Allyson Brooks Ph.D., Director
State Historic Preservation Officer

October 9, 2026

To: The Honorable Maria Cantwell and The Honorable Patty Murray, U.S. Senate

From: Allyson Brooks Ph.D., Washington State Historic Preservation Officer

Re: The Bipartisan American Affordability and Jobs Act of 2026 (S. 5653)

The BAAJA Act is intended to assist with project delivery by streamlining environmental reviews including Section 106 of the National Historic Preservation Act. However, provisions in the bill are so complex that they are likely to slow or impede project delivery as opposed to streamlining.

The historic preservation community agrees that the National Historic Preservation Act of 1966 could use a 21st century update. The community has provided Congressional staff with numerous ideas for updates that will strengthen protections while ensuring project reviews are conducted more efficiently. Ideas were given by the National Conference of State Historic Preservation Officers, the Society for American Archaeology, the American Cultural Resource Association, the National Trust for Historic Preservation and more throughout the year. Almost none of the ideas proposed were adopted in the BAAJA Act.

There are certain foundational elements that everyone agreed upon: one federal agency per one undertaking (as opposed to Section 106 applying to every federal agency involved), one lead historic preservation office when multiple states are involved, and adherence to existing timelines. It is important to note that over 98% of Section 106 reviews are resolved with appropriate timelines. In states that have digital data responses are generally received from state historic preservation offices within one business week.

Federal undertakings such as transmission lines and clean energy projects are incredibly complicated to review and thus take much longer than usual. The state is working to solve

this problem by asking energy companies to hire professional mediators. We currently have professional mediators assisting with Royal Slope and with Goldendale.

The bill makes drastic and unnecessary changes to many areas.

1. The change in the definition of undertaking would remove 2/3rds of Washington SHPO reviews. An undertaking under the BAAJA Act would only apply to substantial federal undertakings. This means all projects using pass through funds from agencies such as DOT, HUD, EPA, Commerce would no longer be reviewed under Section 106. Thousands of archaeological, cultural and historic sites would be open to demolition and damage without the state or the public having any knowledge of the potential for loss or having any voice at all in their right to protect our state's heritage. Even for projects on federal lands, the federal agency will have unilateral authority on whether consultation with a state or tribe is even necessary.

2. The new definition of a traditional cultural property is unintelligible. It would be "an identifiable geographic location or feature at which an event of continuing religious or cultural significance to a living community occurred, including any prehistoric or historic district, site, building, structure, or object, and any existing artifacts or material remains at that district, site, building, structure, or object." This is very unclear and when asked for further information by Congressional staff a staffer said the courts will figure it out. That is a recipe for impeding project delivery while the courts spend years trying to elucidate what Congress means. The issue around tribal consultation under NHPA, and the rights of the tribes off tribal land, has already been litigated under Narragansett v McMasters in U.S. District court as of May 2026. That case determined that tribes have consultation rights only. Because of this judicial decision the drastic change to the term traditional cultural property is unnecessary and will be harmful.

3. The bill has provisions that state and tribal historic preservation offices must be audited every two years. States and tribes already provide Interior with an annual report which functions as the annual audit. Further, the bill gives the federal government the right to remove funding from a state or tribal historic preservation office and place authority with the federal government if the audit demonstrates a lack of timely compliance. Removing funding will not solve any problems or streamline compliance. The current bill only supports tribal digitization. Instead, funding state *and* tribal digitization of cultural resource data *would* streamline compliance through the appropriate use of technology.

4. The provision in BAAJA that requires that for delayed projects, a State or Tribal Historic Officer must work more than 50% of the work week on resolving the project with a member of the Senior Executive Service. It is unclear whether the federal government has a right to bind a state or tribal employee in this manner. Instead, the better alternative is to require energy companies to use professional mediators for complicated undertakings.

5. The appropriate number of staff at the federal, state and local level is the crux of the issue with permit streamlining. The loss of federal cultural resource staff has significantly hampered Section 106 review times. Projects are stalled in federal offices while employees cannot manage the workload. State and tribal historic preservation offices have never been appropriately staffed to manage the Section 106 workload. In Washington State alone, we often have between 5,000-6,000 Section 106 submittals a year. Most of these reviews are handled quickly and efficiently. However, the lack of staffing means that complicated undertakings are slowed by the lack of federal, state and tribal employees able to work full-time on a complicated project.

6. The new definition of the Area of Potential Effect will have adverse consequences on places such as the International District in Seattle and Pioneer Square. The removal of any consideration of indirect effects such as noise and visual will leave communities without any ability alternatives for the residents.

7. The new bill removes the public from participation in their heritage. The National Historic Preservation Act was conceived as a partnership between the federal government, states, tribes and the public as a direct reaction to the projects in the 1950s and 1960s that were constructed without any consideration for heritage, parks and natural resources. The environmental laws of the 1960s and 1970s were established to ensure the people have a voice in federal activities, particularly large federal projects either funded directly or permitted. There is no reason to remove "we the people" from actively participating in federal decision making.

In conclusion, the historic preservation community has been active in proposing ideas for improvement. Please consider removing the section on revisions to the National Historic Preservation Act and allow the experts to work with Congressional staff on improvements that will enhance timely project delivery while balancing protection or avoidance of our heritage.