision requires states to consult or accommodate Indian Tribes.[5]
- Consult with Indian Tribes before proposing revisions to Section 401 and 404 of the Clean Water Act, which narrow crucial definitions, change permit terms, overhaul of Section 401 certification processes, and remove important federal backstops.
- Re-evaluate the proposed, compressed deadlines and look at methods and processes that prioritize early coordination rather than compressing deadlines.

Respectfully,

Jodie A Palmer

Jodie Palmer
Chairwoman
Match-E-Be-Nash-She-Wish Band of Pottawatomi (Gun Lake Tribe)

Cc:
Congressional Delegation of the Match-E-Be-Nash-She-Wish Band of Pottawatomi (Gun Lake Tribe):
Senate Committee on Environment and Public Works
Senate Committee on Energy and Natural Resources
Senate Committee on Indian Affairs
Michigan Governor Gretchen Whitmer
Michigan Attorney General Dana Nessel

[4] Please refer to "BAAJA's Sec. 1301 and 1306" for the complete statutory definition and usage of these terms—"relevant and objective," "credible and reliable data," "prevailing principles, methods, tools, and professional standards of practice," and "impartially gathered and objectively applied without presumptions or policy prescriptions that bias the application." In the attachments provided as a snapshot of the Tribe's consultation with the USACE Detroit District for the Zagitëk TCP, it is easy to see how agencies can quickly move to dismiss Tribal data and Indigenous Knowledge in favor of what they determine "credible and reliable data" and "impartially gathered."

[5] Please refer "BAAJA's Sec.1304 and 1306" regarding the changes to the Section 7 of the ESA that that are of concern to the Tribe.