November 23, 2026

The Honorable Mike Johnson
Speaker of the House
H-232, The Capitol
Washington, D.C. 20515

The Honorable Hakeem Jeffries
Democratic Leader
H204, The Capitol
Washington, DC 20515

Dear Speaker Johnson and Leader Jeffries:

On behalf of the undersigned national historic preservation organizations, we write to express profound objections to numerous provisions impacting historic preservation in the Bipartisan American Affordability and Jobs Act of 2026 (H.R. 2347). Our organizations represent Tribal Historic Preservation Officers; State Historic Preservation Officers; cultural resource professionals; and national, state, and local preservation organizations, as well as millions of Americans who care for our nation's historic places.

We share the goal of efficient and more predictable federal review processes as part of federal permitting. However, achieving that goal requires significant revisions to or removal of this bill's historic preservation provisions.

As passed by the Senate, this bill does far more than streamline Section 106 of the National Historic Preservation Act (NHPA). It narrows what historic resources the law protects; weakens the voices of Tribal Nations, states, and local communities; and inaccurately shifts accountability for project delays away from federal agencies that control most of the review process. Any amendments must address these flaws without undermining historic preservation or creating new inefficiencies, uncertainty, and delays.

We Support Real Efficiency

Section 106 works because it brings federal agencies together with Tribal Nations, states, local governments, and communities before decisions are made. For sixty years, that consultation has identified historic and cultural resources; clarified impacts; and produced practical ways to avoid, minimize, or mitigate harm. Consultation is often how projects avoid costly and protracted surprises later.

The overwhelming majority of Section 106 reviews are completed quickly and without controversy. Thanks to early Section 106 consultation, out of 120,000 federal undertakings reviewed annually, only about two percent result in adverse effects; and the average Section 106 review is completed within just 16 days.

We support measures that improve the efficiency and predictability of reviews, including clearer timelines, early stakeholder coordination, designation of a lead federal agency for multi-agency projects, and expanded use of programmatic agreements. But the bill fails to address many of the challenges associated with federal agency delays.

The bill does nothing to resolve federal staffing shortages, and it inappropriately seeks to create efficiencies by narrowing the scope of review, imposing rigid deadlines on stakeholders, and penalizing state and Tribal partners who carry out much of the work. In doing so, the historic preservation provisions in this bill will likely have the opposite effect of what is intended: more delay, more confusion, and less efficiency.

Our Principal Concerns

The bill removes many federal projects from review. It would narrow the definition of an "undertaking" to actions that require a federal permit or approval as well as a new and ambiguous standard of "substantial federal control." Projects funded by federal grants or loans would mostly fall outside the Section 106 process. In effect, federal tax dollars could pay for the demolition of historic properties without any opportunity for public comment. The bill also establishes broad statutory exclusions rather than relying on negotiated programmatic approaches that have proven highly successful.

It narrows what counts as harm. A new statutory definition of "adverse effect" would exclude most visual, atmospheric, audible, and temporary effects, and impacts to a property beyond its character-defining features. Effects associated with related past or future projects would also be excluded from consideration, and the bill would establish a broad statutory limitation on the area of potential effects (APE). For battlefields, sacred landscapes, historic districts, and multi-phase infrastructure projects, narrowing what counts as harm would leave serious impacts to historic resources unexamined and unaddressed.

It lets federal agencies opt out of preservation. The bill gives federal official sole discretion to determine that other considerations outweigh historic preservation, decline prudent and feasible mitigation, and declare the agency's Section 106 responsibilities fulfilled. This turns consultation from a search for solutions into a procedural box to check. Mitigation outside the area of potential effects could be considered *only* at the applicant's written request.

It replaces meaningful consultation with rigid deadlines. Consulting parties would generally have just 30 days to provide information or object, after which the agency could proceed without their input. If a SHPO, THPO, Tribe, or local government misses a deadline, the agency could reach agreement with the Advisory Council on Historic Preservation (ACHP) instead, bypassing the local and Tribal knowledge those consulting parties bring to the process. Remarkably, historic properties that are identified after an initial 30-day review that are listed or eligible for the National Register of Historic Places would not need to be considered during the Section 106 review.

It punishes partners for federal delay. SHPOs and THPOs would face evaluations every two years, audits, suspension of Historic Preservation Fund grants, and, in the case of SHPOs, possible federal takeover of their functions if they miss timelines. Many of those timelines depend on federal reports and decisions, yet the bill sets no comparable staffing standard for federal agencies and fails to address federal agency delays that all but ensure stakeholders will not be able to comply with the new timelines.

It sharply limits judicial review. Claims would have to be filed within 150 days, courts would owe agencies substantial deference, and the usual remedy would be remand without vacatur or injunction. Projects could continue while violations are corrected, so harm may be done before the

law is followed. Meanwhile, applicants would gain a right to sue over missed deadlines and obtain injunctive relief.

It undermines Tribal sovereignty and sacred places. The bill's effect on Tribal Nations is especially troubling. It would undermine the government-to-government relationship and the federal trust and treaty responsibilities that Section 106 consultation helps fulfill. Information about sacred sites, cultural landscapes, and traditional practices often requires consultation with elders and cultural leaders. A 30-day window rarely allows for that.

A Pathway Forward for Permitting Reform

The expedited legislative process for the bill eliminates the opportunity for a committee process that would allow Members of Congress to address problematic historic preservation provisions and the significant risks to preserving our nation's historic and cultural resources. To avoid a rushed process and provide ample time for considering the magnitude of these proposed changes, Congress has an opportunity to revisit this issue in the next session and ensure the legislation avoids negatively impacting historic preservation and the Section 106 process.

With additional time to consider permitting reform legislation, we would welcome the opportunity to work with Congress to ensure it includes critical components for efficiencies, maintains core principles of historic preservation, and excludes harmful provisions. In particular, we believe such a bill should:

1. **Keep consultation meaningful.** Set clear and reasonable timelines that can adapt to project complexity, and require agencies to seek, consider, and respond to input from Tribal Nations, SHPOs, local governments, and the public.

2. **Keep the scope of Section 106 intact.** Do not redefine "undertaking" or "adverse effect" in ways that exclude federally funded projects or visual, atmospheric, audible, and cumulative effects. Address recurring activities through negotiated programmatic agreements rather than categorical statutory exclusions.

3. **Remove the unilateral opt-out.** Require transparency and accountability whenever an agency finds that other considerations outweigh historic preservation.

4. **Respect Tribal sovereignty.** Drop federal THPO qualification standards and allow sufficient time for culturally appropriate consultation.

5. **Match accountability with capacity.** Replace penalties on SHPOs and THPOs with requirements that federal agencies keep qualified preservation staff, and fund SHPOs, THPOs, agencies, and the ACHP to meet faster timelines, including technology investment for SHPOs as well as THPOs.

6. **Preserve meaningful judicial review.** Keep an effective path for courts to ensure agencies follow the law before irreversible harm occurs.

Congress can make permitting more efficient and predictable without making historic places invisible. As we celebrate the 60th anniversary of the National Historic Preservation Act and its positive impact, we urge you to work with the preservation community, Tribal Nations, states, and local governments to achieve permitting reform legislation that avoids undermining our nation's historic and cultural resources, and we stand ready to assist.

Sincerely,

American Cultural Resources Association

Asian & Pacific Islander Americans in Historic Preservation

Latinos in Heritage Conservation

National Alliance of Preservation Commissions

National Association of Tribal Historic Preservation Officers

National Conference of State Historic Preservation Officers

National Preservation Partners Network

National Trust for Historic Preservation

Preservation Action

Society for American Archaeology

Society for Industrial Archeology

The Archaeological Conservancy

The Association for Preservation Technology International