

**THE SECTION 106 CONSULTATION
PROCESS UNDER THE NATIONAL
HISTORIC PRESERVATION ACT**

HEARING
BEFORE THE
COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
ONE HUNDRED NINETEENTH CONGRESS
FIRST SESSION

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OCTOBER 29, 2025
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CONTENTS

OPENING STATEMENTS

	Page
Lee, Hon. Mike, Chairman and a U.S. Senator from Utah	1
Heinrich, Hon. Martin, Ranking Member and a U.S. Senator from New Mexico	3

WITNESSES

Merritt, Dr. Chris, Utah State Historic Preservation Officer	4
McDonald, Andy, Environmental Compliance Manager, Montana-Dakota Util- ities Company	14
Concho, Steven, Tribal Historic Preservation Officer, Pueblo of Acoma, New Mexico; Board Member, National Association of Tribal Historic Preservation Officers	21

ALPHABETICAL LISTING AND APPENDIX MATERIAL SUBMITTED

ACHP Foundation: Statement for the Record	77
Advisory Council on Historic Preservation: Article entitled "Section 106 Success Story: Innovative Approach Is Model for Cultural Resource Management"	73
Article entitled "Section 106 Success Story: Spaceport America: Commit- ment to Balance 21st and 16th Centuries"	75
American Cultural Resources Association: Statement for the Record	80
Andrascik, Hannah: Letter for the Record	85
Association of American Railroads: Statement for the Record	86
Association of Oregon Archaeologists: Letter for the Record	93
Boston, Christine: Letter for the Record	95
Britt, Kelly: Letter for the Record	96
Brooks, Allyson: Statement for the Record	97
Burke, Adrienne: Letter for the Record	101
Burke Williams, Amanda: Letter for the Record	100
Caldwell, Aaron: Letter for the Record	102
Chuipka, Jason: Letter for the Record	105
Click, Rosie: Letter for the Record	106
Concho, Steven: Opening Statement	21
Written Testimony	23
Responses to Questions for the Record	62
Cowlitz Indian Tribe: Statement for the Record	107

IV

	Page
Ellyson, Laura:	
Letter for the Record	110
Evo, Julie:	
Statement for the Record	112
Falls, Eva:	
Comments for the Record	115
Fort Belknap Indian Community:	
Statement for the Record	116
Friedberg, Dara:	
Communication for the Record	121
Heinrich, Hon. Martin:	
Opening Statement	3
Higgins, Kelly:	
Letter for the Record	122
Hillen, Beth:	
Letter for the Record	123
Huddleston, Loren:	
Communication for the Record	125
Hynes, Johanna:	
Letter for the Record	126
Igiugig Village Council:	
Letter for the Record	127
Kannady, John:	
Communication for the Record	130
Kawerak, Inc.:	
Letter for the Record	131
Kear, Matthew:	
Letter for the Record	133
Kessler, Dean:	
Letter for the Record	134
Klamath Water Users Association:	
Statement for the Record	135
Laguna Pueblo:	
Statement for the Record	140
Lee, Hon. Mike:	
Opening Statement	1
Washington Post editorial entitled "In Defense of the White House Ball- room" published on October 25, 2025	47
Little Traverse Bay Bands of Odawa Indians:	
Statement for the Record	143
Martel, Mason:	
Letter for the Record	146
Mashpee Wampanoag Tribe:	
Letter for the Record from David Weeden, Tribal Historic Preservation Officer	147
Statement for the Record from Brian Weeden, Chairman	153
McDonald, Andy:	
Opening Statement	14
Written Testimony	16
Responses to Questions for the Record	57
Merritt, Dr. Chris:	
Opening Statement	4
Written Testimony	7
Responses to Questions for the Record	51
Meyers, Maureen:	
Letter for the Record	156
Mille Lacs Band of Ojibwe:	
Statement for the Record	157
Miller, Derek:	
Communication for the Record	162
National Conference of State Historic Preservation Officers:	
Statement for the Record	163
National Congress of American Indians:	
Statement for the Record	168
National Trust for Historic Preservation:	
Statement for the Record	179

	Page
Navajo Nation:	
Letter for the Record	185
Nietering, Nathan:	
Communication for the Record	187
Oregon Water Resources Congress:	
Statement for the Record	188
Peresolak, Kate:	
Letter for the Record	192
Preservation Action:	
Statement for the Record	193
Pueblo de Cochiti:	
Statement for the Record	197
Quinault Indian Nation:	
Letter for the Record	202
Rathbone, Stuart:	
Letter for the Record	204
Receveur, Haley:	
Letter for the Record	207
Reid, Dawn:	
Letter for the Record	208
Slick, Katherine:	
Statement for the Record	210
Snoqualmie Tribe:	
Letter for the Record	212
Society for American Archaeology:	
Statement for the Record	216
Society for Historical Archaeology:	
Executive Summary of Statement for the Record	223
Full Statement for the Record	225
Steel Manufacturers Association:	
Letter for the Record	230
Swanton, Kristin:	
Letter for the Record	232
Terry, Matthew:	
Letter for the Record	233
Tlingit and Haida Indian Tribes of Alaska:	
Letter for the Record	234
Tohono O'odham Nation:	
Statement for the Record	236
United South and Eastern Tribes Sovereignty Protection Fund:	
Statement for the Record	239
Village of Solomon (AK):	
Letter for the Record	245
Walzer, Mariah:	
Letter for the Record	248
Ward, Herbert Henry:	
Letter for the Record	249
Welch, Elizabeth L.:	
Letter for the Record	250
Wellman, Judith:	
Letter for the Record	251
Williams, Levi:	
Letter for the Record	252
Woods, Erin:	
Letter for the Record	253
Young, Jessica:	
Letter for the Record	255
Ysleta del Sur Pueblo:	
Letter for the Record	257
Zuercher, Shannon:	
Letter for the Record	259

THE SECTION 106 CONSULTATION PROCESS UNDER THE NATIONAL HISTORIC PRESER- VATION ACT

WEDNESDAY, OCTOBER 29, 2025

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The Committee met, pursuant to notice, at 9:31 a.m. in Room SD-366, Dirksen Senate Office Building, Hon. Mike Lee, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. MIKE LEE, U.S. SENATOR FROM UTAH

The CHAIRMAN. The Committee will come to order. Good morning and welcome.

At today's hearing, we are going to examine the consultation process that takes place pursuant to Section 106 of the National Historic Preservation Act (NHPA). Congress enacted the statute in 1966 to ensure that the Federal Government would give due consideration to preserving America's historical artifacts with appropriate stakeholders. This section of NHPA is itself purely procedural, and as such, it requires government officials to undertake a specific process, but doesn't mandate any specified outcome. In that regard, it's similar to the National Environmental Policy Act (NEPA), which directs a process, not a result, and which the Supreme Court recently, in its *Seven County* decision, returned to a right-sized role in federal policymaking. Today, we will consider the scope of Section 106 of NHPA to ensure that it plays the role that Congress intended when NHPA was enacted.

We will be hearing from three witnesses today to better understand these issues. They are, first, Dr. Chris Merritt, the State Historic Preservation Officer for the State of Utah. Second, Mr. Andy McDonald, the Environmental Compliance Manager for Montana-Dakota Utilities Company. And finally, Mr. Steven Concho, the Tribal Historic Preservation Officer for the Pueblo of Acoma. Welcome to each of you.

When a law written to protect our past starts to block our future, it can be worth examining where we are and how we got here, and how we might find a better balance and a better way forward. The National Historic Preservation Act was written in 1966 to prevent places of genuine historical value from being wiped out before anyone even had the chance to speak up or to identify a relevant consideration. Few, if any, would dispute that purpose. We ought to

protect the places that show where we came from and who we are. But over the years, a narrow procedural safeguard has evolved into a sprawling, unpredictable process that now delays some of the very projects our country needs to build and maintain that story. Section 106 has within it a consultation process that has become more like a maze without a map. Agencies, developers, and even preservation officers often don't know where the boundaries lie or how long the path will be. That confusion is showing up all over the country and the uncertainty it sows has consequences for everyone.

The Royal Slope Solar project in Washington is now three years behind schedule. The Bonanza Solar project in Nevada has been under construction for nearly three years. The Cape Wind and Vineyard Wind projects in Massachusetts each faced long delays before they could move forward. The Great Lakes Tunnel project in Michigan, which would improve an important energy link across the Upper Midwest, has spent years caught in back-and-forth reviews. Ironically, this project began because the state insisted the existing pipeline was unsafe and that it needed to be buried for protection. But once the tunnel was proposed, the "area of potential effects," as the statutory language directs us to inquire into, became so broad that every step triggered a new consultation. That, in turn, broadened the scope, and the broadened scope has added roughly four years to the schedule of the project. In Oregon, the Department of Forestry used most of its planning funds on heritage surveys required under Section 106 instead of the wildfire work those dollars were meant to support.

These are not just the priorities of one particular political party or another that we are talking about. This affects projects all over the country, supported by people of many, many different backgrounds. They include solar and wind projects that my friends on the other side of the aisle would very much like to move forward. And yet, they all run into the same consultation process that has grown so broad—and at times inconsistent—that it hinders and in some cases outright blocks projects, even though they may enjoy support from both political parties and from people at every point along the ideological continuum.

My home State of Utah has shown how we can recalibrate and achieve a balance acceptable to everyone. Our state historic preservation office has digitized records, created clear expectations, and kept consultation moving efficiently. Utah protects what is genuinely historic while allowing much-needed projects that will benefit its citizens to move forward in a timely manner. A law meant to safeguard our shared national heritage should not become an instrument of paralysis. Congress can preserve what is worth remembering without turning every permit into an archeological expedition. The purpose of this law is and was always to protect what matters, not to make action impossible. Preserving our heritage should help us build wisely, but it should not and must not keep us from building at all. That is the balance this hearing is about. That's the type of balance we are hoping to be able to find. Exploring ways to protect the story of where we have been without making it impossible to build what comes next.

And now, the Chair recognizes the Ranking Member, Senator Heinrich.

**OPENING STATEMENT OF HON. MARTIN HEINRICH,
U.S. SENATOR FROM NEW MEXICO**

Senator HEINRICH. Thank you, Chairman.

The National Historic Preservation Act says something very simple: before we build something we should know if there is an important piece of our nation's history or culture in the area where we are planning to build. And if there is, we should try to figure out if we can avoid damaging it. Sometimes, damage can't be avoided, and sometimes, the project being built is important enough that damage to a historic resource is a trade-off that we choose to make. The NHPA allows for that, but we should at least check before we do irreversible damage to our national heritage. We can and must build the energy infrastructure our economy and our climate need while also preserving our history and our heritage. We can do both.

Our kids and our grandkids deserve to know where they come from, and we can't tell the story of our nation without protecting the places that literally tell those stories. Sometimes those places are a historic building or a historic district. Sometimes those places are a valley or a mesa or a mountain. In my State of New Mexico, Mount Taylor dominates the horizon of central and western New Mexico, rising 5,000 feet from the desert below to a peak of above 11,000 feet. It is visible from nearly 100 miles away and it is sacred to at least eight tribes in New Mexico and Arizona.

Mount Taylor and its surrounding mesas are a traditional cultural property, and the impact of development on it should be carefully considered before permits are issued. And that's what the National Historic Preservation Act requires. Without the NHPA, federal agencies could allow new development on this mountain without ever considering its impact on the religious practices and the traditions of neighboring tribal communities. Mount Taylor is listed on the State Register of Historic Places as a traditional cultural property, and that means that projects there get more scrutiny than other places in our state. But that's as it should be because of the significance of Mount Taylor to communities across our state.

There is no perfect law on the books, and we should always look for ways to make processes like Section 106 consultation more efficient and more effective. I am confident we can do that while also protecting the places, even the stories, that have forged our national heritage. I am equally confident we can't do any of this without staff at the agencies that process permits for projects on federal lands. Our public land agencies have already lost more than 20 percent of their staff to early retirements, buyouts, and we are expecting layoffs at the land management agencies in the coming weeks that will make this even worse.

It doesn't matter what kind of permit you are looking for, whether it's oil or gas, or grazing, or road construction, or recreation; if the desk your permit application has landed on doesn't have a human behind it, you are not going to get your permit. We can tweak and reform laws all we want, but fundamentally, until we have adequate staff at the agencies that process permits, we will continue to see frustratingly long permitting times. And as I have

said a number of times now, we can't do permitting reform if the administration persists in ignoring the fundamental laws. That is just as true for Section 106 agreements as it is for oil and gas permits. We absolutely have to fix these issues alongside process improvements if we are serious about permitting reform.

And finally, I would point out that there are three buildings in this city that the National Historic Preservation Act does not apply to—the Capitol, the Supreme Court, and the White House—and we have all seen what is going on at the White House right now—to our house.

I look forward to hearing from today's witnesses about these issues, and I am incredibly pleased to introduce Mr. Steven Concho from Acoma Pueblo, New Mexico. Mr. Concho is a member of the Pueblo of Acoma, located in the western part of our state. He has served for nearly 15 years now in the Pueblo's Office of Historic Preservation, including for the past five years as the Pueblo's Tribal Historic Preservation Officer, or THPO. Mr. Concho also represents the Four Corners Region on the Board of Directors for the National Association of Tribal Historic Preservation Officers, where he advocates for the protection of tribal cultural heritage and the advancement of tribal preservation programs nationwide.

In his role as THPO, Mr. Concho is dedicated to ensuring the protection, preservation, and continued vitality of Acoma's ancestral lands and the broader Acoma cultural province for future generations. His work emphasizes both safeguarding sacred places and promoting meaningful tribal participation in federal and state preservation processes. He is passionate about community education, and strives to inspire younger generations to pursue careers in archaeology, anthropology, and cultural resource management, ensuring that the work of preservation continues under future Acoma leaders. Welcome, Mr. Concho, and thank you to all of our witnesses for lending us your expertise this morning on this incredibly salient topic.

The CHAIRMAN. Okay, we are now going to hear from our witnesses today. We will hear from each of you in five-minute rounds. We will start with you, Dr. Merritt, and then go to Mr. McDonald, then Mr. Concho.

You may proceed.

**STATEMENT OF DR. CHRIS MERRITT,
UTAH STATE HISTORIC PRESERVATION OFFICER**

Dr. MERRITT. Thank you, Chairman. Thank you, Committee. I am honored to be here today.

I am Dr. Chris Merritt, the State Historic Preservation Officer for Utah. I am excited today to talk briefly about the National Historic Preservation Act. I have been a professional archeologist for over 20 years, with the last 13 serving the great State of Utah. Every day I am excited to go to work and share my passion for history.

But let's first start with a small history review. The 1950s and 60s witnessed large federal initiatives, such as interstate highways and urban renewal. Few checks existed, and because of this, many historic downtowns, neighborhoods, and places of archeological heritage were unnecessarily destroyed with little to no consideration.

This changed in 1966 with the passage of the National Historic Preservation Act, which, in part, mandated that federal agencies take into account their actions on historic properties. As expressed in the preamble of the Act, Congress found that, “The spirit and direction of the nation are founded upon and reflected in its historic heritage.”

The Act established a federalist approach to historic preservation, empowering each state to create its own office to coordinate federal reviews and activities. The State Historic Preservation Office, or SHPO, and later THPOs. Creation of SHPOs was recognition that there needed to be a voice at the state level to review projects and offer local advice and technical assistance. While the Act created many programs, my comments today focus on the legal compliance process, known as 106. From the Act emerged a regulatory process that starts by determining if an undertaking has a potential to cause harm, then identifying historic properties within the area, assessing those effects to historic properties, and finally resolving effects, when necessary. This process can be broadly compared to the development of environmental analysis under NEPA. There are many technical aspects of this type of review, but ultimately, this is a procedural law meant to have a beginning and an end.

The Utah SHPO knows that this process should be clear, reasonable, and as predictable as possible, for not only the good of the agency and proponent, but also for historic properties themselves. Ambiguity in the scope, procedures, and timeline in a Section 106 process could endanger historic properties by dedicating insufficient time and resources to appropriately plan for these properties, and could needlessly make them a perceived roadblock when expectations could have been clear at the beginning. We work through the process and move forward undertakings while still ensuring that historic properties are protected. My team reviews about 1,500 federal undertakings per year, ranging from mineral exploration programs to large-scale post wildland fire rehabilitation. But only 3.2 percent of those result in adverse effects, illustrating that the vast majority of undertakings do not harm historic properties. SHPOs have 30 days to review projects, but we have a goal with our governor’s office and legislature to cut that in half. We regularly cut review times by over 75 percent. We have accomplished the feat of obliterating regulatory review timelines by not just commitment of dedicated staff, but investment in digital workflows.

With support from the governor and the legislature, we have been paperless since 2017, and are one of the first SHPOs to do so. This builds on our comprehensive digital database containing 270,000 historic resources, nearly 50,000 inventories, and adding another 5,500 resources per year. And while those numbers are large, only about nine percent of Utah has been inventoried. We share this comprehensive information with all federal and state agencies and consultants. In my tenure with the SHPO, we have focused on the reliability and predictability of Section 106 by working to create interagency uniformity, such as a standard-setting agreement with all five Utah national forests. We also have nearly a dozen programmatic agreements with federal agencies that

streamline the process, and we signed a first-of-its-kind agreement with the Army Corps of Engineers just last week.

There are times of concern, however, where national-level streamlining agreements can go too far. At the end of the last administration, the Advisory Council on Historic Preservation proposed a program comment that would have weakened or removed state and public reviews of only those types of undertakings that fell underneath deeply politicized categories. Thankfully, that proposed program comment didn't carry over at the administration change, but it had the potential to destroy the federalist approach to preservation by picking winners and losers based solely on the undertaking. Other issues with Section 106 can arise when the regulations are stretched beyond reasonability or misinterpreted, or by abusing procedural regulatory statements to unduly delay projects that receive SHPO concurrence. For example, one SHPO finds that a grazing allotment fence restringing is a simple matter of a letter, while another finds that the entire adjoining 100,000-acre allotment needs inventory and necessitates creation of an agreement document that could take months.

There are always opportunities to do Section 106 better. I am personally hopeful that the model we employ in Utah can demonstrate where efficiencies and streamlining improve the process for all involved parties. Empowering the states to be at the center of this process is a critical component of the law to provide a check and balance on federal actions and their impacts on cultural resources. In Utah, we are committed to working collaboratively to keep the process moving and to never allow a "we can't" mindset to determine our course of action. Perhaps our greatest strength is that we recognize that the Section 106 process was meant to be pragmatic and solution-focused, not a means of stopping projects.

Thank you.

[The prepared statement of Dr. Merritt follows:]

Christopher W. Merritt, Ph.D.
State Historic Preservation Officer
State of Utah

Hello, I am Dr. Chris Merritt, the State Historic Preservation Officer from Utah. I appreciate the opportunity today to speak briefly about the Federal cultural resources processes and how we have been able to save time and money by investing in collaboration, digital processes, and creative solutions to complex problems. I have been a professional archaeologist for more than 20 years, working with the federal government, academia, private consulting, and for the last 13 years for the great State of Utah. Every day I am excited to go to work, to help steer historic preservation in Utah, and share my passion for history.

I. National Historic Preservation Act Passage

First, a small history review. In the 1950s and 1960s, the federal government and its various initiatives sought to build new infrastructure such as interstate highways while also contending with urban decline due to post-World War 2 population and economic shifts. At the time there were few if any checks and balances to what the federal government projects would look like, where they would be located, or how they would affect our nation's historical places. Because of this many historic downtowns, neighborhoods, and places of archaeological heritage were unnecessarily destroyed with little to no consideration by the federal government. This changed in 1966 with the passage of the National Historic Preservation Act¹, which, in part, mandated that federal agencies take into account their actions on historic properties (legally defined as something eligible for or listed on the National Register of Historic Places). The National Historic was amended four times in 1976, 1980, 1992, and 2016.² Building on the Historic Sites Act of 1935, this Act recognized the importance of identifying and preserving places important to local, state, and national history, and built the modern Historic Preservation field as we see today.

II. State Historic Preservation Offices

Reacting to those unfettered federal actions that led to its passage, the National Historic Preservation Act established a federalist approach to historic preservation, empowering each State to create its own office to coordinate federal reviews and activities. Each state then created their own State Historic Preservation Office (or SHIP-O for short), to manage its preservation programming and be a voice for the Governor and citizens on these federal undertakings (see 54 U.S.C. § 302303 and §36CFR61). Creation of SHPOs was recognition that there needed to be a voice at the State level to review projects, offer advice and technical assistance that can only be provided by State-level experts in various fields such as architectural history or archaeology, and to be the nexus of all things historic preservation. There are now 59 SHPOs (50 States, 5 Territories, 3 freely associated states, and the District of Columbia), in addition there are 208 Tribal Historic Preservation Offices (THPO).

¹ 54 U.S.C. § 300101

² Pub. L. No. 94-422, 90 Stat. 1320, Pub. L. No. 96-515, 94 Stat. 2987, Pub. L. 102-575, 106 Stat. 4753, Pub. L. No. 96-515.

Due to this being a congressional mandate, SHPOs and their tribal equivalents, THPOs, are partially funded by the Historic Preservation Fund managed by the National Park Service, which mandates 60% federal funding and 40% state funding match. Utah received its first grant in 1969, thus creating its State Historic Preservation in that same year.

III. Section 106 of the National Historic Preservation Act

While the National Historic Preservation Act (NHPA) of 1966 created many programs, I want to focus my comments on this legal compliance process, also known by the shorthand of Section 106, referring to that specific part of the Act³ where there is the legal mandate to review impacts to cultural resources. As expressed in the preamble to the NHPA, Congress found that "the spirit and direction of the Nation are founded upon and reflected in its historic heritage", and the "historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people".

It is with this direction in mind that Section 106 of the NHPA creates a step-by-step process to identify historic properties and then assess the effects of the federal undertaking to those resources. As one would imagine, there are many technical aspects of this type of review, of which I'm happy to explain in more detail, but ultimately this is a process law meant to have a beginning and end, ever churning for the good of both historic properties and undertakings. The Section 106 process is simplistic yet complex, depending on the nature, scope, and scale of the undertaking and the cultural resources impacted. Federal agencies lead the process, with the SHPO, Tribes, and other parties involved along the way in various capacities.

At its core, the Section 106 process has four steps, each with its own exit ramps.

- 1) Determine if the Agency has an "undertaking", which encompasses federal lands, funds, permits, or approvals. And then if they have a potential to cause an effect.⁴
- 2) identify historic properties within the Area of Potential Effects.⁵
- 3) Assess the effects of the federal undertaking on any historic properties.⁶
- 4) And in those rare cases, resolve effects to historic properties.⁷

Each SHPO and/or relevant THPO has consultation responsibilities throughout each of these four steps. Steps 1 and 4 are perhaps the most clearly defined in statute and process, with Steps 2 and 3 having the most variability due to the needs of each State, Tribe, or other consulting party. It is our opinion at the Utah SHPO that this process should be clear, reasonable, and as predictable as possible for not only the good of the agency and proponent, but also for historic properties themselves.

IV. Utah State Historic Preservation Office Overview & Efficiencies

³ 54 U.S.C. § 306108 and its implementing regulations §36CFR800

⁴ 36CFR800.3

⁵ 36CFR800.4

⁶ 36CFR800.5

⁷ 36CFR800.6

Our team at the Utah SHPO completes Section 106 reviews for about 1,500 federal undertakings per year, ranging from small Army Corps wetland permits or mining exploration drilling programs to large-scale post-wildland fire rehabilitation, and everything in between. Our office reviews National Register eligibility determinations, findings of effect to historic properties, and other technical aspects of the Section 106 process. Of those cases, we average only about 34 adverse effects per year, or only 3.2% of all reviews. This low number, in my opinion, illustrates that the process is working. Proponents, federal agencies, consulting parties and others are finding ways to avoid or minimize effects to these historic properties while moving undertakings forward. Adverse effects could range from the destruction of a historic home renowned for its architecture during a road widening, piping of canals that were critical to a community's history and growth, or a construction through a Native American heritage site. All of these are permanent and lasting effects to community history, hence our efforts to minimize those conclusions to the process where possible.

Under regulations the SHPO has 30 days to complete a review of a properly documented undertaking from the federal agency. Utah is unique in that over the past 20 years, the SHPO has had a goal with the Governor's Office of reviewing all undertakings in under 15 days, half the statutory timeline. We typically go above and beyond that with an internal goal of 7 days or less, which in the most recent 2024-2025 year, we have seen 98% of all reviews take 7 days or less. This means that we have cut the regulatory review time by over 75%, helping undertakings move faster through the process and gaining efficiencies throughout the system. At the Utah SHPO we do not get mired in grammatical or editorial comments, instead focusing on our core mandates of reviewing determinations of eligibility for the National Register of Historic Places and the finding of effects to historic properties. Laser focus on our statutory mandate in the Section 106 process realizes amazing efficiencies.

V. Digital Data and Workflows in Utah

We have accomplished the feat of obliterating regulatory review timelines by a wholesale investment in digital systems and workflows, helping ensure timely project delivery. With leadership from the Governor's Office and funding and support of the Legislature, utilizing the power of technology, we have been digital-only since 2017. This means that we have digitized our entire backlog of paper files dating to the late 1960s to the 2010s and made them available online for agencies, consultants, and where appropriate, the public. The investment made in our GIS (Geographic Information System) spatial database has elevated our process to one of the most comprehensive and efficient systems in the nation. And perhaps even more significantly Utah was one of the first SHPOs in the entire nation to go full-digital by moving from a paper and postal mail consultation process to a fully digital workflow in 2017. Utah has been able to realize an estimated \$350,000 in savings per year from printing and mailing, let alone the immeasurable time savings in not handling paper. This digital process investment means that agencies and proponents can monitor our work in real-time, allows maximum flexibility for SHPO staff to complete compliance work anywhere and anytime.

Our digital cultural resource systems, split into an archaeological component (Sego) whose access is protected by both federal and state laws due to concerns with looting and vandalism if

it was made public, and a historic building component (HUB) which is public and shared with dozens of communities throughout Utah, are nationally recognized examples for this type of technology. Per the National Historic Preservation Act⁸, the SHPOs are meant to be the center repository for cultural resource inventories, regardless of land jurisdiction. In Utah, we take this responsibility seriously and maintain the most comprehensive and complete database of archaeological and historic building resources in the state, that is used by all federal agencies, state agencies, and consultants. For instance, we are the data stewards for the Bureau of Land Management in Utah, which means they use our digital data systems on a daily basis to manage sites on their administered lands. This empowers the State of Utah to hold the most thorough data sets possible, and also gives us the cross-jurisdictional authority to ensure we avoid proliferation of small and disparate fiefdoms of data that not only hurts the protection of cultural resources but also landscape-level and resource management analysis and decisions. As of this hearing, the Utah SHPO holds the digital information of 134,403 archaeological sites, 135,675 historic buildings, and 48,757 inventories. This data includes spatial location (GIS) and robust archaeological site or building-specific data for each individual property. Each year another 5,500 resources are added to these databases through the Section 106 consultation process.

But data is only as good as those who have access to it and know how to use it for decision making. To ensure this information is useful we not only share it out through online services, but execute data sharing agreements with the federal agencies so that they have real-time direct access to this information. In the past few years, we initiated an agreement with Utah's State Division of Forestry, Fire and State Lands so that wildland fire incident commanders have access to this sensitive archaeological data in real-time. To put all these efforts into perspective, we create and maintain this data with a small staff, partially funded by the federal government, state government, small dollar cooperative agreements (Such as \$18,000 or so from the BLM) and small fees paid by those accessing the data through the online viewers.

VI. Consistency, Predictability and Streamlining at the Utah SHPO

As mentioned earlier, of the four steps of the Section 106 process, the identification of historic properties within the Area of Potential Effect and assessing effects to those properties are the most commonly complex part. This is because each State, Federal Agency, Tribal Nation or other consulting party has varying opinions on how to define the Area of Potential Effect and identification procedures such as archaeological inventories, regimented excavation procedures, or rigorous architectural surveys, each with their own standards. This is a reality of working with cultural resources across disparate physical landscapes and human histories. However, there are still ways to make this process predictable for those entering it, whether by proponents or federal and state agencies. For example, in 2024 we established a standardized Area of Potential Effects for solar undertakings with the Bureau of Land Management.

In my tenure with the State of Utah we have dedicated ourselves to continuously reviewing the Section 106 process and finding efficiencies. For the reliability and predictability of the process,

⁸ 54 U.S.C. § 302303(b)(1)

the Utah SHPO has worked with all agency partners to create interagency uniformity in many aspects of identification procedures, archaeological site definitions, architectural survey standards, and digital data standards. For example, the Utah SHPO signed an Memorandum of Understanding with Utah's six National Forest units in 2019, becoming the first standardized agreement in Utah for addressing various pieces of the Section 106 process with the United States Forest Service. As of today, all State and Federal agencies working in Utah follow the same standards, creating consistency of expectations, the predictability of outcome, and ensuring everything is done right the first time.

Another tool we have used is called a Programmatic Agreement,⁹ which can be used to streamline Section 106 processes by simplifying consultation review for undertakings that are administrative, remarkably routine, have minimal potential to affect cultural resources, and/or were identified for structuring expectations so that one-off consultations become predictable in expectation and outcome. Programmatic Agreements can be a powerful tool to give the SHPOs, Federal Agencies, and other parties a legally defensible rulebook to follow, and can offer great opportunities for efficiencies.

For instance, we were the first SHPO in the nation to sign a Programmatic Agreement with the Federal Emergency Management Agency to navigate cultural resource effects during a declared emergency and have streamlining agreements with the Bureau of Land Management, United States Forest Service, National Park Service, Bureau of Reclamation, and other agencies. And as of October 15, 2025 we have signed the first-of-its kind agreement with the Army Corps of Engineers to streamline their regulatory program. These agreements, by giving clear direction and clear pathways to exit and close the Section 106 process, allow both the agency and our office to focus attention on undertakings that have greater concern, effects, or controversy. Thus, each year dozens of undertakings go through this streamlined process, allowing agencies and proponents to move forward without much, if any, review times.

There are times of concern however, where national-level agreements can cause concerns to SHPOs, as they remove the input from individual states. For example, the Advisory Council on Historic Preservation proposed a Program Comment for Accessible, Climate-Resilient, and Connected Communities at the end of the last presidential administration. This Program Comment was unusual for many reasons, one of which was the proposal to remove nearly all State and Public reviews of only those types of undertakings that fell underneath those deeply politicized categories. In response, 29 SHPOs, the National Conference of SHPOs, and numerous other Tribes and organizations sent lengthy negative comments back to the Advisory Council. Thankfully, that proposed Program Comment failed to be executed due to the administration change, but could have been a major step backwards in the federalist approach to the National Historic Preservation Act.

VII. Concluding Thoughts

⁹ §36CFR800.12

Perhaps our greatest strength is that we recognize that the Section 106 process was meant to be pragmatic and solution-focused, not a means of 'stopping' projects. Empowering the States themselves to be at the center of these undertakings is a critical component of this law, to provide a check and balance on federal actions and their impacts on cultural resources. In Utah we are committed to working collaboratively to keep the process moving, and to never allow a 'we can't' mindset to determine courses of action.

Towards this end, the Utah SHPO prides itself on finding ways to bridge communication gaps between agencies and consulting parties, identifying places in the process that can be improved or streamlined, and at all times searching for the most legally defensible but pragmatic solution to an undertaking's resolution. We host quarterly interagency collaboration meetings to build consensus on cultural resource topics, share our collective expertise, and build relationships that allow projects to move quickly through any process. We feel that these coordination and collaboration meetings create the communication channels needed to promote thoughtful analysis of what is, and what is not, working great in the Section 106 process.

It is not to say that there are never hurdles or problems with the Section 106 process, such as the real-world example of one SHPO saying a type of undertaking such as a grazing allotment fence re-stringing is a simple matter of just a letter, while the neighboring SHPO opined that the entire 100,000+ acre allotment that the fence surrounds needs inventory and assessment, and the creation of an agreement document that could take months. Or, the weaponization of procedural statements in the regulations, such as the ability of any consulting party to dispute a "No Adverse Effect" finding by an Agency Official, even if the SHPO concurred. This was a constant problem in the late 2010s, with some groups disputing each oil and gas lease sales in Utah, and disputing the finding of "No Adverse Effects". This necessitated review by the Advisory Council on Historic Preservation (which has 45 days to review) on each undertaking. While each time they agreed with the Agency Official's determination this created lengthy delays for an already properly executed compliance process.

But why do I offer some negative issues at the end of this testimony? First, in Utah we do the process consistently, smoothly, and efficiently if all parties are working towards a common goal. Second, while we see all undertakings as equal in the eyes of the law, not all parties engaged in those consultations agree with the undertaking itself and can steer the process into a contentious path. And finally, there are always opportunities to do Section 106 better, and I'm personally hopeful that the model we employ in Utah is something that can demonstrate the process can work when we dedicate ourselves to finding solutions.

I'll close with a personal perspective. Sometimes my compliance staff wonders how being a modern-day Sisyphus; each day reviewing cases, closing them, and then being awash with new ones the next morning makes a difference in the preservation of our nation's history. I remind them that the National Historic Preservation Act created a process without which there would be no boulder at all. No checks and balances between federal and state governments, no thoughtful planning for cultural resources in federal undertakings, and nothing to help promote the preservation of each community's uniqueness. Sure the process rarely, if ever, gets major

splashy wins that make the news, but the hundreds of cases handled by SHPOs each day are powerful wins in preserving our nation's history while identifying pragmatic ways to build a better future.

The CHAIRMAN. Thank you, Dr. Merritt.
Mr. McDonald.

STATEMENT OF ANDY MCDONALD, ENVIRONMENTAL COMPLIANCE MANAGER, MONTANA-DAKOTA UTILITIES COMPANY

Mr. MCDONALD. Chairman Lee, Ranking Member Heinrich, and members of the Committee, thank you for the opportunity to testify today on the need to improve predictability and certainty in the Section 106 review process under the National Historic Preservation Act. My name is Andy McDonald, and I serve as the Environmental Compliance Manager responsible for supporting Montana-Dakota Utilities Company's electric operations. Montana-Dakota is a small investor-owned utility company that generates, transmits, and distributes electricity to more than 145,000 customers across 185 communities and adjacent rural areas in North Dakota, South Dakota, Montana, and Wyoming.

Section 106 of the NHPA requires federal agencies to define and document the area of potential effects (APE) of a proposed project—in other words, the area that must be assessed for impacts to historic resources. The implementing regulations define key terms broadly, and over time these terms have been interpreted inconsistently and sometimes expansively, creating confusion and unnecessary delays. Montana-Dakota has experienced this issue on recent projects. In the example I would like to discuss today, Montana-Dakota is rebuilding a three-mile electric distribution line where approximately half of the line crosses federal lands managed by two different federal agencies. The project involves undergrounding lines for wildfire risk mitigation and upgrading aging infrastructure. One agency required the APE to include only the portion of land managed by that agency. However, the other agency required the APE to include the entire three miles, including portions on private land where no federal approval is required. It's important to note that there is an area of cultural significance on federal land in this area that we are working with the agency to find a path around that does not negatively affect those important resources.

We are cognizant of the fact that these resources could extend onto neighboring private lands. Unfortunately, there is a perception among some that if the federal agencies don't have oversight over projects, that industry disregards any and all aspects of environmental concern. My experience over the last ten years paints a brighter picture about our efforts to provide a reliable energy source to our customers, while respecting the environmental and cultural resources that exist across our landscape. There are plenty of examples across the country of voluntary efforts made by industry to preserve our landscape and resources. In a situation such as the one I have described, utilities still have the ability to use consultants and work with the appropriate state and tribal agencies and private landowners to navigate a path around these areas without negatively impacting historic resources. This approach provides more certainty for industry and our federal counterparts. They know which areas they are responsible for, and we know which areas we are responsible for. This allows projects to be planned and executed in a more timely and economical manner. It

will also allow federal employees more time to focus on other management needs within their respective areas.

To be clear, our issue is not with the intent of Section 106 or the federal employees' efforts to interpret and implement it, but rather, the absence of clear, predictable boundaries around what constitutes the relevant APE and what effects must be considered. As my example illuminates, this lack of clarity leads to inconsistent interpretations among agencies, regions, individual staff, consultants, and even utility companies.

In certain areas, environmental conditions and wildlife restrictions leave extremely limited annual windows for construction to be completed—sometimes as little as two months during the year. In order to efficiently plan for rebuilding our existing infrastructure to more modern designs, as well as building new infrastructure to serve the rapidly expanding load growth, clarity is needed in the NHPA. Congress has an opportunity to enhance predictability and certainty to the Section 106 review process for all parties involved, specifically for linear projects, clarifying that agencies shall review the geographic area or areas within which an undertaking may directly cause alterations in the character or use of historic properties if any such properties exist in that area, and that agencies may only consider effects that share a reasonably close causal relationship to and are proximately caused by the undertaking. Lastly, clarifying that where the geographic area or areas of an undertaking include multiple agency jurisdictions, agencies must work together to apply consistent standards with regard to reviewing potential alterations in the character or use of historic properties. This preserves the spirit of the NHPA while restoring predictability and adding certainty to the Section 106 process.

On behalf of Montana-Dakota Utilities Company and EEI, I appreciate the Committee's attention to this critical issue, and I support Congress making changes to the NHPA to achieve a more efficient, consistent, predictable, and effective Section 106 process. Thank you for the opportunity to testify, and I look forward to answering any questions you may have.

[The prepared statement of Mr. McDonald follows:]

Testimony from Mr. Andy McDonald, Montana-Dakota Utilities Co.

before the

U.S. Senate Energy and Natural Resources Committee

October 29, 2025

I. Introduction

Chairman Lee, Ranking Member Heinrich, and members of the Committee, thank you for the opportunity to testify today on the need to improve predictability and certainty in the Section 106 review process under the National Historic Preservation Act (NHPA).

My name is Andy McDonald, and I serve as the Environmental Compliance Manager responsible for supporting Montana-Dakota Utilities Co.'s (Montana-Dakota) electric operations. Montana-Dakota is a small investor-owned utility company that generates, transmits, and distributes electricity to more than 145,000 customers across 185 communities and adjacent rural areas in North Dakota, South Dakota, Montana, and Wyoming. I have worked for Montana-Dakota for ten years, and as part of my responsibilities, I oversee the natural and cultural resource permitting efforts for the Company's electric projects.

Montana-Dakota is also a member of the Edison Electric Institute (EEI), which represents all investor-owned electric companies in the United States, serving more than 250 million customers in 50 states and the District of Columbia. EEI member companies, like Montana-Dakota, work every day to provide reliable energy to their customers at the lowest cost possible.

Across our nation, electric companies are building critically needed new generation, as well as the transmission and distribution infrastructure to deliver energy to customers.

Congress has an opportunity to act on a bipartisan basis to codify common-sense reforms to the federal permitting process to allow electric companies to more efficiently plan for and timely implement new grid investment and deliver reliable energy.

II. Section 106 Reviews Are Unpredictable.

Section 106 of the NHPA requires federal agencies to define and document the Area of Potential Effects (APE) of a proposed project—in other words, the area that must be assessed for impacts to historic resources. The implementing regulations define key terms broadly, and over time these terms have been interpreted inconsistently and sometimes expansively, creating confusion and unnecessary delays.

Montana-Dakota has experienced this issue on recent projects. In the example I'd like to discuss today, Montana-Dakota is rebuilding a three-mile electric distribution line where approximately half of the line crosses federal lands managed by two different federal agencies. The project involves undergrounding lines for wildfire risk mitigation and upgrading aging infrastructure. One agency required the APE to include only the portion of land managed by that agency. However, the other agency required the APE to include the entire three miles, including portions on private land where no federal approval is required. It's important to note that there is an area of cultural significance on federal land in this area that we are working with the agency to find a path around that does not negatively affect those important resources.

We're cognizant of the fact that these resources could extend onto neighboring private lands. Unfortunately, there is a perception among some that if the federal agencies don't have oversight over projects, that industry disregards any and all aspects of environmental concern. My experience over the last ten years paints a brighter picture about our efforts to provide a reliable energy source to our customers, while respecting the environmental and cultural resources that exist across our landscape.

There are plenty of examples across the country of voluntary efforts made by industry to preserve our landscape and resources. In a situation such as the one I have described, utilities still have the ability to use consultants and work with the appropriate state/tribal agencies and private landowners to navigate a path around these areas without negatively impacting historic resources. This approach provides more certainty for industry and our federal counterparts. They know which areas they are responsible for, and we know which areas we are responsible for. This allows projects to be planned and executed in a more timely and economical manner. It will also allow federal employees more time to focus on other management needs within their respective areas.

To be clear, our issue is not with the intent of Section 106 or the federal employees' efforts to interpret and implement it, but rather, the absence of clear, predictable boundaries around what constitutes the relevant APE and what effects must be considered. As my example illuminates, this lack of clarity leads to inconsistent interpretations among agencies, regions, individual staff, consultants, and even utility companies.

In certain cases, environmental conditions and wildlife restrictions leave extremely limited annual windows for construction to be completed, sometimes as little as two months during the year. In order to efficiently plan for rebuilding our existing infrastructure to more modern designs, as well as building new infrastructure to serve the rapidly expanding load growth, clarity is needed in the NHPA.

III. Clarifying The NHPA.

Congress has an opportunity to enhance predictability and certainty to the Section 106 review process for all parties involved. Specifically for linear projects, clarifying that agencies shall review the geographic area or areas within which an undertaking may *directly* cause alterations in the character or use of historic properties, if any such properties exist. And that agencies may only consider effects that share a reasonably close causal relationship to, and are proximately caused by, the undertaking. Effects that are speculative, attenuated from the undertaking, separate in time or place from the undertaking, or in relation to separate existing or potential future undertakings shall not be reviewed. Lastly, clarifying that where the geographic area or areas of an undertaking includes multiple agency jurisdictions, agencies *must* work together to apply consistent standards with regard to reviewing potential alterations in the character or use of historic properties. This preserves the spirit of the NHPA while restoring predictability and adding certainty to the Section 106 process.

IV. Conclusion

Consistent and predictable Section 106 reviews are essential to ensuring that electric companies can continue to meet demand growth and provide reliable energy at the lowest cost possible. Making these reasonable clarifications within NHPA would not weaken historic preservation, but rather, provide more certainty and predictability to the Section 106 review process.

On behalf of Montana-Dakota Utilities Co. and EEI, I appreciate the Committee's attention to this critical issue and support Congress making changes to the NHPA to achieve a more efficient, consistent, predictable, and effective Section 106 process.

Thank you for the opportunity to testify and I look forward to answering any questions you may have.

The CHAIRMAN. Thanks, Mr. McDonald.
Mr. Concho, we will hear from you next.

STATEMENT OF STEVEN CONCHO, TRIBAL HISTORIC PRESERVATION OFFICER, PUEBLO OF ACOMA, NEW MEXICO; BOARD MEMBER, NATIONAL ASSOCIATION OF TRIBAL HISTORIC PRESERVATION OFFICERS

Mr. CONCHO. Chairman Lee, Ranking Member Heinrich, and members of the Committee, thank you for the opportunity to testify today about the Section 106 process under the National Historic Preservation Act. My name is Steven Concho, and I am a member of the Pueblo of Acoma, and I serve as the Tribal Historic Preservation Officer for the pueblo. I also sit on the Board of Directors for the National Association of Tribal Historic Preservation Officers, representing the Four Corners region.

Our mesa-top home at Acoma, also known as Sky City, has been where Acoma people have lived for more than a 1,000 years. Our culture, language, and way of life are tied to an ancestral landscape that extends far beyond our present-day boundaries. Protecting these places is essential not only for our identity, but for our survival as Acoma people. The Section 106 process is one of a few laws that require the United States to listen to tribes before federal actions disturb places of historic, cultural, and often spiritual importance. Consultation under Section 106 is not a courtesy. It is a legal duty that reflects the government-to-government relationship between federally recognized tribes and the United States and a trust responsibility.

Section 106 requires agencies to take tribal input into account by consulting at every stage, but it does not dictate an outcome or prevent development. Development may still proceed when a historic property is determined eligible for the National Register of Historic Places, including as a traditional cultural property. The National Historic Preservation Act simply requires that the federal agency consider the adverse effects a proposed development would have on a historic property before approving the permit. The preference is to avoid the adverse effects, and if that is not at all possible, the law requires mitigation. Consultation provides the tribes, like ours, with a seat at the table and a say in what the effects would be and how to avoid or mitigate them. It does not hand tribes a veto. When tribes are consulted early and properly, in my experience, almost all projects have moved forward efficiently and collaboratively in a way that protects cultural resources.

That's why early and meaningful consultation matters. On the other hand, when the agencies engage tribes only after decisions have been made, projects can stall because of fights over threatened resources, resulting in rising costs. When tribes are brought in from the start, projects move faster and cultural resources are preserved. At Acoma, we saw firsthand the positive effects of early and meaningful consultation with a proposed CO₂ pipeline that was going to cross 14 miles of Acoma lands. We developed a process to address this project that we call the "Acoma Model."

From the very beginning of this pipeline project, the Bureau of Land Management and the energy company worked directly with the Pueblo of Acoma. The Pueblo entered into a cost reimburse-

ment agreement with the company so our cultural experts could work alongside the project archeologist and engineers. Together, in six weeks, working with a team of knowledgeable Acoma cultural practitioners, the project team surveyed 14 miles of Acoma trust land, identified more than 150 cultural sites, including 90 that would have never been recognized through standard archeological methods, and successfully rerouted the pipeline corridor to avoid them entirely. That collaboration saved time, avoided conflict, and protected cultural resources that are important to the Acoma people. This is what successful consultation looks like.

Our office manages dozens of consultation requests across four states every month with minimal staff and limited short-term federal funding. Like many tribal historic preservation offices, Acoma operates on roughly \$100,000 a year, barely enough to cover salaries, travel, and essential operations. This level of funding forces all THPOs, including ours, to triage projects and stretch limited capacity, which can lead agencies to misinterpret slower response as delays. In reality, the fastest and most effective way to improve consultations for everyone—tribes, agencies, and industry—is to invest directly in THPO capacity.

Mr. Chairman, members of the Committee, the Pueblo of Acoma urges Congress to reaffirm support of Section 106, strengthen support for Tribal Historic Preservation Offices, and ensure that early, well-funded consultation remains a cornerstone of responsible federal decision-making.

Thank you for your time, and I look forward to your questions.
[The prepared statement of Mr. Concho follows:]

**Written Testimony of Steven Concho,
Tribal Historic Preservation Officer for the Pueblo of Acoma, New Mexico and
Board Member of the National Association of Tribal Historic Preservation Officers**

before the

**Senate Committee on Energy and Natural Resources
Wednesday, October 29, 2025**

Introduction.

My name is Steven Concho, and I serve as the Tribal Historic Preservation Officer (“THPO”) for the Pueblo of Acoma (“Pueblo” or “Acoma”). My testimony addresses how Section 106 works on the ground, why consultation is indispensable, and how targeted investments in Tribal Historic Preservation Offices and utilizing existing legal and regulatory tools to improve efficiency will simultaneously reduce permitting delays and improve federal compliance.

The Acoma people are an ancient people. We have lived at Acoma Sky City, our mesa-top home, for over 1,000 years, making it one of the oldest continuously inhabited communities in the United States. Our living culture, language, and cultural practices are deeply tied to a network of ancestral sites, cultural landscapes, shrines, and ceremonial trails that extend far beyond the present-day Pueblo boundaries. These places are integral to Acoma’s ongoing cultural identity and survival.

Acoma, like other tribes, shares a unique, government-to-government relationship with the United States based on our status as a sovereign nation. The “Section 106” consultation process of the National Historic Preservation Act (“NHPA”) is therefore critical, as it is one of the only statutory mechanisms requiring federal agencies to consider and consult with Indian Tribes regarding federal undertakings that may affect historic properties of traditional religious and cultural significance. This Section 106 process is a way that the United States meets treaty and trust obligations to Tribes and ensures that Tribal lifeways, cultural practices, and sacred places are considered in federal decision making while projects advance. When proper consultation under Section 106 occurs, projects move forward in a way that protects cultural resources. Most projects proceed efficiently and collaboratively. On the other hand, when Tribes are not consulted properly or in a timely manner, projects can be delayed because of fights over a threatened resources or cultural resources can be destroyed.

Over decades of experience, the Pueblo of Acoma regards the NHPA as one of the most effective federal statutes for ensuring that tribal voices and knowledge are incorporated into federal decision-making concerning cultural heritage and sacred landscapes.

Purpose of Section 106 of the NHPA.

Congress’s policy, enshrined in the NHPA, is that preservation and modern society should exist “in productive harmony” and that the federal government must provide leadership in preservation.¹ Section 106 operationalizes a critical part of that policy by requiring agencies, before funding or permitting an undertaking, to “take into account the effect of the undertaking on any historic property” and to afford the Advisory Council on Historic Preservation (“ACHP”) a reasonable opportunity to comment.² A

¹ 54 U.S.C. § 300101(1); *see also* § 300101(2).

² 54 U.S.C. § 306108; 36 C.F.R. § 800.1(a)

historic property that must be considered in this process is one that is listed on (or is eligible for listing on) the National Register of Historic Places ("National Register"). Properties of "traditional religious and cultural importance" to tribes may be determined eligible for the National Register, ensuring that cultural landscapes like Mount Taylor, discussed *infra*, receive consideration during review.³ Consultation with Indian Tribes must occur on a government-to-government basis, early and respectfully, consistent with the regulations at 36 C.F.R. Part 800.⁴ The regulations define consultation as "the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement[.]"⁵ The goal is to avoid adversely impacting such cultural properties where possible through project alterations, or, if avoidance is not possible, to mitigate adverse effects. In the NHPA, Congress also directed agencies to protect sensitive information from disclosure when necessary to safeguard historic properties of religious and cultural significance.⁶

Crucially, Section 106 is procedural. It ensures agencies consider effects and consult in good faith; it does not mandate a particular substantive outcome or prohibit development.⁷ This point bears repeating: consultation is important as it enables an agency to take into account effects but does not dictate a particular result.

Traditional Cultural Properties and NHPA guidance.

The National Park Service's Bulletin 38 explains that a Traditional Cultural Property ("TCP") may be eligible for the National Register because of its association with the cultural practices or beliefs of a living community that are rooted in its history and important to maintaining cultural identity.⁸ The ACHP's Consultation with Indian Tribes Handbook (2021) provides practical guidance for federal staff and THPOs, emphasizing early, respectful, government-to-government consultation, the possibility of consultation protocols, and the special expertise tribes hold regarding places of religious and cultural significance.⁹

Importance of Tribal Consultation Under Section 106.

Tribal consultation under Section 106 is not an optional courtesy; it is a statutory requirement and a cornerstone of federal preservation policy. Tribes possess unique ethnographic, linguistic, and cultural expertise necessary for determining whether a property is eligible for the National Register as a historic property or TCP of cultural significance. No other entity possesses the requisite knowledge to make these determinations in a manner consistent with the NHPA's requirements.

In practice, based on my experience, many delays or disputes attributed to "tribal consultation" stem from late or incomplete agency initiation of the Section 106 process. Early engagement with tribes during project scoping (prior to route selection, lease issuance, or design finalization) reduces both

³ 54 U.S.C. § 302706 (properties of traditional religious and cultural importance may be determined eligible for the National Register); *see also* National Register guidance (Bulletin 38)

⁴ 36 C.F.R. Part 800; *see* 36 C.F.R. § 800.2(c)(2)(ii)(C) (stating "Consultation with an Indian tribe must recognize the government-to-government relationship between the Federal Government and Indian tribes...[.]").

⁵ 36 C.F.R. § 800.16(f) (definition of "consultation").

⁶ 54 U.S.C. § 307103 (withholding sensitive information about historic properties); *see also* 36 C.F.R. § 800.11(c).

⁷ *See generally* 54 U.S.C. § 306108 (requiring federal agencies to "take into account the effect on any historic property"); *see also* 36 C.F.R. §§ 800.5 – 800.6.

⁸ *See* National Register guidance (Bulletin 38) (available at: <https://www.nps.gov/subjects/nationalregister/upload/NRB38-Completeweb.pdf>).

⁹ ACHP, Consultation with Indian Tribes in the Section 106 Review Process: A Handbook (2021) (available at: <https://www.achp.gov/sites/default/files/2021-06/ConsultationwithIndianTribesHandbook6-11-21Final.pdf>).

procedural risk and cost. When tribes are engaged after decisions are effectively made, duplication of studies to account for tribal input as required, litigation, and project redesigns often follow. NHPA is not a “stop-work” statute. Section 106 does not dictate project outcomes; it ensures informed decision-making. The agency retains discretion to proceed after completing consultation and considering avoidance or mitigation, but that discretion must be exercised in light of a developed administrative record demonstrating that tribal input was meaningfully considered.

Acoma’s Experience and the “Acoma Model”.

Acoma has participated in myriads of federal undertakings under Section 106 and through this experience has developed a structured, legally defensible model for tribal consultation. Where employed, the “Acoma Model” has led to outcomes that met the requirements of the NHPA and satisfied the concerns of the Pueblo and project proponents. Two case studies warrant discussion and consideration by the Committee:

Case Study 1: Mount Taylor Traditional Cultural Property.¹⁰

When several uranium plans of operation were proposed on Mount Taylor, the Cibola National Forest (“CNF”) proactively initiated a determination of eligibility for the Mount Taylor cultural landscape and formally invited extensive tribal participation, including a multi-tribal ethnographic study describing the mountain’s significance to the Pueblos of Acoma, Laguna, Zuni, the Hopi Tribe, and the Navajo Nation. CNF concluded that the Mount Taylor cultural landscape is eligible for the National Register as a traditional cultural property, primarily under Criteria A and B, with contributing resources that may also meet Criterion D.¹¹ Eligibility ensures consideration under Section 106 but does not, by itself, bar development. The eligibility determination neither pre-decided outcomes for future projects in and around Mount Taylor, nor did it substitute for project-specific identification of historic properties, but it put all applicants on notice that early, government-to-government consultation with tribes would be necessary and productive. This approach improved scoping in future projects such as currently proposed uranium mining projects on or near the Mount Taylor TCP, clarified party expectations, and helped steer proponents toward collaborative survey and design methods that avoid or minimize effects.

Case Study 2: Kinder Morgan Lobos CO2 Pipeline – “the Acoma Model”.¹²

Using the lessons learned from the Mt. Taylor Traditional Cultural Property, Acoma utilized a similar process during a proposed 214-mile CO2 pipeline that would have connected Arizona’s St. Johns Field to Kinder Morgan’s Cortez line in New Mexico. Fourteen miles of the pipeline would have crossed Acoma trust lands. From the outset, BLM and Kinder Morgan approached Acoma, and the Pueblo insisted that the proponent reimburse the Pueblo’s actual costs of participation, including ethnographic fieldwork, in relation to the project on Acoma lands. The project proponent and Acoma executed a monthly cost-

¹⁰ See Mt. Taylor Traditional Cultural Property Determination of Eligibility. (Feb. 4, 2008) (available at: <https://www.nrc.gov/docs/ML0904/ML090440287.pdf>).

¹¹ These criteria provide in part: “The quality of significance in American history, architecture, archaeology, engineering, and culture is present in districts, sites, buildings, structures, and **objects** that possess integrity of location, design, setting, materials, workmanship, feeling, and association and:

- (a) that are associated with events that have made a significant contribution to the broad patterns of our history; or
- (b) that are associated with the lives of persons significant in our past; or

...

- (d) that have yielded, or may be likely to yield, information important in prehistory or history.” 36 C.F.R. § 60.4.

¹² See Ann Berkley Rodgers, Aaron M. Sims & Gregory A. Smith, Defending the National Historic Preservation Act: Part 2, Law360 (Nov. 1, 2017),) (available at: <https://www.law360.com/articles/979317>).

reimbursement agreement. Acoma then fielded ethnographic assessment teams, comprised of knowledgeable Acoma cultural experts, to work alongside the proponent’s archaeologists and engineers to run a simultaneous Class III inventory – an intensive pedestrian field survey meant to locate and record all historic properties, TCP survey, and routing study. While BLM lands, outside of the Pueblo’s trust lands, were surveyed within a 300-foot corridor, Acoma directed a wider half-mile study area on Pueblo trust lands to enable real routing flexibility. Within that study area, the parties ultimately delineated a 100-foot construction corridor approved by both Acoma and Kinder Morgan.

Given Acoma’s longstanding confidentiality protocols, all non-federal personnel signed project-specific confidentiality agreements. Within the fourteen-mile Acoma transect, joint field teams identified more than 150 cultural/archaeological properties on Acoma lands, far more than along the rest of the alignment, including 90 TCPs that standard archaeological methods would likely have missed without tribal expertise. Despite the density of sensitive places, the team designated an area of potential effects across Acoma lands *that avoided all identified properties*. Because consultation was initiated early and in good faith, allowing issues to be solved in the field with the right people at the right time, the on-the-ground routing and cultural resource work concluded in roughly six weeks (including about three weeks in the field for cultural property identification and avoidance). This collaborative approach avoided protracted Section 106 agreement negotiation, Phase II testing (which is done to identify eligible properties), and costly mitigation/data recovery. With BLM participation, there were no certification issues.

Beyond schedule and cost benefits, the “Acoma Model” produced a durable cultural-resource record while honoring Acoma sovereignty and knowledge systems. It also yielded a profound cultural benefit: fieldwork on recently reacquired trust lands corroborated Acoma oral histories about ancestral movements, strengthening intergenerational cultural continuity.

Even though external market factors ultimately halted the project, the “Acoma Model” stands as proof that early, well-funded, government-to-government consultation (which includes pairing tribal experts with agency and proponent teams), and good-faith involvement with project proponents, can identify avoidance routes, narrow the Areas of Potential Effects (“APE”) to exclude sensitive places, accelerate review, and reduce litigation risk. In short, meaningful early consultation enables better, faster, and more defensible outcomes that are better for every party to the permitting process.

Under-resourcing of Tribal Historic Preservation Offices is a root cause of delay.

During any given month, Acoma’s THPO manages dozens of simultaneous Section 106 requests across four states (New Mexico, Colorado, Arizona, and Utah) from various federal agencies. Acoma, like many THPOs, receives modest, formula-based awards from the Historic Preservation Fund which must cover staffing, training, travel for field visits, records management, and participation in complex NHPA processes. In FY 2024, an estimated \$23 million was appropriated to fund an average near \$100,000 per THPO, while the number of recognized THPOs continues to grow and consultation requests increase.¹³ Unpredictable annual funding and late apportionments make it difficult for THPOs to maintain staff, manage caseloads, and engage consistently in reviews.

¹³ See National Association of Tribal Historic Preservation Officers, “Statement of the National Association of Tribal Historic Preservation Officers Valerie J. Grussing, PhD, Executive Director Fiscal Year 2025 Interior, Environment, and Related Agencies Appropriations Committee on Appropriations, United States House of Representatives May 8, 2024”.

Predictably, thin funding and staffing forces triage: site visits are delayed, document reviews stack up, and agencies interpret slower response times as “delay.” In fact, better resourcing is the fastest way to reduce delay. Direct and increased, multi-year THPO funding that supports professional staff, travel for early site reconnaissance, and development of consultation protocols will yield faster, higher-quality responses and more durable, litigation-resilient decisions.

Since Senator Heinrich pointed out these funding issues in 2023, the number of THPO has increased, but THPO funding has not. Last Congress, Sen. Heinrich introduced the [Historic Preservation Enhancement Act \(S. 5645\)](#) which would require that THPOs receive a minimum of 20 percent of the Historic Preservation Fund (HPF) funding each year. Currently, THPOs receive about 11 or 12 percent of the HPF funding each year. Congresswoman Leger Fernandez introduced a companion bill H.R. 10553. Acoma would support reintroduction and passage of the legislation.

Recommendations.

1. Reaffirm and strengthen Section 106 implementation.

Congress should reaffirm the core Section 106 tribal consultation framework, require agencies to initiate early consultation at planning inception, encourage use of consultation protocols with tribes as authorized in the regulations, and encourage utilization of existing tools like Programmatic Agreements and Program Comments to increase efficiency and consistency.

2. Invest directly in THPO capacity.

Congress should expand the THPO set-aside in the Historic Preservation Fund, authorize multi-year awards, and direct agencies to budget project-specific support for tribal participation (e.g., applicant-funded, agency-administered support for tribal fieldwork) while preserving tribal independence in consultation. This includes supporting reintroduction and passage of the [Historic Preservation Enhancement Act \(S. 5645\)](#).

3. Safeguard sensitive information.

Congress should reaffirm and, where necessary, clarify agencies’ duty to withhold from public disclosure certain location and character information for sacred places to prevent looting or harm while still allowing informed decision-making.

4. Encourage alignment of Section 106 with other decision statutes.

Congress should promote integration of Section 106 with National Environmental Policy Act and relevant project-specific statutes so that real avoidance and minimization alternatives are genuinely considered, not foreclosed by late timing or inflexible authorizing laws.

5. Enhance agency accountability and early consultation.

Congress should recommend increased authority for Offices of Tribal Relations across agencies to ensure archaeologists and other compliance staff meet standards and do not delay project reviews because of internal training or compliance gaps. Hold agencies accountable for early and meaningful consultation and for meeting their statutory and trust responsibilities.

Conclusion.

The Pueblo of Acoma respectfully urges Congress to reaffirm and strengthen the implementation of Section 106 and to invest in the THPO capacity that makes consultation meaningful. When consultation begins early and is adequately resourced, it consistently produces better fieldwork, more thoughtful design, fewer conflicts, and decisions that honor tribal sovereignty and the federal trust responsibility while advancing responsible development. Doing so is crucial for federal agencies to simultaneously meet their legal obligations and protect the places that sustain living cultures.

The CHAIRMAN. Thank you so much.

We will now begin five-minute rounds of questions, alternating between Republicans and Democrats, in order of seniority, subject to the early bird rule, and we will begin that now.

We will start with you, Dr. Merritt.

Now, the statutory text that we are dealing with here, Section 106 of NHPA, is ambiguous. It provides simple, broad directions suggesting that federal agencies need to consider effects on historic properties. Now, while there are regulations that spell out some of the details, and something of a process, they also leave significant details open to interpretation. As a result, the scope of what can be considered during the consultation process has ballooned rather dramatically. How do you determine the appropriate area of potential effects as you are reviewing? How do you keep that area proportionate and relevant to the direct impacts on the project?

Dr. MERRITT. Thank you, Chairman, for that question, and I will nerd out for a second for everybody's sake. So the area of potential effect in 36 CFR 800 is defined by the direct effects. So, think about digging, trenching, et cetera—physical impacts. But there are portions of the APE that deal with visual, atmospheric, and auditory. It is those parts, those indirect effects, that do draw the APE larger in many cases. I will say, of the 1,500 cases that we review a year in Utah, only a few dozen, if not one percent of those cases, have what we would call a variable APE based on those resources.

And so, as you point out, it is ambiguous, it is vague. And there are positives for that and there are also very negatives, as Mr. McDonald has mentioned. And so, we work through a consultation process. The agency approaches us on a proposed area of potential effects at the SHPO or the THPO, and then other parties also have an opinion on what that APE could look like. There is need, in my opinion, to better define some of these aspects to create reliability in establishing APEs and other effects.

The other thing I want to say is, I have a three-stool approach in Utah—practice, data, and relationships. Practice, to me, is an investment up front of setting up reliable standards. And so, for a long time, Section 106 has been a very reactive process. I would like to be proactive and come up with established rules, so that as projects come forward, there is a rule book for these proponents and other parties to play by versus having every single process through the sausage grinder end up in a different place.

The CHAIRMAN. Yes, and that makes a lot of sense.

Now, under the current process, what determines the extent of indirect impacts when you see them, and how can those indirect impacts be objectively and reasonably quantified when determining the adverse effects? Is that part of the difficulty here, figuring out how to quantify, how to evaluate relative indirect impacts?

Dr. MERRITT. Yes, that's a great question.

So, when we talk about effects, I will go to the parallel law, the National Register of Historic Places. When we designate something eligible for the National Register, we are supposed to say what are those character-defining features that make that site significant. When we go into the 106 process, that's how we assess the impact of the project. Are we changing those factors that make it eligible

for the National Register—those character-defining features? And I have to say, I cannot quantify and I cannot come up with an objective measure of indirect effects because it is so variable based on the resource itself. A small uranium mine in central Utah is going to be a different assessment than perhaps a tribally important landscape in another part of our state.

And so, that's why it becomes very tricky when you are assessing those visual and atmospheric and auditory effects to come up with a regular agreed-upon pattern. And that's why, again, I go back—I would like to invest early and set up standards so not every single project has a different outcome.

The CHAIRMAN. Right. It would diminish the subjectivity inherent in it, and when you have less subjectivity, you are probably going to have a faster, more straightforward process.

Dr. MERRITT. Absolutely, sir. And I think the subjectivity creates frustration from agencies, tribal members, nations, and proponents. So, I think ambiguity is sometimes the big problem.

The CHAIRMAN. Now, Mr. McDonald, in your testimony, you state that “the NHPA Section 106 implementing regulations define key terms broadly, and over time these terms have been interpreted inconsistently and sometimes expansively.”

This is a fundamental issue, isn't it? One that we face with many permitting statutes, including this one, including NEPA, wherein there is a fairly simple procedural requirement in a statute that has been weaponized, or it has at least wandered beyond its original scope, the scope of its original understanding. To what extent has this particular lack of clarity in Section 106 delayed MDU's distribution line?

Mr. McDONALD. Senator, thank you for the question.

In this particular project, it has delayed it on the terms of months, more than years, you know, probably about 12 to 18 months in the process. This also is a line where we are dealing with kind of going up the side of a mountain to a certain extent, so our timeline for construction for this one is about a two-month window from when the snowpack comes off to when we are getting into the portion where it's too dry to work on. So, it's not necessarily the consultation process that resulted in that length of delay, but because of the timing of those decisions and how that process has kind of been held up because of the misunderstanding of where we need to look at and where we don't need to look at for projects, or where we need to work with state or tribal partners versus the federal partners in that process. We have missed that window and now we are waiting another construction season to address that line.

The CHAIRMAN. Thank you.

Senator Heinrich.

Senator HEINRICH. Thank you, Chairman.

For Mr. Concho to begin with, and then I want to hear Dr. Merritt's opinion as well. In your experience, what would expedite consultation with states and tribes, and how much of this is ambiguity and how much of it is fundamental resourcing of the offices that evaluate these projects? To Mr. Concho.

Mr. CONCHO. Yes, thank you for your question. I think, and as I have stated, what works for Acoma is the Acoma Model, which

does force the project proponents to consult with the tribe and bring us in at an early stage. That way, we know exactly what is going on and how we can approach the projects together. And it has worked. And we have had very much success with that model. And so, I think just involving the tribes and bringing us in at an early stage really expedites, and often, in the long run, saves costs.

Senator HEINRICH. Right.

Dr. Merritt.

Dr. MERRITT. I feel I am very lucky to work in Utah because our governor and our legislature provide us the tools to do this efficiently. So always the knee-jerk answer is, like, more money, more staff. And in some cases, in some states and many tribes, that is very, very true. In Utah, that is not the case.

Senator HEINRICH. What is your overall budget in Utah?

Dr. MERRITT. This is a good question. We receive 60 percent of our budget from the National Park Service through the Historic Preservation Fund. So, I am sitting up here 60 percent federally funded. That's just a tad under—

Senator HEINRICH. What is the stateside piece?

Dr. MERRITT. So, the state side is at 40 percent match.

Senator HEINRICH. Yes.

Dr. MERRITT. So, it's about a million dollars from the feds and then, you know, \$700,000 to \$800,000 from the state.

And so, your question towards efficiencies—I think, again, it goes towards early and often. I think you are going to hear that a lot—lot of the projects we see in Utah that go sideways, if we had better integration very early on in the process, if the proponent had been told, like this is an expectation, if the agencies talked to each other, I think all of those embed efficiencies in the system.

Senator HEINRICH. Say that last part one more time, because that has been my experience as to many of these big infrastructure projects. One of the fundamental challenges is when the agencies—

Dr. MERRITT. Don't integrate themselves and they don't—

Senator HEINRICH [continuing]. Don't talk to each other early in the process. Absolutely.

Mr. Concho, what is your budget again? Did you say \$100,000?

Mr. CONCHO. Yes, a little over \$100,000 is the appropriations that we have received.

Senator HEINRICH. And do you receive any federal funds as part of that?

Mr. CONCHO. We don't have—it's mostly just grants, and then if there is some tribal funding to supplement.

Senator HEINRICH. Dr. Merritt, I want to ask you if there are tools that we should be using that are underused widely in this process, and I am thinking, you know, because people made the analogy to NEPA. In NEPA, we have categorical exclusions, and those apply to things where the fact pattern is demonstrably the same over and over and over again, and so, you analyze those as a basket, rather than every single individual time. Are there tools like that within the National Historic Preservation Act that you think we should be utilizing more?

Dr. MERRITT. Thank you, Senator, for that one, because this is one I am really passionate about. In my 13 years at the state, I

have invested heavily in what we call programmatic agreements. So, in the 800 regulations that implement Section 106, they give us the tool to create agreements that can make routine or even complex undertakings into an agreement document that you enter the sausage grinder and you know what you are going to end up with. Programmatic agreements have the ability to do what we call streamline. And that is putting those things in buckets, or baskets, or whatever analogy we would like. And that allows us efficiencies in the system, because not every single fence restringing project or every single USDA disbursement to a farmer for a crop replacement, that doesn't need to go through a full four-step process. And so, we can use a programmatic agreement to say, analyze it at the agency level, do your tribal consultation, but we don't need to see the project at the state SHPO. You send that to us at the end of the year.

And so, that's where our caseload is probably higher than 1,500, because we have put so many of those cases into large buckets.

Senator HEINRICH. Into those buckets, yes.

Mr. Concho, given the history of our country, the history of your pueblo, why is it important for us to hear your perspective when we consider historic preservation issues?

Mr. CONCHO. Thank you for that question. Yes, it's very important that you hear the pueblo's perspective because from where I am from, we have lived this life for almost a thousand years, and I am here as a THPO in this capacity, basically because I love what I do. I love my job. And I do this for those folks yet to be born, to protect the area where I am from, because it has been our—we have footsteps all over the Southwest, and we still continue to migrate and visit and touch these places, like Mesa Verde, Chaco Canyon, and protect these places through song, through prayers, and also, often, we go and visit these places still today. These places, people refer to them as ruins or abandoned, but they are not. We still go to these places. They are living places that still hold meaning to the pueblo people. And this is where I come from, from the Southwest, from the Pueblo of Acoma, one of the oldest continuously inhabited cities in the United States, and we are happy to be that way because we still continue to have our traditions as they were given to us for a thousand years. And protecting all these places in between keeps our tradition alive, keeps our tradition growing.

Senator HEINRICH. It's a living cultural landscape.

Mr. CONCHO. Yes, living cultural.

The CHAIRMAN. Senator Justice.

Senator JUSTICE. Thank you, Mr. Chairman, Ranking Member—and I am just a plain-spoken guy from the State of West Virginia, very proud of it, done a lot, a lot, a lot of stuff, and I would just say just this—we absolutely should always continue to ask ourselves, and I wrote it down, is, can we protect and move forward at the same time? It's just that simple. And the next thing that I would say is just what my dad has said many times, but I will never forget this. You know, my dad was a graduate as an aeronautical engineer from Purdue University. And right after he came out of that, he enlisted in the Air Force, and lo and behold, they taught him how to fly, and he was flying a B-29 bomber, World

War II. Now, you just think about that guy and how great all those folks were, men and women at that time, and the contribution that they made to all of us, to each and every one of us. That guy stood at an engineering table with two or three engineers and a superintendent of a job and they were trying to figure out exactly where to put the road. And I will never forget this until I die—they went on and on for probably an hour and a half, and then, at that time, Dad said to the superintendent, “Kirby, I don’t know exactly what the right answer is, but this damn well ain’t it.”

Now, that’s all there is to this whole situation here. We know what all the red tape and all the problems are, for crying out loud. We know that we want to protect. You spoke, sir, about the ruins and everything that people call it, but they speak to you, do they not? They do. We know we have to protect. We know that. But at the same time, we have got to find a way to move forward because really and truly, the red tape, the permitting process, to do anything—you see, I am a business guy. The permitting process is so absolutely bogged down, it’s unbelievable. And you talk about sausage, I mean, for crying out loud, it’s the most bizarre things at times that anybody could ever imagine.

So, we have got to do something about it, and we have got to fix it. And we are smart. And we have the ability to fix it. Please, let’s quit denying, please, someway, somehow, let’s quit denying that we have a problem. I mean, it’s preposterous to think just how bad the problem really is. You know, we have got to live here, too. That’s all there is to it. And we have got to do things. And we have got to try to make things better. We have an energy meltdown right on our doorstep and we have got to do something about that, too. If we don’t watch out, we are going to spin around two or three times in this great, great, great nation, and we are going to say, uh oh, we have got to a real, real—moment.

And so, with all that being said, I have really only got just one question, and this would be to Mr. McDonald, and it’s so obvious, it’s off the chart, but you know, what we have read in here is, can you provide an estimate of the direct cost—personnel, survey work, legal expenses, on and on and on—that are solely attributable to Section 106, a process for a multi-state project and how that cost is ultimately passed down to the American energy consumers? To put it plainly, can you give me an estimate of how much American taxpayers are paying for the Federal Government’s overcomplicated process? Please, sir.

Mr. McDONALD. Thank you for the question, Senator. So, our utility isn’t quite the largest utility. We are, in fact, pretty small in the grand scheme of things. We can certainly visit with some of our counterparts and I can get you a more reasonable estimate for that answer for the record, if that is acceptable?

Senator JUSTICE. Well, surely—surely, it’s acceptable. But the bottom line to the whole thing of what I am trying to say is, the whole process here is not working. The process is ungodly expensive and it is absolutely a time consumer like nobody’s business. We have just got to do something about it.

Mr. Chairman, thank you, sir.

The CHAIRMAN. Thank you very much.

Senator Cortez Masto.

Senator CORTEZ MASTO. Thank you, Mr. Chairman and the Ranking Member.

Can I just ask all the panel members—do any of you agree that we should eliminate entirely the Section 106? Anybody that agrees with that?

Mr. McDonald.

Mr. McDONALD. No.

Senator CORTEZ MASTO. Dr. Merritt.

Dr. MERRITT. No.

Senator CORTEZ MASTO. Mr. Concho.

Mr. CONCHO. No.

Senator CORTEZ MASTO. Thank you.

I appreciate it, and I think there is opportunity to streamline, and it makes sense, and I appreciate all of you coming here. Obviously, this is necessary and it does work, in some fashion, and what we are trying to figure out is where we can streamline it. And all of you here are important in helping us make that determination.

Dr. Merritt, thank you for being here and for the work that you are doing for the State of Utah. As a neighbor in Nevada, we appreciate that. I have spent a lot of time in Utah.

Let me ask you this: you talked about how APE should be further defined—atmospheric, visual, auditory. How would we define that at a federal level without implicating what you said, the uniqueness of each project in every other state?

Dr. MERRITT. Thank you, Senator, for that, and I have enjoyed working with the Nevada SHPO for many years. So, it's good to see you today.

That's tricky. I have asked myself that, like, where in the regulations can we make this more clear because I do feel there are points of it. I don't know how to do it at a broad level. This is why Utah is different than Nevada is different than Wyoming is different than Maine. And that's why, again, I go back to that federalist approach, as the problems that I have sometimes seen with national agreements from the Advisory Council or other places is that it's a one-size-fits-all, and I am not Indiana. I can see things on the landscape for very long distances out here in the West. And so, it's very hard to put a pinpoint at a regulatory level. I think there are ways, and we can be creative looking at the language of how the 36 CFR 800 regulations are written to better define and limit by landscape, by landform, or something, because there are points in the state where we have had a ten-mile buffer for a power line.

Senator CORTEZ MASTO. Right.

Dr. MERRITT. Regardless of if there is a mountain between it and that ten-mile buffer. So, there are smarter ways we can do it, but I always come back to the federalist approach, as I want to have a seat at that table helping to find that for the best for the people of Utah.

Senator CORTEZ MASTO. Yes, and I agree, and I think it is so important that we have local stakeholders there. I think that was the intent, right, is to have the local stakeholders involved because you know the land, you know better what is going on and the chal-

lenges that we are facing to address the concerns that we are looking at.

Can I also ask one final thing? You get federal funding from the Federal Government, but Mr. Concho, the tribes don't get federal funding dedicated. Do you have to fight for it through grant funding? Is that correct?

Mr. CONCHO. If you are a THPO department, we do have to submit our grants yearly.

Senator CORTEZ MASTO. But you don't get federal—directed federal funding, like a state office would?

Mr. CONCHO. No, we have to go through the National Park Service funding for THPO.

Senator CORTEZ MASTO. Is it the same process—

Dr. MERRITT. It's also a grant for us as well. The Historic Preservation Fund provides the funding for both SHPOs and THPOs.

Senator CORTEZ MASTO. And it's a grant process that you all apply for?

Dr. MERRITT. Can I answer?

Senator CORTEZ MASTO. Yes, please.

Dr. MERRITT. So, the appropriation that comes from the Historic Preservation Fund comes from offshore oil leasing royalties. And so, it's not really taxpayer money in that sense. The problem that we have is there are 59 SHPOs. There are over 200 THPOs. But the pie doesn't necessarily grow, right? So we are not adding states every single day, but we are adding THPOs. And so, the pie for a THPO is smaller every time there is a new THPO created versus my pie has expanded a little bit because of population dynamics and other features that the National Park Service uses to apportion our grant. But we are both applying for grants to support our offices.

Senator CORTEZ MASTO. So, would you recommend this as another area for us to look at, how we provide equitable funding, because it seems to me that SHPOs and THPOs are key to this process, if we are looking at ensuring that they are at the table helping to make these decisions, or should we not look at that formula?

Dr. MERRITT. I would say, from the questions I am hearing today, everyone wants to find solutions. And so, I think at every step of these questions there are solutions to be found. Maybe it's funding, maybe it's procedural, maybe it's regulatory, but I think all of it needs to be looked at because not every state is as lucky as we are in Utah.

Senator CORTEZ MASTO. Yes.

Dr. MERRITT. To do as good as we can because we have the support.

Senator CORTEZ MASTO. And you have the dedicated staff, and I appreciate that.

Let me ask you one final question, and I am running out of time. The Department of the Interior is planning on laying off 2,000 individuals. How important is it for the Department of the Interior to have staff that are funding and working on this 106 process?

Dr. MERRITT. So, to answer that question, overwhelmingly SHPOs feel that with employee turnover at the Federal Government, lack of staffing at the Federal Government, it puts more pressure on us to do the work and more pressure—I won't speak

for the tribes, but I have heard from tribes that they feel more pressure. As those positions dry up or people are retiring, it does put more weight on us to carry the load for these federal agencies. And I cannot imagine a world where the lack of federal employees is not going to hurt permitting and not hurt review processes.

Senator CORTEZ MASTO. Thank you. Thank you again, all three of you.

The CHAIRMAN. Senator Cotton.

Senator COTTON. The consulting firm McKinsey estimates that the average proposed project subject to environmental review takes four to five years to move through the permitting process, with an average of four additional years spent litigating the project. According to the Breakthrough Institute, 75 percent of environmental litigation, like NHPA, is driven by a handful of environmental NGOs. Of the challenges, ten organizations are responsible for more than one-third of often frivolous lawsuits. Agencies win approximately 80 percent of these cases. Nevertheless, litigation by these NGOs demonstrably slows and even kills necessary projects that could have lowered costs for consumers and increased reliability.

Mr. McDonald, radical environmentalists have abused our court system and weaponized statutes such as the National Historic Preservation Act, the National Environmental Policy Act, and the Clean Water Act to slow or kill needful projects to increase supply and lower costs. Given this legal landscape, what reforms, in your opinion, are needed to stop this kind of radical lawfare and lower electricity prices for consumers?

Mr. McDONALD. Senator, thanks for the question.

As was described in the testimony, I really think that the certainty that is provided with the regulations that we are asking for here will eliminate some of that. I am not naïve to think it's going to eliminate all of that, but I certainly think that, you know, if we have clear direction on what our responsibility is in the statute, it provides for less uncertainty and less ambiguity in what our responsibilities are in those issues.

Senator COTTON. And if one of these radical groups unsuccessfully sues on a project, are they barred from suing under other statutes or are they free to proceed under other statutes?

Mr. McDONALD. Senator, I am not aware of the answer to that question, but perhaps somebody else with a better legal background would understand that.

Senator COTTON. I think they have many other statutes that they can proceed under, so they get multiple bites at the apple. When a project is shuttered because of such lawsuits, are construction workers and operators still paid?

Mr. McDONALD. Thanks for the question. Again, Senator, I would have to get back to you on that one as well. I am not aware of the answer to that question.

Senator COTTON. Well, given that most workers are being paid by the hour, I think it's probably fair to guess that they are not being paid, which means this kind of lawfare is not just causing electricity supply to go down and prices to go up, but hardworking construction workers not to be paid.

How does the threat of such open-ended lawsuits affect your decision-making for projects at MDU?

Mr. McDONALD. I think with all projects, lawsuits or not, you know, we always strive to do the best job possible. We work with our state, local, and federal partners, and tribal partners in instances where we are working on tribal land, you know, we always try and do the right thing. And again, the clearer the statute is, the easier it is for us to plan for these projects, to execute these projects in an efficient and predictable manner.

Senator COTTON. Okay, thank you.

I yield back my time.

The CHAIRMAN. Senator Gallego.

Senator GALLEGRO. Thank you, Chairman Lee and Ranking Member Heinrich, and thank you to our witnesses for your attendance today.

Like many of the states represented on this Committee, my home State of Arizona has widespread historic resources that teach about our past, honor tribal heritage, and drive tourism to our state—a lot of tourism. We are also experiencing tremendous population energy demand growth, meaning we have to find ways to both grow quickly and responsibly. I have been a vocal supporter of building out housing, energy, and transmission resources as fast as possible, but I have also been vocal that we can't do so in a way that hurts and cuts our community and tribal input. You know, for example, Arizona State Historic—our SHPO office—has reviewed more than 3,000 federal projects and consultations in the past three years. Their average turnaround time is less than 30 days and their adverse effect rate is below two percent. This means they are following the law while keeping things moving and even improving economic investment and community relationships. I believe there are ways to streamline though and improve Section 106 review without bypassing community input, and I look forward to hearing your thoughts on all of this.

My first question is for Dr. Merritt. Last week, Arizona's SHPO officer sent a letter to the Superintendent of the Grand Canyon, highlighting ways that they can work together to streamline construction of a new Grand Canyon lodge after it was destroyed in the Dragon Bravo fire this summer. Reconstruction of the lodge will require significant buildout of energy and water infrastructure, as well as the building itself. The letter highlights ways that Section 106 can be streamlined under existing authorities, including synchronized reviews, exemptions of certain activities from 106 review, and real-time, on-the-ground decision-making. Do you think that most states currently use streamlining authorities like those outlined by the Arizona SHPO officer to the greatest extent, and is there room for improvement under existing authorities?

Dr. MERRITT. Thank you for that question, Senator, and that was sad to lose that facility.

Senator GALLEGRO. I know, trust me, it's a tearjerker for all of us.

Dr. MERRITT. I think it's always variable, and I do think most SHPOs employ programmatic agreements to find ways of streamlining and efficiency. This comes back to my third leg of the stool—the relationship building. These programmatic agreements are only as good as the relationship we forge between the SHPO and a federal agency. And I am very happy that the Arizona SHPO has that relationship with the National Park Service to agree to allow

things to move streamlined in a way that is structured. I am also applauding the Arizona SHPO for being proactive, working with the Park Service to plan for this versus waiting.

The long answer is yes, I think many SHPOs use these agreements, but I think we can expand their utility, and instead of—perhaps what I am advocating is, instead of having project-specific agreements, to be programmatic in the sense of projects by the Park Service in Arizona as a whole, or other agencies, because I think in those we find a lot of embedded efficiencies that can help.

Senator GALLEGU. Got you.

My next question is to Mr. Concho. Many Arizona stakeholders have highlighted that tribal consultation under the Historic Preservation Act is not only required under federal trust responsibility, but is extremely valuable for wildfire rehabilitation, trail construction, and much more. Can you speak more about if the value of tribal historic preservation officers were to be lost if the opportunity for tribal consultation is narrowed or reduced?

Mr. CONCHO. Yes, thank you for that question. Tribal Historic Preservation Officers are very important to the communities and the states that we live in, especially in a southwestern state where there is a high concentration of sites in the areas there. Without Tribal Historic Preservation Officers, that all could be lost or not protected further from, you know, from being counted as our history. As I mentioned earlier, our history stems for a long time, and we are still, we are here to protect that history. You know, one thing to keep in mind when talking about SHPOs and THPOs is that being a Tribal Historic Preservation Officer, we did take on those responsibilities from the SHPO and brought them home—like for my example, to Acoma. And there is where I see these projects come through my office. And by the same token, we have thousands of requests that come in through my office yearly and with a staff of only maybe one or two. And so, you can see how that mounts up and how we have to prioritize what we have to do.

Senator GALLEGU. Close down things, too.

Mr. CONCHO. So, I think additional funding to help us maybe hire additional staff would help streamline those decisions that we have to make as Tribal Historic Preservation Officers to protect our cultural identity.

Senator GALLEGU. Great.

Back to Dr. Merritt. In FY24, Arizona SHPO Officers reviewed 1,451 federal and state projects, with an average turnaround time of just 20 days, flagging only two percent for adverse impacts requiring mitigation. That's pretty efficient, in my opinion. It's my understanding that the National Park Service used to collect performance metrics like this for all states, but no longer does. How can we know how much Section 106 is holding up projects if we aren't collecting and sharing that data around it? Besides anecdotal?

Dr. MERRITT. Yes, thank you, Senator, for that. And I do think that there are the reporting mechanisms for us to receive our grant. I think that is another place for accountability for our offices and what we are doing. You know, I have relationships with the governor and the legislature to report those statistics as well, of how efficiency, and I have already told many, many folks here, like,

if a complaint of a 106 project makes it to a legislator or to a congress, I have screwed up because that's how sometimes the measurement of success of Section 106 is measured, is how many people are complaining about it.

And so, I don't want that. I want to work to make this function and smooth and I don't want people finding problems with it, because that's the true accountability—the more people that are finding errors with it, the more I am not doing my job.

Senator GALLEGO. Thank you.

I yield back.

The CHAIRMAN. Senator Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman.

Mr. Chairman, Ranking Member, thank you for the hearing. You know, as we are focusing on permitting reform, and more broadly, I think it's very important that we are doing a more focused review of Section 106 compliance and how this all works.

Thank you for being here before the Committee today. My colleagues know that I often start my comments by saying Alaska is unique—our situation is just a little bit different. And I think in this situation, again, it just underscores—we are big, we are a young state, we've got a lot of properties that may have impact to traditional, religious, or cultural significance given the fact that we have 40 percent of the tribes in the country. We want to make sure, we must make sure that the consultation process is coordinated, it is efficient, but honors that government-to-government consultation, and that tribal voices are meaningfully heard—not just “this is what is going on and we will check in with you later,” but being there at the beginning.

We also recognize in my state, again, I mention we are big—we've got about 80 percent of the state that has never been surveyed for historic or cultural properties. And so, this presents its own set of problems when you have even very smaller, low-impact projects that may then trigger Section 106 reviews across huge areas. So, I am going to put this out to Dr. Merritt, but gentlemen, any of you can reply to this. Just a couple concrete examples of how this is playing out. In Southeast Alaska, we had our power and telephone company—they are trying to bring broadband to a very small community, Dyea, and the National Park Service required 500 hand-dug test pits along a 1.7-mile route. So, this was going to be more ground disturbance than laying the fiber itself. The project was delayed and the community basically lost out on that. And so, it's an example of project risk that is very small, but you have essential infrastructure that's effectively being halted. And we want to do all we can to protect historic sites. We understand that, but again, just looking at the scope of this.

Another project is in Northwest Alaska. Two mineral exploration projects, Anarraaq and Aktigirug—30 months of review, seven EA extensions, conflicting findings between the Corps, SHPO and the IRA Council ultimately halts the construction despite extensive consultation there. So, the question to you all is, when you have, again, projects that are very small, a project risk so small, these repeated reevaluations that effectively do nothing but delay projects. And again, I am coming from a state where our construc-

tion seasons are limited. It's truly a season. It's not 365 days. You might have four months at best to advance your project.

So, Dr. Merritt, let's just start with you here.

Dr. MERRITT. Thank you for that question, Senator. I can't see the ground in Alaska, but I can see the ground very well in Utah. And so, that's why there are different methods that each state employs. And that goes back to the state-by-state solution. But I think, again, it goes back to relationships and finding common-sense solutions to get through these projects. Sometimes doing shovel probes—shovel tests is what we call those—makes sense. Other times, it has become perfunctory. We always do them because we always have done them.

I can't speak to the Alaska SHPO and why they moved forward on that, but I can speak to the other issue of having multiple agencies not working well together. And I have seen that time and time again, not because the solution is bad for anybody, but because the coordination stank at the very onset. Is the Army Corps maybe not coordinating with another agency early on, or the other agency not knowing there would be another agency's involvement, and so we get multiple steps, multiple horses in the race that don't even know they are racing each other. I have seen that happen multiple times in the implementation of this law because we do have ourselves tied to NEPA. We have to complete the 106 process before a NEPA decision can be reached.

I have worked for the Federal Government, I have worked for the Forest Service, and I remember examples of working under NEPA, and the NEPA shop not telling the archeologists what's coming, and so, we're now the bottleneck because most NEPA is desktop, you know, looking at stuff from computers and books versus most archeology being on-the-ground type of work. So, I have seen delays in that way and communication and also just every single time thinking—are we doing this in the smartest way for the people this project is trying to serve? I never separate myself from the point of the project. I don't care about what the project is from a regulatory standpoint. My job is to just make it move as quickly as possible.

Senator MURKOWSKI. Well, it sounds like you're not satisfied that we have a process that is efficient, does allow for a—whether it's a multi-track—but just recognizing that understanding what this process may look like, timelines that are realistic, could help us with our efficiency.

Dr. MERRITT. One hundred percent.

When a proponent calls me because they know they have to enter into a consultation with the BLM to get a permit, I try to walk them through, as clearly as I can, like expect this, expect this. When you meet with the BLM, let me know, we can communicate with the BLM to move the project along. And so, it's communication.

Senator MURKOWSKI. Yes.

Dr. MERRITT. And sometimes we stink at it.

Senator MURKOWSKI. Thank you for that.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Murkowski.

Senator Hickenlooper, you are up next.

Senator HICKENLOOPER. Thank you, Mr. Chair. Thanks to all of you for being here. Thanks for your work.

Expanding and updating our electrical grid is critical, I think, to ensure reliable, affordable, you know, dependable, electricity. Many of us up here have sponsored a number of bills in that direction. In Colorado, we have seen how valuable it is when energy developers and agencies consider cultural and historical context and the resources up front in the processes of much-needed grid expansion. I think you all touched on this.

Let me start with Dr. Merritt and Mr. Concho. What are your ideas for how we can minimize the impacts to historic and cultural resources, while at the same time being more efficient or speeding up the buildout of critical infrastructure, like transmission, which the country depends upon?

Mr. Concho, why don't you start?

Mr. CONCHO. Thank you for the question.

I believe, like you mentioned, first and foremost, bringing on the tribes that belong to the areas that are being affected with the project proponent, bringing them together at the table as the project is at its inception is the most important part in this whole thing because you get the input from tribal representatives, plus the tribal knowledge—the elders, the people that live there and that have lived there know where certain things are at, know where certain historic and sacred sites are. And so, coming from the Native American perspective and coming from the Southwest, it is very important, especially in the Southwest because there's not—you can't walk, at least maybe a mile, and not run into a place of cultural significance, and that's how important it is for the THPOs just to come to the table early and involve the tribes at an early point.

Senator HICKENLOOPER. Great.

Dr. MERRITT. I struggle with being pithy, but I will try to do my best because this is a very interesting question. So, in Utah, we have spent most of this year working on a draft agreement to look at geothermal. We are getting an increase of geothermal projects in Utah, and I want to be ahead of it. I want to be ahead of the gold rush for this new energy source that could redefine our nation's dependence on other energy sources. But we are investing up front, like, let's set up a firm process for any geothermal company in our state. What are the expectations? Where can you find and move quickly? Where do you need to slow down? I think that's one big piece, is being proactive, ahead of the game. We have established similars for solar on the western side of Utah to make solar projects simple when they come in—simple on a grand scheme.

The second thing, as you brought up—historic context. So, I will nerd out again for you. For everybody's sake, the National Register of Historic Places urges people to create historic context. So, it's a playbook. You are out inventorying, you find a type of building or an archeological site, you go through this already-pulled-together resource to determine what makes that resource important or not important in the eyes of the law. I am a big proponent of these because it does help standardize, when people are going to the field—I find "A", I look at the document, and I conclude "B", versus every

single resource kind of winging it. And so, I think that does offer another place of structure.

And so, we invested, in Utah, with partnership with the Bureau of Land Management, historic context in our oil field in north-eastern Utah, looking at very commonly discovered sites—sheep herder camps, Native American open campsites. And so, we just wanted to invest a lot early on.

Senator HICKENLOOPER. Well, I appreciate that and I think that is crucially important, making sure to reach out.

A relatively unknown part of my past that I loved is, my business would renovate old historic buildings. I spent a lot of time working with historic preservation in local communities around the western United States. In 1997, I was proud, the National Trust for Historic Preservation gave me their award of honor—much ado about nothing, as my wife said. But I do think, Mr. Merritt, I think it's incredibly valuable that we take into consideration exactly what you are working on, making sure that we are out front.

The Trump administration had removed three members of the Advisory Council on Historic Preservation earlier this year and then two more resigned. This is in addition to the staffing cuts we have seen, not just for the Council staff, but for federal land management agencies, other agencies leading projects through the entire Section 106 process. Can you speak to the impact that these vacancies and staffing cuts have made, especially on energy projects?

Dr. MERRITT. So, in Utah, we haven't seen as many of the federal layoffs as in other states. The vacancies at the Advisory Council of Historic Preservation could hurt us in the long run of putting forward program comments that could help expedite, nationally, some of these agreements. But increased vacancies at federal agencies in Utah will slow the Federal Government's response to permitting applications and reviews. And so, while we're not seeing it yet in Utah, I know other places are. And so, it is a concern of ours because the more that the federal agencies don't do their job because of staffing, the more it falls to us.

Senator HICKENLOOPER. Got it. Hear you loud and clear.

Thanks to all three of you.

I yield back to the Chair.

The CHAIRMAN. Thank you.

Senator McCormick.

Senator MCCORMICK. Thank you, Mr. Chairman and Ranking Member. Thank you to our three distinguished guests. I am grateful that this panel of witnesses has come here to discuss an important issue for our permitting process and jobs pipeline in Pennsylvania. The reality is that regulatory inconsistency and duplication across federal agencies are unnecessarily delaying and hindering vital infrastructure projects across the country, including in my state, the Commonwealth of Pennsylvania. And that's why I am committed to streamlining the permitting process and examining the different regulations and rules put in place such as the Section 106 consultation process under the National Historic Preservation Act. The NHPA process currently slows down our ability to build, update, and modernize due to several specific failures that directly impact our state's economy. This includes the fundamental regu-

latory inconsistency across how different federal agencies apply the rule, often resulting in duplicative and overly expensive, expansive consultations by agencies like the National Park Service.

We also face challenges from the Bureau of Land Management's deference to tribes and their required changes on previously agreed upon plans, which creates crippling uncertainty for developers. Compounding all of this, the reliance on subjective and difficult-to-measure concepts, like the traditional cultural properties (TCPs), allows for decisions that go beyond clear statutory requirements, treating vague concepts with the same significance as clearly delineated historic sites. Now, for Pennsylvania to secure our future and lead in manufacturing, we need reforms that impose firm deadlines, clarify the scope of review to the project's actual disturbance, and exempt critical infrastructure, like utility poles and transmission lines from being unnecessarily flagged as historic.

So, with that context, Mr. McDonald, last summer in Pennsylvania we hosted the inaugural Pennsylvania Energy and Innovation Summit, which convened President Trump, his Cabinet, and leading CEOs from the technology and energy sectors. Throughout the day, participants raised our urgent need to build new energy infrastructure quickly and efficiently to meet the growing demands for energy. In your testimony, you discuss the unexpected delays MDU faced when rebuilding an electric distribution line due to Section 106 of the National Historic Preservation Act. Given that U.S. electricity demand is projected to increase by nearly 80 percent by 2050, how do you expect the current Section 106 process to significantly hinder critical energy development?

Mr. MCDONALD. Thanks for the question, Senator.

I think the answer is that it varies, and that gets back to the point in my testimony about the clarity needed in the statute. Depending on which federal agency you are talking to, even which consultant, which utility company, there has just been a lot of different interpretations of how do you define that area of potential effects and what the project is establishing there. So, I mean, potentially there are projects that will go on as planned and everybody will agree upon the same interpretation, but without that clarity in the statute, it is still a bit of a guessing game on how these projects are going to run and how efficient they are going to be planned and executed.

And as I spoke to—with that example, again, we are dealing with about a two, two-and-a-half-month window for construction. So, even a delay of a month or two, depending on the timing of when we get to that point in the process, can lead to a further delay, depending on what your construction season delays are.

Senator MCCORMICK. Advice on what changes policymakers should pursue to address critical infrastructure delays caused by Section 106?

Mr. MCDONALD. I think, Senator, we can get you more definitive language on what that looks like. I think it's really just, for linear projects, in particular, if we're not receiving federal funding, which we typically don't—we are an investor-owned company, so it's pretty rare anyways—but if we're not receiving federal funding, then our thought is the jurisdiction for the federal agencies and the consultation projects is the land that they manage. That would be our

suggestion, but we can follow up with more distinct language there too.

Senator McCORMICK. Very good.

Mr. Concho, I have a question for you, but I am not sure I am going to have enough time, so, I will submit that for the record.

Thank you.

The CHAIRMAN. Senator Padilla.

Senator PADILLA. Thank you, Mr. Chairman. I just want to echo the sentiment that has been shared from several members already, and that's the importance, obviously, of truly meaningful tribal consultation. Consultation through Section 106 of the National Historic Preservation Act is a critical tool within California. We, too, have a State Historic Preservation Officer, a SHPO, and in 2024 alone, the SHPO completed roughly 4,100 reviews under Section 106. So, it's not a slow, sleepy office. It is a very busy one, in addition to being an important one. This has included individual project consultations for efforts such as road projects, solar installations, and hazardous fuels projects in our forests.

California is home to 109 federally recognized tribes, more than any other state in the nation, and over 50 have THPOs, the Tribal Historic Preservation Officers. And we value this because tribes have traditional knowledge of the land and resources that have been significant to their people since time immemorial. That's why it's critical for the Federal Government to meaningfully engage with tribes when pursuing projects that could impact their cultural resources. And the key word I want to emphasize here is meaningful. Tribal consultation is not just a quick call, an email, whether or not it is replied to, simply for the purposes of checking a box. Meaningful means meaningful.

Mr. Concho, I know that in your testimony and some of the Q&A with other members, you have talked about not just the quality of engagement, how important that is, but the importance and value of early engagement as well. For the benefit of some of the members of the Committee, can you give some examples of how early engagement can lead to either reduced costs down the road, less risk of a project not getting to the finish line, if you will, and the long-term viability of some of these important projects?

Mr. CONCHO. Thank you for that question.

Back at Acoma, what I refer to as the Acoma Method, or the Acoma Way, we met with the one of the Kinder Morgan projects that was coming through our area. And you know, we did meet with them from the onset and we partnered with them. And we met with them and we brought in our tribal knowledgeable people that know the land, know my elders, and we, with the Governor, along with the Council, we sat and we talked about this project and how it is going to go, and where is it going to go, and how is it going to affect the land. So, we worked with them to agree on a specific area that we are going to survey. That way, we have enough room to say, oh, there is a cultural property here or something significant here. That way, for that pipeline, we can then say, okay, we are good with this project. Let's move forward.

And by doing so early, it allows the proponent to say, well, we sat with them. This is where it's going to go. The monitors are there with us. And so, they got done with the project in six weeks.

There are other projects ongoing currently, such as a fiber-optic project that's going through the pueblo that we are working alongside the proponent with that project. So, we're not saying that Section 106 stops or gives the tribes permission to halt a project, but as long as we are working together, we can see outcomes and look these projects through and then see that they don't affect any of our cultural resources.

Senator PADILLA. Wonderful. It seems to be an elegant evolution of what is referred to sometimes as the carpenter's rule, right? Measure twice, cut once, right? If you are thoughtful on the front end, you're not having to go back and redesign and redesign and accommodate for things that you learn later in the process because you consider them much earlier.

Dr. Merritt, quick follow-up question for you. What are some of the best practices that have allowed responsible development in Utah without undermining tribal resources?

Dr. MERRITT. Thank you, Senator, for that question.

And so, I will just refer back to my talking points. It's focusing on the process, the data, and the relationships. In Utah, our Department of Transportation has actually set up consultation agreements with tribes. So, the tribes aren't being inundated with projects that they're not typically concerned about as a way to limit down the workload for our tribal partners.

We also focus on the digital workflows, and we provide data sharing to all our state and federal partners to provide that information in real time. And all of these efficiencies allow us, much like Mr. Concho is saying, to invest up front to make the best decision. The better data we have, the better process we have, the better way we can plan for a project to not impact Utah's 13,000 years of human history. And so, we have done that in such a way that projects can move forward without deep-level concerns and impacting resources without due diligence.

Senator PADILLA. Thank you very much. I know my time is up, Mr. Chairman. I just want to end on two quick notes.

One, I will submit some questions for the record in writing for the witnesses afterwards. I know some of my colleagues spoke to some of the funding and staffing, you know, general resource concerns—the need for them as opposed to the cuts and reductions that we seem to be fending off.

I will ask Mr. Concho specifically about THPOs and the \$100,000 figure that seems very low, nowadays especially, and the value of additional investment for this process.

And lastly, Mr. Chairman, while the conversation has been centered around consultations for specific projects on a project-by-project basis, I know California is not the only state—maybe one of the first states—to grow these relationships and partnerships beyond just consultation for purposes of a specific project, but genuine partnerships and shared management responsibilities of public lands and stewardship for the long term of public lands. There is a lot of experience and historical knowledge to be gained here, whether it's management, whether it's environmental species protection, whether it's wildfire mitigation, on and on and on. So, I hope these are great examples that other states can be inspired by, learn from, and replicate.

Thank you, Mr. Chair.

Senator HEINRICH. I am going to just put sort of a fine point on what Senator Padilla mentioned. A couple of things that we clearly heard in this hearing today are that we need better coordination between federal agencies, and that has been my personal experience, and I think that's something that probably is shared across the aisle. But we also need people at the desks. There is talk of extensive additional layoffs at our public land agencies. I think there is no question that will further slow the certainty that whether you care about this flavor of energy or that flavor of energy, if there is no one at the desk, you can't get a permit. And we need to make sure that's not the case. That is not responsible management. It's not responsible stewardship of our public lands. And hopefully, we can find some common ground around that for the entire energy spectrum.

Thank you, Chairman.

The CHAIRMAN. Thanks, and I appreciate that insight that nobody wants to see a process that has resulted in a lot of delays produce even more delays. I will note that the relatively recent efforts within the Trump administration to streamline the federal workforce—almost mathematically impossible that those could have caused the significant delays that we are talking about here. And I would add that the examples I mentioned, each of the examples I mentioned in my opening statement have been going on for many years, and each of them encountered significant delays either under the Biden administration or the Obama administration.

A lot of what we are talking about here today, as we have discussed at length, is the fact that we have some ambiguous text that has left THPOs and SHPOs, among others in the process, with a lot of subjective—there is a lot of subjectivity involved, and that has resulted in delays. So, to the extent that we can clarify those standards, we will all be better off.

I want to also enter into the record a piece by the Washington Post Editorial Board from a couple of days ago, talking about the ballroom and placing it in a historical context. That will be admitted, without objection.

[Washington Post editorial follows:]

From the Washington Post:

Democracy Dies in Darkness



Opinion
Editorial Board

In defense of the White House ballroom

Donald Trump vs. the NIMBYS

October 25, 2025

The teardown of the White House's East Wing this week is a Rorschach test. Many see the rubble as a metaphor for President Donald Trump's reckless disregard of norms and the rule of law, a reflection of his willingness to bulldoze history and a temple to a second Gilded Age, paid for by corporate donors. Others see what they love about Trump: A lifelong builder boldly pursuing a grand vision, a change agent unafraid to decisively take on the status quo and a developer slashing through red tape that would stymie any normal politician.

In classic Trump fashion, the president is pursuing a reasonable idea in the most jarring manner possible. Privately, many alumni of the Biden and Obama White Houses acknowledge the long-overdue need for an event space like what Trump is creating. It is absurd that tents need to be erected on the South Lawn for state dinners, and VIPs are forced to use porta-potties.

The State Dining Room seats 140. The East Room seats about 200. Trump says the ballroom at the center of his 90,000-square-foot addition will accommodate 999 guests. The next Democratic president will be happy to have this.

Preservationists express horror that Trump did not submit his plans to their scrutiny, but the truth is that this project would not have gotten done, certainly not during his term, if the president had gone through the traditional review process. The blueprints would have faced death by a thousand papercuts.

Fortunately for Trump, the White House is exempt from some of the required regulations that other federal buildings must comply with. Because it has become far too difficult to build anything in America. Prominent Democrats have become vocal this year in calling out their party's lawyerly obsession with process, which combined with a not in my backyard (NIMBY) mentality, has prevented a place such as California from building a high-speed rail project that its voters approved by referendum in 2008.

Many homeowners have become red-pilled by their struggles to navigate the slow-as-molasses maze of government bureaucracy when they're trying to make even modest renovations, such as adding a deck. D.C. alone has 70 historic districts and other random entities that can throw sand in the gears.

Though the fundraising for the ballroom creates problematic conflicts of interest, two examples validate Trump's aggressive approach. After a fence jumper got inside the White House in 2014, it was obvious that better perimeter fencing needed to be installed. But doing so involved five public meetings of the National Capital Planning Commission (NCPC) over two years, as members took pains to ensure the fencing complied with environmental rules. Construction didn't begin until July 2019.

Or consider the modest Dwight D. Eisenhower Memorial near the National Air and Space Museum. Congress authorized its creation in 1999. Architect Frank Gehry was selected in 2009. The NCPC rejected Gehry's initial design proposal in 2014 before approving a revised plan the next year. The Commission of Fine Arts gave its approval in 2017. The memorial wasn't opened until late 2020. By contrast, Eisenhower planned and executed D-Day in about six months.

The president has said the project will cost \$300 million but that he's raised \$350 million from private donors. The White House released a list of 37 donors on Thursday, including Apple, Amazon, Comcast and Lockheed Martin. (Amazon founder Jeff Bezos owns The Post.)

Trump joins a long list of presidents who have left their imprint on the White House. Theodore Roosevelt replaced greenhouses to construct the West Wing. William Howard Taft constructed the first Oval Office in 1909. Richard M. Nixon converted a swimming pool into the press briefing room in 1970. The modern East Wing wasn't even built until World War II to cover up an underground bunker. Harry S. Truman gutted the White House interior and added the balcony that bears his name. Purists decried it. Now it's a hallmark.

The White House cannot simply be a museum to the past. Like America, it must evolve with the times to maintain its greatness. Strong leaders reject calcification. In that way, Trump's undertaking is a shot across the bow at NIMBYs everywhere.

The CHAIRMAN. Finally, before we conclude today's hearing, I want to take a moment of personal privilege to recognize our Chief Counsel, Pat McCormick, who will soon be departing, sadly, after 14 years of service to this Committee and the United States Senate.

Pat is an extraordinary human being. Anybody who has interacted with him knows that. His mind is an encyclopedia that knows the work of this Committee backwards, forwards, and upside down. His judgment and his deep knowledge of all the laws touching on the subject matter of the Energy and Natural Resources Committee have anchored this Committee's work for many of its most complex and consequential debates over the last decade and a half. We will be introducing a resolution to honor that service, but for now, Pat, I just thank you for your many years of service.

Mr. MCCORMICK. Thank you. Thank you to the Committee.

[Applause.]

The CHAIRMAN. We wish you the very best of luck in all of your future endeavors, and thanks for your service.

Mr. MCCORMICK. Thank you very much. It has been an honor to work with you.

The CHAIRMAN. Thank you so much.

All right, so that will conclude today's hearing. I thank my colleagues for their contributions. I thank the witnesses, who have traveled great distance to offer great insights today.

Any Senator who wishes to submit additional questions for the record may do so. The deadline for doing that will be 6:00 p.m. tomorrow, and that is Thursday, the 30th of October.

Senators will have until 6:00 p.m. next Wednesday, November 5th, to add any statements for the record to today's hearing.

Thanks again for being here. The Committee stands adjourned. [Whereupon, at 11:00 a.m., the hearing was adjourned.]

APPENDIX MATERIAL SUBMITTED

U.S. Senate Committee on Energy and Natural Resources
October 29, 2025 Hearing: *Section 106 consultation process under the National Historic
Preservation Act*
Questions for the Record Submitted to Dr. Chris Merritt

Questions from Chairman Lee

Question 1: It has become increasingly difficult to build and invest in the United States because of a regulatory framework riddled with red tape, duplication, and barriers. Any undertaking, from a wildfire risk reduction treatment to a pipeline to a solar facility, can face years or even decades of regulatory and legal hurdles.

Are there areas where Section 106 could be streamlined or better integrated into other permitting processes, without sacrificing historic preservation outcomes?

Excellent question, Chairman. Yes, there are several places that Section 106 processes could be streamlined and integrated. First, the implementing regulations for Section 106, 36CFR800.14, allow for the creation of Programmatic Agreements. Programmatic Agreements can allow simplicity in reviews and streamlining when effects on historic properties are similar and repetitive, when effects cannot be fully determined before an undertaking's approval, and for routine management activities. In Utah, we have streamlining Programmatic Agreements with several agencies, where we accept that many of their undertakings have no risk to historic properties, so we blanket exempt them from review, or due to low risk, review them at the end of the year. This allows dozens, if not hundreds, of undertakings to move forward quickly with an internal agency review only. To answer the second part of your question, the integration with NEPA is a critical piece of the puzzle. There is an entire section within 36CFR800.8, that details the push to better integrate NEPA and the National Historic Preservation Act. This is an underutilized tool, and if effectively managed, could increase efficiencies throughout the system. After working in this sector for nearly 20 years, I can tell you that internal coordination at federal agencies between NEPA and cultural resources teams, is a weak point and can be improved. Both Programmatic Agreements and better NEPA integration will improve the process without sacrificing historic property protections.

Question 2: Projects requiring a federal permit often cross multiple jurisdictions and require that project sponsors consult many federal agencies and outside parties. Those parties often disagree on the area of potential effect or the degree of impact to a historic property.

How does this lack of consistency and uniformity impact not only the project in question but also your ability to accurately identify and preserve historic properties?

Great question Chairman. At the onset of an undertaking there should be a clarity in the scope of the undertaking from both the agency and proponent's perspective. For most undertakings, the definition of the Area of Potential Effects and other pieces of the Section 106 review process are simple, repetitive, and generally uniform. In the more complex cases, such as transmission lines, pipelines, or other large-scale development projects, these pieces can become burdensome and unclear. But it does not need to be that way. In the regulations, there are clear lines for federal agency officials to designate "Lead agency" status which should be done early in the consultation process for Section 106. This will put the onus on the agency to coordinate with others, versus weight on the proponent for all aspects of the Section 106 process. Also, the

U.S. Senate Committee on Energy and Natural Resources
October 29, 2025 Hearing: *Section 106 consultation process under the National Historic Preservation Act*
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earlier in the process that the NHPA can be engaged, concurrently with initiation of NEPA, all parties would benefit. Much of NEPA is desktop analysis, but much of NHPA is field-based, and will take longer to gather needed information, including thorough consultation with Tribes and other parties. Delaying integrating NHPA with the NEPA analysis will create perceived bottlenecks later in the process, which may be avoided. My final suggestion on this type of project is the early development of a Programmatic Agreement for a large project like a Transmission Line, which would set up clear rules for what the cultural consultation process would look like. Further, and this is something I want to do more of in Utah, is for each State to create Programmatic Agreements that could blanket multiple undertakings, not just the one in the door. This means creating a blanket Programmatic Agreement for High-Voltage Transmission lines, for example, not connected to a specific individual project. Proponents would be able to walk into the process of a new or expanded line, understanding the exact expectations of Section 106 before NEPA even initiates.

Question 3: The NHPA delegates a significant amount of authority to the states to conduct historic preservation. Utah holds itself to rigorous standards and best practices, but not every state is the same.

Do any mechanisms exist to ensure that State and Tribal Historic Preservation Offices are conducting consultation in good faith and adhering to reasonable timelines? What remedies exist if you are consulting with another SHPO or THPO that is unresponsive?

In my opinion, there are at the minimum three places that accountability exists within the current system. First is personal accountability, as SHPOs and THPOs are paid by the taxpayer and every day I walk into my office thinking about what is the value of my work today for those who are paying my salary? Am I representing the work of the State and its citizens? Second, SHPOs/THPOs are within governmental structures that need to demand accountability as well. Within the Executive Branch of the State of Utah, I am directly accountable to the Governor and his team, and I assure you that if I was missing deadlines and dragging processes out, there would be accountability from the Executive Branch, let alone the Legislature who controls funding. Third, 60% of the budget of the SHPO is received from a grant through the National Park Service. To receive this sizable grant, there are a number of commitments which the SHPO has to maintain. In all three realms of this accountability there are documented measurables, such as our target to the Utah Legislature of consultation at or below 15 days, etc. Of course, accountability only matters when it is enforced and in Utah we take this responsibility seriously.

Questions from Senator Cantwell

Question 1: Over the years, Washington state has successfully completed a broad spectrum of projects that were subjected to Section 106 of the National Historic Preservation Act. We have successfully navigated Section 106 consultations through projects involving archaeological sites, tribal burial grounds, and other sacred and historic places.

U.S. Senate Committee on Energy and Natural Resources
October 29, 2025 Hearing: *Section 106 consultation process under the National Historic Preservation Act*
Questions for the Record Submitted to Dr. Chris Merritt

Section 106 consultation done right, makes sure voices are heard, while not disrupting infrastructure projects. In fact, Section 106 consultations help avoid disruptions at critical project phases, such as construction, when delays can balloon project costs.

- In your experience, how have Section 106 consultations ensured voices, particularly Tribal voices are heard, and have helped manage unforeseen disruptions in infrastructure projects?
 - Thank you, Senator, for the thoughtful question. Section 106 and 36CFR800 instruct federal agencies to engage with Tribal partners at every step in the process, whether helping to identify historic properties or those resources of cultural significance, to helping assess and resolve undertaking effects to those resources. This provides Tribes several places to participate in the process. The second half of your question is to manage unexpected situations in development projects, and this is where Section 106 works well if we invest early in the consultation procedures. No one wants to be in the midst of a project, engines rolling, and encounter an unforeseen cultural resource issue. But if the project was properly consulted upon, and even if it wasn't, there are tools that allow for the regulations to kick in and offer paths out of the situation quickly with clear sideboards. We often call these 'discovery protocols'. However, investment in the identification phase, consultation with partners, and due diligence reviews, can provide proponents and Agencies with some level of confidence in the process.
- Do you believe Section 106 consultations can help reduce delays and overall project costs?
 - Yes, Section 106, if done right, can help projects move quickly and efficiently to completion and limit the potential for unexpected delays. In the grand scheme of a multi-billion-dollar infrastructure project, cultural resources are a very small piece of the financial commitment, but could be problematic if not handled early in consultation.

Question 2: As you know, the Historic Preservation Fund provides the necessary funding to preserve our nation's historic resources. It provides preservation awards to states, tribes, local governments, educational institutions, and nonprofits committed to preserving irreplaceable, historic artifacts and sites.

While the fund is authorized at \$150 million per year, the fiscal year 2025 Continuing Resolution (CR) appropriated almost \$169 million for the Historic Preservation Fund. The President's fiscal year 2026 budget requested just \$11 million for the Historic Preservation Fund. This means all federal funding would be drained from State and Tribal Historic Preservation Offices and Section 106 consultations.

- Does slashing the budget for the Historic Preservation Fund help or harm Section 106 consultation?

U.S. Senate Committee on Energy and Natural Resources
October 29, 2025 Hearing: *Section 106 consultation process under the National Historic Preservation Act*
Questions for the Record Submitted to Dr. Chris Merritt

- Thank you for the question, and cutting the Historic Preservation Fund will hurt the capacity of SHPOs and THPOs to review project findings from agency officials by likely furloughs to staff, loss of digital systems to maintenance costs, etc. This will undoubtedly lead to slowdowns in Section 106 review process costing both time and money to all involved.
- How will it impact the Section 106 consultations for infrastructure and development projects?
 - As mentioned above, the loss of funding from the Historic Preservation Fund, will impact staff and data systems at the SHPO and THPO. Lack of staffing to review undertakings, the lack of digital systems being maintained or updated, will all types of undertakings including infrastructure and development.

Questions from Senator Hoeven

Question 1: In your written testimony, you note how inconsistencies among federal, state, and tribal agencies on how to identify “Areas of Potential Effects” can slow the process. How has the State of Utah worked collaboratively with partner agencies to streamline and standardize Section 106 reviews?

A great question Senator, and my whole team at the Utah SHPO works hard to make this a reality. Over the past ten years, we have worked with our federal and state partners to establish as much clear guidance on expectations through written “how-to” documents through our Office, investment in the Bureau of Land Management’s Protocol to identify streamline and consistency-setting structure, and then nearly a dozen other Programmatic Agreements to structure the Section 106 process more consistently. I speak to the process, data, and relationships as the key to Section 106 working cleanly. Process in our office is clear and consistent through our written guidance and practice and includes our investment in a digital consultation process. Our data is comprehensive, accessible and constantly maintained. And we prioritize good relationships with all federal and state agencies. We host quarterly interagency meetings to build those congenial relationships, touch on opportunities or topics of concern, and effectively create a network of professionals dedicated to working collaboratively.

Question 2: How can federal agencies, states, and tribes work together to bring greater consistency to historic preservation without unnecessarily subjecting states and tribes to a one-size-fits-all federalized approach?

Thank you, Senator, and similar to other questions I recommend that States and Tribes execute Programmatic Agreements early and often. These agreements allow the structuring of the Section 106 process so that it is consistent and reliable, for agencies, tribes, proponents and other parties. A clear standard at the onset will create efficiencies through the entire system.

Question 3: Your written testimony highlights a challenge where consulting parties are able to dispute “no adverse findings,” even when proper consultation has occurred.

U.S. Senate Committee on Energy and Natural Resources
October 29, 2025 Hearing: *Section 106 consultation process under the National Historic Preservation Act*
Questions for the Record Submitted to Dr. Chris Merritt

What changes should Congress consider to help prevent bad-faith disputes and unnecessary delays?

Thank you, Senator, for this question, and it is a complicated one. The example in my written testimony, refers to 36CFR800.5(c), that allows any consulting party in the Section 106 process to disagree with the finding between the Agency and SHPO, which then leads to a first attempt to resolve the disagreement at the Agency level. If not resolved, the disagreement goes to the Advisory Council on Historic Preservation where they have 30 days to respond, etc. In an ideal world this is a safety valve, but in practice, it has been abused by some consulting parties to delay projects that were appropriately consulted and even received SHPO concurrence. This has been used multiple times in Utah to delay projects for months, for those types of undertakings consulting parties found against their political positions, such as oil and gas leasing. At the end of nearly a dozen disputes using this tactic, the undertakings progressed as consulted, only now months behind schedule. This is a process that could warrant review on best practices to avoid bad-faith disputes and unnecessary delays. There are undoubtedly other areas of the regulations that have been used in other States to slow down processes, but this is the one I am the most aware of in Utah. I would be curious to hear from agencies and proponents on specific concerns they have had regarding this topic, and work to build a better law.

Questions from Senator Hickenlooper

Question 1:

We have heard from Colorado energy developers and state officials that starting a Section 106 consultation after a long NEPA review can drag out project timelines.

Sometimes a change made due to one permitting process, say an adjustment in a transmission line location to avoid endangered species habitat, can cause the Section 106 process to restart.

Do you have specific recommendations for federal agencies to better align NEPA and Section 106 processes to streamline reviews and get projects moving faster?

Thank you for the question, Senator, this is a complicated issue. As I have mentioned in other comments, much of NEPA is desktop, while much of the Section 106 process is fieldwork. This means that there is a need for greater clarity from the onset of a project initiation where the project is proposed to be constructed, a solid and clear understanding of the types of ground disturbing activities and locations, and potentially limiting the number of alternatives (as each would potentially need cultural resources inventory before signing a Record of Decision), etc. The two easiest ways to improve NEPA/Section 106 integration is starting the integration early in the process so that cultural resource professionals are in the discussions, feeding information to planners and proponents, and being aware of where to put the precious resources of time/energy. My second most significant way of fixing your example (alteration of the project due to endangered species), is the development of Programmatic Agreements. These Agreements are a blueprint that lays out precisely 'what' needs to be done for each of these variable instances. For example, we promote Programmatic Agreements for large-scale transmission lines for the exact issues you raise such as multiple alternative routes, project variances (changing

U.S. Senate Committee on Energy and Natural Resources
October 29, 2025 Hearing: *Section 106 consultation process under the National Historic Preservation Act*

Questions for the Record Submitted to Dr. Chris Merritt

alignment due to unforeseen project change), unknown effects due to private landowner denial of access, shortening review times for SHPOs and other parties, etc. These Programmatic Agreements, if developed early, can provide clarity on processes and not allow a small change in an alignment to create lengthy delays.

Question 2:

What lessons can be learned from other linear infrastructure processes, like pipelines and highways, when it comes to historic preservation reviews for electric transmission processes?

Thank you, Senator. To our office, pipelines, highways, and electric transmission projects are the same in most ways--long distance with large areas of potential effects, clear and understandable effects to historic properties, and many moving pieces with other natural resources. What differs for transmission projects, that sometimes gets lost in the conversation, is the ability to avoid more impacts to cultural resources due to spanning of sensitive sites, pole placement relocations, etc. It is this variability that should, potentially, make Section 106 consultation for electric transmission projects easier with the exception of assessing visual, atmospheric, and auditory effects. But even this can be handled with an early engagement in the consultation process to create clear boundaries for areas of potential effects that do not unduly burden the project. Early and often consultation and a commitment to being pragmatic through the consultation can lead to efficiencies and clarity.

Questions from Senator Padilla

Question 1: The President's FY26 Budget proposes to nearly zero out funding for the Historic Preservation Fund, which would hamstring the ability of SHPOs and THPOs to engage in Section 106 reviews. Can you explain how this unpredictable federal funding and proposed budget cuts to the Historic Preservation Fund would impact your office's ability to complete Section 106 reviews?

Thank you, Senator, for this question. The loss of the Historic Preservation Fund would undoubtedly impact the ability of SHPOs and THPOs to maintain their staff and data systems, leading to loss of staff reviewers, staff to maintain digital systems, and even the cost of maintain those digital systems. Federal funding is critical to the existence of the SHPOs and THPOs in most places, and significantly impacts staffing, maintenance of data systems, and the interrelated review times for efficient consultation.

U.S. Senate Committee on Energy and Natural Resources
 October 29, 2025 Hearing: *Section 106 consultation process under the National Historic
 Preservation Act*
 Questions for the Record Submitted to Mr. Andy McDonald

Questions from Chairman Lee

Question 1: The SunZia transmission line is one of the nation’s largest infrastructure projects, running about 550 miles from central New Mexico to south-central Arizona. It is my understanding that the BLM issued the ROD for the line in 2016. However, the Center for Biological Diversity did not sue the developer under the NHPA until 8 years later, in 2024. This lawsuit was filed AFTER the developer began construction and has the potential to force the dismantling of the already completed SunZia transmission line.

What specifically can Congress do to reform the NHPA to ensure that project opponents cannot game the consultation process to stop the development of needed energy infrastructure in the future?

Without getting into the details of the SunZia transmission project, Congress can provide clear direction to project proponents and federal agencies by clarifying that the “undertaking”—as used in Sec. 106—is limited to only that portion of a project or specific project activity requiring federal permit, license, or approval. A clear and predictable Sec. 106 review process would allow project proponents and agencies certainty regarding compliance with Sec. 106 and any potential litigation.

Question 2: Some permitting reform advocates have pitched the idea of combining the NHPA process with the NEPA review process. They argue that a combined process would allow developers to address historic preservation concerns with a single environmental review and reduce duplicative efforts. Agencies would potentially use NEPA documents to satisfy Section 106 requirements, avoiding separate documentation and timelines.

Do you see this as a potential means to streamline the permitting process for a line such as the one MDU is developing?

Including language in NEPA and NHPA explicitly providing for the sharing of documents between review processes could make these processes more efficient and streamlined.

Question 3: NHPA consultation can add significant delay to the permitting process for projects, sometimes dragging on for years after the NEPA process is complete. In the meantime, project sponsors’ hands are tied.

What effect does this uncertainty have on a project sponsor’s willingness to make the infrastructure investments our nation needs?

Utilities have to consider what their rebuild and new constructions needs are to best serve their customers. Prioritization and budgeting play crucial roles in this process. Uncertainty in permitting doesn’t change our willingness to take on these projects, but it does affect when or if they can be completed, which can have an impact on timelines for the other projects and rate recovery as well. There are a limited number of contractors that exist that can perform this type

U.S. Senate Committee on Energy and Natural Resources
 October 29, 2025 Hearing: *Section 106 consultation process under the National Historic Preservation Act*
 Questions for the Record Submitted to Mr. Andy McDonald

of work so scheduling uncertainties can have a ripple effect on not just the project affected by permitting delays, but multiple projects being conducted during that construction season.

Questions from Ranking Member Heinrich

Question 1: When Montana – Dakota Utilities is planning a new infrastructure project, what steps does the company take to ensure the project won't cause undue damage to historic sites?

The company does an initial desktop review of the project path to determine land ownership along the route, as well as what to expect for cultural and natural resource permitting. For projects that require a siting permit with a state utility regulatory commission, or some type of federal nexus, the cultural analysis effort is largely dictated by those processes. For areas that do not require siting and do not have a federal nexus, we typically use a combination of desktop review (internal and consulting assistance), an unanticipated discovery plan that instructs the contractor what to do and who to call if they encounter an area of cultural significance, as well as contractors that have experience working on large projects where they have been through training on these types of significant areas. For projects on tribal land, we review the applicable tribal laws and rules and work with tribal historical preservation officers to create a survey plan for the route.

Questions from Senator Hoeven

Question 1: Your written testimony discusses MDU's three-mile distribution line project intended to upgrade aging infrastructure and mitigate risks from wildfire. This line crosses federal lands managed by two different agencies, with each agency setting a different defined "Area of Potential Effects" to be reviewed for the project.

How can inconsistencies in the implementation of the Section 106 consultation process delay project construction?

Uncertainty and inconsistencies in the implementation of the Section 106 process can delay construction in a number of ways. Survey crews may have to make multiple trips which impacts time and cost. Weather and other environmental factors may restrict or further impact the survey season, so more survey trips mean more opportunities to be impacted or delayed by those environmental factors. Engineering and design may have to be adjusted based on survey results, so the more efficient that entire process is, the less of a cascading effect it can have on the entire project. There are a limited number of contractors that can perform utility work and we have to be able to plan efficiently for their time across not only our expansive footprint, but their other commitments as well. If we miss the window that we anticipated for them to be able to begin construction, they may have moved on to another project commitment for weeks or months.

Question 2: What do these delays mean for states with short construction seasons, like North Dakota?

U.S. Senate Committee on Energy and Natural Resources
October 29, 2025 Hearing: Section 106 consultation process under the National Historic
Preservation Act
Questions for the Record Submitted to Mr. Andy McDonald

Building off of my response to the previous question, these delays can be the difference in whether or not a project gets built this year, the next year, or further in the future. We not only consider cultural resources for timing of construction, we consider fire danger, saturated ground conditions for landowners, seasonal construction restrictions for species of concern (sage-grouse, big game migration corridors), migratory bird and eagle nesting seasons, and several other factors. There are certain areas within our service territory where we may only have a month or two to construct because of some combination of the factors listed above. Certainty in knowing what our permitting expectations are leading into and beginning a project can limit delays and reduce the cascading effect that can impact the timelines of multiple projects. As the demand on our nation's energy infrastructure continues to increase at a rapid pace, clarity and certainty in permitting will be critical factors in executing these projects that maintain and bolster grid reliability.

Question 3: What steps should be taken to clarify where each federal agency's Section 106 consultation authority begins and ends as part of this process?

Please find attached EEI's proposed amendments to the NHPA that would provide clarity and predictability to the NHPA Sec. 106 review process. As EEI's proposes, Agencies must be required to work together to employ consistent and predictable parameters for Sec. 106 reviews.

Question 4: How would a more predictable Section 106 process help maintain grid reliability and mitigate wildfire risks, while continuing to support goals for historic preservation?

Planning, budgeting, designing, and constructing these projects involves a number of people and companies working together. If one aspect of that operation gets upset or lacks certainty, it has a cascading effect on the entire project, and potentially other projects. Refining the statute to clearly indicate where the federal jurisdiction begins and ends for a project allows for utilities to plan and execute projects that address grid reliability and wildfire risk more expeditiously, while still supporting historic preservation efforts for the entire project.

Questions from Senator Cantwell

Question 1: Over the years, Washington state has successfully completed a broad spectrum of projects that were subjected to Section 106 of the National Historic Preservation Act. We have successfully navigated Section 106 consultations through projects involving archaeological sites, tribal burial grounds, and other sacred and historic places.

Section 106 consultation done right, makes sure voices are heard, while not disrupting infrastructure projects. In fact, Section 106 consultations help avoid disruptions at critical project phases, such as construction, when delays can balloon project costs.

U.S. Senate Committee on Energy and Natural Resources
October 29, 2025 Hearing: Section 106 consultation process under the National Historic
Preservation Act
Questions for the Record Submitted to Mr. Andy McDonald

- Can you explain the exact issue that was impacting project delivery from the Section 106 process? Was it the area of potential effect? Was it the survey area? Was it decision making etc.?

It was a combination of the project not initially being prioritized by the agency that wanted to analyze the entire project footprint for cultural resources (including private land), a lack of coordination between both federal agencies since they are currently not required to do so under the statute, and extensive discussions on what the area of potential effect must be for the project.

- Can you provide ideas for improving the Section 106 process?

Please find attached EEI's proposed amendments to the NHPA that would provide clarity and predictability to the NHPA Sec. 106 review process.



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NATIONAL HISTORIC PRESERVATION ACT (NHPA) REFORMS

AREA OF POTENTIAL EFFECTS

LEGISLATIVE PURPOSE/INTENT:

Section 106 of the National Historic Preservation Act requires federal agencies to define and document the Area of Potential Effects (APE) of a proposed project—in other words, the area that must be assessed for impacts to historic resources. Current regulations for Section 106 can be interpreted broadly, potentially requiring significant review and study of a proposed action, leading to unnecessary delays. We seek to propose language limiting the APE, consistent with the spirit of the Seven County decision, including clarifying that the “undertaking” is limited to only that portion of a project or specific project activity requiring federal permit, license, or approval.

PROPOSED LEGISLATIVE LANGUAGE:

Section 106 of the National Historic Preservation Act (54 U.S.C. 306108) is amended as follows—
Following the last sentence, include: “Agencies shall review the geographic area or areas within which an undertaking may directly cause alterations in the character or use of historic properties, if any such properties exist. Agencies may only consider effects that share a reasonably close causal relationship to, and are proximately caused by, the undertaking. Effects that are speculative, attenuated from the undertaking, separate in time or place from the undertaking, or in relation to separate existing or potential future undertakings shall not be reviewed.

“Where the geographic area or areas of the undertaking includes multiple Agency jurisdictions, Agencies must work together to apply consistent standards with regard to reviewing potential alterations in the character or use of historic properties.”

Relevant Committees: House Committee on Natural Resources, Senate Committee on Environment and Public Works

U.S. Senate Committee on Energy and Natural Resources
October 29, 2025 Hearing: *Section 106 consultation process under the National Historic Preservation Act*
Questions for the Record Submitted to Mr. Steven Concho

Questions from Chairman Lee

Question 1: Are you required to maintain records detailing the number of requests for review of findings or determinations that you receive annually?

S. CONCHO RESPONSE: No, we are not required by federal law to maintain such records. As requests are received, they are logged and given a priority. Given our limited staff capacity, we must triage requests and focus our efforts on those that have the most potential to impact sites of significance to the Pueblo of Acoma. High priority requests mainly pertain to those requests for consultation on projects within the current reservation boundaries. The priority typically drops as a project moves away from those boundaries, but we still review and consult as appropriate.

a. If so, how many requests have you received over the last five years?

S. CONCHO RESPONSE: Over the last five years the requests have seemed to increase year over year. Altogether, over the last five years, Acoma has received approximately 1,545 requests for consultation under Section 106. These involve requests from four different states (NM, AZ, CO, and UT), and do not include separate NAGPRA consultation requests which are also processed by our office.

b. 36 C.F.R. § 800.3(c)(4) states that the agency may move to the next step in consultation or work with the Council in lieu of the THPO if the THPO fails to respond within 30 days of receipt of a request for review of a finding or determination. What is your average response time to requests for review, and how often do you re-enter the section 106 process if there was a failure to respond to a review request?

S. CONCHO RESPONSE: Our office's average response time is around 15 days to respond and say either that Acoma has no comment or to request additional consultation, with our response time varying depending on the priority of the request. Requests have not had to escalate due a failure to respond on our part. Note that where Acoma requests additional consultation, that initiates an entirely new timeline including responding in writing to comments, reviewing agency documents/records, consultations with agency staff, site visits, and any other required follow up.

Question 2: Before an Indian tribe may assume the functions of a State Historic Preservation Officer, the Secretary of the Interior, in consultation with relevant parties, must determine that a tribal preservation program is fully capable of carrying out the functions it proposes to assume (54 U.S.C. § 302702). What are the elements of the plan that a tribal preservation official must submit to the Secretary for approval?

U.S. Senate Committee on Energy and Natural Resources
October 29, 2025 Hearing: *Section 106 consultation process under the National Historic Preservation Act*
Questions for the Record Submitted to Mr. Steven Concho

S. CONCHO RESPONSE: An application to establish a Tribal Historic Preservation Program, whose full requirements can be found at the National Park Service (NPS) website, must contain several key pieces of documentation: (I) a signed, written request to assume State Historic Preservation Office (SHPO) functions on tribal lands, signed by the Tribe's governing authority; (II) identification of the Tribal Historic Preservation Officer (THPO), information regarding their official appointment by the Tribe, and their contact information; and (III) most substantively, a program plan for the office that contains specific required elements. These plan elements include which specific SHPO functions the THPO is proposing to assume and how those functions will be performed. For a Tribe seeking to assume the duties of a State Historic Preservation Officer (SHPO) they must submit a comprehensive program plan to the Secretary of the Interior demonstrating the tribe's full capability to carry out those functions.

Most importantly, the plan must specify which of the 10 historic preservation functions it will assume from the state and detail how those functions will be implemented. In detailing how they will assume these functions, Tribes demonstrate in the plan their capabilities to conduct historic property surveys, maintain historic property inventories, nominate properties to the National Register, develop and execute a comprehensive preservation plan, manage federal preservation grants, and consult with federal agencies under Section 106 of the National Historic Preservation Act. In the plan, the Tribe must show that its program includes professionals who meet the Secretary of the Interior's Historic Preservation Qualification Standards, including archaeologists, historians, and architectural historians, and provide evidence of their credentials. The plan must also outline the structure for professional and cultural oversight, including the establishment of an advisory review board composed of tribal members, as well as procedures for consultation with other interested Tribes and participation by the public. It must also specify how the Tribe will coordinate with non-tribal property owners. Finally, the submission should document the Tribe's prior preservation activities that relate to the functions it proposes to assume, and provide a quantification of the tribal lands with supporting documentation from the Bureau of Indian Affairs. Please visit the NPS's Tribal Historic Preservation Program Tribal Historic Preservation Officer Application website (<https://www.nps.gov/articles/thppapps.htm>), and specifically at the "THPO Application Checklist."

- a. Are there any quantifiable performance-based metrics that a THPO must meet annually in order to maintain its assumption of duties?

S. CONCHO RESPONSE: No. NPS does not impose fixed, nationwide quantitative metrics on THPOs. Continued assumption of duties under 54 U.S.C. § 302702 depends on adherence to the Tribe's approved work plan associated with each THPOs assumed historic preservation functions, administrative compliance, and timely submission of required financial and performance reports.

- b. If so, what are the quantifiable metrics, and what does the reporting process entail?

U.S. Senate Committee on Energy and Natural Resources
October 29, 2025 Hearing: *Section 106 consultation process under the National Historic Preservation Act*
Questions for the Record Submitted to Mr. Steven Concho

- c. If not, are there any quantifiable performance-based metrics that could be used to determine the efficiency and efficacy of the THPO relative to other THPOs and SHPOs?

S. CONCHO RESPONSE: Evaluating THPOs through quantifiable metrics is inherently challenging because each Tribe operates within unique cultural, governmental, and geographic contexts that shape its preservation priorities. For example, the Navajo Nation THPO in the Southwest has jurisdiction over Tribal trust lands approximately the size of West Virginia, while the Village of Kake THPO in Alaska has jurisdiction over 15 acres of Tribal trust lands. Acoma specifically, maintains nearly 534k acres of land held in trust, fee, or by lease; approximately 7/10th the size of Rhode Island. Differences like these make direct comparisons between THPOs, and between THPOs and SHPOs, potentially misleading. Moreover, the appropriateness of quantifiable performance metrics is further limited by the fact that the subject of consultation itself—the cultural resource—is unique to each Tribe. The cultural, spiritual, and historical significance that a particular site or object holds for the Pueblo of Acoma may be entirely distinct from how another Tribe understands and relates to that same place or type of resource. Attempting to measure such deeply contextual and culturally grounded processes through standardized quantitative indicators risks distorting their purpose and meaning.

That said, one could still use certain measurable indicators to broadly assess performance. These might include the number of Section 106 reviews completed each year, the number of historic properties documented or evaluated for the National Register of Historic Places, the timeliness of compliance reviews and reporting, the extent of community outreach and education activities conducted, and the efficiency of grant management. Some of that data is available in the NPS Historic Preservation Fund Annual Report, but in order for the data to be more accurate and comprehensive, the federal government would have to provide THPOs with more funding. Without a significant increase in THPO annual appropriations, the collection of that data would place a burden on already underfunded THPOs. The creation of an unfunded mandate on THPOs would lead to delays in the review process.

Question 3: As the Tribal Historic Preservation Officer for the Pueblo of Acoma, where are the boundaries of your authority? Does your authority extend to the exterior boundaries of the reservation, or are they limited to the current boundaries of the reservation?

S. CONCHO RESPONSE: As THPO for the Pueblo of Acoma, I am responsible for the New Mexico SHPO responsibilities that Acoma has assumed on Acoma trust lands. In that sense, my regulatory authority is primarily limited to the exterior boundaries of the Acoma reservation. However, Acoma's history, cultural connections, and cultural resources extend far beyond those modern boundaries. The Pueblo of Acoma continues to consult with projects on undertakings occurring across our ancestral landscape. This includes, but is not

U.S. Senate Committee on Energy and Natural Resources
October 29, 2025 Hearing: *Section 106 consultation process under the National Historic Preservation Act*
Questions for the Record Submitted to Mr. Steven Concho

limited to broader areas throughout the Four Corners region and within the Acoma Cultural Province (an archaeology area identified in the Pueblo's claim during the Indian Claims Commission Proceedings during Docket 266). These lands contain ancestral villages, trails, shrines, and other cultural resources that remain integral to Acoma identity, history, and continuing cultural practice. Therefore, while my statutory authority is jurisdictionally limited, my responsibility to advocate for and protect Acoma's cultural heritage extends to all places that form part of that ancestral landscape.

- a. Of the requests for review of findings or determinations that you receive annually, on average, how many of them are for undertakings within the current boundaries of the reservation versus the exterior boundaries of the reservation?

S. CONCHO RESPONSE: Approximately 500 Section 106 consultations within the last 5 years (out of approximately 1,545 total) have been within or on the Acoma tribal trust lands. This includes all projects on Acoma's reservation.

Question 4: Section 302706 of the NHPA requires federal agencies to consult with any tribes that attach religious and cultural significance to a property, and the implementing regulations note that federal agencies should be aware that these properties may be located on ancestral lands, rather than within current or exterior reservation boundaries. How do you determine what properties beyond the current or exterior bounds of the reservation hold religious and cultural significance?

S. CONCHO RESPONSE: The Acoma people are an ancient people, and we have lived at Acoma Sky City, our mesa-top home, for over 1,000 years. Our living culture, language, and cultural practices are deeply tied to a network of ancestral sites, cultural landscapes, shrines, and ceremonial trails that extend far beyond the present-day boundaries of our trust lands. As the THPO for the Pueblo, part of my role is to identify such cultural landscapes, shrines, or ceremonial trails of significance to the Pueblo within the area of a proposed project, and I consult with elders and experienced Acoma cultural practitioners, whose knowledge is essential to understanding the cultural meaning and spatial extent of these places.

An example of this is the Mount Taylor Traditional Cultural Property (TCP), a mountain sacred to Acoma and many neighboring Pueblos and Tribes. Mount Taylor itself is recognized as a cultural landscape. It is not just a single geographic feature but an entire living environment imbued with meaning, use, and history. Within that broader landscape exist many individual resources including but not limited to: shrines, pilgrimage routes, springs, plant-gathering areas, and ancestral sites. Together those individual resources express the mountain's cultural and spiritual significance. In this way, Mount Taylor illustrates how a single TCP can consist of "nested" cultural resources, each with its own role and meaning within the whole.

U.S. Senate Committee on Energy and Natural Resources
October 29, 2025 Hearing: *Section 106 consultation process under the National Historic Preservation Act*
Questions for the Record Submitted to Mr. Steven Concho

- a. When you determine that a property holds religious and cultural significance, how do you determine the exact area that holds significance? Is the area tied to human activity or a specific geographic location?

S. CONCHO RESPONSE: The area that holds significance depends on the nature of the site. Some are tied to a more limited geographic location, while others that involve networks of sites can span larger areas. Some places, such as a specific shrine, spring, or ancestral structure, are geographically discrete and tied to a defined physical location. Others, like Mount Taylor, represent expansive cultural landscapes encompassing a constellation of interrelated sites and features. In those cases, the significance is not limited to one point on a map but derives from the interconnections between locations, the history and ceremonies associated with them, and the continuing relationship of the Acoma people to those resources and the land as a living whole. Determining those boundaries requires careful consultation with Acoma cultural practitioners to ensure that both the tangible and intangible dimensions of the site are respected and understood.

- b. If a landscape-scale area holds religious and cultural significance, do you designate the landscape as a historic property?

S. CONCHO RESPONSE: My role as a THPO is to consult with the federal agency and SHPO to evaluate any properties identified within the area of potential effects for National Register eligibility, if that eligibility has not previously been determined. It is ultimately the federal agency's responsibility to make a determination that a historic property is eligible or not, and this typically includes the geographic scope of the property. I consult with them as part of that eligibility determination.

- c. The NHPA defines "historic property" as "any prehistoric or historic district, site, building, structure, or object included on, or eligible for inclusion on, the National Register, including artifacts, records, and material remains relating to the district, site, building, structure, or object" (54 U.S.C. § 300308). Do you believe that landscape-scale areas qualify as historic properties under this definition?

S. CONCHO RESPONSE: Yes. Landscape-scale areas can and do qualify as historic properties under the NHPA. The 1992 amendments to the NHPA specifically clarified that a "[p]roperty of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register." 54 U.S.C. § 302706(a). This amendment affirmed that places of tribal significance are not limited to individual sites, buildings, or structures, but may encompass entire landscapes that hold interconnected cultural, spiritual, and historical meaning. A clear example is the Mount Taylor TCP, listed on the New Mexico Register of Cultural Properties and found eligible for inclusion on the National Register. The Mount Taylor TCP

**U.S. Senate Committee on Energy and Natural Resources
 October 29, 2025 Hearing: *Section 106 consultation process under the National Historic Preservation Act*
 Questions for the Record Submitted to Mr. Steven Concho**

demonstrates that a mountain and its network of interrelated features can collectively constitute a single historic property under the NHPA because the landscape itself embodies the cultural and spiritual values of the Acoma people and neighboring tribes.

Question 5: Please give a detailed breakdown of the annual funding that the Tribal Historic Preservation Office for the Pueblo of Acoma receives from the federal government.

S. CONCHO RESPONSE: The Pueblo of Acoma receives just over \$100,000 each year as part of its National Park Service THPO grant. The breakdown of this budget is as follows:

Personnel (THPO & Partial Assistant)	\$47,000
Fringe Benefits	\$12,000
Travel (Mandatory NATHPO Conference and ATALM Conference, other Section 106 trainings as deemed necessary)	\$5,300
Supplies (PPE and Office supplies)	\$8,500
Contractual (Advisory Board, Tribal Monitors, Consultation, Lectures)	\$25,000
Memberships	\$500
Indirect Cost	\$19,600
Total	\$117,900

a. Is there a non-federal match requirement for funding, and, if so, how much does the Pueblo of Acoma contribute to its Preservation Office?

S. CONCHO RESPONSE: There is no match requirement for THPO offices, in recognition of the trust responsibility.

b. Are there any reporting requirements for the use of federal funds? If so, what are they?

S. CONCHO RESPONSE: Yes, the Pueblo of Acoma completes an annual report for its THPO grant. We report on the status of our monies that were spent or remain. And we also report on projects that are complete.

Questions from Ranking Member Heinrich

Question 1: What are the consequences for the people of Acoma when an infrastructure project is built on your ancestral lands without consulting with experts from Acoma?

S. CONCHO RESPONSE: Acoma cultural experts are the experts in our Pueblo's culture and history. When projects are undertaken on our ancestral lands without

U.S. Senate Committee on Energy and Natural Resources
October 29, 2025 Hearing: *Section 106 consultation process under the National Historic Preservation Act*
Questions for the Record Submitted to Mr. Steven Concho

consulting Acoma, the risk is not abstract. It means the potential destruction or irreversible alteration of sites that are central to our identity and way of life. If a project is built without seeking input from the Pueblo, irreplaceable cultural sites could be damaged. As I testified at the hearing, Acoma people depend on our sacred places for ongoing traditional cultural practices that stretch back for over 1,000 years. Adverse impacts to these places could mean that our cultural practices are permanently harmed. It is not only physical loss but a severing of cultural continuity and our ability to pass on traditions, prayers, and stories to future generations. Consultation allows us to identify these harms and work to develop solutions for the project that may be able to avoid permanent harm to these places.

Questions from Senator McCormick

Question 1: Mr. Concho, your testimony highlighted your deep commitment to preservation across a network of ancestral sites and cultural landscapes far beyond current Pueblo boundaries. I'm proud of the thoughtful stewardship of Pennsylvania's 169 National Historic Landmarks, over 3,000 National Register sites, and beloved public lands like the Allegheny National Forest. Given this shared commitment to preservation, how can we best balance the goals of Section 106 of the National Historic Preservation Act, while simultaneously keeping essential infrastructure projects on track?

S. CONCHO RESPONSE: Most projects that cross my desk as part of Section 106 review proceed without delays, especially when the federal agency and project proponent consult early and in good faith with the Pueblo. The projects that make the news are in my experience usually those where a particularly important historic property might be impacted, and/or where the consultation process is initiated too late and there is no attempt to engage consulting parties in good faith. These delays can be avoided in almost all cases, and for the projects where Acoma or others voice opposition, the process is already equipped to address how to mitigate for adverse effects, if there is no way to avoid them. The Section 106 process as currently written and as it is currently carried out already incorporates the concept of balance by not requiring a specific outcome, but by requiring consultation and that the impacts to historic properties be seriously considered and avoided and mitigated if necessary.

Questions from Senator Cantwell

Question 1: Over the years, Washington state has successfully completed a broad spectrum of projects that were subjected to Section 106 of the National Historic Preservation Act. We have successfully navigated Section 106 consultations through projects involving archaeological sites, tribal burial grounds, and other sacred and historic places.

Section 106 consultation done right, makes sure voices are heard, while not disrupting infrastructure projects. In fact, Section 106 consultations help avoid disruptions at critical project phases, such as construction, when delays can balloon project costs.

U.S. Senate Committee on Energy and Natural Resources
October 29, 2025 Hearing: *Section 106 consultation process under the National Historic Preservation Act*
Questions for the Record Submitted to Mr. Steven Concho

- In your experience, how have Section 106 consultations ensured voices, particularly Tribal voices are heard, and have helped manage unforeseen disruptions in infrastructure projects?

S. CONCHO RESPONSE: Section 106 allows Tribes like mine a seat at the table to ensure that our historic and sacred places are considered when there is a proposed development project. When done correctly, this process can help avoid impacting these places, allowing projects to proceed without delays.

- Do you believe Section 106 consultations can help reduce delays and overall project costs?

S. CONCHO RESPONSE: Yes. Section 106 makes sure that we know what is in the area of a project *before* we build something there. Knowing this in advance leads to better project planning, allowing the Section 106 participants to work together to avoid impacting these places.

Question 2: As you know, the Historic Preservation Fund provides the necessary funding to preserve our nation's historic resources. It provides preservation awards to states, tribes, local governments, educational institutions, and nonprofits committed to preserving irreplaceable, historic artifacts and sites.

While the fund is authorized at \$150 million per year, the fiscal year 2025 Continuing Resolution (CR) appropriated almost \$169 million for the Historic Preservation Fund. The President's fiscal year 2026 budget requested just \$11 million for the Historic Preservation Fund. This means all federal funding would be drained from State and Tribal Historic Preservation Offices and Section 106 consultations.

- Does slashing the budget for the Historic Preservation Fund help or harm Section 106 consultation?

S. CONCHO RESPONSE: Any reduction in THPO and SHPO funding would severely limit the ability of THPOs to engage in Section 106 consultation. The current funding levels are already inadequate and represent a failure on the part of the federal government to meet its Trust responsibility to Tribal Nations. An elimination of that already inadequate funding would lead to significant delays in THPOs ability to consult on projects with a federal nexus.

U.S. Senate Committee on Energy and Natural Resources
October 29, 2025 Hearing: *Section 106 consultation process under the National Historic Preservation Act*
Questions for the Record Submitted to Mr. Steven Concho

- How will it impact the Section 106 consultations for infrastructure and development projects?

S. CONCHO RESPONSE: Reduction in THPO funding would create problems for infrastructure and development projects with a federal nexus. The reduction in the funding would have no impact on the requirement that project proponents engage in consultation with Tribal Nations, which they would still be required to do. Without funding, many Tribal Nations would not be able to engage in consultation and the projects would not be able to proceed or, if they did proceed without consultation, a judge could determine that the proponents violated the law and impose penalties.

Questions from Senator Hickenlooper

Question 1:

The consultation required under Section 106 of the National Historic Preservation Act is an important recognition of Tribal sovereignty and expertise in cultural resources. We understand that agencies sometimes ask Tribes and Native Hawaiian Organizations to conduct activities beyond consultation — such as surveys, research, or record checks.

The Advisory Council on Historic Preservation has required, under certain circumstances, for federal agencies to compensate Tribes for activities beyond the scope of consultation. Would you support statutory language to require federal agencies to compensate Tribes and Native Hawaiian Organizations for their work outside of consultations?

S. CONCHO RESPONSE:

The Pueblo of Acoma supports efforts to ensure that Tribes are not forced to bear unfunded costs when participating meaningfully in the Section 106 process. While consultation itself is a federal responsibility, effective participation often requires Tribes to engage in activities beyond consultation such as site visits, archival or ethnographic research, or field verification of potential impacts. These efforts involve real expenses, including staff time, travel, and the engagement of cultural experts who may not be full-time Tribal employees but whose knowledge is essential to identifying and evaluating historic properties of religious and cultural significance.

Our view is that federal agencies should be required to cover the *actual costs* that Tribes incur in performing these necessary tasks, rather than framing the issue as “compensation” for consultation. Cost recovery acknowledges the government-to-government nature of the relationship and ensures that Tribes have the resources needed to participate fully and effectively in the process Congress intended.

U.S. Senate Committee on Energy and Natural Resources
October 29, 2025 Hearing: *Section 106 consultation process under the National Historic
Preservation Act*
Questions for the Record Submitted to Mr. Steven Concho

Question 2:

We have heard from Colorado energy developers and state officials that starting a Section 106 consultation after a long NEPA review can drag out project timelines.

Sometimes a change made due to one permitting process, like an adjustment in a transmission line location to avoid endangered species habitat, can cause the Section 106 process to restart.

Do you have specific recommendations for federal agencies to better align NEPA and Section 106 processes to streamline reviews and get projects moving faster?

S. CONCHO RESPONSE: Federal agencies should be required to initiate the Section 106 process earlier. The process does not need to be changed. The delay is usually federal agencies not initiating Section 106 review early enough and then initiating the process once NEPA has already been substantially completed and/or not meaningfully engaging in consultation with Tribes. If agencies just did what they were required to do, when in the process they are required to do it, Section 106 would go faster and smoother.

Question 3:

What lessons can be learned from other linear infrastructure processes, like pipelines and highways, when it comes to historic preservation reviews for electric transmission processes?

S. CONCHO RESPONSE: With linear projects, early consultation is extremely important. These types of projects often cover long distances and traverse diverse cultural landscapes, increasing the likelihood of encountering sites of religious and cultural significance. As the example from my testimony at the hearing showed, linear projects are ones that can be moved if Tribes are brought in early in the planning process. This allows them to work to identify impacted sites early and the transmission line could be rerouted. Problems arise when Tribes are brought in after the route has been determined. If a site is found in the area, it can make avoiding impacts more difficult. Another lesson from Acoma's experience is that for linear undertakings, federal agencies and applicants should consider significantly expanding the width of their Areas of Potential Effects (APEs) during the planning stage. A broader APE provides the spatial flexibility needed to evaluate alternative alignments and rerouting options, and it ensures that potential cultural resources are not narrowly excluded by an artificially constrained project corridor.

Questions from Senator Padilla

Question 1: Can you explain how important it is to incorporate Traditional Ecological Knowledge in the Section 106 review process, and some tools that can be used to achieve this?

S. CONCHO RESPONSE: Traditional Ecological Knowledge is a body of knowledge developed over many generations from our interaction with our landscape. This knowledge informs our Pueblo's understanding of an area, ties into our cultural practices,

U.S. Senate Committee on Energy and Natural Resources
October 29, 2025 Hearing: *Section 106 consultation process under the National Historic Preservation Act*
Questions for the Record Submitted to Mr. Steven Concho

and can be one aspect of National Register eligibility for a traditional cultural property. This information can only be brought out through Tribal consultation, and without this traditional knowledge, the understanding of why an area is historic or scared would be incomplete. In terms of tools to achieve this, supporting strengthened consultation with Tribes and increased funding for THPOs would ensure that Traditional Ecological Knowledge is considered.

Question 2: You stated that each Tribal Historic Preservation Officer (THPO) only receives roughly \$100,000 in federal funds per year. How would more funding for THPOs improve Tribes' ability to more quickly complete Section 106 reviews?

S. CONCHO RESPONSE: Increased funding for THPOs would enable them to hire additional staff members, which would significantly increase their ability to complete Section 106 reviews.

106 SUCCESS STORY

Innovative Approach is Model for Cultural Resource Management

Chaves, Eddy, Lea Counties, New Mexico



“Southeastern New Mexico used to be a place where both industry and the preservation community were frustrated with the way Bureau of Land Management archaeology was being done. The Permian Basin Agreement has transformed this area into an unprecedented example of how people with divergent interests can work together to achieve great things. We at BLM are very proud of the ‘win-win’ aspects of the PA and its outstanding track record of research and public benefits.”

—AMY LUEDERS
BLM New Mexico State Director

Photos: Above, Taylor Mound; Right, oil spill site conference and petroglyph of butcher scene (photos courtesy BLM)



THE STORY

The Mescalero Plain is a band of wind deposited sand and dunes in southeastern New Mexico, named for the Mescalero Apaches who once hunted the area. Evidence of Paleoindians dating to 5,000 BC illustrates thousands of years of mobile hunter-gatherer occupation on the Mescalero Plain. Part of the sparsely populated Chihuahuan Desert, the plain sits atop the Permian Basin, the largest oil and gas basin in North America. The first oil well in the Permian Basin in New Mexico was the Flynn, Welch, and Yates No. 1 drilled in 1924. By 2003, more than 300,000 acres managed by the Bureau of Land Management's (BLM) field office had been surveyed for oil and gas projects, and more than 8,000 archaeological sites had been recorded.

THE PROJECT

In New Mexico, most of the oil and gas development in the Permian Basin occurs on 2 million acres managed by the BLM Pecos District. The district processes thousands of oil-and-gas applications to drill annually, making it one of the busiest offices in the nation. For 30 years, BLM's archaeological program was driven by industry's needs—in the face of a proposed wellsite, the preferred action was “flag and avoid” (survey and record sites, and redesign projects to avoid the historic properties). As long as the spacing between developments allowed archaeologists to help industry move project footprints to avoid archaeological resources, preservation in place was a viable option. However, over time, intense development in some areas made it difficult to locate projects without harming archaeological sites. Many sites were being lost due to infrastructure maintenance, dune formation, and were ravaged by illegal artifact collecting. An alternative to “flag and avoid” was needed.

THE 106 PROCESS

BLM was the federal agency responsible for conducting the Section 106 review process under the National Historic Preservation Act, which requires agencies to identify historic properties and assess the effects of the projects they carry out, fund, or permit on those properties. Federal agencies are required to consult with parties that have an interest in the fate of historic properties when adverse effects are likely to ensue.

CONTINUED >>>



Photos: Above, caravan carrying Permian Basin PA Workgroup members to a site visit in the oil field near Loco Hills, NM; Right, excavating Bloom Mound (photos courtesy BLM)

With an understanding of the existing situation, BLM and the New Mexico State Historic Preservation Officer built common ground among archaeologists, managers, tribes, and industry resulting in a collaborative approach to balancing energy development and archaeology. The fruits of their efforts were an improved approach, embodied in a Section 106 agreement that encompasses 1,700 square miles with the most active oil and gas areas. Operating under the agreement is voluntary—if a company chooses the agreement procedures, it contributes the cost of the archaeological survey into a mitigation pool. Under the terms of the agreement, the partners in the program collaborate to determine how the pool's funds are used, providing effective support for research and interpretation of the area's archaeology.



THE SUCCESS

Since 2008, the oil industry has paid nearly \$11 million into the pool. Without the Permian Basin agreement, those funds would have been spent on thousands of small surveys. Instead, the pool has built a comprehensive field program, providing millions of dollars for archaeological research and studies that provide a foundation for understanding and managing the area's archaeological resources. Now all resources are managed through a Geographic Information System integrated with the New Mexico Cultural Resource Information System, replacing outdated records in an easy-to-access format. The system provides real-time pictures of surveyed areas and sites, indicating where work is needed. The pool supports educational materials and outreach events to engage locals with their heritage. Use of the agreement procedures gives industry more predictability and control over schedules and budgets needed to operate efficiently and demonstrates that cultural resources projects they fund have real-world benefits.

The original agreement was so successful that signatories are extending the program's life through a Programmatic Agreement for 10 more years. Innovative use of the Section 106 process shows that seven years of directed field research has done more to understand and manage the resources than 30 years of business as usual.

ADVISORY COUNCIL ON HISTORIC PRESERVATION
401 F Street NW, Suite 308, Washington DC 20001
Phone: 202-517-0200 • Fax: 202-517-6381 • achp@achp.gov • www.achp.gov

Consulting Parties:

Bureau of Land Management
ACHP
New Mexico State Historic
Preservation Officer
Mescalero Apache Tribe
New Mexico Archaeological
Council
New Mexico Oil and Gas
Association
Independent Petroleum
Association of New
Mexico

For more about Section
106 and the ACHP go
to www.achp.gov

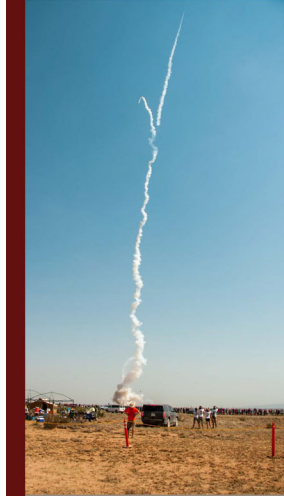


Preserving America's Heritage

106 SUCCESS STORY

Spaceport America: Commitment to Balance 21st and 16th Centuries

Sierra County, New Mexico



“The connection from Mexico’s distant past to humans in space exists along the historically significant road called El Camino Real. From the beginning, federal and state agencies consulted with citizens on programming, design, and construction to ensure this 21st century project would be sensitive to the 16th century trail. Spaceport America continues to respect and represent our rich New Mexico heritage and culture while providing a launch site for future space travel.”

—BILL RICHARDSON
Former New Mexico Governor

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THE STORY

For centuries, a trade route connecting Central Mexico with current day New Mexico supplied Native Americans with important trade goods. In 1598, Juan de Oñate received permission from the King of Spain to conduct the first expedition to establish a colony in Spain’s northernmost province using this ancient trail, which would come to be known as El Camino Real de Tierra Adentro (El Camino). From 1598 to 1881, El Camino was the principal link for colonists, explorers, and traders connecting Mexico City and Santa Fe. Relying on pack trains and wagons that could not cross the arroyos west of the Rio Grande or the mountainous terrain east of it, Spanish expeditions used a shortcut known as La Jornada Del Muerto (La Jornada) along the last 100 miles of the 1,457-mile-long route.

Managed by the Bureau of Land Management (BLM), New Mexico State Land Office (SLO), and private ranchers, La Jornada has remained void of development since the end of activity on El Camino. El Camino, including La Jornada, was designated a National Historic Trail in 2000 and listed in the National Register in 2010.

THE PROJECT

In 2003, the state of New Mexico proposed construction of the world’s first purpose-built commercial space vehicle launch facility on 18,000 acres along La Jornada. The Federal Aviation Administration (FAA)-licensed spaceport would be constructed on SLO land west and adjacent to White Sands Missile Range (WSMR) and BLM-managed land. Named “Spaceport America,” it was envisioned to accommodate both vertical and horizontal launch space vehicles, serve as a base for pre-flight and post-flight activities and encourage spectator visitation and economic development.

THE 106 PROCESS

FAA, the federal agency licensing this project, was responsible for conducting the Section 106 process under the National Historic Preservation Act. Section 106 requires that federal agencies identify historic properties and assess the effects of the projects

CONTINUED >>>



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they license, fund, or permit on those properties. Federal agencies also are required to consult with parties that have an interest in the historic property when adverse effects may occur. FAA and the New Mexico State Historic Preservation Officer (SHPO) identified a number of adverse effects to the proposed project: visual intrusion to the National Historic Trail including daylight visibility and nighttime lighting; disturbance of the quiet, isolated atmosphere of the trail experience; potential for increased human and vehicular traffic; destruction of archaeological sites by facility and utility corridor construction, and potential disturbance of archaeological sites during operations.

FAA used Section 106 consultation to engage a diverse group of interested parties—the National Park Service, SHPO, Advisory Council on Historic Preservation, BLM, SLO, National Aeronautics and Space Administration, WSMR, NM Department of Transportation, Sierra County, three Indian tribes, National Trust for Historic Preservation, local preservation organizations, and nearby ranchers and property owners—in developing a Programmatic Agreement (PA) to guide the project. The PA established the Spaceport America Planning and Design Advisory Committee to incorporate design elements that were sensitive to cultural elements of the El Camino. The plans included a low-profile structure designed with sloped elevations to break up sight lines using natural colors, berms, and vegetative screening to minimize visibility. The facilities’ design and construction were oriented parallel with existing natural ground contours. All energy distribution lines were underground consistent with the goal of minimal visual impact. A detailed construction management and protection plan for the archaeological resources included cultural resources sensitivity training for a large workforce. Mitigation plans developed under the PA addressed other effects to archaeological sites and the El Camino and resulted in archival study and mapping of trail traces adding to what was already known about the history of the trail.

THE SUCCESS

The Spaceport America project illustrates the value of early consultation in order to achieve harmony between the very modern project and the vast cultural landscape. Programming, design, and construction were sensitive to the undeveloped natural conditions of the area. The design incorporated green technologies and approaches to minimize potential environmental impacts to ensure the project blended with its natural and cultural surroundings. When the FAA renewed Spaceport’s license in 2013, the PA was amended so its provisions could continue to guide construction and operation activities as they relate to historic properties. Commitment to be respectful and representative of the rich New Mexico heritage and culture has been leveraged into formulating the overall vision for Spaceport America.

ADVISORY COUNCIL ON HISTORIC PRESERVATION
 401 F Street NW, Suite 308, Washington DC 20001
 Phone: 202-517-0200 • Fax: 202-517-6381 • achp@achp.gov • www.achp.gov

Consulting Parties:

- FAA
- ACHP
- NM SHPO
- New Mexico Spaceport Authority
- National Park Service
- BLM
- SLO
- National Aeronautics and Space Administration
- WSMR
- NM Department of Transportation
- Sierra County
- National Trust for Historic Preservation
- New Mexico Heritage Preservation Alliance
- El Camino Real de Tierra Adentro Trail Association (CARTA)
- Dennis Wallin (representative of private property owners)
- Ysleta del Sur Pueblo
- Comanche Tribe
- Hopi Tribe

For more about Section 106 and the ACHP go to www.achp.gov



Preserving America’s Heritage



**Testimony of John M. Fowler, Chair of the ACHP Foundation, Before the
Senate Energy and Natural Resources Committee Regarding the Section 106
Consultation Process Under the National Historic Preservation Act
October 29, 2025**

On behalf of the ACHP Foundation it is my pleasure to submit testimony for the record. My name is John Fowler and I am the chair of the ACHP Foundation. The Foundation was established in 2004 to support the purposes of the Advisory Council on Historic Preservation (ACHP). The Foundation board is comprised of former members and senior staff of the ACHP, and it maintains a network of former ACHP members to keep them apprised of and engaged in activities of the ACHP. In that capacity, the Foundation regularly draws on the experience and expertise of this group of ACHP alumni whose ranks include individual presidential appointees, policy-level federal agency officials, and senior career staff. They span decades of service and represent appointees of both Republican and Democratic presidents dating back to the Reagan Administration.

The Foundation sits as a non-voting observer on the ACHP and accordingly keeps abreast of the ACHP's work, especially its unique role as the overall manager of the Section 106 process. We regularly participate in ACHP business and committee meetings and maintain a close working relationship with ACHP leadership, both political and career. So we bring to the current discussion our cumulative and ongoing experience and insights on the Section 106 process from the national level.

Over its nearly six-decade history the Section 106 process has proven to be an effective tool for balancing the needs of contemporary society with the preservation of the nation's irreplaceable heritage. During that time it has evolved to meet the needs and challenges of changing federal programs and national priorities. Throughout that history the ACHP has demonstrated its ability to address current issues with the administrative tools the Congress entrusted it with as the national coordinator of the process. The Foundation has found those tools and other ACHP initiatives offer the most effective and timely path for addressing current concerns.

Apropos that, we wish to stress two primary points. First, an efficient Section 106 process, like other reviews, requires adequate and knowledgeable staffing to carry it out. Second, legislation should be a last resort for dealing with perceived impediments in the process, used only when administrative solutions fall short.

At the outset it is important to note that the Section 106 process provides tribal, state, and local governments, community groups, businesses, and private citizens a voice in federal decisions that affect historic resources important to them. The heart of the process is

consultation among interested parties, enabling decision makers to consider alternatives that allow projects to proceed while reasonably accommodating historic preservation values.

Meaningful consultation requires early engagement of stakeholders, accurate information on affected historic properties and the nature of those effects, and open dialogue on alternative ways to design a project to address preservation concerns. Where federal agencies honor these principles, the Section 106 process moves smoothly and efficiently. However, that is not always the case and occasionally federal agencies, through lack of experience or capacity, fail to follow these fundamentals.

When consultation only occurs after key project decisions are made or when agency officials fail to provide necessary information and analyses, consultation can falter and delays ensue. Legislative or regulatory changes cannot resolve those kinds of problems. The solution lies in having officials trained in the Section 106 process who know how to manage it properly. Unfortunately, current budgetary policies are exacerbating that situation. Drastic cuts to federal agency personnel are depleting the ranks of experienced staff, requiring employees with little or no knowledge of Section 106 to assume that responsibility as part of their other duties.

Just as critical is the Administration's proposed termination of federal funding support for State and Tribal Historic Preservation Officers (SHPO/THPO). The Section 106 process is a model of federalism, where these representatives of state and tribal government play the key role in consulting with and assisting federal officials in project reviews. However, without the federal investment that essentially pays for the assistance provided by SHPOs and THPOs, they cannot meet the demands placed on them and the system slows.

We urge the Committee to take a serious look at the resource needs at the federal, tribal, and state level in order to ensure adequate capacity exists for efficient reviews and recommend that sufficient funding be included in FY 2026 appropriations.

The other component of adequate capacity is having knowledgeable agency staff administering the Section 106 process. The ACHP has for many years conducted a highly-regarded training program for federal officials and other stakeholders, contributing significantly to the efficiency of the Section 106 process. However, the Administration's FY 2026 budget request slashes the ACHP's budget by 40%, imposing a reduction of core staff from 40 to 16. This will cripple the ACHP's ability to provide useful training for federal officials, precluding a simple and immediate way to avoid problems in project reviews.

As to our second point, the evolution of the Section 106 process since its inception has been marked by numerous actions by the ACHP to address emerging procedural issues by using its administrative tools to tailor the general process where needed and providing non-binding guidance for Section 106 users. The Section 106 regulations (36 C.F.R. Part 800) provide a framework for compliance that covers the broad range of federal actions subject to the law. A guiding principle of the ACHP has been that often this general framework needs to be adapted to deal with the needs of a specific program or type of historic resource. Accordingly, the regulations provide a variety of tools that can be readily applied as needed. They include programmatic agreements that cover entire agency programs or apply to a region; program comments that simplify reviews for specific programs; standard treatments that set forth ways

to deal with specific types of historic resources; and exemptions that remove particular programs or activities from any Section 106 review.

These administrative tools have been used successfully to address everything from the Interstate Highway System to military housing, resulting in significant savings in time and money that might have otherwise been spent on individual project reviews. But creating these alternatives requires a substantial investment of ACHP professional staff expertise and time. With the proposed reduction of ACHP staff capacity for FY 2026 (and quite possibly beyond), the ACHP will not be able to meet the demand from federal agencies that has been accelerating in recent years.

Similarly, the ACHP has developed a library of useful advisory guidance to assist participants in the Section 106 process. Topics cover a broad range of subjects, with particular attention to promoting timely, efficient, and meaningful consultation. A complete list is found at the ACHP's [website](#). These tools, developed by the ACHP with input from federal agencies and other stakeholders, offer an expeditious and effective way to address issues that may arise in the implementation of Section 106. However, like the development of program alternatives, they require the investment of ACHP staff time and resources.

We urge the Committee to recommend reinstatement of funding that would enable the ACHP to continue to actively develop program alternatives and guidance documents as well as maintain its training activities.

In closing, we wish to emphasize that we support efforts to improve efficiencies in the Section 106 process. Evolution and refinement are essential as the nature and scope of federal programs and projects change over time. However, we do not believe that amending the National Historic Preservation Act is either necessary or appropriate. Tools that have been successfully used over the years have proven their worth and can resolve concerns that may currently exist. What is needed is for the Congress to recognize that the minimal financial investment it makes in the historic preservation infrastructure of the ACHP, federal agency preservation staff, and State and Tribal Historic Preservation Officer programs reaps outsized benefits when it comes to the efficient delivery of billions of dollars of federal programs while safeguarding America's heritage.



**FULL COMMITTEE HEARING TO EXAMINE THE SECTION 106 CONSULTATION
PROCESS UNDER THE NATIONAL HISTORIC PRESERVATION ACT**

**STATEMENT OF AMANDA STRATTON,
EXECUTIVE DIRECTOR OF THE AMERICAN CULTURAL RESOURCES ASSOCIATION**

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

OCTOBER 29, 2025

Chairman Lee, Ranking Member Heinrich and members of the Committee:

Thank you for giving the American Cultural Resources Association (ACRA) the opportunity to provide written testimony about the Section 106 consultation process under the National Historic Preservation Act (NHPA).

ACRA is the national trade association supporting cultural resource management (CRM) firms of all sizes, types, and specialties. ACRA member firms undertake much of the legally mandated cultural resource studies and investigations in the United States. To help guide smart, sustainable economic development and safeguard important historic and cultural heritage assets, ACRA members apply specialized research skills within a framework of federal, state, local, and/or Tribal law and facilitate an open dialog where every stakeholder has a voice.

CRM is a \$1.1 billion industry¹ that employs thousands of people, including archaeologists, architectural historians, historians, ethnographers, and other professionals. They create jobs by subcontracting with professional land surveyors, drafting/GIS staff, field technicians, construction firms, and a host of other vendors who contribute to the CRM process. They support local businesses, from hotels to equipment suppliers and many more, when their teams are in the field, often in rural areas. The majority of CRM firms in the United States are designated as small businesses under the U.S. Small Business Administration's size standards.

The Need for Section 106

The NHPA was enacted by Congress in 1966 in recognition of the fact that many properties of historic significance to the nation were being destroyed by federally funded infrastructure and construction projects.

At that time, half of the 12,000 historic structures documented by the National Park Service's Historic American Buildings Survey (HABS) had been destroyed or damaged. A committee

¹ Heritage Business International, The Size of the U.S. Heritage Compliance Sector, 2024

established by then-President Lyndon B. Johnson said the HABS collection looked like "a death mask of America."²

In enacting the NHPA, Congress found that "the spirit and direction of the Nation are founded upon and reflected in its historic past" and that "the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people."³

Section 106 of the NHPA states that "[t]he head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, shall take into account the effect of the undertaking on any historic property."⁴

Since its enactment more than half a century ago, Section 106 has been an American success story, balancing the commitment to build the infrastructure our country needs in order to prosper with the imperative to preserve the properties that tell our nation's story.

Section 106, as well as its accompanying regulations promulgated by the Advisory Council on Historic Preservation (ACHP), lays out a carefully considered framework to provide for the consideration of the effects of federal undertakings on historic properties. It makes sure that the public is consulted on projects that could affect the historic and cultural character of their communities. It also is a key component of the federal government's trust responsibility to Tribes.

The Section 106 process does not give any stakeholder veto power over an infrastructure project. It is a wholly procedural statute that does not pre-determine or require a certain outcome, leaving decision-making authority entirely to the federal agency. When situations arise where it is found that an undertaking will cause adverse effects to historic properties, Section 106 provides a mechanism to explore options to avoid, minimize, or mitigate harm. Even in cases where consulting parties are unable to come to agreement on a resolution, the final decision to proceed with an undertaking rests with the agency.

Many Section 106 reviews take place in a matter of days, and the overwhelming majority result in findings of no adverse effects. In fact, Section 106 helps avoid delays by surfacing and addressing potential adverse impacts early in a project's planning stages and not leaving them to be discovered once shovels hit the ground. By providing an opportunity for the public to be consulted, the Section 106 process helps to avoid litigation and delays throughout the life of a project.

Section 106 and the accompanying regulations provide agencies with a multitude of ways to comply. Recognizing that certain federal undertakings involve repeatable projects involving substantially similar property types, the regulations allow for a range of options, including programmatic agreements, program comments, and alternate procedures. These tools ensure

² <https://www.nps.gov/subjects/historicpreservation/national-historic-preservation-act.htm>

³ P.L. 89-665

⁴ 54 U.S. Code § 306108 - Effect of undertaking on historic property

federal compliance with the NHPA in ways that accelerate project timelines and offer maximum flexibility to agencies.

CRM professionals and their clients respect the Section 106 process because it provides a clear, consistent roadmap to enable undertakings to progress while considering the impact of actions on the country's diverse cultural heritage. Local communities value rely on Section 106 to give their citizens a voice in the process.

Opportunities for Improving the Section 106 Process

There is widespread agreement that the federal permitting process can be made faster and more efficient. However, weakening preservation laws and exempting entire classes of projects from Section 106 reviews fail to address the underlying causes of delay.

In fact, excluding projects from Section 106 can lead to more delays and higher costs because avoiding public engagement early in the process may mean more controversy later on, when adverse effects are more difficult to address. Worse, bypassing the Section 106 process endangers the places that tell our country's history. We simply cannot replace the irreplaceable.

Through their extensive work with public and private clients in facilitating the Section 106 review process, ACRA member firms have identified some of the challenges that can slow the process, including:

- *Failure to commence the Section 106 review process at the outset:* As stated earlier, Section 106 works best when the process begins at the outset of a project; in fact, it can work concurrently with other review processes, like that under the National Environmental Policy Act (NEPA) and other federal laws. However, when agencies think of Section 106 as an "afterthought," the lack of early consultation can hamper the ability of a project to move forward in a timely manner.
- *Lack of consistency and experience in administering Section 106 reviews.* There is wide variation in how Section 106 is implemented by federal agencies. Even within agencies CRM firms find inconsistent application of Section 106. These discrepancies slow project reviews, create added expense, and lead to confusion.

One such example is with the U.S. Army Corps of Engineers, which for years has promulgated its own NHPA regulations, at Appendix C to 33 CFR Part 325. The Corps itself has acknowledged that its "reliance on Appendix C and multiple guidance documents can result in inconsistency and confusion among the regulated public, State and Tribal Historic Preservation Offices, Tribes, and others."⁵

⁵ U.S. Army Corps of Engineers, Modernization of Army Civil Works Policy Priorities Solicitation of Input (Docket ID No. COE-2022-0006), June 3, 2022

In 2024, the Corps published a proposed rule to replace Appendix C with the ACHP's regulations⁶, a move that would lessen inconsistencies between Corps Section 106 reviews and those of other federal agencies and ensure better public consultation. That rule, which ACRA strongly supports, has yet to be finalized.

In addition, ACRA member firms report a wide variance in federal agencies' understanding of the Section 106 process, including the existence and availability of programmatic alternatives that could be developed to comply with Section 106 in a much shorter timeframe.

- *A need to digitize historic records.* Technological advances hold the potential to dramatically accelerate the Section 106 review process, without sacrificing the protection of historic and cultural landmarks. Tools like the digitization of records, GIS systems, and even AI can help quicken reviews of historic properties, particularly if CRM professionals can access data and materials almost instantaneously.

While many state historic preservation offices have spent considerable time and expense in digitizing their records, there is a lack of consistency across the country. This makes it more difficult and inefficient for CRM firms and others to access existing records as part of identifying historic properties. In some cases, ACRA member firms report needing to travel to state capitals in order to access hard-copy material, which costs time and money.

- *Lack of funding for state and Tribal historic preservation offices.* State and Tribal historic preservation officers (S/THPOs) have multiple responsibilities in facilitating historic preservation under their jurisdictions, including nominating sites for inclusion on the National Register of Historic Places, administering the Historic Tax Credit and other duties.

At the federal level, the Historic Preservation Fund (HPF) has proven to be an indispensable tool to provide S/THPOs with funding they need to fulfill their responsibilities. And because HPF monies come from Outer Continental Shelf royalties, it has not spent a dime of taxpayer money since its creation almost 50 years ago.

In recent years, demand for HPF funds has risen exponentially as SHPO responsibilities have increased and new THPO offices are established, while competitive grant programs have been created and expanded. Yet the Fund's annual authorization of \$150 million has remained the same since the 1970s. If the Fund's authorization had been indexed to inflation from the outset, it currently would stand at more than \$800 million annually.

Without adequate funding, S/THPOs often lack the capacity to carry out programs that support management of our cultural resources, heritage preservation, and community development. As a result, critical infrastructure projects risk being delayed.

⁶ U.S. Army Corps of Engineers, Processing of Department of the Army Permits; Procedures for the Protection of Historic Properties (Docket ID: COE-2023-0004), February 9, 2024

Recommendations for Strengthening Section 106

As the Committee explores the Section 106 consultation process, ACRA respectfully offers the following recommendations to make the process even more effective and efficient:

1. Investing in the ability of state and Tribal historic preservation offices to digitize their records, which helps speed up the process of assessing a project's effects on historic properties
2. Encouraging agencies to begin the Section 106 process as early in a project timeline as possible to help identify and resolve potential issues
3. Directing agencies to align their Section 106 processes with the ACHP's regulations to increase consistency in its application, such as with the Army Corps' proposed rule to replace Appendix C with the ACHP regulations
4. Providing training to federal agency personnel in the Section 106 process, including about programmatic alternatives, to ensure greater predictability in its application across, and within, agencies
5. Reauthorizing the Historic Preservation Fund, which supports the work of state and Tribal historic preservation offices and helps them manage Section 106 reviews under their jurisdiction, and increasing its annual authorization from \$150 million to \$250 million.

Conclusion

As the nation prepares to celebrate its 250th anniversary next year, honoring and preserving the places that tell our story is more important than ever. Section 106 provides the right balance between understanding our past while building for the future. The Committee can play a vital role in striking that balance by taking steps that foster an efficient and timely Section 106 review process.

ACRA appreciates having the opportunity to provide this written testimony to the Committee. It looks forward to working with you to ensure that the federal government continues to serve as a collaborative partner with state and local governments, Tribes, not-for-profit organizations, the CRM industry and others who work every day to protect our nation's cultural treasures.

From: [Hannah Andrascik](#)
To: [fortherecord \(Energy\)](#)
Subject: Andrascik - October 29, 2025 — Full Committee Hearing to Examine the Section 106 Consultation Process Under the National Historic Preservation Act
Date: Wednesday, November 5, 2025 7:59:45 AM

Dear Members of the Senate Energy & Natural Resources Committee,

I am writing to urge the committee to uphold and protect Section 106 of the National Historic Preservation Act (NHPA). Section 106 is a cornerstone of America's preservation framework that ensures federal agencies take into account the effects of their actions on historic properties.

Section 106 does not have the authority to stop projects. It is a 4-step flexible framework that ensuring our irreplaceable tangible heritage is considered in federal project planning. The process works smoothly when project proponents and/or federal agencies, involve the State and Tribal Historic Preservation Officers, and local governments early in project planning.

Through my career, I've witnessed how Section 106 creates opportunities for collaboration and compromise among agencies, developers, communities, and the public. It helps identify and protect sacred Indigenous sites, historic neighborhoods, and cultural landmarks that tell the full, inclusive story of our nation. It also prevents costly conflicts and project delays by encouraging early dialogue and problem-solving.

I was disappointed that some of the senators came to the meeting with what appeared to be a forgone conclusion of what the challenges to the 106 process are and had made up their minds on what outcome of the hearing would be without listening to the answers the expert witnesses presented. Dr. Merritt and Mr. Concho demonstrated that the 106 process can run smoothly with early consultation and when federal, state, and tribal cultural resource programs are fully funded. They also gave evidence that more program comments and national/state wide programmatic agreements are needed to address repetitive undertakings. In order for this to happen the Advisory Council on Historic Preservation needs to be fully funded and staffed, along with federal, state, and tribal cultural resource programs.

After over 50 years of proven success, Section 106 remains an essential tool for balancing development with stewardship. I urge you to reaffirm your commitment to the National Historic Preservation Act and ensure that Section 106 remains strong and effective.

Weakening or eliminating Section 106 would silence community voices, put irreplaceable cultural resources at risk, and erode one of the few mechanisms that ensures the federal government honors its obligation to protect our shared heritage.

Thank you for your attention and your public service.

Sincerely,
Hannah Andrascik
1909 N Katchina Dr, Flagstaff, AZ 86001

STATEMENT FOR THE RECORD
IAN JEFFERIES
PRESIDENT & CHIEF EXECUTIVE OFFICER
ASSOCIATION OF AMERICAN RAILROADS



BEFORE THE
UNITED STATES SENATE
COMMITTEE ON ENERGY AND NATURAL RESOURCES

HEARING TO:

EXAMINE THE SECTION 106 CONSULTATION PROCESS UNDER THE
NATIONAL HISTORIC PRESERVATION ACT

OCTOBER 29, 2025

Association of American Railroads
425 Third Street SW
Washington, DC 20024
202-639-2100

On behalf of the members of the Association of American Railroads (AAR), thank you for the opportunity to submit this statement for the record regarding the Section 106 consultation process and its impact on the railroads. AAR freight railroad members account for some 84 percent of U.S. freight railroad mileage, 93 percent of employees, and 97 percent of revenue. The major freight railroads in Canada and Mexico are AAR members, as are Amtrak and several commuter rail systems. Unlike other modes of transportation, railroads own, maintain, and operate on our own private infrastructure, annually investing \$25 billion back into the network to improve the efficiency, fluidity, and resilience of the rail network.

For those who may be less familiar with the AAR, we've been around for 90 years, though our predecessors date back to the early days of railroading in the 19th century. Railroads are among the first regulated industries in this country's history, and we respect our heritage and look towards the future. We advocate for policies that promote the economic and operational health of the freight rail industry and that allow railroads to better serve their customers, the communities in which they operate, and the broader economy.

AAR's members are committed to working cooperatively with their employees, their customers, policymakers, and others to help railroads meet the freight transportation needs of our country safely and efficiently.

Railroads & Section 106

AAR supports permitting reforms that are critical to the continued growth, safety, and sustainability of our nation's rail system and recognizes the importance of addressing inefficiencies in the permitting process while still preserving necessary protections. For over a decade, the railroad industry has worked with Congress to make these appropriate, carefully balanced changes to the Section 106 consultation process for railroad projects.

In 2005, Congress enacted the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETA-LU) which prohibited blanket historic designation

of the interstate highway system, establishing a practical framework that allows projects to proceed while preserving truly historic features. This model has proven successful in balancing infrastructure development with historic preservation.

In 2015, Congress reaffirmed this approach by extending a similar system for railroad projects in Section 11504 of the Fixing America's Surface Transportation (FAST) Act, directing the Advisory Council on Historic Preservation (ACHP) to issue an exemption for railroad rights-of-way from Section 106 review that is consistent with the highway model. Recognizing that there are important historic sites along the rail network, the goal of this provision was to identify the specific sites where additional historic preservation reviews were necessary while allowing projects to move forward on the rest of the network. The intent was clear: railroads should be treated the same as highways when it comes to historic preservation reviews.

However, a decade later, ACHP has failed to comply with this directive. Instead of issuing a broad exemption, ACHP proposed a burdensome site-by-site review process that presumes all railroad rights-of-way are historic unless specifically exempted. This approach reverses Congressional intent and imposes unnecessary delays on critical infrastructure projects. It has resulted in impractical, archaic restrictions on how projects can proceed. In one example, a railroad sought approval to rebuild an aging wooden bridge to improve safety and climate resilience. The railroad was told the bridge could only be rebuilt with the same wood materials and design, despite there being no historic relevance to the structure.

Section 106-related delays have real-world consequences. They ripple across the economy, affecting freight movement, construction timelines, and the transportation networks on which businesses and communities rely. In an era where supply chain efficiency and resilience are essential to national competitiveness, imposing duplicative and impractical

regulatory regimes on rail infrastructure undermines the very goals Congress intended to advance.

The rail industry has made repeated efforts to work with ACHP and the Department of Transportation (DOT) to implement Section 11504 as Congress directed. These efforts have been met with resistance and reinterpretation that contradict the statute, where the default is exclusion from review, not inclusion.

Fair Treatment

Railroads are not seeking special treatment but asking for equal treatment. The exemption for highways has allowed projects to proceed efficiently while preserving truly historic sites. Railroads deserve the same regulatory certainty and efficiency. To that end, AAR and its members have urged Congress to include language in the upcoming Surface Transportation Reauthorization legislation that directs ACHP and DOT to adopt a railroad rights-of-way exemption fully consistent with the highway model. This will align federal policy with Congressional intent, reduce unnecessary regulatory burdens, enable vital freight, transportation, and construction projects to proceed efficiently, and support national supply chain resilience and competitiveness. To support this request, AAR has organized a coalition letter signed by the following organizations:

- American Association of State Highway and Transportation Officials (AASHTO)
- American Short Line and Regional Railroad Association (ASLRRA)
- Association of American Railroads
- National Association of Manufacturers (NAM)
- National Railroad Construction and Maintenance Association (NRCMA)
- Railway Engineering-Maintenance Suppliers Association (REMSA)
- Railway Supply Institute (RSI)

- U.S. Chamber of Commerce

This coalition represents a unified call from railroads, suppliers, manufacturers, and the business community for regulatory clarity and equitable treatment under Section 106. A copy of that letter follows this statement.

Conclusion

America's freight railroads are a vital national resource. With growing demands on our transportation infrastructure and increasing pressure to improve environmental performance and supply chain efficiency, railroads are well-positioned to meet these challenges. But we must be allowed to do so without outdated and duplicative regulatory barriers. Congress has acted before to streamline infrastructure permitting. It must act again to ensure that railroads are treated equitably under Section 106. AAR and its members stand ready to partner with Congress and ACHP to implement this long-overdue reform. Thank you for your leadership and commitment to modernizing America's rail network.

**ATTACHMENT – Coalition Letter Supporting Section 106 Reform for
Railroad Rights of Way**

The Honorable Daniel Webster
Chairman
Subcommittee on Railroads,
Pipelines, and Hazardous Materials
House Transportation and
Infrastructure Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Dina Titus
Ranking Member
Subcommittee on Railroads,
Pipelines, and Hazardous Materials
House Transportation and
Infrastructure Committee
U.S. House of Representatives
Washington, DC 20515

September 23, 2025

Dear Chairman Webster and Ranking Member Titus:

We write to respectfully urge you to include language in the Surface Transportation Reauthorization legislation directing the Advisory Council on Historic Preservation (ACHP) to comply with Section 11504 of the FAST Act by issuing the long-overdue exemption from Section 106 review for railroad rights-of-way. Congress was unequivocal: this exemption must mirror the one adopted for the interstate highway system. Nearly a decade later, that mandate remains unfulfilled.

Section 106 requires federal agencies to consider the impact of projects on historic properties. While such reviews may be appropriate for certain structures or sites, Congress has previously recognized that they are not suitable for all projects and can unnecessarily delay critical infrastructure with no historic relevance. The consequences extend far beyond rail. Section 106-related delays and uncertainty ripple across the economy—affecting freight movement, construction timelines, and the transportation networks that businesses and communities depend on. In an era where efficiency and resilience are essential to national competitiveness, imposing a duplicative and impractical regulatory regime on rail infrastructure undermines the very goals Congress intended to advance.

Congress has acted before to correct this course. In SAFETEA-LU, lawmakers prohibited a blanket historic designation for the interstate system and established a practical, exception-based framework that has successfully kept projects moving while preserving historic features where appropriate. Congress reaffirmed this approach in Section 11504 of the FAST Act, directing ACHP to apply the same model to railroads. Yet today, ACHP remains out of compliance with that legislative directive. Instead, they have proposed a framework that reverses Congressional intent—presuming all rail

rights-of-way are subject to review unless specifically exempted. This burdensome, site-by-site exemption process is unsustainable for both the private sector and government agencies.

We respectfully urge you to include language in the Surface Transportation Reauthorization directing ACHP to adopt a rail rights-of-way exemption fully consistent with the highway model. Doing so will align federal policy with Congressional intent, reduce unnecessary regulatory burdens, and enable vital freight, transportation, and construction projects to proceed efficiently.

The undersigned organizations and their members stand ready to partner with ACHP and Congress to achieve this outcome through the upcoming Surface Transportation Reauthorization. We urge your leadership to ensure that federal agencies uphold the law and honor Congress's directive.

Sincerely,

American Association of State Highway and Transportation Officials

American Short Line and Railroad Association

Association of American Railroads

National Association of Manufacturers

National Railroad Construction and Maintenance Association

Railway Engineering-Maintenance Suppliers Association

Railway Supply Institute

U.S. Chamber of Commerce



Association of Oregon Archaeologists

1467 Siskiyou Blvd
PMB #5189
Ashland, OR 97520

Senate Committee on Energy and Natural Resources

RE: Full Committee Hearing to Examine the Section 106 Consultation Process Under the National Historic Preservation Act, October 29, 2025

Dear Committee Members,

As a professional organization whose members work on all sides of the Section 106 process currently under discussion—those representing private developers, as well as federal, state, and tribal staff, it is important that we submit a letter detailing the importance of the process to the history and archaeology of the state of Oregon. The vast majority of archaeology across the country, including in Oregon, is identified during the beginning of the Section 106 process of the National Historic Preservation Act. Without this process, nearly all of these sites would be heavily affected if not destroyed. The law does not outright protect sites but rather gives the opportunity to find agreeable solutions for all parties involved. This could be anything from simply avoiding a site, minimizing effects, altering a project to accommodate a site, or finding meaningful ways to mitigate for the loss.

The people of the United States wanted a law to protect important places after many were destroyed during the heavy government development projects during the early and mid-twentieth century. Losses of significant archaeological sites, cultural sites, neighborhood places, and community hubs pressured the federal government to protect places deemed important by the people whom they are associated with. This often results in a better project, with proponents walking away quite happy with the end result. The project gets done, and sometimes, they have something to celebrate with the community as a result.

However, without such a process, intentionally, or accidentally damaging or destroying an important historic property can cultivate public outrage. A prime example of this public outrage can be seen with the Whitehouse East Wing demolition. Not that it didn't need to happen, or that it shouldn't happen, but rather that there was no process to discuss and explore the options available for the best outcome available.

These considerations are especially important for cultivating a national identity, to bring people together, especially when we are so divided as a country today. America's Semi-quintennial, or 250th birthday, is approaching in 2026. This same year happens to also be the 60th anniversary of the National Historic Preservation Act, and the 50th anniversary of the Historic Preservation Fund which supports the work behind making the National Historic Preservation Act work. People are paying attention to our history.

The act is also consistent with the government-to-government relationship between the Federal government agencies and Tribal governments established through treaties, laws, and executive orders. The obligation to consider the effects of Federal undertakings on Tribes exists outside of the NHPA, however, the NHPA often acts as a predictable path forward for this process. Without it, projects such as the large energy and land management projects will become less predictable and riskier.

It is an easy investment that consistently makes sense. For every \$1 spent by the Federal government on the Historic Preservation Fund program, an additional \$3.97 flows into the local economy, supporting not only preservation, but most importantly, the relationship between the Federal government, local communities, and Tribes.

Improvements to the process may be beneficial, and to this point, our organization attempts to work with the Oregon SHPO and Tribes to improve definition of terms as understood and applicable within the State of Oregon, as a collaborative process. The hearing testimony supported the need for such efforts, and progress is being made. However, improvements outside the influence of our organization that would be most helpful include steady funding and improved resources for SHPO and THPO staffing and data management, as well as reducing federal agency staff turnover and improving staffing levels would significantly improve the pace and consistency of the process for all involved.

We hope the Senate Committee on Energy and Natural Resources takes our input into account when evaluating sensible ways to move development projects forward, while preserving the sense of place that holds communities together.

Sincerely,

The Association of Oregon Archaeologists Executive Board

Signed:

Michele Punke, President

Megan McGuinness, Vice President

Kirsten Lopez, Secretary

From: [Christine Boston](#)
To: [fortherecord \(Energy\)](#)
Subject: Boston - October 29, 2025 — Full Committee Hearing to Examine the Section 106 Consultation Process Under the National Historic Preservation Act
Date: Wednesday, November 5, 2025 11:21:35 AM

Good morning,

I am writing in favor of saving and retaining Section 106 review. This type of consultation is integral and important in the retention of historical knowledge, architectural history, and cultural & archaeological resources. While some may see the Section 106 review as cumbersome **it is not**. When Section 106 is done effectively it actually speeds up projects, removing unnecessary and unexpected delays in projects. For example, archaeological survey and test shoveling enables contractors to know if there are any cultural or archaeological resources, particularly those related to clandestine burials, a legitimate risk here throughout Missouri given its rich history involving American Indians, Spanish and French occupation, Westward expansion and Missouri as a frontier, and eventually Missouri in its early years as a state. If a contractor begins work and hits an unknown burial or cemetery their work is delayed. First, law enforcement are called in to determine whether a criminal investigation is necessary, followed by state preservation agents and related descendant populations if no crime is determined to have occurred at the site. In cases wherein no immediate descendent populations are known the construction project is delayed even further. The totality of the delay for not having a Section 106 review is far more than having it. Again, this underscores the need for Section 106 review as these matters can be easily mitigated when Section 106 review is done effectively and efficiently.

I ask that Section 106 reviews are retained in the best interests of the public, particularly as they benefit from the historical knowledge gained through such reviews and the expedition of construction projects that go through them.

Thank you for your time and consideration,

Dr. Christine Boston
1112 Jobe Drive
Jefferson City, MO 65101

From: [Kelly Britt](#)
To: [fortherecord \(Energy\)](#)
Subject: October 29, 2025 — Full Committee Hearing to Examine the Section 106 Consultation Process Under the National Historic Preservation Act
Date: Wednesday, November 5, 2025 7:57:32 PM

Dear Committee,

I am writing today in the capacity of a professional archaeologist, academic, as well as a concerned citizen, regarding the hearing to examine Section 106 of the NHPA. This Act is of utmost importance to protect, for it plays such an important role in preserving heritage and history for the greater public. I have worked with Section 106 for many years, and I wanted to reiterate what was stated in the hearing, that if the consultation process is started in advance and done in collaboration with the Tribal Nations and other community groups, I have found the process goes quickly, and keeps costs down. The issue is when there is a lag in the process, or if agencies try to cut corners with time or money, and start the process late, or try not to do it at all, that there are issues. Therefore, I urge the Committee to add funding to the SHPO and THPO offices, so there is enough staff for the process to be completed in advance and in collaboration with partners, for heritage must be protected for all.

Sincerely,

Kelly M Britt, PhD, RPA
 Associate Professor of Anthropology
 Department of Anthropology
 Brooklyn College and The Graduate Center, CUNY
 Registrant of Professional Archaeologists ID: 989627

2900 Bedford Avenue
 Brooklyn, NY 11210
 718-951-5000 ext. 2039
kellym.britt@brooklyn.cuny.edu
Pronouns in use: she, her, hers
 Instagram-@bcurbanarchlab

- *To maintain a work/life balance I check email Monday-Friday 9 am to 5 pm EST. Please allow 2-3 business days for a reply.*

I must acknowledge that the land on which I teach is the traditional and unceded territory of the Lenape. The Brooklyn College community, acknowledges that academic institutions, indeed the nation-state itself, was founded upon and continues to enact exclusions and erasures of Indigenous Peoples. This acknowledgment demonstrates a commitment to beginning the process of working to dismantle ongoing practices and legacies of settler colonialism, and to recognize the hundreds of Indigenous Nations who continue to resist, live, and uphold their sacred relations across their lands. I also pay our respect to Indigenous elders past, present, and future and to those who have stewarded this land throughout the generations. I acknowledge the enslaved and free Africans and African Americans whose labor and lives built this city in which I teach.



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

Full Committee Hearing to Examine the Section 106 Consultation Process Under the National Historic Preservation Act

**Statement of Dr. Allyson Brooks
Washington State Historic Preservation Officer
Senate Committee on Energy and Natural Resources**

October 29, 2025

The Washington State Historic Preservation Officer, Dr. Allyson Brooks, is respectfully providing comments on the US Senate Hearing on Section 106 of the National Historic Preservation Act.

Washington State has a unique relationship with the National Historic Preservation Act. It was our own Senator Scoop Jackson that took the lead on the original legislation and saw the process through to signature by President Lyndon Johnson in only nine months. The impetus for the legislation was the loss of our nation's most historic places from interstate highway construction, the building of dams in the American West, and urban renewal. In response, Senator Scoop Jackson and his counterparts developed a requirement that would ensure consideration of historic properties while balancing the need for project delivery. The result was the federal review process known as Section 106. Senator Jackson knew that it was the states who were the experts on significant historic, archaeological, and cultural places in their area, not the federal government. In 1992 Congress created tribal historic preservation offices as tribes have their own indigenous knowledge that is not held by state governments.

In the years that followed the passage of the National Historic Preservation Act the Federal Advisory Council on Historic Preservation created the implementing regulations that operationalized the Section 106 process. These were carefully constructed to acknowledge that federal, state and tribal governments need to consider both known resources and those that have yet to be identified. While the process may seem complex and circular, it is quite linear: define the area of potential effect, identify potential historic properties, evaluate their historic significance and then for those eligible for listing on the National Register, seek ways to avoid, minimize and mitigate harm. The entire process is focused on balancing consideration of our nation's heritage with ensuring that projects go forward. Neither the states nor the tribes have veto authority over the federal government.

Section 106 should be considered a team approach to balancing protection of our nation's historic properties with project delivery. State and tribal historic preservation officers assist the federal government during project planning by providing cultural resource knowledge and expertise when considering the funding or permitting or licensing of a federal project. We work

State of Washington • Department of Archaeology & Historic Preservation
P.O. Box 48343 • Olympia, Washington 98504-8343 • (360) 586-3065
www.dahp.wa.gov



together to find ways to avoid, minimize or mitigate harm. This team approach has created long term professional and personal relationships at all levels of government that prevents project delays through trust and confidence and a willingness to seek solutions.

Our agency works with 33 federally recognized tribes both in our state and adjacent, who have a sovereign interest on both tribal and non-tribal lands. Our tribal partners have a legal right to see their heritage protected and we work with our tribal partners every day to achieve that outcome. We work closely with federal agencies and tribes on identifying places of archaeological and cultural significance and then seek to avoid or minimize harm to those sites. Section 106 becomes problematic when federal agencies delegate their authority to developers who may not have any background in tribal consultation, have no relationship with tribes and are not prepared to provide funding for mitigation. We recently experienced this on a FERC project where the developer, with an international partner, was not prepared or accepting of working with tribes to account for the loss of a major sacred site. The intransigence of the developer caused the Section 106 process to take far longer than was necessary.

Processes, such as Section 106, can always be improved. Our agency began digitizing all our paper records and developing Geographic Information System maps of cultural resources starting in 1999. By 2005 our agency was completely paperless and all communication was digital. This initiative resulted in being able to respond to project submittals *in less than one business week*. We developed a digital Area of Potential Effect computer module so developers, consultants and others could draw their APE online and our system will self-populate the known resources. We created EZ 1 and EZ 2 forms to assist the public when federal agencies ask members of the public to suddenly become cultural resource experts. We generated a statewide archaeological risk assessment module that is available to the public that gives developers and others a means of assessing archaeological potential that can be used to assess the time needed to complete the environmental review process.

Last federal fiscal year we received 5,371 Section 106 submittals of which only 45 were adverse effects. We signed seven programmatic agreements to streamline the process with federal agencies that manage large landscapes in Washington. Our agency has no interest in reviewing activities that have little to no impact on historic resources. We streamline so that our agency and our tribal partners can focus on projects that need our attention.

When Section 106 becomes bogged down it is generally for the following reasons: a federal agency has delegated the process to a developer unfamiliar with cultural resource work, the project proponent hires a consultant unfamiliar with the state or region, the project proponent lacks a background in tribal consultation and/or the federal agency is not taking the lead on its own required government to government consultation. It is not the process itself that creates the problem but the lack of cultural resource staffing at the federal level, lack of funding for state and tribal preservation offices to conduct their work, and federal delegation to project proponents lacking any background in cultural resource management or tribal relations. One important example is FERC's relationship with federally recognized tribes. Section 106 mandates tribal consultation but yet FERC claims a quasi-judicial status that impedes

government to government consultation. The underlying problem is not the regulations but two conflicting laws that are disconnected by statute.

Washington State has managed to successfully navigate Section 106 with project delivery for a multitude of high-profile projects. Our office effectively managed to work closely with FHWA and WSDOT on the construction of a major tunnel underneath Seattle that could impact two major historic districts: Pioneer Square and Pike Place Market. Working with our federal, tribal, and local partners we created a means to protect those areas while ensuring the tunnel was completed in a timely manner. Federal funding for the light rail projects in Tacoma and Seattle has gone smoothly under the Section 106 process and in turn light rail has incentivized the rehabilitation of historic buildings to create additional housing.

In conclusion, it is not the Section 106 process itself that creates issues but how it is funded and managed. Section 106 is a brilliantly constructed device that allows all parties, including the public, to have a voice in protecting our nation's heritage. At the hearing I heard the term "radical environmentalists". The thought of radical historians, archaeologists and tribal elders made me smile. We are likely the least radical people you will ever meet. Instead, all we are trying to do is save the past for our future. And especially during America 250, our work is more important than ever.

From: [amanda.b](#)
To: [fortherecord \(Energy\)](#)
Subject: Burke Williams - October 29, 2025 — Full Committee Hearing to Examine the Section 106 Consultation Process Under the National Historic Preservation Act
Date: Tuesday, November 4, 2025 11:51:08 PM

Dear Members of the Senate Energy & Natural Resources Committee,

I am writing to urge the committee to uphold and protect Section 106 of the National Historic Preservation Act (NHPA). Section 106 is a cornerstone of America's preservation framework that ensures federal agencies take into account the effects of their actions on historic properties.

As someone who has worked in the field of historic preservation for nearly twenty years implementing section 106 on the federal and state level, I have seen firsthand how effective this regulatory framework can be when it is initiated at the appropriate stage in project planning. Section 106 does not have the authority to stop projects. It is a 4-step flexible framework that ensuring our irreplaceable tangible heritage is considered in federal project planning. The process works smoothly when project proponents and/or federal agencies, involve the State and Tribal Historic Preservation Officers, and local governments early in project planning.

Through my career, I've witnessed how Section 106 creates opportunities for collaboration and compromise among agencies, developers, communities, and the public. It helps identify and protect sacred Indigenous sites, historic neighborhoods, and cultural landmarks that tell the full, inclusive story of our nation. It also prevents costly conflicts and project delays by encouraging early dialogue and problem-solving.

I was disappointed that some of the senators came to the meeting with what appeared to be a forgone conclusion of what the challenges to the 106 process are and had made up their minds on what outcome of the hearing would be without listening to the answers the expert witnesses presented. Dr. Merritt and Mr. Concho demonstrated that the 106 process can run smoothly with early consultation and when federal, state, and tribal cultural resource programs are fully funded. They also gave evidence that more program comments and national/state wide programmatic agreements are needed to address repetitive undertakings. In order for this to happen the Advisory Council on Historic Preservation needs to be fully funded and staffed, along with federal, state, and tribal cultural resource programs.

After over 50 years of proven success, Section 106 remains an essential tool for balancing development with stewardship. I urge you to reaffirm your commitment to the National Historic Preservation Act and ensure that Section 106 remains strong and effective.

Weakening or eliminating Section 106 would silence community voices, put irreplaceable cultural resources at risk, and erode one of the few mechanisms that ensures the federal government honors its obligation to protect our shared heritage.

Thank you for your attention and your public service.

Respectfully,

Amanda Burke Williams

From: [Adrienne Burke](#)
To: [fortherecord \(Energy\)](#)
Subject: Burke - October 29, 2025 — Full Committee Hearing to Examine the Section 106 Consultation Process Under the NHPA
Date: Tuesday, November 4, 2025 9:15:55 AM

Dear Members of the Senate Energy & Natural Resources Committee,

I am writing to urge you to uphold and protect **Section 106 of the National Historic Preservation Act (NHPA)**. Section 106 is a cornerstone of America's preservation framework that ensures federal agencies take into account the effects of their actions on historic properties.

As someone who has worked in the field of historic preservation for seventeen years, I have seen firsthand how effective this regulatory framework can be. Section 106 is not about stopping projects. It is about **ensuring that progress happens responsibly**. The process fosters communication, transparency, and accountability by requiring federal agencies to consult with State and Tribal Historic Preservation Officers, local governments, and the public before proceeding with projects that may affect historic places.

Through this process, I've witnessed how Section 106 creates opportunities for **collaboration and compromise** among agencies, developers, and communities. It helps identify and protect sacred Indigenous sites, historic neighborhoods, and cultural landmarks that tell the full, inclusive story of our nation. It also **prevents costly conflicts and project delays** by encouraging early dialogue and problem-solving.

Weakening or eliminating Section 106 would silence community voices, put irreplaceable cultural resources at risk, and erode one of the few mechanisms that ensures the federal government honors its obligation to protect our shared heritage.

After decades of proven success, Section 106 remains an essential tool for balancing development with stewardship. I urge you to reaffirm your commitment to the National Historic Preservation Act and ensure that **Section 106 remains strong and effective**.

Thank you for your attention and your service to the public.

From: [Aaron Caldwell](#)
To: [fortherecord \(Energy\)](#)
Subject: Caldwell - October 29, 2025 - Full Committee Hearing to Examine the Section 106 Consultation Process under the National Historic Preservation Act
Date: Wednesday, November 5, 2025 7:30:40 AM

Dear Members of the United States Senate Energy Committee,

I write as a concerned citizen and career environmental planning consultant to urge immediate legislative reform of Section 106 of the National Historic Preservation Act (NHPA). While the intent of Section 106—to protect historically significant properties from adverse effects of federally funded or permitted projects—is laudable, the current process has become a bottleneck that delays critical transportation infrastructure and energy projects nationwide, often with minimal preservation benefit. Three targeted reforms would restore balance, efficiency, and transparency without compromising legitimate historic values.

1. Establish More Stringent Eligibility Criteria for National Register Listing

Current standards allow properties to qualify based on vague associations or local sentiment rather than rigorous, objective historical significance. Reform legislation should:

- Require properties to meet at least two of the four existing National Register criteria (A–D) with documented primary-source evidence.
- Exclude resources less than 75 years old unless they possess exceptional, nationally recognized importance (e.g., Apollo 11 command module).
- Mandate independent peer review by qualified historians for any contested eligibility determination.

2. These changes would reduce frivolous listings that weaponize Section 106 to block development.

3. Mandate Full Digitization of Section 106 Coordination and Records, Including AI-Assisted Review

Paper-based workflows and fragmented state systems create unnecessary delays and errors. Congress should require:

- A unified, cloud-based federal portal for submitting 106

notifications, APE maps, eligibility findings, and impact assessments.

- All records to be machine-readable (PDF/A, GIS shapefiles) with mandatory public dashboards tracking project status in real time.
 - Integration of AI tools to:
 - Pre-screen properties against National Register criteria using natural-language processing of historic context statements.
 - Flag inconsistencies in SHPO/tribal comments for rapid resolution.
 - Generate draft finding templates compliant with 36 CFR 800.
4. Digitization would cut administrative overhead by an estimated 40–60% while increasing transparency for all stakeholders.
5. **Impose Binding, Tiered Deadlines for Consulting Parties**
Indefinite response windows enable strategic delays. Legislation must set:
- **30 calendar days** for tribes, local historic societies, and SHPOs to acknowledge receipt and request consulting-party status.
 - **30 calendar days** for concurrence on resource eligibility (absent a written extension request with cause).
 - **45 calendar days** for submission of formal impact assessments or objections to “no adverse effect” findings.
 - Automatic concurrence if deadlines are missed, with a 15-day cure period for good-faith errors.

The economic stakes are immense: the American Society of Civil Engineers estimates that every month of delay on a typical \$100 million infrastructure project costs taxpayers \$1–2 million in inflation and financing alone. Meanwhile, truly significant sites—like Gettysburg or Mesa Verde—would remain fully protected under tightened criteria.

I respectfully request that the Senate hold hearings on Section 106 reform and advance legislation incorporating the above provisions.

104

Thank you for your leadership on infrastructure and regulatory efficiency.

Sincerely,

Aaron Caldwell

Smyrna, GA 30080

From: [Jason Chuipka](#)
To: [fortherecord \(Energy\)](#)
Subject: Chuipka - October 29, 2025 — Full Committee Hearing to Examine the Section 106 Consultation Process Under the National Historic Preservation Act
Date: Tuesday, November 4, 2025 2:38:00 PM

Hello,

I am submitting my comments as a cultural resource professional that has worked within the framework of the National Historic Preservation Act (NHPA) for more than 30 years.

Regarding broader permitting changes that would compress NEPA timelines — compressing of timelines does not mean there will be a cost savings, or make project approval faster. The “rush” aspect will result in the same or greater costs as it requires more staff, overtime, and paying to make logistics happen as required.

Rushing the Section 106 process means that project impacts may not be as fully thought through as they need to be resulting in a cycle of revision and delay. And as has happened in the past, this has included litigation, protests, and bad feelings amongst stakeholders that carry over into the next project thus hindering future projects. In other words, the move to rush is most likely to cause delays and higher costs overall.

The saying in project management is that when it comes to fast, cheap, and good you can only have two of the three at any one time: fast and good = expensive; fast and cheap = low quality, litigation, bad feelings; cheap and good = not fast.

For implementation of Section 106 in energy development projects we are generally working in the “cheap and good” with most professionals doing it as dedicated individuals without a high rate of pay — i.e. at the October 29, 2025 hearing Senator Masto was stunned to learn the Acoma THPO’s annual federal support is only ~\$100,000.

Compressing NEPA timelines will result in greater costs and not change the issue at stake, which is that cultural heritage is priceless and irreplaceable. As such, “fast and cheap” should not be on the table.

Thank-you,

Jason Chuipka

Jason Chuipka, M.A., RPA
Vice President, Principal Investigator

Woods Canyon Archaeological Consultants, Inc.
140 North Linden Street
Cortez, CO 81321
office: 970-564-9640
cell: 970-570-9524
www.woodscanyon.net

From: [Rosie Click](#)
To: [fortherecord \(Energy\)](#)
Subject: October 29, 2025 — Full Committee Hearing to Examine the Section 106 Consultation Process Under the National Historic Preservation Act
Date: Wednesday, November 5, 2025 3:42:19 PM

Name: Virginia "Rosie" Click
Address: 1675 21st St N Apt 7, Arlington VA 22209

Comment in support of Section 106 of the National Historic Preservation Act:
Three years ago, I had no idea that the Section 106 process existed. I was at the beginning of a history PhD program, and just starting to learn about historic preservation itself. However, in the first months of my program, I received an email newsletter asking for consulting parties for the Section 106 process for the rehabilitation of the Clara Barton National Historic Site, a NPS site in Glen Echo, MD. I responded to the call, just hoping to observe and learn more. Instead, I gained an entire community of dedicated preservationists, public historians, legal council, community members, and Red Cross staff, all of whom worked diligently to review the proposed renovations. While some focused on archaeological impacts, others focused on structural concerns, while still others focused on the impact to the story of Clara Barton and the historical integrity of the site- all while teaching me the importance of doing this kind of review. This community of people helped shape the future of the Clara Barton NHS into one that focused with renewed energy on Barton herself, an American hero, and the Red Cross, a foundational American institution. Original plans would have compromised the telling of both of those stories.

While this committee is likely mainly focused on Section 106 in regards to new energy projects, I'd ask that you consider the importance to historic sites as well. The Section 106 process brings together both professionals and the public to review plans for our nation's most treasured places. It is a chance for all of us to have a say in the future of historic sites and participate in the governance of our country.

--
Rosie Click, Georgetown University



THE COWLITZ INDIAN TRIBE
TESTIMONY OF THE HONORABLE WILLIAM (BILL) IYALL, CHAIRMAN
U.S. SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
HEARING TO EXAMINE THE SECTION 106 CONSULTATION PROCESS UNDER THE
NATIONAL HISTORIC PRESERVATION ACT

October 29, 2025

INTRODUCTION AND BACKGROUND

Thank you Chairman Lee, Ranking Member Heinrich, and distinguished Members of the Committee for the opportunity to submit testimony on behalf of the Cowlitz Indian Tribe regarding the importance of tribal consultation and preserving sites of traditional religious and cultural significance to Indian tribes under Section 106 of the National Historic Preservation Act.

The Cowlitz Indian Tribe has a deep connection to its traditional lands in southwest Washington, where the Cowlitz people have lived since time immemorial. The Cowlitz are known as the Forever People, and we cherish our rich spiritual and cultural traditions. Our ancestors hunted, fished, and gathered in the Columbia River watershed. We have persisted through pandemics, both distant and recent, and the loss of our land when the federal government opened Cowlitz lands to non-Indian settlement without congressional authorization after unsuccessful treaty negotiations in the 1850s. As a result, our people became scattered, and we were forced to reorganize and pursue formal recognition from the federal government through the Department of the Interior's administrative recognition process. We were restored to federal recognition in 2000, and in 2015, our Reservation was established in Clark County, Washington. Today, the Cowlitz Indian Tribe is one of the largest employers in the region, and our rich legacy of tradition guides our efforts to ensure self-sufficiency for Tribal members and support Tribal self-determination.

Because of our history, we have a unique appreciation for the importance of preserving our Tribal lands and our culture. The National Historic Preservation Act (NHPA) and its Section 106 (54 U.S.C. § 306108) consultation process are crucial for the protection of traditional and culturally significant sites. We urge the Committee to work with tribes to understand how the NHPA Section 106 tribal consultation process works, how the process helps agencies to make better-informed decisions and avoid subsequent delays in federal undertakings, and to consider ways to provide adequate funding for tribal historic preservation officers, who play a key role in the consultation process.

The Forever People

PO Box 2547 ∞ Longview, WA 98632-8594 ∞ Cell: (360) 916-1309 ∞ Email: wiyall@cowlitz.org

CONSULTATION UNDER SECTION 106 IS ESSENTIAL, ROOTED IN THE TRUST RESPONSIBILITY, AND BENEFITS FEDERAL PROJECTS

The NHPA was enacted in 1966 with the intent of preserving historic sites throughout the United States. Section 106 of the NHPA requires federal agencies to consider how their actions will affect historic properties, which include sites of religious and cultural significance to Indian Tribes, before they move ahead with a project. As part of the Section 106 process, the federal agency must consult with federally recognized tribes about potential adverse effects on sites of Tribal religious and cultural significance, and work to resolve adverse effects in making project decisions.

As such, the NHPA Section 106 consultation process is an essential tool that allows tribes to participate in the decision-making process and ensures their voices are heard when federal actions may affect sites of tribal, cultural, and historic importance. These sites may include tribal sacred sites, burial grounds or artifacts of religious importance that are irreplaceable if destroyed. They may also include traditional hunting and gathering areas and other locations that are crucial to a tribe's cultural identity and history. Tribal consultation may be necessary to identify these resources, which may not be obvious to people unfamiliar with our history or cultural traditions, and may not be documented in other databases.

Tribal participation in this process is rooted in the federal government's trust responsibility to protect and conserve tribal lands and resources -- any attempt to circumvent tribal participation in the Section 106 process would undermine that trust obligation. The requirement that federal agencies engage in tribal consultation before proceeding with a project is a critical preventive measure, especially when weighed against the irreparable harm to tribal artifacts, sacred sites, and other significant cultural sites that could result. In addition, tribal consultation will help agencies to avoid subsequent project delays and potentially costly litigation.

For tribal consultation to be most effective, federal agencies need to engage with tribes early in the process. Consultation also must be more than a "check the box" exercise— federal agencies must identify, assess, and consult on any impacts its actions may have on historic properties and culturally significant sites. Nevertheless, federal agencies should not view tribal consultation as a hindrance or obstruction, but rather as an integral and necessary part of project planning under the NHPA. Consultation allows agencies to make better-informed decisions that respect tribal sovereignty and culture, that ultimately will benefit the project.

The NHPA regulations also allow federal agencies to develop their own procedures to implement Section 106 that can streamline the process to meet the specific mission of that agency. Federal agencies can establish Section 106 procedures in consultation with tribal stakeholders to ensure that adequate consultation occurs to identify potentially adverse effects to culturally significant sites, and at the same time, ensure that the federal undertaking is completed in a timely manner. In addition, where projects are complex and have multiple similar undertakings, federal agencies may develop alternative and more efficient procedures for Section 106 compliance in a programmatic agreement (36 CFR 800.14), working with the Advisory Council on Historic Preservation, and relevant State and Tribal Historic Preservation Officers – rather than undertaking individual reviews.

The Cowlitz Indian Tribe is very familiar with the Section 106 consultation process and has a Tribal Historic Preservation Office (THPO) that participates in the identification, protection, and preservation of historic and sacred sites and other sites of cultural significance to the Tribe. Our Tribe has engaged in Section 106 consultation and worked with federal agencies on numerous projects, including situations that involved both emergency short-term planning and longer-term safety planning where cultural concerns had to be taken into account. THPOs are critical to the consultation process, and additional federal support is needed to ensure that tribes can hire THPOs and adequately support those positions. Adequately funding THPOs would help to facilitate an efficient Section 106 compliance process and protection of tribal sites of traditional, religious, and cultural significance.

COLLABORATION AND PROJECT SUCCESS UNDER THE NHPA

The 1980 eruption of Mt. St. Helens—centered in the Tribe’s traditional territory—triggered ash and debris flows down the Toutle River, endangering life and property. The debris also created a natural dam at Spirit Lake, causing the lake to grow behind the blockage, amplifying the risk of a catastrophic release of water and sediment downstream. After the initial emergencies were addressed, federal agencies started a long-term planning process that allowed them to balance the needs for safety while also recognizing the importance of Mt. St. Helens, known as *Lavettlat’la* or “the smoker,” as a traditional cultural place important to the Cowlitz Indian Tribe. The NHPA Section 106 consultation process was of key importance in this planning process.

The agencies involved quickly moved to develop programmatic agreements (PAs), enabling the agencies to move forward in a measured and equitable manner. The PAs for the projects that addressed both the Mt. St. Helens eruption and the Spirit Lake growth created predictability and certainty about the compliance process while also allowing the Tribe to document other traditional cultural places in the Toutle River watershed, Spirit Lake, and *Lavettlat’la*. Rather than forcing the parties into an adversarial process, the NHPA allowed the parties to move forward collaboratively. These collaborative processes lead to quicker, less expensive implementation and allow federal funds to be spent on the ground rather than in a courtroom.

CONCLUSION

Tribal consultation is an essential component of the NHPA Section 106 compliance process, and it is critical for the protection of tribal cultural resources and our shared cultural heritage. Section 106 consultation allows tribes to engage on a government-to-government basis with federal agencies to protect important cultural sites. We respectfully urge the Committee to work with tribes if it is considering any potential changes to the Section 106 consultation provisions – weakening or limiting the existing provisions would violate the United States’ trust obligation to tribes, and fail to adequately protect historic properties, including sites of religious and cultural significance to Indian Tribes, that the NHPA is intended to preserve.

From: [Laura E](#)
To: [fortherecord \(Energy\)](#)
Subject: Ellyson - October 29, 2025 — Full Committee Hearing to Examine the Section 106 Consultation Process Under the NHPA
Date: Tuesday, November 4, 2025 11:13:39 AM

Dr. Laura Ellyson
3504 Victory Drive
Pace, FL 32571

Dear Committee Chairman and Committee Members,
I am writing to you in support of maintaining the current regulatory process of projects that fall under the Section 106 process. I hope you agree that the process is essential for protecting the resources that enrich and define the fully diverse cultural landscape that is the United States of America and its people, including the indigenous communities that share our country.

The only changes I would encourage is to increase the funding appropriated to SHPO and THPO which would allow these offices to increase the staff to better accommodate project reviews and the related processing of data related to federal projects in terms of processing site data into the state- and tribal-managed systems. I will provide a personal example in support of increased funding for SHPO in the case of a large pipeline (FERC) project in Mississippi and Alabama spanning over 200 miles.

I work as a principal investigator with an environmental consulting company on a number of projects that require cultural resources survey under Section 106. During the course of the project mentioned, the major source of the delay on the cultural resources process has been the understaffed SHPO. Mississippi SHPO (Mississippi Division of Archives and History, MDAH) had a limited staff of a single person who handles site inventorying for archaeological sites and another single staff member who handles the historic aboveground structure/architecture inventory. These two staff members handle processing of site forms, assigning site numbers, and likely additional tasks that I am unaware of. The 200-mile FERC project resulted in over 150 new archaeological sites, 38 site revisits, and over 40 new historic architectural resources, which my team had been actively submitting related forms and paperwork during the course of the survey which took a year to complete due to weather and landowner access restrictions. Due to MDAH having one staff member to handle those 150 new applications for site numbers ahead of the report submission, they were also handling a number of other large projects from other agencies of similar size at the time who were also sending in site forms for. To maintain fairness, the MDAH site registrar would work with both mine and the other large projects to assign us each 10 site numbers a week for our new sites, despite us submitting more than 10 forms a week. As you can see, this process took 15 weeks (about 4 months) just to fully receive the new archaeological site numbers for inclusion in the survey reports for FERC and for SHPO.

This delay resulted in the submission of a preliminary draft report for the first half of the survey, which was subsequently rejected by SHPO due to not having all new site numbers assigned and a second addendum report three months later in order to keep up with the requirements for FERC permit filing timelines. Both the revised initial and addendum reports are currently under review by the single person at MDAH who handles project compliance reviews. MDAH stipulates in their regulations that projects should have a turnaround of 30 days for report comments or compliance decisions. Due to the sheer size of these reports

(each, over 500 pages of text plus supporting figures and appendices) to be reviewed by a single person, MDAH has asked for two additional extensions with another likely anticipated because of how understaffed MDAH is. I presume that our two large reports are not the only ones received over the past two months for review as it is likely that the other large projects that held up site number assignments are also on a similar timeline as ours for agency permit filing.

I hope that this example has highlighted that with additional funding to SHPOs, they would be able to hire more staff (this increasing the number of jobs available to the workforce) to accommodate the related site inventorying and compliance reviews which would cut down the time it takes to gain compliance for construction.

Under the same project, we have received comments from Tribal stakeholders who have informed us about culturally sensitive areas that are not currently registered with MDAH and I presume, had the tribal consultation happened earlier in the regulatory process, the project could have been planned better to avoid these areas of concern from its inception rather than after a whole year of survey work has been completed to address the original route and subsequent reroutes for various reasons including environmental concerns, landowner preferences/restrictions, and a few (under 10% of those 150) cultural sites that are potentially eligible for NRHP listing. I would not be surprised if additional reroutes are requested by THPO for some areas, requiring further delays in construction. These would be avoided by including tribal consultation earlier in the project planning stages.

In summary, I advise maintaining the current Section 106 regulatory process with the exception of additional funding particularly to SHPOs and THPOs who are currently understaffed in areas where large federal projects are planned for development and cannot handle the sudden influx of survey results and report reviews on large-scale or large numbers of federal projects. This funding would increase the number of jobs available to state and tribal workforces, keep up with the growing federal infrastructure and development needs, and avoid unnecessary delays in permit filing applications. I also encourage including tribal consultation earlier in the project planning stages to avoid unnecessary reroutes and subsequent project delays over information that would have been valuable earlier in the planning process.

I appreciate your time and consideration.

Sincerely,
Dr. Laura Ellyson

From: [Julie Evo](#)
To: [forthecord \(Energy\)](#)
Subject: Evo - October 29, 2025 — Full Committee Hearing to Examine the Section 106 Consultation Process
Date: Wednesday, November 5, 2025 12:35:37 PM
Attachments: [Outlook-wkajpv4n.png](#)

Testimony for the Record
Full Committee Hearing to Examine the Section 106 Consultation Process Under the
National Historic Preservation Act
October 29, 2025

Chair, Ranking Member, and Members of the Committee:

Thank you for the opportunity to provide testimony on the Section 106 consultation process. I submit these comments as the Principal Investigator of Archaeology for a full-service architecture and engineering firm with an internal cultural resource management (CRM) division. Our structure allows cultural resources to be integrated early, alongside architecture, engineering, and environmental review, which streamlines project delivery and reduces risk. I strongly encourage federal project sponsors and the broader A/E/C industry to adopt the same mindset and staffing model.

Section 106 works. Delays blamed on the statute most often arise not from the law but from late, reactive planning and a persistent industry misconception that cultural resources can be left until the end. In the A/E/C space, many procurements (RFPs, RFQs, IDIQs) still exclude or minimize archaeology and CRM, leading project teams to postpone necessary work until construction is imminent. This practice almost guarantees schedule disruption. Cultural resources should be scoped, planned, and funded from the outset, just like utilities, environmental review, architecture, and engineering.

I have seen this pattern repeatedly across federal and federally assisted projects. When early warnings, sensitivity data, and community knowledge are ignored, proponents later blame Section 106, SHPOs, THPOs, Tribal Nations, Native Hawaiian Organizations, and archaeology firms for delays that stem from their own late engagement. These delays are not inherent to the law. They are the foreseeable outcome of inadequate planning and a disregard for known information.

A highly visible example is the Honolulu Authority for Rapid Transportation (HART) rail project. Section 106 consultation began early, and the State Historic Preservation Officer, the Advisory Council on Historic Preservation, Native Hawaiian Organizations, and technical specialists clearly documented the high probability of encountering cultural resources and Native Hawaiian burials along the corridor. Although this information was available at the outset, the project advanced without fully integrating these findings into planning, design sequencing, or construction strategy. When burials were encountered as predicted, the project faced emergency actions, redesign, segmentation, litigation, and major impacts to scope and schedule. The delays did not occur because Section 106 was triggered. They occurred

because its findings were not meaningfully acted upon.

Section 106 is a planning tool that supports responsible development and fosters community trust. It is not a barrier to progress. Complacency, late planning, and inadequate scoping are the real barriers. When cultural resources are treated with the same rigor and timing as other critical project elements, Section 106 is predictable, efficient, and successful.

I know that historic preservation is important to the American people and to this Committee. Protecting our shared heritage is a bipartisan value grounded in respect, stewardship, and good governance. We must also acknowledge where agencies and the A/E/C industries, particularly in the rapidly growing energy and infrastructure sectors, need to take this responsibility seriously. Meaningful compliance requires early action, resourcing, and an understanding that community trust and efficient project delivery are not mutually exclusive. They are inseparable.

Recommendations

- **Treat cultural resources as a core discipline from project initiation.** Federal guidance should require CRM kickoff at the same time as architecture, engineering, and NEPA, including baseline archival review and predictive sensitivity mapping at concept design.
- **Require CRM scoping in procurement documents.** RFPs and RFQs should explicitly include archaeological and historic preservation services, with evaluation criteria for CRM capability and defined scope and budget lines.
- **Initiate consultation early.** Agencies should begin outreach to SHPOs, THPOs, Tribal Nations, and Native Hawaiian Organizations during alternatives development, with Section 106 milestones tied to 30 and 60 percent design deliverables.
- **Resource SHPOs, THPOs, Tribal Nations, and reviewing offices.** Congress should increase grant and staffing support and require pay scales competitive with private-sector expertise to ensure timely, informed review.
- **Use programmatic tools responsibly.** Encourage Programmatic Agreements, vetted discovery plans, and standard treatment measures for recurring projects, but only when paired with early planning and clear triggers.
- **Integrate CRM risk into cost and schedule planning.** Require cultural resource contingencies similar to geotechnical allowances and prohibit ground disturbance until consultation and treatment measures are complete.

Section 106 reflects our shared commitment to safeguard historic and cultural resources while advancing needed development. It functions well when project sponsors plan responsibly, begin consultation early, and resource reviewers and practitioners adequately. Early action, not legislative rollback, is the path to greater efficiency and better project

outcomes.

Thank you for your leadership and for the opportunity to provide these comments.

Sincerely,
Julie Evo

Julie Evo, M.S., RPA
Archaeology - Principal Investigator



AEPAC | ARCHITECTURE & ENGINEERING
1003 Bishop St. Suite 2520, Honolulu, HI 96813
Main: (808) 942-7474 | **Mobile:** (808) 489-4302
julie@aepac.com | www.aepac.com

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From: [Eva F](#)
To: [fortherecord \(Energy\)](#)
Subject: Falls - October 29, 2025 — Full Committee Hearing to Examine the Section 106 Consultation Process Under the National Historic Preservation Act
Date: Monday, November 3, 2025 9:38:32 PM

Public Comment:

Section 106, 110, and the NHPA as a whole is an asset to the federal planning process and should not be eliminated. The NHPA is extremely flexible, allows for public comment and transparency, and makes sure that important resources that are part of our shared heritage receive full consideration in federal project planning.

Let's be honest, the NHPA is not what actually stalls projects or "blows up" budgets...

Historic resources generate tourism on public lands. They are Money Makers! Because people care!

They tell OUR story as a people and a country.

They contribute to the scientific understanding of our changing world and even humans as a species.

Please leave this vital legislation alone (and focus on the price of my groceries),

Eva Falls
Concerned Citizen
411 Osage Rd, Cockeysville, MD 21030

Fort Belknap Indian Community



Fort Belknap Agency
656 Agency Main Street
Harlem, Montana 59526-9455
PH: (406) 353-2205
FAX: Council - (406) 353-4541
FAX: Departments - (406) 353-2797

Fort Belknap Indian Community
(Tribal Govt.)
Fort Belknap Indian Community
(Elected to administer the affairs of the community and
to represent the Assiniboine and the Gros Ventre
Tribes of the Fort Belknap Indian Reservation)

FORT BELKNAP INDIAN COMMUNITY TESTIMONY FOR HEARING TO EXAMINE THE SECTION 106 CONSULTATION PROCESS UNDER THE NATIONAL HISTORIC PRESERVATION ACT

November 3, 2025

INTRODUCTION

The Fort Belknap Indian Community (FBIC) submits this testimony for the record in response to the U.S. Senate Committee on Energy and Natural Resources “Hearing to Examine the Section 106 Consultation Process Under the National Historic Preservation Act.” The Fort Belknap Reservation is the homeland to the Assiniboine (Nakoda) and Gros Ventre (Aaniiih) Tribes and is the fourth largest Reservation in Montana. Our Reservation is rich with cultural sites, and we are dedicated to protecting our invaluable cultural heritage on and off the Reservation.

The National Historic Preservation Act (NHPA) and its Section 106 Process provides an efficient and critical review process that limits and avoids impacts to historic properties, sacred sites, and tribal cultural resources. FBIC strongly opposes any attempt to eliminate, weaken, or introduce shortcuts into the Section 106 Process. The Section 106 Process is often our last opportunity to protect historic, sacred, and cultural resources.

For FBIC and many other Indian tribes, this is not just our past, it is also our present and future. Just like any church, synagogue, temple, or historic building, our historic properties must be protected. Tribal historic properties include sacred sites, cultural resources, and other resources that are significant to our culture and identity. Protecting these resources ensures that future generations can identify, utilize, and learn from the sites, places, and resources that have defined our people for all time.

Time and time again, despite government-to-government treaties and agreements between our nations, the United States has found ways to take more of our lands, turn our sacred sites into Superfund sites, and threaten the existence of our economic and cultural resources. The Section 106 Process is one of the few ways to protect what we reserved in treaties with the United States, and is one of the few modern laws that help us uphold our treaties, which the U.S. Constitution calls the supreme law of the land.

The NHPA and the Section 106 Process are not ambiguous or uncertain processes. It is a focused opportunity for projects to take into consideration the historic properties and cultural resources that may be impacted by development. The review process utilizes the expertise of Tribal Historic Preservation Offices (THPOs), elders, and cultural advisors to avoid or minimize

impacts to our sacred resources. The NHPA and Section 106 Process do not even require absolute avoidance. In many cases, only mitigation to minimize impacts is required.

The key to the Section 106 Process is early and honest communication with Indian tribes whose historic properties may be impacted by a project. The Section 106 Process is designed to work through potential conflicts and develop solutions. The NHPA and Section 106 Process are not barriers to the future, they are simply processes for ensuring that our past, present, and future are always connected.

THE ADMINISTRATION IS ALREADY UNDERMINING THE SECTION 106 PROCESS

The Committee should be holding a hearing on the Administration's attempt to circumvent the NHPA by effectively eliminating consultation under the Section 106 Process. On January 20, 2025, the President issued Executive Order No. 14156 Declaring a National Energy Emergency and directing federal agencies to expedite permitting of energy projects. The Executive Order asserted that insufficient energy production, transportation, refining, and generation capacity pose an "unusual and extraordinary threat" to the nation's economy and national security.

The Administration's own energy experts do not agree with these statements. The U.S. Energy Information Administration (EIA) is part of the U.S. Department of Energy and collects, analyzes, and disseminates independent and impartial energy information to promote sound policy making. EIA describes itself as the nation's premier source of energy information. In April 2025, during the same time that the President and Interior were claiming that there was an energy emergency, EIA reported record breaking oil and gas production in the United States.

In fact, covering the period from 2019 to 2026, EIA issued report after report demonstrating there is no energy emergency. For example, on July 14, 2024, EIA reported that the United States has been an "annual net total energy exporter since 2019." In another example, on June 9, 2025, EIA reported that "[i]n 2024, the United States produced more energy than ever before." And, finally, on June 6, 2025, EIA reported that oil and gas production in the Gulf of Mexico is "expected to remain stable through 2026."

In response to this so-called emergency, the Department of the Interior (Interior) and other federal agencies issued emergency permitting procedures. Interior's process for Section 106 Compliance does not provide enough information about proposed energy projects, enough time to identify and assess impacts, and relies on companies to monitor their own compliance with the law.

To apply to use Interior's Emergency Process for Section 106 Compliance, companies are required to provide only a minimum amount of information:

- the name of the company;
- the name of the project;
- the location of the project;

- the lead agency permitting the project; and
- the latest version of the proposed plan of operations.

Based on this information, federal agencies are directed to notify Indian tribes, THPOs, and other historic preservation officials about the project and invite comments within seven (7) days of the notice. If approved by Interior, the only requirement is that the “company agrees to implement, to the extent prudent and feasible, measures that avoid or minimize harm to historic properties.”

Seven (7) days is not enough time for Indian tribes and THPOs to be notified about a project, identify impacts, assess impacts, develop avoidance or mitigation plans, and provide these comments to Interior. In other words, Interior’s Emergency Process for Section 106 Compliance completely eliminates the requirements of Section 106 of the NHPA. Additional time and information will be needed by Indian tribes, THPOs, and other historic preservation officials to provide any response to a proposed project.

Interior also cannot delegate Section 106 Compliance to a third party. Under its Emergency Process, Interior requires that companies agree to implement measures to avoid or minimize harm to historic properties. These are Interior’s obligations under the law and they cannot be delegated to private companies. In many cases, historic properties include cultural resources and sacred sites. Information about cultural resources and sacred sites are kept confidential to prevent theft and looting. Private companies cannot have access to this confidential information.

Finally, the regulations implementing Section 106 of the NHPA at 36 C.F.R. § 800.12(d) provide a 30-day period for any emergencies. Interior’s Emergency Process and guidance issued by the Advisory Council on Historic Preservation (ACHP) on February 25, 2025, extended the use of emergency procedures indefinitely. This extension appears to violate 36 C.F.R. § 800.12(d) which requires that agencies “request an extension ... from the Council prior to the expiration of the 30 days.” Instead, the ACHP issued a blanket extension to all federal agencies.

None of these actions are justified by unsubstantiated claims of an Energy Emergency. Instead of examining the Section 106 Process, the Committee should be seeking full implementation and compliance with the law it passed to protect historic properties and cultural resources.

Claims of “unnecessary delays” attributed to Tribal consultation are also incorrect. In our experience, what genuinely causes delays is the severe and chronic lack of resources provided to Tribal Historic Preservation Offices. THPO positions are funded by federal grants, but the average funding has severely dropped and in its most recent budget the Administration proposed cutting THPO funding by 97 percent. The average THPO grant is already too low for the responsibilities required, and many offices estimate their grants would need to be doubled to be truly effective. If Congress is serious about efficiency, it must properly fund the THPOs, not eliminate or circumvent their authority.

SECTION 106 IS A MANDATE TO PROTECT CULTURAL SOVEREIGNTY

The NHPA provides a legal framework for protection of historic properties and cultural resources. The purpose of the NHPA is to ensure that the effects on historic properties and cultural resources are rigorously considered for all federal actions. Compliance with Section 106 is the mechanism that legally obligates every federal agency to consider FBIC's and other tribes' views about historic preservation issues. Crucially, Section 106 does not require a particular outcome or stop development; it simply demands that federal agencies consult in good faith, ensuring that the effects are identified and resolved early in the process, consistent with the regulations outlined in 36 C.F.R. Part 800.

The Section 106 consultation process is one of the most vital mechanisms for Indian tribes to protect their cultural heritage and exercise their inherent sovereignty. It legally obligates a federal agency to engage in a government-to-government dialogue with any tribe whose religious and cultural historic properties may be impacted by a federal project. This mandate is crucial because it ensures that sites of deep significance—like sacred sites, Traditional Cultural Properties, and ancestral landscapes—which may be invisible to non-Tribal historic surveys, are properly identified, valued, and protected. Section 106 provides tribes with a necessary and formal voice in federal decision-making, ensuring their perspectives, traditional knowledge, and cultural continuity are respected before irreversible destruction occurs.

In 1992, the NHPA was amended to allow the creation of THPOs, significantly enhancing the role of Indian tribes in the national preservation program. Currently, there are 222 federally recognized THPOs overseeing historic preservation across over 50 million acres in 30 states.

In 2012, we established our own Tribal Historic Preservation Office. Our THPO works tirelessly to protect all cultural resources within the boundaries of our Reservation and the historic territories of the Nakoda and Aaniiih. These areas encompass historical artifacts, items of patrimony, archaeological sites, and sacred sites. We currently operate with two full-time officers and cultural resource monitors who perform essential research.

THE NHPA AND SECTION 106 COULD HAVE PROTECTED THE LITTLE ROCKIES

The Little Rockies sit on the southern end of our Reservation. The Little Rockies are a sacred area used for hunting and spiritual ceremonies. Seven years after our Reservation was established and under the threat of starvation, the United States carved the Grinnell Notch out of our Reservation for gold mining. After decades of devastating gold mining, the area is now a toxic waste dump contaminated by open-pit cyanide heap-leach mines. The Environmental Protection Agency declared the area a Superfund site, yet acid mine drainage and contaminated ground water threaten our Reservation.

Despite ongoing threats to our homelands, there are active efforts to restart exploration and potentially renew mining on privately owned land within the old mine's boundaries. Between 1979 and the mid-1990s, state and federal regulators approved eleven requests to expand mining

operations with minimal environmental review, overriding strong opposition from the FBIC. In contrast, in March 2022 the Montana Department of Environmental Quality finally conducted a full and robust Environmental Impact Statement to adequately assess the potential harm before any new exploration. This is the level of due diligence that Section 106 mandates and that Congress must protect.

FBIC views attempts to undermine Section 106 as a repeat of the historical exploitation seen at the Grinnell Notch. Tribal consultation under Section 106 is not an optional courtesy; it is a statutory requirement and a cornerstone of federal preservation policy. Tribes possess unique historical, linguistic, and cultural expertise necessary for assessing sites that contain Traditional Cultural Properties. No other entity possesses the requisite knowledge to make these determinations in a manner consistent with the NHPA.

CONCLUSION

FBIC is strongly opposed to any attempt to undermine the NHPA and Section 106 Process. The Administration has already effectively eliminated the Section 106 Process under its so-called Energy Emergency. There is no basis for Congress to further support these efforts by further undermining the NHPA and Section 106 Process. Instead, Congress should properly fund and support THPOs to promote efficiency and decision-making.

The NHPA and Section 106 Process protect the very resources that we reserved in treaties and agreements with the United States. Historic properties include our cultural resources, sacred sites, and other resources. These resources are not just our past, but also our present and our future. The NHPA and Section 106 Process provide the opportunity to protect these resources for our future generations. The Section 106 Process does not require a certain outcome, it only ensures that we all work together to find a solution for everyone.

From: [Dara Friedberg](#)
To: [fortherecord \(Energy\)](#)
Subject: October 29, 2025 — Full Committee Hearing to Examine the Section 106 Consultation Process Under the National Historic Preservation Act
Date: Wednesday, November 5, 2025 4:31:34 PM

I'm writing as an architectural and public historian who works in the historic preservation field (Cultural Resources Management). I've had the privilege to work on hundreds of projects through Section 106 such as that which revealed a forgotten cemetery for enslaved people. Our work doesn't force an end to proposed projects, but rather it brings to light historic buildings, landscapes, cemeteries, and sites that might otherwise be completely lost. When possible, projects can be adjusted to save these resources. Please don't let "tweaks" to Section 106 be code for or turn into the gutting of a program that has identified thousands of important historic resources in the country that allow a better understanding of our nation's history.

Sincerely,
Dara Friedberg
3206 W. Grace St., Richmond, VA 23221

From: [Kelly Higgins](#)
To: [fortherecord \(Energy\)](#)
Subject: Higgins -October 29, 2025 — Full Committee Hearing to Examine the Section 106 Consultation Process Under the National Historic Preservation Act
Date: Wednesday, November 5, 2025 9:28:55 AM

Good morning,

I am writing in response to the hearing you held on October 29, 2025 regarding the Section 106 Consultation Process. As an archaeologist working in the southeastern U.S., Section 106 created my career and I am extremely concerned that changes to the language of the law would not only be detrimental to my career (and the careers of the thousands of Americans employed in this field), but also to the cultural and historical fabric of our communities Section 106 helps protect.

As was mentioned during the hearing, the vast majority of Section 106 projects are completed without issue and in a timely manner. There are also programs in place, such as Programmatic Agreements, that help move the process along. However, at its core, Section 106 and the larger National Historic Preservation Act were implemented to force the federal government to "slow down, talk, and think" when it comes to development. It gives local communities a chance to voice opposition to a project and forces agencies to consider alternatives.

Section 106 is an advisory law, it cannot enforce its recommendations. It was designed to keep federal power in check and to enforce transparency and responsibility that should come with federal spending. Additionally, the law is adaptable, allowing agencies to determine if a "standard" approach for evaluations and surveys is appropriate, or if a different approach should be undertaken- offering the flexibility Congress seems to want.

Changes to the Section 106 laws would be detrimental to the protection of historic resources of the United States. The witnesses who spoke at this hearing repeatedly mentioned that the federal government needs to fund State Historic Preservation Offices (SHPOs) and Tribal Historic Preservation Offices (THPOs), invest in digital systems and data, start consultation early, and build relationships. By properly supporting these agencies, Section 106 will become more "streamlined" and efficient, and help our country move forward while preserving its past.

Sincerely,
Kelly Higgins, M.A., RPA
Archaeologist
3906 Overbrook Dr.
Columbia, South Carolina 29205

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Kelly Higgins
higginsk7@gmail.com
(336) 681-2761

From: [Beth Hillen](#)
To: [fortherecord \(Energy\)](#)
Subject: October 29, 2025 - Full Committee Hearing to Examine the Section 106 Consultation Process Under the NHPA
Date: Wednesday, November 5, 2025 5:41:41 PM

Dear Senators,

I watched the October 29, 2025 hearing to examine Section 106 with great interest. I have worked in the field of historic preservation for the past 38 years, primarily involved with Section 106 compliance for Federal Highway Administration (FHWA)-funded infrastructure, but also for federal undertakings for the FTA, FAA, USDA, DOD, DOE and other agencies. Further, I am a partner in a firm which does environmental consulting, including Section 106 consultation.

The context for why we have the NHPA is vital in understanding why the process is so important to giving citizens of the United States a voice. Prior to its passage, swaths of neighborhoods, places of cultural and historical significance, and sacred spaces were sacrificed with little consultation in the name of progress. The most vulnerable were communities populated by marginalized populations, who sometimes saw their communities irreparably and permanently destroyed.

My decades of experience mirror the data shared by Dr. Chris Merritt and Senator Gallego; a very small percentage of Section 106 consultations result in an Adverse Effect finding. When they do, through consultation, negotiation, and consensus building, these reviews often result in outcomes that meet the needs of the project, as well as preserve significant historic properties that are often the pride of local communities, thus all interested parties benefit. To be clear though, a finding of Adverse Effect does not mean a historic property will be preserved. Often the Adverse Effect is the property must be demolished for the project to move forward, and that is a legitimate result. I have negotiated many projects where the outcome was not preservation, but mitigation for the adverse effect of demolition. Section 106 is a flexible process which can have many outcomes, because each project, each historic resource, each community they are located in, and the relationship between the three, is unique.

As Mr. Steven Concho eloquently stated, Section 106 is not a courtesy but is a legal duty of our government—it is a duty that works and helps protect our nation's irreplaceable cultural heritage. Because that is what they are, irreplaceable. Once destroyed, they cannot be replaced or recreated; serious consideration and examining options before doing so, is both a prudent and ethical approach.

As a practitioner, I agree that efforts should be made to make the process more efficient. As Dr. Merritt, Senator Cortez Masto, Senator Heinrich, and Senator Hickenlooper all pointed out, efficient reviews require adequate funding and staffing. Many state and Tribal historic preservation offices (THPO/SHPOs) are chronically under-staffed due to both state and federal funding cuts. Cultural Resources staff in other agencies, such as the FHWA and the US Army Corps of Engineers, have been reduced, eliminated, and/or furloughed. This will not help shorten review times, it will lengthen them. Early coordination with stakeholders and better cross-agency coordination will help expedite timelines.

Determining significance of cultural resources is always going to be a subjective process requiring the guidance of subject matter experts who are trained to weigh the varying aspects of significance and integrity. Our cultural heritage is worthy of such scrutiny and care. Generations who came before recognized these truths and fought to create the legal framework that exists under the NHPA. Please protect this vital and successful legislation.

Over the span of my career, I have seen many changes to how the National Historic Preservation Act (NHPA) has been interpreted and implanted. The changes were drafted via consultation with Cultural Resources experts from Federal agencies, THPO/SHPOs, the Advisory Council on Historic Preservation, Cultural Resources Management professional organizations, academia, and other industry experts, as well as from those whose projects are subject to Section 106 review and the general public. I urge a similar consensus building process for any changes considered as a result of this hearing.

Sincerely,

Luella Beth Hillen
6380 West Congress Drive
Pendleton, IN 46064

From: [Huddleston, Loren](#)
To: [fortherecord \(Energy\)](#)
Subject: Huddleston - NHPA and Section 106
Date: Wednesday, November 5, 2025 12:57:39 PM

Hello,

I am a Senior Archaeologist at WSP. I have over 20 years' experience within the business, and I have only seen the Cultural Resources Management sector of the process increase sensitivity and improve overall effectiveness by streamlining processes within the bounds of the 106 process and by applying technology to speed up field efforts.

The process is NOT broken; it is just not implemented in the correct way. There is not standardization within the agencies regarding the policies. There is limited use of the Programmatic Agreement option available to further streamline larger projects. The representation of the energy official within the Senate hearing was biased and did not address what efforts had been made to use any type of streamlining process currently available to proponents. The best representation of the whole issue was given by the Utah SHPO, Chris Merritt. His explanation of the use of Programmatic Agreements shows that there is a streamlining option that is already available, and there is little reason to delete the entire process.

It is like the adage "to throw out the baby with the bathwater." There are improvements that should be made, but there are already provisions within NHPA/Section 106 that can be used to complete the process effectively and in concert with progress and preservation.

Loren Huddleston

Re: October 29, 2025 Full Committee Hearing to Examine the Section 106 Consultation Process
Under the National Historic Preservation Act

Dear Senate Energy and Natural Resources Committee

I am writing as a resident of Charlestown Massachusetts (founded in 1628) and a civic activist in our community. Thank you to the Senate Energy and Natural Resources Committee for the careful attention given to Section 106 during the recent hearing. The Committee's role in ensuring a fair, effective review process for federally funded projects is essential to both historic preservation and public trust.

Locally, the Bunker Hill Housing Redevelopment project illustrates why Section 106 matters. Federal funding supported a major redevelopment on land tied to the Battle of Bunker Hill, a site eligible for the National Register of Historic Places. Unfortunately, the community did not benefit from section 106 review even though it was required and repeatedly requested. Many residents, myself included, feel our well founded concerns regarding the site's historical significance as the first major battlefield in the American Revolution were not fully considered.

Section 106 review gives voice to local communities and ensures that important places are not lost without due deliberation. My hope is that the Committee will use its influence to make the process stronger. It is important that agencies have guidance and support to do this work well, not just quickly.

I respectfully ask the Committee to reinforce the protections Section 106 provides, and to continue making space for local input and oversight in the decisions that shape our shared history. Thank you for considering this perspective and for your commitment to these issues.

Sincerely,

Johanna Hynes (Charlestown Neighborhood Council, At Large and Charlestown Historic
Battlefield District, Co-Chair)



IGIUGIG VILLAGE COUNCIL
 P.O. Box 4008
 Igiugig, AK 99613
 Phone: (907) 533-3211 Fax: (907) 533-3217 www.igiugig.com
 Email: admin@igiugig.gov

October 28, 2025

The Honorable Mike Lee, Chair
 The Honorable Martin Heinrich, Ranking Member
 U.S. Senate Committee on Energy & Natural Resources
 304 Dirksen Senate Office Building
 Washington, DC 20510

Re: Oversight Hearing on the National Historic Preservation Act—Section 106 Consultation (October 29, 2025)

Dear Chair Lee, Ranking Member Heinrich, and Members of the Committee:

On behalf of Igiugig Village, a federally recognized Alaska Native Tribe located at the confluence of the Kvichak River and Lake Iliamna in Southwest Alaska, thank you for your attention to these comments on the Committee's oversight of the National Historic Preservation Act (NHPA) Section 106 consultation process. For Tribal communities like ours, Section 106 is often the only reliable way to surface place-based knowledge early enough to avoid predictable conflicts, design better projects, reduce litigation risk, and keep schedules on track. We are concerned about the use of the Section 106 emergency provisions in 36 C.F.R. § 800.12 and the use of 7-day comment windows. While appropriate for certain projects, broad use for all federal projects, including broadband projects, will place an unnecessary burden on Tribes and represents an abdication of federal responsibility to work collaboratively with both States and Tribes to protect cultural and heritage resources.

If the Committee wishes to improve outcomes and timeliness, there are targeted reforms that will streamline the Section 106 process without sacrificing trust responsibility or Tribal rights:

- Front-load consultation:
 - Direct agencies to initiate Section 106 consultations at the same time as project scoping and alternatives development—not after a single “preferred alternative” has solidified.
- One federal lead and one consultation plan per project:
 - Require a single lead agency to publish a joint 106 consultation plan with milestones that align with the project's permitting schedule, thereby eliminating duplicative or serial outreach.
- Make programmatic where it makes sense:
 - Encourage Programmatic Agreements for routine, repetitive activities (e.g., in-corridor maintenance) so staff can focus on higher-risk undertakings.
- Require an accountability memo:
 - At decision, agencies should issue a “consultation influence statement” that explains how Tribal input influenced alternatives, avoidance/mitigation, and monitoring.
- Build Tribal capacity:
 - Authorize and appropriate stable funding for inter-Tribal cultural resource teams within Tribal governments and Alaska Native Corporations, including funds for travel, surveys, and data

- management with confidentiality protections. Stronger Tribal counterparts will make for faster, higher-quality consultation.
- Protect timelines with flexibility:
 - Set time-certain milestones, but allow mutually agreed extensions when agencies or applicants add scope, when ground conditions or seasons prevent surveys, or when new cultural information emerges.
 - On the Advisory Council on Historic Preservation's extension of the applicability of the Section 106 emergency provisions:
 - ACHP stated it is extending the applicability of the Section 106 emergency provisions in 36 C.F.R § 800.12 for the duration of the energy emergency declared in EO 14146. This includes the 7-day comment window that typically only applies in emergencies and only for 30 days after an emergency is declared. A seven-day notice does not allow a reasonable, good-faith effort to identify affected Tribal Nations, review confidential site information, convene elected leadership, or coordinate among Tribal Governments, elders, and subject-matter experts. In Alaska, weather, travel, and communications constraints compound these limits. Compressed windows push risk downstream inviting avoidable conflict, re-design, and litigation rather than producing durable, timely decisions. Meaningful consultation requires timely notice with sufficient project detail; sufficient time to hold council meetings and obtain internal direction; time to review protected cultural information and, where needed, conduct site visits or seasonal surveys; and coordination among multiple federal leads. Chronic under-resourcing of SHPO offices at the state level further constrains capacity.
 - A practical floor for initial Tribal comment is 30 days, paired with a clear schedule for iterative meetings. For complex undertakings or those requiring seasonal access or confidentiality protocols, agencies should extend timelines by mutual agreement. This approach advances the government's interest in efficient, predictable permitting while honoring the federal consultation duty and producing more defensible outcomes.

Igiugig Village's Experience

Igiugig Village has engaged Section 106 from both sides of the table. For projects we sponsor, we have led consultation planning and execution in coordination with the responsible federal agency. For projects proposed by others, we have participated as a consulting party. In both roles, we have consistently encouraged early, substantive consultation because it produces better designs, fewer surprises, and more durable decisions.

As a project proponent, Igiugig has led Section 106 consultation for the Igiugig Community Cultural Center project, wind turbine development and solar projects. As a consulting party on third-party undertakings, we have brought local knowledge, confidential site information, and practical mitigation measures to the table. Across both settings, our approach is the same: Identify culturally important places early; adjust siting and timing to avoid harm; and document agreed mitigation and monitoring so work can proceed with clarity. This is consultation working efficiently, respectfully, and in service of timely, defensible federal decisions.

What we ask of the Committee:

- Reaffirm Congress's commitment to Section 106's consultation duty and oppose any narrowing of Tribal participation, triggers, or timelines that would push conflict downstream.
- Direct agencies to integrate Section 106 consultation at project scoping, designate a single federal lead per project, and publish joint consultation plans aligned with permitting schedules.
- Support capacity-building for SHPOs, THPOs, and Inter-tribal cultural resource teams so consultation is timely, substantive, and efficient.
- Encourage greater use of Programmatic Agreements and other tools that reserve the most intensive review for undertakings with the highest risk to cultural resources.
- Ensure any expedited procedures preserve a minimum 30-day initial Tribal comment period under Section 106, with longer periods by agreement where site access, confidentiality needs, or seasonal conditions require it.

- Require clear documentation of how Tribal input informed alternatives, mitigation, and monitoring—so decisions are faster, more defensible, and more durable.

Maintaining the integrity of the Section 106 consultation process is not an impediment to development. Rather, it is how the federal government makes well-informed decisions at initial stages of project planning, while honoring its trust responsibility and the living cultures tied to the lands and waters where projects proceed. We appreciate your leadership and would welcome the chance to discuss constructive implementation improvements that advance both stewardship and permitting certainty.

Quyana (thank you) for your time and consideration of these comments.



AlexAnna Salmon
Igiugig Village Council President

From: [John Kannady](#)
To: [forthecord \(Energy\)](#)
Subject: Kannady - October 29, 2025 — Full Committee Hearing to Examine the Section 106 Consultation Process Under the National Historic Preservation Act
Date: Tuesday, November 4, 2025 10:21:20 AM

Hello Committee,

I have been in historic preservation my whole career. I listened to the hearing and I heard four things.

1. The Section 106 process works well to preserve our shared history
2. Early consultation equals project success
3. Section 106 is not the real cause of delays
4. Preserving History is important to all of us

Infrastructure needs repairing and improving. I have seen the process work great and also drag along. The process works. All parties need to come to the table earlier. Funding these state-based programs, most importantly THPOs, would do a lot to ensure the project is reviewed in a timely manner and all parties are fully engaged in the process.

Thanks for your time,

John

[John Kannady \(he/him\)](#) | **Director of GIS**

New South Associates, Inc.

A Women-Owned Small Business

6150 East Ponce de Leon Avenue, Stone Mountain, GA 30083

Office: (770) 498-4155 (ext. 116) | **Cell:** (404) 769-8377

[Website](#) | [Facebook](#) | [LinkedIn](#)



KAWERAK, INC.

October 26, 2025

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White Mountain

Iḡakuik /

Nutchirviq

From: Melanie Bahnke, President
Kawerak, Inc.
PO Box 948
Nome, AK 99762

To: Senate Committee on Energy and Natural Resources

Re: Full Committee Hearing to Examine the Section 106 Consultation
Process Under the National Historic Preservation Act

Dear Members of the Senate Committee on Energy and Natural Resources,

Kawerak, Inc. is the Alaska Native non-profit Tribal Consortium for the 20 federally recognized tribes in the Bering Strait region of Alaska. Kawerak is writing to share thoughts on the importance of Tribal Consultation as relates to the National Historic Preservation Act (NHPA).

Kawerak supports Tribal Consultation between the federal government and tribal governments and believes long established processes developed under the Administrative Procedure Act, 5 U.S.C. §§ 551-559 and Presidential Executive Order 13175, are a critical means by which Tribes may assist agencies in developing public policy that will substantially affect their interests as stakeholders. Presidential Executive Order 13175 was specifically developed to streamline and facilitate Tribal consultation between agencies and Tribes. Executive Order 13175 provides that agencies shall engage in "meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications." This Executive Order established requirements of agencies to consult with tribal officials and receive input in the development of policies with "tribal implications." The preamble of the Executive Order provides that it was established to "strengthen the government-to-government relationships with Indian tribes..." Executive Order 13175 was therefore established in the context of improving the federal government's relationship with tribes, as part of its trust responsibility to tribes.

Executive Order 13175 further defined situations in which consultation must occur by defining what "tribal implications" means: "Policies that have tribal implications" means "regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes."

KAWERAK, INC.

PO Box 948 • Nome Alaska 99762 • 907.443.5231 • www.kawerak.org

Advancing the capacity of our people and tribes for the benefit of the region.

Tribal Consultation regarding the Section 106 process under the National Historic Preservation Act not only fits squarely within the Administrative Procedure Act and Executive Order 13175, but is also in the best interests of Tribes and their communities, and in the best interests of the Federal Government as well, for the following reasons:

Tribal Consultation leads to better outcomes. As the original stewards of lands and waters across the United States, Tribes have direct knowledge of them and can meaningfully contribute to decision-making about them. Tribes have important knowledge and information that can enhance the Federal Government's decision-making about historic properties (and many other topics) and lead to outcomes that utilize the best available information.

Tribal Consultation respects sovereignty. Both the Federal Government and Tribal nations are sovereign. Tribal Consultation is an effective tool to both respect and illustrate that sovereignty. Tribal Consultation brings sovereigns together, in a government-to-government relationship, to share knowledge and perspectives about important issues, including historic properties governed under the NHPA.

Tribal Consultation is crucial to the management of historic properties. Many historic properties have religious and cultural significance to Tribes. Tribes and communities whose religious and culturally significant heritage may be impacted by Federal Government decisions have a right to participate in that decision-making. Only Tribes are able to assess impacts to historic properties they are connected to because of their unique relationship with those properties. The National Register of Historic Places has multiple listings for the Nome Census Area. The listed historic properties highlight the heritage and cultural history of the Tribes in our region.

Kawerak believes that Tribal Consultation is part of the legally enforceable federal Indian trust responsibility to Tribes and contributes to the protection of Tribal treaty rights, lands, assets, and resources of Alaska Native tribes and villages. We strongly urge the Committee to take no actions that would weaken Tribal Consultation under the NHPA or any other federal regulation.

Thank you for considering these comments. If you have any questions, please reach out to Dr. Julie Raymond-Yakoubian, Social Science Program Director (907-443-4273, juliery@kawerak.org)

Sincerely,
KAWERAK, INC.

Melanie Bahnke

Melanie Bahnke, President

KAWERAK, INC.

PO Box 948 • Nome Alaska 99762 • 907.443.5231 • www.kawerak.org

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From: [Matthew Kear](#)
To: [fortherecord \(Energy\)](#)
Subject: Kear - October 29, 2025 — Full Committee Hearing to Examine the Section 106 Consultation Process Under the National Historic Preservation Act
Date: Tuesday, November 4, 2025 9:38:10 PM

I am writing to provide the following comment on the subject senate hearing:

The National Historic Preservation Act is the foundational law for the treatment of historic properties in the United States. The federal government drives many forms of development in this country through funding or permitting. Because of this, Section 106 is one of the most consequential regulations in the preservation of historic places in this country. Most people are not aware. It is too often subject to tired tropes ("red tape"), some of which were voiced by several senators in this hearing. It is a disservice to the countless communities and the projects that have benefited from this regulation and the consultation process it entails.

It's a wild misconception that Section 106 stops projects or delays them unnecessarily. It is merely a consultation process that requires the identification of significant historic places with the potential to be impacted by an action, to engage with members of the public that care about these resources during planning, and to make a reasonable and good faith effort to ensure the project moves forward with minimal harm to the more significant of these places. Section 106 provides another opportunity to engage communities on the projects that are going to impact them. These efforts consider impacts to the physical elements that make up communities and they give communities an opportunity to speak for them and influence the project. Done properly, this results in more community buy-in on a project. In that way, regulations like Section 106 help build better projects.

I am a preservation planner, primarily involved in transportation planning. Section 106 has been an efficient part of the project planning process where I work for decades -- increasingly becoming more efficient through partnerships, formal agreements, and other mechanisms afforded by the regs. The focus of this hearing was on the energy sector, which represents a single slice of the infrastructure improvements and federal actions subject to Section 106. If there are inefficiencies within energy permitting, I encourage partnership between the Advisory Council on Historic Preservation and those federal agencies responsible for permitting on energy projects. For that to work, these agencies need to be fully staffed and funded to ensure efficient compliance. Any concerns about vague language in the regs raised in this meeting should be addressed through existing mechanisms, like Programmatic Agreements. The regs are not the issue -- we need the federal government to provide the funds and staff to implement the regs properly.

Efficiency is a worthy goal, as long as it respects the intention of this regulation -- that historic places are community resources that belong to us all, so we have a right to advocate for them, and the government has a responsibility to hear our concerns.

Respectfully,

Matthew Robert Kear
3032 Deanna Way SW
Lawrenceville, Georgia 30044

From: [Dean Kessler](#)
To: [forthecord \(Energy\)](#)
Subject: Public Testimony: Oct. 29, 2025 - Full Committee Hearing to Examine the Section 106 Consultation Process Under the NHPA
Date: Wednesday, November 5, 2025 5:25:40 PM

Dear Senators,

On October 29, 2025, I, along with 20 of my colleagues within my office, watched the Full Committee Hearing to Examine the Section 106 Consultation Process Under the NHPA with great interest. I have worked and volunteered in the field of historic preservation for the past 17 years, and in the last 2 years I have been involved with Section 106 compliance.

Understanding the context for why we have the National Historic Preservation Act of 1966 (NHPA) is vital to comprehend why the process is so important. This process gives the citizens of the United States an opportunity to express their concerns regarding projects happening in their communities. Prior to its passage, swaths of neighborhoods, places of cultural and historical significance, and sacred spaces were demolished and erased with little consultation in the name of progress. Oftentimes the most vulnerable were communities populated by marginalized populations, who sometimes saw their communities irreparably and permanently destroyed. For example, large sections of historic neighborhoods in Indianapolis - such as the Old Northside, Saint Joseph, Chatham-Arch, Lockerbie, Holy Cross, Fletcher Place and Fountain Square - were destroyed during the construction of Interstates 65 and 70 through the heart of Downtown. This devastation severed communities; displaced 17,000 people, ruined local economies, and took many decades to recover from. Had Sect. 106 existed when the planning began, this atrocity to the City of Indianapolis may not have happened.

My colleagues and I would like to echo the data shared by Dr. Chris Merritt and Senator Gallego that demonstrates that a very small percentage of Section 106 consultations result in an Adverse Effect finding, and that these reviews often result in outcomes that meet the needs of all interested parties. As Mr. Steven Concho eloquently stated, 106 is not a courtesy but is a legal duty of our government—it is a duty that works and helps protect our nation's irreplaceable cultural heritage.

As practitioners, my colleagues and I agree that efforts should be made to make the process more efficient. As Dr. Merritt, Senator Cortez Masto, Senator Heinrich, and Senator Hickenlooper all pointed out, efficient reviews require adequate funding and staffing. Early coordination with stakeholders and better cross-agency coordination will help expedite timelines.

We also share the belief that determining significance of cultural resources is always going to be a subjective process requiring the guidance of subject matter experts who are trained to weigh the varying aspects of significance and integrity. Our cultural heritage is worthy of such scrutiny and care. Generations who came before recognized these truths and fought to create the legal framework that exists under the NHPA. Please protect this vital and successful legislation.

Have a great day,

Dean Andrew Kessler
4935 Crittenden Ave.
Indianapolis, IN 46205



2312 South Sixth Street, Klamath Falls, Oregon
97601
(541) 883-6100 Phone • (541) 883-8893 Fax
www.kwua.org

**Statement of Elizabeth Nielsen, Executive Director
Klamath Water Users Association
Before the
Energy and Natural Resources Committee
U.S. Senate
to
“Examine the Section 106 Consultation Process Under the National Historic
Preservation Act.”**

October 29, 2025

Chairman Lee, Ranking Member Heinrich, and Members of the Committee, thank you for holding this important hearing and for allowing me the honor of providing written testimony before this Committee. My name is Elizabeth Nielsen, and I am the Executive Director of the Klamath Water Users Association (KWUA). I am pleased to provide this testimony on behalf of our farmers and ranchers, and our member irrigation districts on issues related to Section 106 of the National Historic Preservation Act (NHPA). I would also like to thank Senators Wyden and Padilla, who represent our Klamath Basin farmers and ranchers in Oregon and California and appreciate their service on this Committee.

Section 106 of the NHPA is intended to serve important goals of preserving our nation’s historic properties. In our experience, however, it often hinders important activities aimed to improve irrigation efficiency, with these hindrances and delays serving little to no purpose in preserving historic properties or artifacts. This issue, and specific to the Klamath Project, is further described in the testimony below. I am hopeful that today’s hearing will explore some of the issues with implementation of Section 106 of the NHPA, and opportunities to resolve these issues.

The Klamath Basin and the Klamath Project

The Klamath Basin comprises about 10 million acres, approximately 200,000 of which are the irrigated lands of the Project. The Project, which straddles the Oregon-California border, was developed by the Bureau of Reclamation (Reclamation) under the 1902 Reclamation Act. The Project relies on water from the Klamath and Lost River systems, including regulated storage in Upper Klamath Lake, Clear Lake, and Gerber Reservoir. The irrigated lands of the Project support family farms and ranches that produce cereal grains, potatoes, pasture and hay, beef and dairy, onions, and several specialty crops including



2312 South Sixth Street, Klamath Falls, Oregon
97601
(541) 883-6100 Phone • (541) 883-8893 Fax
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horseradish, mint (for both oil and tea), strawberry rootstock, and others. Agricultural production supports local businesses and rural communities built on farming. The area of irrigated land today is not significantly different than it was in the early 1940's, although there have been major investments by growers and irrigation districts who constantly improve the efficiency of irrigation infrastructure. The Project is known for its extreme efficiency in water use, attributable largely to repeated re-use of the irrigation water supply.

Project facilities are the sole means for delivery of water to two longstanding and highly valued federal wildlife refuges – Lower Klamath and Tule Lake National Wildlife Refuges – managed by the U.S. Fish and Wildlife Service. Our agricultural communities share the Klamath Basin with several Indian tribes in both Oregon and California.

KWUA is a nonprofit corporation, formed in 1953, whose members are irrigation districts who are contractors of Reclamation's Klamath Project (Project). Our members use water from the Klamath River and Upper Klamath Lake and deliver that water to approximately 175,000 acres of high-quality agricultural land in Klamath County, Oregon, and Siskiyou and Modoc Counties in California. KWUA member districts also operate the infrastructure that delivers water to Tule Lake and Lower Klamath National Wildlife Refuges, critical areas in the Pacific Flyway.

Like many other agricultural landscapes in the West and throughout the United States, irrigation districts in the Project are always endeavoring to improve irrigation efficiency, replace and upgrade aging infrastructure, and improve irrigation practices for the farmers and ranchers they serve. Often times, and especially within federal Reclamation projects, this work includes a federal nexus that triggers multiple requirements, including those under Section 106 of the NHPA.

NHPA Section 106

Section 106 of the NHPA requires federal agencies to consider the effects of their undertakings on historic properties. The process, often called the "Section 106 review," is intended to ensure that preservation values are factored into federal planning and project development. It involves identifying historic properties potentially affected by a project, assessing adverse effects, and seeking ways to avoid, minimize, or mitigate those effects through consultation with State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs), local governments, and interested parties. While it does not mandate preservation, it promotes transparency and collaboration to balance historic preservation with other public interests.

In the context of Section 106 of the NHPA, a federal nexus refers to any connection between a project and the federal government that triggers the Section 106 review process. This connection can occur when a project:

1. Is federally funded (in whole or in part),
2. Requires a federal permit, license, or approval (such as from Reclamation, U.S. Army Corps of Engineers, or Federal Energy Regulatory Commission), or
3. Takes place on federal land or involves federal property.

Essentially, the presence of a federal nexus means the project qualifies as a “federal undertaking” under the NHPA, and therefore the responsible federal agency must consider the project’s potential effects on historic properties through the Section 106 consultation process.

Section 106 reflects Congress’s recognition that preservation is a shared public value and that historic properties contribute to community identity, continuity, and quality of life. In its best form, it leads to creative solutions that accommodate both preservation and progress. However, Section 106 has sometimes been misused or misunderstood, leading to outcomes far from its original intent. In some cases, it has been treated as a regulatory obstacle or a tool to delay projects rather than a consultative process to improve them. Misapplication of Section 106 creates unnecessary inefficiencies and undermines the purpose of the law.

Recent Klamath Project Experience with Section 106

For Fiscal Year 2022, Congress appropriated \$5 million within Reclamation’s budget to install telemetry systems—commonly referred to as Supervisory Control and Data Acquisition (SCADA) devices—throughout the Klamath Project to improve water management efficiencies and conserve our precious irrigation water supply. In March 2024, Reclamation awarded the funding under contract to the Farmers Conservation Alliance (FCA), a non-profit organization that works with farmers and rural communities in the western United States to modernize irrigation systems for mutual agricultural and environmental benefit.

Following receipt of the award, FCA worked in partnership with local irrigation districts, Reclamation, and other stakeholders across the Klamath Basin to identify over 150 locations for SCADA installation. From this effort, FCA and Reclamation identified 20 sites



2312 South Sixth Street, Klamath Falls, Oregon
97601
(541) 883-6100 Phone • (541) 883-8893 Fax
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that could be approved under a Categorical Exclusion (CE) for Phase 1 of the project¹. The plan was to utilize the CE process to expedite deployment and complete installation by the end of summer 2024. Then planning for Phase 2 of the project would begin with the other sites that were identified for SCADA installation.

However, actual installation of these devices did not start until mid-August 2025, nearly 18 months after planning first began. A primary cause of this delay was Reclamation's decision to require a full cultural resources review, even though SCADA equipment is typically small, no larger than a residential electrical box, and is generally affixed to existing infrastructure (e.g. concrete spillways). The cost of purchasing and installing each device is only a few thousand dollars.

The cultural review process became protracted and burdensome, involving multiple levels of review across both Area and Regional offices within Reclamation. At one point, FCA received questions regarding the size and number of bolts that would be used to attach the SCADA devices.

Throughout this process, FCA followed established cultural review documentation procedures previously used within the Klamath Project. However, as the initial documentation neared completion, Reclamation issued new guidance that required FCA to substantially revise its draft materials. This change resulted in five additional rounds of review and added approximately \$8,000 in unanticipated costs.

Further delays occurred when Reclamation determined that field surveys would be required before work could proceed on the 20 sites. Because Reclamation lacked available staff to conduct these surveys in a timely manner, FCA retained a qualified subcontractor to complete the fieldwork and documentation in order to maintain project progress.

Ultimately, FCA spent an additional 400 hours of staff time and another \$55,000 in subcontractor costs to meet changing requirements. This underscores that such an extensive review was unnecessary, was disproportionate to the project's scope, served no purpose in meeting the intent of Section 106 of the NHPA and did not protect any significant historic properties or artifacts.

¹ A CE is a classification under the National Environmental Policy Act (NEPA) used for actions that a federal agency has determined do not individually or cumulatively have a significant effect on the human environment. Because these types of actions are known from past experience to have minimal environmental impact, they are excluded from the more detailed review required for an Environmental Assessment (EA) or Environmental Impact Statement (EIS).



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97601
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These 20 locations represent only the first phase of the SCADA project. As planning begins for Phase 2, it is important that environmental and cultural review be streamlined and not utilized as a tool to slow down and complicate activities meant to improve practices and efficiencies in managing the storage and delivery of irrigation water, especially when there is no harm to historical properties or artifacts. FCA is collaborating closely with Reclamation to apply lessons learned from Phase 1. KWUA, for its part, will continue to coordinate with FCA and our member districts with the goal of ensuring that future phases proceed more efficiently and effectively.

Conclusion

Thank you for considering this testimony and the unfortunate Klamath Project situation where Section 106 has seemed to take on a life of its own rather than serve its true purposes. Just as we are working locally, KWUA stands ready to work with the Committee, Reclamation and other agencies and parties to address these barriers to infrastructure improvement and irrigation modernization and efficiency projects.



October 29, 2025

The Honorable Senator Mike Lee, Chair
The Honorable Ranking Member, Senator Martin Heinrich
United States Senate Committee on Energy & Natural Resources
366 Dirksen Senate Building
Washington, DC 20510

RE: Pueblo of Laguna Testimony Regarding Oversight Hearing entitled, "Full Committee Hearing to Examine the Section 106 Consultation Process Under the National Historic Preservation Act"

Dear Chairman and members of the Senate Committee on Energy & Natural Resources,

On behalf of the Pueblo of Laguna, I am honored to submit the following testimony for the Committee's consideration on its review of the National Historic Preservation Act (NHPA) Section 106 Consultation Process. Our Tribal Nation appreciates the Committee's attention to how the federal government is continuing to implement consultation under the Section 106 Process with Tribes.

I. Introduction

Our Pueblo is a sovereign Tribal Nation who, since time immemorial, has maintained an ongoing connection and commitment to the lands, waters, traditional cultural landscapes, and historic resources within what is now considered New Mexico and across the broader Southwest. Our cultural survival, history, prayers, and very identity depend on the integrity of the land and sacred sites. The preservation of these cultural resources and sacred landscapes is a critical and enduring priority in our legacy responsibility to ensure the health and well-being of our nation, community, families, and future generations.

II. Pueblo of Laguna Statement of Position

The Pueblo of Laguna (POL) strongly opposes any legislative efforts to "streamline" the tribal consultation requirements of Section 106 of the National Historic Preservation Act (NHPA). The current push in the U.S. Senate to accelerate energy and mining projects, mainly by avoiding the consideration of cultural resources, directly threatens the sovereignty and cultural heritage of Tribal Nations. Section 106 is the statutory mandate that compels Federal agencies to conduct formal

Government-to-Government (G2G) consultation to safeguard historic properties of religious and cultural importance, often including irreplaceable Traditional Cultural Properties (TCPs).

The Pueblo of Laguna is committed to preserving Section 106 and strengthening it to provide greater protection for tribes, particularly regarding resource extraction activities within our ancestral watersheds and lands that hold deep cultural and historical significance for the Pueblo of Laguna. We assert that efforts to shorten consultation timelines, to expand categorical exclusions, or weaken mitigation agreements threaten the irreversible loss of history and fundamentally disregard the Federal Trust Responsibility. When Section 106 processes are abbreviated, underfunded, or ignored, it not only weakens the protection of sacred sites but also violates the government's fundamental obligation to honor Tribal sovereignty and safeguard the cultural continuity of Tribal Nations.

Tribal consultation is not a discretionary policy or an administrative burden; it is a mandatory legal requirement rooted in the foundational principles of Federal Indian law. The protections of Section 106 are rooted in the Federal Trust Responsibility. The Federal Government cannot compound the harm of the loss of land with the destruction of cultural resources. Therefore, the immediate priority must be to ensure robust compliance with existing law and to strengthen the mechanisms that protect cultural resources. Because each Tribe/Nation/Pueblo is unique respect for tribal sovereignty requires individual consultation with each Tribal Nation. A dedicated session for the Pueblo of Laguna acknowledges our distinct relationship and sovereign right to engage directly on matters of such significance.

Meaningful consultation with tribes can also identify issues that likely would lead to litigation later for a breach of trust by the United States. Avoiding *any* litigation not only speeds up the process, but it preserves the resources of the United States and tribes. The careful identification and discussion of governmental concerns early on is not a "waste" or a "delay," it saves time and money.

The resistance from Tribal Nations stems from our enduring commitment to cultural stewardship, a responsibility that remains fundamental to our core values. When Native people were displaced, removed, or restricted from their traditional homelands, we never lost connection to these special places. We are stewards of this land. While mining, oil, and gas companies come and go, our people and the lands we love are left to live with the consequences of project expediency.

III. The Pueblo of Laguna recommends that Congress take the following immediate actions:

- 1. Affirm and Strengthen Section 106 Requirements:** Congress must not only leave the existing consultation requirements of Section 106 in place but must strengthen them to provide greater protection of cultural resources. Legislative efforts must mandate minimum, non-waivable consultation periods and prohibit the utilization of expedited or emergency provisions for non-disaster-related economic development projects, thereby restoring the standard of meaningful and timely input required by EO 13175.

2. **Affirm Congressional Commitment to Compliance:** Congress must affirm its commitment to ensuring the Executive Branch's compliance with all federal laws requiring consultation, including the NHPA, NEPA, and NAGPRA. This affirmation must be accompanied by increased funding resources and technical support for Tribal Historic Preservation Officers, enabling them to conduct necessary cultural surveys and to engage effectively in the consultation process. The affirmations should also include mechanisms for enforcement when consultation obligations are not met. This can include penalties for agencies or applicants who proceed without adequate consultation or compliance with executed agreements.
3. **Recognize Protection as a Trust Mandate:** The final decision in any federal undertaking must reflect that the protection of irreplaceable cultural resources is a mandate of the Federal Trust Responsibility, and not merely a preference to be balanced against corporate expediency.
4. **End misuse of "emergency" procedures.** Federal agencies must immediately stop applying the NHPA's emergency consultation provisions to non-disaster-related projects, especially those involving energy infrastructure, transmission corridors, or critical minerals near Tribal lands.
5. **Guarantee sufficient consultation time.** Federal agencies should be required to provide Tribes with a minimum of 30 days to respond to consultation notices, with extensions as needed to accommodate cultural protocols, internal review, and the involvement of traditional leaders and preservation staff.
6. **Require full cultural resource surveys before project approval.** Agencies must conduct comprehensive field surveys, led or co-led by Tribal cultural specialists and traditional knowledge holders, prior to issuing any findings of effect or approvals. Reliance on incomplete or outdated records should be prohibited.

By implementing and codifying these measures, the federal government can begin to repair past damage and strengthen the Section 106 process so that it once again serves its intended purpose-protecting the living cultural landscapes that define our identity, history, and survival as Pueblo people.

Thank you for reviewing our testimony.

Sincerely,

PUEBLO OF LAGUNA



Harry A. Antonio, Jr.
Governor



LITTLE TRAVERSE BAY BANDS OF OJIBWA INDIANS
TESTIMONY OF THE HONORABLE WINNAY WEMIGWASE, CHAIRPERSON
U.S. SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
OVERSIGHT HEARING TO EXAMINE THE SECTION 106 CONSULTATION PROCESS
UNDER THE NATIONAL HISTORIC PRESERVATION ACT

October 29, 2025

INTRODUCTION AND BACKGROUND

Thank you Chairman Lee, Ranking Member Heinrich, and distinguished Members of the Committee for the opportunity to submit written testimony on this important topic on behalf of the Little Traverse Bay Bands of Odawa Indians (Tribe) and our over 4,000 members. As the Chairperson of the Tribe, I write to express the Tribe's deep concern with any proposed changes to Section 106 of the National Historic Preservation Act (NHPA) that may limit Tribal authority to protect our sacred sites, archaeological resources, and historical properties which hold deep cultural and religious significance for the Tribe. Our Tribe understands the immense importance of Section 106 and any changes to limit its functionality would be detrimental for all of Indian Country.

Our reservation is located in the northwestern part of Michigan's Lower Peninsula within Charlevoix and Emmet Counties. In 1994, Congress reaffirmed the federal recognition of the Tribe through Public Law 103-324, 108 Stat. 2156 (Sept. 21, 1994), finding that the Tribe is a political successor to the signatories of the 1836 Treaty of Washington and the 1855 Treaty of Detroit. Since becoming federally recognized in 1994, our Tribal government has been deeply committed to ensuring the preservation of the Tribe's cultural and historical resources for future generations, including through compliance with the Section 106 process.

SECTION 106 MUST REMAIN

Section 106 of the NHPA provides the legal mechanism to include Tribes in federal decision-making regarding proposed federal undertakings that may impact culturally or historically significant Tribal properties and artifacts. The federal government has a trust responsibility to Tribal

Nations and the NHPA's requirement to include Tribal governments in the federal decision-making process is a statutory recognition of that responsibility. The Section 106 review process is an important tool to ensure that Tribal perspectives and cultural knowledge are included in the conversation and it is imperative for the protection of cultural resources. Prior to the enactment of the NHPA in 1966, Tribes had limited opportunities for consultation with federal agencies to protect areas and sites with significant cultural importance. Any legislative or regulatory action to limit the Tribal consultation process under the NHPA or limit the ability of Tribal Historic Preservation Officers (THPOs) to consult will inherently limit Tribes' ability to protect Tribal cultural resources and sacred sites for generations to come. Additionally, any curtailing of the NHPA consultation process would ultimately force Tribes to rely on state historic preservation review systems that do not have the force of federal law nor fully recognize the government-to-government relationship between Tribes and the federal government.

The Tribe recognizes that delays in the Section 106 process can arise in situations where a federal agency does not adequately identify and notify Tribes that may be impacted *before* any federal decision is made regarding the particular undertaking. Tribes understand the importance of streamlining federal reviews for infrastructure projects, as many Tribes face significant barriers to update or build necessary infrastructure for their communities. However, curtailing the Section 106 process is not the answer to increased efficiency and will only lead to irreparable damage to culturally significant areas for Tribes and the general public alike. Federal agencies can effectively mitigate any delay by maintaining updated contact information for THPOs and any other tribally designated points of contact, lists of Tribes that need to be notified for projects in specific areas, and ensuring that notice is given to Tribal officials as early as possible.

FEDERAL FUNDING FOR THPOs MUST BE MAINTAINED

The Tribe, much like Tribes throughout Indian Country, relies heavily on federal funding to support the work of our THPO. Seventy-five percent of the Tribe's budget to support our THPO comes from the NHPA and the remainder is tribally funded. With this current funding structure, the Tribe is only able to employ one THPO. Any decrease or weakening in support for THPOs will significantly negatively impact the Tribe's ability to work with federal agencies to protect culturally significant areas and cultural resources. It is critical for federal agencies, especially personnel responsible for Section 106 compliance, to maintain relationships with THPOs as such officers are essential to protecting Tribal cultural sites. Once a sacred site is destroyed, it can never be replaced. THPOs are key to ensuring the Section 106 process is efficient and Tribal input is timely, and any decrease in funding for THPOs will only lead to less efficient and longer consultation processes.

CONCLUSION

The Tribe is deeply committed to the preservation of our ancestral homelands, sacred sites, and cultural heritage, and the NHPA is an essential tool to ensure that we are able to consult with the federal government on a government-to-government basis regarding preservation. Therefore, we strongly urge this Committee to uphold the protections of Section 106 of the NHPA and not act

to weaken any of the Act's protections for sacred sites and culturally significant areas. Moreover, in line with the purposes of the NHPA, we respectfully request that you uphold and strengthen the federal trust responsibility by providing adequate federal funding for THPO programs and ensuring timely and substantive consultation *before* any major federal decisions are made.

Thank you for the opportunity to submit this testimony in support of the Section 106 consultation process under the NHPA.

From: [Mason Martel](#)
To: [fortherecord \(Energy\)](#)
Subject: Martel - October 29, 2025 — Full Committee Hearing to Examine the Section 106 Consultation Process Under the National Historic Preservation Act
Date: Wednesday, November 5, 2025 10:25:59 AM

Dear Members of the Senate Energy & Natural Resources Committee,

I am writing to urge the committee to uphold and protect Section 106 of the National Historic Preservation Act (NHPA). Section 106 is a cornerstone of America's preservation framework that ensures federal agencies take into account the effects of their actions on historic properties.

Missouri Preservation is the only statewide preservation organization whose mission includes advocating for historic architecture throughout the state. We have worked with our SHPO as a consulting party in the 106 process and over our nearly 50 years of service have seen firsthand how effective Section 106 can be when it is initiated early in project planning. Section 106 does not have the authority to stop projects, it is a 4-step process that ensures our irreplaceable tangible heritage is considered in federal project planning. The process works smoothly when project proponents and/or federal agencies, involve the State and Tribal Historic Preservation Officers, and local governments early in project planning.

We stand behind and echo the comments made by Dr. Merritt and Mr. Concho that the 106 process can run smoothly when consultation begins early in the project planning process, and when federal, state, and tribal cultural resource programs are fully funded. We also agree what is needed is more program comments and national/statewide programmatic agreements to streamline review of repetitive undertakings.

Section 106 has been part of federal project planning for over 50 years and is an essential tool for balancing development with stewardship. I urge you to reaffirm your commitment to the National Historic Preservation Act and ensure that Section 106 remains strong and effective.

Weakening or eliminating Section 106 would silence community voices, put irreplaceable cultural resources at risk, and erode one of the few mechanisms that ensures the federal government honors its obligation to protect our shared heritage.

Thank you for your attention and your service to the public.

--

Mason Martel

President | [Missouri Preservation](#)
319 N. 4th Street, Room 850 | St. Louis, Missouri 63102
[Support our Non-Profit by becoming a member!](#)



David Weeden,
Tribal Historic Preservation Officer
Mashpee Wampanoag Tribe
483 Great Neck Road South
Mashpee, MA 02649
Phone: (508) 477-0208
Email: David.Weeden@mwtribe-nsn.gov
October 17, 2025

The Honorable Members
Senate Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Re: *Opposition to Proposed Changes to the National Historic Preservation Act and Section 106 Consultation Process*

Dear Chairman and Committee Members:

I write to you today with grave concern regarding proposed changes to the National Historic Preservation Act (NHPA) that would limit tribal authority to protect sacred sites and effectively participate in the Section 106 consultation process. As the Tribal Historic Preservation Officer for the Mashpee Wampanoag Tribe, I respectfully but urgently plead that this Committee reject any proposals that would undermine our ability to preserve and protect sites of irreplaceable cultural and spiritual significance to our people.

The Current Crisis: Underfunding and Inadequate Consultation

For years, our Tribal Historic Preservation Office has operated under severe resource constraints while facing an ever-increasing volume of federal undertakings requiring Section 106 review. Despite our best efforts and the dedication of our staff, we struggle to keep pace with project reviews due to chronic underfunding. Meanwhile, federal agencies often approach consultation as a minimalist "check-box" exercise rather than the exercising a meaningful, government-to-government engagement commensurate to the law and to a level our sovereign status demands.

We have repeatedly have raised concerns about:

- Inequitable funding that leaves THPOs unable to adequately review the volume of projects affecting tribal cultural resources
- Perfunctory consultation processes where agencies meet the di minimus letter of the law while ignoring its spirit entirely
- Unrealistic timelines that pressure our office to expedite reviews without sufficient time to properly assess impacts to sacred sites and culturally significant properties

Now, rather than addressing these systemic failures, Congress is contemplating changes that would further diminish our already limited ability to protect what we hold sacred.

Devastating Impacts on the Mashpee Wampanoag THPO

The proposed changes would cripple our Tribal Historic Preservation Department's capacity to fulfill its essential mission. Specifically:

Loss of Meaningful Consultation Authority:

Averting formal engagement intentionally renders THPOs unable to "avoid, minimize, and mitigate adverse effects" and transforms consultation from a substantive process into a hollow formality. Our voice in protecting ancestral lands, burial sites, ceremonial grounds, and culturally modified landscapes would be reduced to ineffective commentary rather than genuine partnership through Government to Government procedures.

Inability to Protect Sacred Sites:

Sacred sites are not merely historical artifacts rather they are living places and spaces of spiritual practice, prayer, and connect us to our ancestors. These changes would strip us of the tools necessary to prevent desecration, destruction, or inappropriate development on lands where our people may have conducted ceremonies for thousands of years; and therefore infringe upon our religious freedoms.

Compounded Resource Strain:

Already operating with insufficient funding, our office would face the impossible task of navigating a weakened regulatory framework while attempting to achieve the same protective outcomes. This amounts to being asked to expect more with less authority as this would simultaneously curtailed and undermined current authority, Sovereignty and Trust Responsibility.

Erosion of Tribal Sovereignty:

These changes signal a troubling retreat from the formal government-to-government relationship that forms the foundation of federal-tribal relations. These proposed changes undermine our sovereign rights, freedoms and responsibility to steward our shared cultural heritage.

Irreversible Harm to Culturally Significant Sites

If these proposed changes are enacted, the consequences for culturally significant sites would be catastrophic and permanent:

Increased Destruction and Desecration:

Without robust Section 106 protections, federal undertakings would proceed with minimal consideration of impacts to burial grounds, ceremonial sites, traditional cultural properties, and archaeological sites some of which contain irreplaceable information and insight about our ancestors and ancient lifeways.

Loss of Sacred Landscapes:

Many of our most significant sites are not individual properties but entire cultural landscapes, made up of watersheds, plant gathering areas, view sheds, and culturally associated travel routes. The proposed changes would make it nearly impossible to protect the integrity of these

interconnected places, transportation routes, circulation patterns, burial spaces and or traditional cultural districts.

Severed Cultural Continuity:

Our ability to pass traditional knowledge, spiritual practices, and cultural identity to future generations depends on maintaining access to and integrity of these sites. Once destroyed, they cannot be reconstructed or replaced. The cultural knowledge they embody is lost forever.

Precedent for Further Erosion:

Weakening NHPA protections would invite similar rollbacks of other tribal consultation requirements under NEPA, the National Environmental Policy Act, and agency-specific regulations, creating a domino effect of diminished tribal rights.

Violation of Federal Trust Responsibilities

These proposed changes would constitute a profound breach of the federal government's trust responsibilities to tribal nations. The trust relationship obligates the federal government to protect tribal lands, resources, sovereignty, and cultural heritage. Specifically, these changes would violate:

Treaty Obligations:

Many tribes, including the Mashpee Wampanoag, have inherent aboriginal reserved rights stemming from treaties, executive orders, and federal recognition. The government's constitutional duty to honor these agreements includes protecting our ability to access and preserve sacred sites, even those on federal or private lands that fall within our ancestral territories.

Fiduciary Duty of Protection:

The Supreme Court has repeatedly affirmed that the trust relationship imposes on the federal government a fiduciary duty to protect tribal property, resources, rights and freedoms. Cultural sites are integral to our identity and wellbeing; they are trust assets that the government is obligated to safeguard, not facilitate the destruction of.

Self-Determination and Self-Governance:

Federal Indian policy, as articulated in the Indian Self-Determination and Education Assistance Act and other statutes, recognizes tribal authority to manage our own affairs. THPOs represent the exercise of this self-governance in the cultural preservation arena. Undermining our authority contradicts decades of federal policy supporting tribal self-determination.

Religious Freedom:

The American Indian Religious Freedom Act recognizes the inherent right of Native peoples to practice traditional religions, which often require access to specific sacred sites. Weakening these vital protections for these sites impairs our ability to effectively exercise essential religious freedoms.

Environmental Justice:

Executive orders and agency policies on environmental justice require federal agencies to address disproportionate impacts on minority and indigenous communities. Sacred sites protection is also a moral and righteous matter; their destruction disproportionately harms tribal communities who have already suffered centuries of cultural suppression.

The Path Forward Without Section 106 Protections

If NHPA Section 106 is undermined as proposed, the Mashpee Wampanoag Tribe would be left with severely limited and inadequate alternatives for protecting culturally significant sites:

Reliance on NEPA Alone:

While the National Environmental Policy Act requires consideration of environmental and cultural impacts, it is primarily a procedural statute that does not mandate specific protective outcomes. Without Section 106's specific focus on historic properties and robust tribal engagement that requires formalized consultation, cultural resources would receive only cursory analysis in environmental reviews and surely will be destroyed as a result of negligible development.

Case-by-Case Litigation:

We would be forced into costly, time-consuming litigation over individual projects which would be an approach that is financially unsustainable for our limited THPO budget, would result in inconsistent protections, and will come too late to prevent irreversible damage to our sacred sites.

Direct Appeals to Agency Leadership:

Without regulatory backing, our appeals would rely entirely on the goodwill of individual agency officials, creating unpredictable and uneven protection that varies by administration, region, and project.

State-Level Protections:

While some states have cultural resource laws, these vary widely in strength and rarely provide the comprehensive protections that federal law offers. Many states lack the expertise or commitment to adequately protect tribal cultural resources.

Acquisition and Easements:

Purchasing or obtaining conservation easements on culturally significant sites is cost-prohibitive given the vast geographic extent of our ancestral territory and the limited resources available to tribes. This approach would also fail to address sites on federal and private lands effectively.

Public Education and Advocacy:

While raising public awareness is valuable, it cannot substitute for legally enforceable protections. Public opinion, however sympathetic, does not stop bulldozers or prevent ground disturbance and looting of our burial sites.

In short, there is no adequate substitute for the Section 106 process. The proposed changes would leave us with a patchwork of weak, voluntary, and unreliable measures that cannot possibly provide the level of protection our sacred sites require and deserve; completely negating reasonable and responsible due diligence.

Conclusion: A Plea for Protection, Not Diminishment

Mr. Chairman and Committee Members, I implore you to reject these proposed changes to the National Historic Preservation Act. The solution to any perceived inefficiencies in the Section 106 process is not to weaken tribal authority and protections, but rather to:

- Increase funding for THPOs to adequately staff our offices and review the growing volume of federal undertakings
- Enforce meaningful consultation by holding agencies accountable for genuine government-to-government engagement
- Provide technical assistance to federal agencies to improve their understanding of tribal cultural resources and improving formal consultation protocols
- Streamline the federal side of the administrative processes without sacrificing substantive protections or meaningful tribal input and formal government to government engagement

Historical Reflection: Service in the Revolutionary War (250th Anniversary)

As a reminder Mashpee Wampanoag stood at the very heart of the American Revolution from the earliest calls to arms, Tribal men enlisted in the Continental Army and local militias; serving in numbers disproportionately higher than surrounding non-Native communities. Our commitment was not abstract, it was a lived sacrifice for the ideals of liberty, freedom, and self-determination that would later be enshrined in the U.S. Constitution.

- Ultimate sacrifices: Many never returned, their names now inscribed on the Mashpee Veterans Monument, which honors service from the Revolutionary War through Vietnam
- Legacy of belief: Our service embodied a belief in promises of justice and equality, even as Native peoples continued to face exclusion and dispossession.

As the United States marks 250 years since its founding, the Mashpee Wampanoag call for recognition that Native warriors fought not only for a new nation, but for the enduring hope that the liberties promised would one day be fully realized; the Semiquincentennial is both a celebration of courage and a reminder of unfinished commitments. Let not the lives of our Tribal members be in regret. Their sacrifices must be honored by ensuring that the freedoms they fought for are upheld, and that Tribal voices remain central in shaping the nation's future.

Our sacred sites are not impediments to developments, nor should they be road kill on the road to progress; rather they are irreplaceable cultural treasures that connect us to our ancestors and sustain our identity as Mashpee Wampanoag people and therefore, should be protected for our future generations. Once destroyed, they are gone forever, along with the cultural knowledge, spiritual practices, and historical understanding they embody.

The federal government has a solemn trust responsibility to protect these sites and to honor our sovereignty to participate meaningfully through formal Government to Government consultations in decisions affecting them. I respectfully urge this Committee to uphold that responsibility by opposing any changes that would weaken the National Historic Preservation Act and the Section 106 consultation process.

We are available to provide testimony, answer questions, or offer additional information as the Committee considers these critical issues. The stakes could not be higher; we are talking about the survival of our cultural shared heritage and our ability to preserve and protect all that is sacred as a distinct indigenous people of our region.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "David Weeden", written over a horizontal line.

David Weeden, Tribal Historic Preservation Officer
Mashpee Wampanoag Tribe

cc: Massachusetts Congressional Delegation
Advisory Council on Historic Preservation
National Conference of State Historic Preservation Officers
National Association of Tribal Historic Preservation Officers



TESTIMONY OF THE HONORABLE BRIAN WEEDEN, CHAIRMAN
ON
U.S. SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
OVERSIGHT HEARING: NATIONAL HISTORIC PRESERVATION ACT
October 29, 2025

Introduction

As Chairman of the Mashpee Wampanoag Tribe, I am deeply concerned and strongly opposed to any proposed amendments to the National Historic Preservation Act (NHPA) that would diminish or constrain Tribal authority to equitably and effectively protect sacred sites, ancestral landscapes, and other historic properties of cultural and religious significance.

The Mashpee Wampanoag Tribe is located in Southeastern Massachusetts and has been here since time immemorial, perhaps most well known as the Tribe that greeted the Pilgrims for the First Thanksgiving in 1621. Our ancestral lands stretch throughout Massachusetts, where we still have strong cultural and historical ties.

In 2012, shortly after federal recognition, we officially established the Mashpee Wampanoag Tribal Historic Preservation Department to oversee cultural resource management, advocacy for tribal sovereignty in preservation matters, and collaboration with agencies and institutions. The Department works hard to ensure compliance with the NHPA, as well as other important federal statutes to protect ancestral lands and sacred sites.

The Importance of Section 106

For decades, Section 106 of the NHPA has served as one of the only meaningful mechanisms through which Tribal Nations can ensure our voices are heard with respect to protection of our cultural resources in the federal decision-making process. Having our voices taken into consideration is not a privilege, but rather a statutory recognition of the United States' trust responsibility to Tribes. Laws such as the NHPA are an affirmation of our legal rights as sovereigns and a recognition of our moral obligations to protect Tribal lands, to preserve our cultural heritage, and enable us to exercise self-determination. Any action to curtail Tribal engagement, or to limit the ability of Tribal Historic Preservation Officers (THPOs) to consult, would undermine this trust relationship and erode the integrity of the preservation system established by Congress in 1966.

The Mashpee Wampanoag Tribal Historic Preservation Office carries a tremendous burden in keeping pace with reviewing the numerous federal undertakings that affect our ancestral homelands, such as those occurring within the offshore wind space, broadband infrastructure, transportation, and energy corridors, among others. The work THPOs do is absolutely necessary, and a crucial part of responsible due diligence.

In 2024, the Tribe entered into a historic agreement with Vineyard Offshore (an offshore wind company) with the goal of working together and fostering a long-term relationship over the course of the offshore wind project. The agreement ensures that the Tribe has a seat at the table to protect important cultural resources and formalizes a partnership between the Tribe as a sovereign government and the project entity. The initial engagement began in 2016 during the development stage of a previously approved project and the agreement is intended to create shared community benefits that acknowledge and respect tribal sovereignty. This is just one example of the type of important collaboration that is possible as a result of Section 106 engagements.

Weakening of Section 106 Would be Devastating for Tribes

Despite the importance of this work, THPOs have long operated at a significant funding disadvantage compared to State counterparts. We continue to advocate for adequate resources to fulfill our federally mandated duties, yet we are now confronted with the prospect of congressional action that would weaken our ability to “avoid, minimize, and mitigate” adverse effects on properties of Tribal cultural significance.

Any legislation that could potentially dismantle Section 106 and the NHPA would have devastating consequences for Tribes. Some examples are as follows:

- *Sacred Sites and Cultural Landscapes*
 - Projects could advance without meaningful Tribal consultation, resulting in the desecration or irreversible loss of ancestral burial grounds, ceremonial places, and traditional use areas.
- *Trust Responsibility Violations*

- Diminished consultation authority would directly violate the federal government's trust duty to protect Tribal cultural and natural resources.
- *Procedural Inequity*
 - Without robust Section 106 protections, Tribes would be left without enforceable recourse, while agencies, corporate entities and developers proceed with a de minimis "box-check" approach to compliance.
- *Loss of Cultural Connections to Ancestral Lands*
 - The destruction of unrecorded or unrecognized cultural sites severs our intergenerational connection to place, language, and identity; values central to our religious beliefs, sovereignty and survival as distinct Indigenous people; and may violate our religious freedoms.

If Congress and federal agencies undermine the NHPA, Tribes will be forced to rely on fragmented state and local systems that do not fully recognize Tribal sovereignty or consider our spiritual values and connectedness to our land and waters. These changes would effectively silence Tribal voices in environmental and cultural stewardship, contrary to the spirit and intent of the NHPA.

Conclusion

We respectfully urge this Committee to reject any proposal that limits or diminishes Tribal consultation or weakens the fundamental requirements to consult with federally recognized Tribes. We implore the Committee to uphold all protections afforded by the NHPA. Accordingly, we also ask that you uphold and strengthen the federal trust obligation by investing in equitable funding for THPO programs, ensuring timely and substantive consultation, and supporting Tribal capacity to engage fully in preservation and decision-making processes. We have outlined further suggestions in the attached letter from our THPO Officer, which I incorporate by reference into this testimony.

Our Mashpee Wampanoag people have lived, prayed, and cared for these lands since time immemorial. Our ability to protect what remains of our shared cultural heritage depends on the principal preservation framework Congress has created and now must defend.

Thank you for the opportunity to submit testimony and we are happy to answer any questions.

From: [Maureen Meyers](#)
To: [forthecord \(Energy\)](#)
Subject: Meyers - RE: October 29, 2025-Full Committee Hearing to Examine the Section 106 Process of the National Historic Preservation Act
Date: Tuesday, November 4, 2025 5:22:58 PM

Dear Committee,

As an archaeologist of over 30 years, I watched the hearing on October 29, 2025 with great interest. Section 106 is the backbone of our preservation laws in the United States. Passed in 1966 as part of the NHPA, it is a vital way to record our nation's history. As a result, millions of archaeological sites have been recorded across the nation, and these data are used and will be used not only for planning but for research purposes by archaeologists across the nation. In addition, it has allowed us to identify nationally significant sites, something I learned as a member of an Advisory Board for National Historic Landmarks.

The S. 106 process works well. It ensures that sites are identified, and if determined eligible for listing on the National Register of Historic Places, are either mitigated or avoided. They create important learning opportunities for communities, strengthening heritage. Next week our company, in coordination with our partner, the Georgia Department of Transportation, will lead an all-day Archaeology open house in Washington County, GA so locals can learn about the early twentieth-century inhabitants of the region. The site will soon be gone because of road construction, but because of S.106, the data and knowledge that data represents are preserved forever.

S.106 doesn't slow projects down; it enhances knowledge and community. I urge you to maintain S. 106 and to replace the hundreds of archaeologists who were fired from federal agencies without cause. Their firing has slowed the process down somewhat, although SHPOs, THPOs, consulting firms, and agencies have continued to work long hours to ensure that the impact has been minimal, both for development and the resource. Please rehire these individuals and understand that S.106 works to identify and preserve our nation's long and amazing history.

Maureen Meyers, Ph.D, RPA | Director of Archaeology
New South Associates, Inc.
A Women-Owned Small Business
6150 East Ponce de Leon Avenue, Stone Mountain, GA 30083
Office: (770) 498-4155 (ext. 123)
Cell: 662-638-5827
[Website](#) | [Facebook](#) | [LinkedIn](#)

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**MILLE LACS BAND OF OJIBWE
DEPARTMENT OF NATURAL RESOURCES**



WRITTEN TESTIMONY OF THE MILLE LACS BAND OF OJIBWE

Before the U.S. Senate Committee on Energy and Natural Resources

Hearing to Examine the Section 106 Consultation Process

under the National Historic Preservation Act

October 29, 2025

Chairman Lee, Ranking Member Heinrich, and distinguished members of the Committee, thank you for the opportunity to provide written testimony regarding the Section 106 consultation process under the National Historic Preservation Act (NHPA). This testimony is submitted by the Mille Lacs Band of Ojibwe, a federally recognized, independent, and sovereign Tribal Nation with ancestral territories across what is now east-central Minnesota.

Introduction

For generations, our people have maintained a sacred relationship with the land, waters, and cultural resources within our ancestral territories. Our culture and way of life is inseparable from our land, water, and natural habitat. Our environment is not the museum of our historic past. It is our living history. Preservation of our land, water, and natural habitat is critical to preserving our identity and thus is a matter of survival for us.

The Section 106 process was intended to ensure meaningful tribal consultation regarding federal undertakings that may affect historic assets of religious and cultural significance to Tribal Nations. We believe it must be shaped in ways that focus on preserving these assets today as we make history. Based on our extensive experience with NHPA, we believe the implementation by the Executive Branch falls significantly short of Congress's intent and the federal government's trust responsibility to Tribal Nations and we ask this Committee to take the lead in strengthening the Act and in expanding the Committee's constitutional responsibility for oversight.

Background on the Mille Lacs Band of Ojibwe

Our Reservation's boundaries are historically rooted in treaties and federal actions, most notably the Treaty of 1855, which established a Reservation encompassing approximately 61,000 acres around Mille Lacs Lake. Over time, the Band's land base has been reduced and fragmented due

DISTRICT I

43408 Oodena Drive • Onamia, MN 56359
(320) 532-7439 • Fax (320) 532-7514

DISTRICT III

45749 Grace Lake Road • Sandstone, MN 55072
(218) 768-3311 • Fax (320) 384-6190

DISTRICT II

36666 State Highway 65 • McGregor, MN 55760
(320) 384-6240 • Fax (218) 768-3903

URBAN OFFICE

1404 E. Franklin Avenue • Minneapolis, MN 55404
(612) 872-1424 • Fax (612) 872-1257

to allotment policies and non-tribal acquisition, but the Band continues to assert its rights over the original reservation area, which includes lands in Mille Lacs, Aitkin, and Pine counties.

The Band's governmental headquarters are located near Onamia, Minnesota, and the Reservation includes several distinct Band communities, such as Vineland, District I, District II (near Isle), and District III (near Hinckley). The Band also owns and manages additional lands outside the formal reservation boundaries, which are used for housing, economic development, and conservation purposes.

Beyond the boundaries of its Reservation, the Band and its members hold significant treaty rights, in common with some other Bands, to hunt, fish, and gather on a large area of what is known as the ceded territories described in the 1837 Treaty and covering much of east-central Minnesota. These rights are usufructuary, apply to public lands and waters within the territory, and have been repeatedly affirmed by federal courts. The Band exercises these rights under its own conservation code, in cooperation with state authorities, and subject to reasonable, necessary, and non-discriminatory regulation for conservation and public safety.

Operationally, the Mille Lacs Band of Ojibwe maintains a sophisticated Tribal Government, with executive, legislative, and judicial branches. The Band provides a wide range of services to its members, including health care, education, law enforcement, and social services. Economic development is a major focus, with the Band operating several enterprises, most notably Grand Casino Mille Lacs and Grand Casino Hinckley, which are among the largest employers in the region. The Band also invests in natural resource management, cultural preservation, and community development initiatives, reflecting its commitment to both economic self-sufficiency and the protection of its heritage and environment.

The Band's operations extend to intergovernmental relations, as it actively engages with federal, state, and local governments to protect the Band's sovereignty, treaty rights, and interests in land and resource management. Environmental stewardship is a core priority, with the Band managing forests, wetlands, and fisheries, and participating in regional conservation efforts. The Mille Lacs Band is recognized for its leadership in Tribal Self-Governance, innovative economic development, and advocacy for Native rights.

FUNDAMENTAL CONCERNS WITH CURRENT IMPLEMENTATION

Consultation After Decisions Are Made

Too often, federal agencies approach the Mille Lacs Band for "consultation" only after key planning decisions have been made by the federal agency. This "check-the-box" approach undermines the very purpose of consultation. In multiple instances over the past five years, we have been presented with fully developed project plans where our input could only result in minimal modifications rather than informing the fundamental approach.

Lack of Meaningful Engagement

Meaningful consultation requires a genuine dialogue between sovereign governments with the actual possibility of influencing outcomes. Instead, we frequently encounter:

- One-way information sessions labeled as "consultation"
- Mass "consultation" sessions with multiple Tribal Nations, rather than one-on-one, government-to-government consultations between the Band and the federal agency
- Arbitrary and compressed timelines that prevent thorough review
- Dismissal of traditional knowledge and oral histories as insufficient "evidence"
- Meetings scheduled without adequate notice or without accommodating the Band's active calendars

Withholding of Critical Information

Informed consent requires access to complete information. Yet repeatedly, we experience:

- Project details provided in fragmented, technical formats without context
- Refusal to share key studies until after comment deadlines
- Cultural resource surveys conducted without Tribal Nation participation or input
- Environmental analyses that narrowly define impact areas to exclude culturally significant landscapes

Trust Beneficiaries Are Not "Mere Stakeholders"

Meaningful consultation by the federal trustee with its Tribal trust beneficiary means the trustee must obtain the prior, informed consent of the beneficiary before the trustee takes any action that will materially affect the beneficiary. Tribes like the Band are trust beneficiaries, not because we are dependents who need paternalistic guidance due to our misperceived incapacity for self-governance, but solely because we are Tribal Nations who by formal treaty agreements obtained significant trust beneficiary rights and privileges in exchange for massive land and natural resource transfers. Those are the terms of the deal. And that is why prior, informed consent with a Tribal Government, as trust beneficiary, must define Tribal consultation by every federal agency, as trustee.

Recommendations for Reform

We respectfully offer the following recommendations to transform Section 106 consultation into a process that honors tribal sovereignty and federal trust responsibilities:

1. **Early and Regular Engagement:** Require consultation at the earliest planning stages before any irreversible decisions are made.
2. **Prior, Informed Consent:** Require that the prior, informed consent be obtained by a federal agency before any decision that will materially affect a Tribe as trust beneficiary.
3. **Meaningful Dialogue:** Establish standards for what constitutes genuine consultation versus mere notification.
4. **Information Transparency:** Mandate full disclosure of all relevant project information in accessible formats in advance of formal consultation meetings. The scheduling of each consultation should automatically trigger a broad, FOIA-like request that promptly produces all meaningful and relevant information well in advance of the consultation.
5. **Adequate Resources:** Make available adequate funding if requested for Tribal participation in consultation processes, including technical assistance.
6. **Outcome Accountability:** Require documentation to accompany every project decision that details how Tribal input specifically influenced the decision.
7. **Training Requirements:** Ensure federal officials responsible for consultation understand Tribal sovereignty, Tribal cultural protocols, and federal trust responsibilities.
8. **Enforcement Mechanisms:** Establish clear and reparative consequences when federal agencies fail to meet consultation standards.

Conclusion

For the Mille Lacs Band of Ojibwe, the protection of our cultural resources is not merely a procedural matter but fundamental to our identity and survival as a people. The federal Executive Branch's implementation of Section 106 consultation has frequently reduced our government-to-government relationship to a bureaucratic formality.

The Mille Lacs Band respects the intent of the Section 106 process but has experienced firsthand its significant shortcomings. True consultation would honor the government-to-government relationship between Tribes and the United States. It would require good faith, transparency, and a willingness to adjust plans based on Tribal input. That standard must be strengthened in the Act.

We stand ready to work with this Committee to reform the consultation process to better respect Tribal sovereignty and protect the cultural heritage that is irreplaceable not just to our people, but to the heritage of the United States of America. We are eager to collaborate with the Committee on crafting meaningful reforms that honor both the letter and spirit of the National Historic Preservation Act and the federal trust responsibility to Tribal Nations.

Miigwech (Thank you) for your consideration of our testimony.

Respectfully submitted,

A handwritten signature in black ink that reads "Kelly Applegate". The signature is written in a cursive, flowing style.

Kelly Applegate
Commissioner of Natural Resources
Mille Lacs Band of Ojibwe

From: [Derek Miller](#)
To: [fortherecord \(Energy\)](#)
Subject: Miller - October 29, 2025 — Full Committee Hearing to Examine the Section 106 Consultation Process Under the National Historic Preservation Act
Date: Tuesday, November 4, 2025 10:19:06 AM

Dear Members of the Senate Energy & Natural Resources Committee,

I am writing in regards to the hearing examining the 106 Consultation Process and urging you to protect this important process. As demonstrated through the hearing and shown countless times, this process is not a bottleneck for development projects. Instead, when done well and faithfully, the section 106 process creates community buy-in for projects and often elevates the value of the development project as it honors important historical resources. These resources provide increased value. And just as importantly, many of these historic resources, once erased, can never be replaced. A careful consideration of their importance is essential.

Development projects are essential for our community and country. Section 106 is a key part of that process. Instead of seeking to remove this process, we should instead make sure that the infrastructure is in place to make this process as smooth as possible. Moreover, we should celebrate those entities (private and public) that follow the process well. We can develop while making sure to honor our history.

Thank you for all your hardwork and consideration.

Sincerely,

Derek Miller
1730 Wilmington Ave.
Richmond, VA 23227
miller.derek.r@gmail.com



National Conference of
State Historic Preservation Officers

Anne B. Raines
President, National Conference of State Historic Preservation Officers and
Deputy Director/Deputy State Historic Preservation Officer, Maryland Historical Trust

U.S. Senate Committee on Energy and Natural Resources
Honorable Mike Lee, Chair

November 4, 2025

Chairman Lee, Ranking Member Heinrich, and members of the Senate Energy and Natural Resources Committee:

Thank you for the opportunity to provide written testimony related to the October 29th, 2025 *Hearing to examine the Section 106 consultation process under the National Historic Preservation Act*. The National Conference of State Historic Preservation Officers (NCSHPO) represents the nation's 59 State Historic Preservation Officers who play an instrumental role in effectively and efficiently implementing our nation's historic preservation program.

NHPA and Section 106 Consultation

In 1966, Congress took an important step to safeguard our nation's heritage by elevating historic preservation as a priority of the federal government. The National Historic Preservation Act (NHPA) of 1966 established the programs and policies which are the cornerstones of historic preservation in the United States today, including the National Register of Historic Places, National Historic Landmarks, and the consultation process known as "Section 106." Developed in response to federal projects such as the development of the Interstate Highway System and the Urban Renewal Program, which resulted in the unmitigated loss of uncounted historic resources in the face of community objections, Section 106 requires federal agencies to consider the potential impacts of federal undertakings on historic properties. Federal undertakings include "any project they [the federal agencies] propose to carry out, license, approve, or assist."¹ While deliberately seeking broad input, at its core, Section 106 is a *consultative process* which does not mandate specific project outcomes. Instead, through proactive identification of historic resources, assessment of project impacts on those resources, and resolution of adverse effects by avoiding, minimizing, or mitigating impacts, Section 106 is designed to ensure timely consideration of historic resources during project planning and decision-making.

It is worth noting that Section 106 consultation is the only means of protection for historic properties that applies across the nation. Some states have review or consultation processes

¹ Advisory Council on Historic Preservation Section 106 white paper, July 2025.
https://www.achp.gov/sites/default/files/whitepapers/2025-07/2025_Section%20106_072225v2.pdf

similar to Section 106, some state designations have a protective function, and some local governments have preservation ordinances requiring project review or stays of demolition – a patchwork of protections. Even the National Register, while a component of the federal program, is honorific and provides no protection for historic resources without Section 106.

The Role of SHPOs

The NHPA also created an extraordinarily successful federal-state-local framework for historic preservation in the U.S., a framework which was later expanded to include Tribes. The NHPA created State Historic Preservation Officers (SHPOs) and gave them a significant role in implementation of federal historic preservation programs such as the National Register, as well as a critical responsibility to cooperate with federal agencies and others “to ensure that historic property is taken into consideration at all levels of planning and development.” Regulations establish Section 106 compliance as a consultative process, in which the relevant SHPO, among other parties, including the general public – provides consultation and information on historic resources within the proposed project area. Section 106 regulations emphasize that the SHPO “reflects the interests of the State and its citizens in the preservation of their cultural heritage.”

As Dr. Chris Merritt, Utah SHPO, noted in his oral testimony last week, the NHPA’s “creation of SHPOs was recognition that there needed to be a voice at the state level to review projects, offer advice and technical assistance that can only be provided by state-level experts in fields such as architectural history or archaeology, and to be the nexus of all things ‘historic preservation.’” Nearly 60 years later, Section 106 continues to recognize the value of states as experts in and stewards of their own history. SHPOs remain committed to continuing efficient, collaborative consultations under Section 106 in partnership with federal agencies and other consulting parties.

The Role of the ACHP

Also established by the NHPA, the Advisory Council on Historic Preservation (ACHP) plays a key role in overseeing the requirements of Section 106. The ACHP provides invaluable assistance to all parties engaged in the Section 106 process. Among other roles, the ACHP:

- > issues regulations for the Section 106 process, which define when Section 106 applies, how historic properties are identified, how potential effects are assessed, and how consultation is conducted to resolve any adverse effects;
- > provides advice and comments in the public interest when historic properties are affected by federal action;
- > provides critical training, education, and outreach to federal agencies, SHPOs, and others engaged in historic preservation and the Section 106 process;
- > works with federal agencies to fulfill their historic preservation responsibilities, both the consultative process required under Section 106 and the broader requirement for federal agencies to maintain historic preservation programs under Section 110 of the NHPA; and
- > promotes consistency and efficiency in the Section 106 process through the judicious use of standardized agreements, known as “program alternatives”, which can satisfy Section 106 for entire categories of projects, eliminating the need for individual consultations.

Successful Section 106 Consultation

Successful and timely consultation about the impacts of projects on historic resources relies on many factors, but is more likely to be achieved when:

- > federal agencies involve SHPO and Tribal Historic Preservation Officers (THPOs) in meaningful consultation early in project planning, before decisions are made, and while project alternatives are still being explored;
- > federal agencies are proactive in identifying the full range of consulting parties;
- > federal agencies, SHPOs, and THPOs possess preservation expertise and are funded and staffed commensurate with their duties;
- > parties develop strong working relationships;
- > sharing of data and documentation is encouraged and is streamlined; and
- > standardized agreements, known as “program alternatives,” are used where practicable, either on a national, state, or project level.

Successful consultation does not guarantee a specific project outcome nor a specific preservation outcome. Even when, for example, a specific building or site cannot be saved, the consultation process can provide some level of mitigation of the loss. However, “adverse effects” requiring mitigation are in the minority. Approximately 120,000 projects nationwide are subject to Section 106 consultation annually, and an estimated 98% of those federal undertakings reviewed by SHPOs result in a finding of “no adverse effect”². Findings of “no adverse effect” do not generally occur by accident. They generally mean that federal agencies take their project planning responsibilities seriously, using available historic resources data in project planning, conducting additional studies where needed, and taking into consideration input from consulting parties. The cases that require extended consultation typically involve projects that would cause irreversible damage to irreplaceable historic resources. The focus in these cases is to help projects avoid, minimize, or mitigate harm - not to halt or impede important development.

Additionally, successful consultation can involve the use of a standardized agreement or “program alternative” to streamline the consultation process. Under this category, there are numerous Programmatic Agreements (PAs), including Nationwide PA’s (NPAs), in use across federal agencies to establish consistent and often streamlined consultation processes for recurring or similar undertakings. NPAs, entered into by federal agencies, ACHP, and NCSHPO, establish consistent national approaches for specific categories of undertakings following input from all signatories. The recent adoption of four such agreements exemplifies the ongoing national effort to forge Section 106 efficiencies in areas of agreement and shared understanding. As of October 1, 2025, 33 SHPOs reported more than 1,200 active federal PAs, with a full count from all 59 SHPOs expected to be higher. Here again, proactive planning by federal agencies will allow them to predict the pending rollout of project types that would lend themselves to PAs or NPAs and initiate the development of those agreements as soon as feasible.

² *ibid*

Recommendations for Improving Section 106 Consultation

- **Support for State Historic Preservation Offices** | Further investment is needed to strengthen SHPO capacity to fulfill federally mandated responsibilities to identify, assist, and protect historic properties.

Historic Preservation Fund (HPF) | The HPF remains the only federal funding source available to SHPOs to assist in achieving preservation outcomes that yield immeasurable public benefit. While SHPOs use their HPF apportionment to hire staff to complete Section 106 consultations expeditiously³, limited staff capacity remains a challenge. HPF appropriations should reflect the increasing demands on SHPOs, who have seen significant year-over-year increases in requests for Section 106 consultation as well as associated increases in the number of Programmatic Agreements and determinations of National Register eligibility. THPOs, who consult on projects alongside or sometimes in place of SHPOs, require additional support as well. The flat funding of SHPOs over the past 3 years – \$62.15 million for 59 SHPOs – fails to meet the current need for investment and offers little opportunity to increase staffing or efficiency. The recent delay in distributing FY2025 HPF funds highlighted the critical importance of this funding and how such disruptions jeopardize federally mandated duties and place historic resources at risk. Although Congress has authorized \$150 million annually for the HPF since 1977 from a non-taxpayer revenue stream, annual appropriations consistently fall short of meeting the need. As such, an immediate multi-year reauthorization of the HPF is also essential.

- **Invest in Technology and Data Development** | Increased investment in technology would enhance the identification, documentation, stewardship, and sharing of historic property information. Since 1966, SHPOs have developed and maintained extensive documentation and record keeping on historic properties, including archaeological sites; this information is a necessary first step in identifying historic resources in the Section 106 process. In many SHPOs, this information began to be collected on paper forms, paper maps, and printed photographs or slides; while many SHPOs had the resources to digitize these materials, and create GIS-based maps, many have not. Similarly, while some SHPOs have created online submission portals for Section 106 reviews (or similar processes at the state level), many others have not. These investments in technology are vital to improving efficiency in project review. As the Utah SHPO mentioned in his testimony, investments in digital and GIS systems have significantly reduced review timelines and improved project delivery, demonstrating the tangible benefits of such investments.
- **Identify and Fund Historic Resource Survey Needs** | Additional staff capacity would allow SHPOs to conduct proactive surveys of historic resources that streamline future project reviews. Surveys may be done based on geographic areas, community or neighborhood boundaries, or historical themes, periods, or building types, depending on the need. Surveys of standing structures, archaeological resources or potential, and areas

³ National Park Service, SHPO Apportionment Formula. <https://www.nps.gov/articles/000/apportionment-update.htm>.

of cultural significance are all needed. SHPOs lack the resources to proceed with this work, which is a critical foundation both for Section 106 consultation and for a more complete understanding of the state's particular historic resources.

- **Emphasize Federal Responsibilities** | Efficiency in the Section 106 process also depends on robust federal agency engagement. Agencies must maintain qualified staff and adequate resources to meet their Section 106 responsibilities; the lack of federal staff is increasing reliance on SHPOs for basic guidance and technical support through the process, which legally must be driven by federal agencies. Delays in the process often stem from incomplete information or late consultation by federal applicants. Revisiting reduced staffing levels at the ACHP and National Park Service (NPS) is critical to improving the overall effectiveness of the process. Recent staff reductions at these agencies threaten the federal government's capacity to safeguard America's historic resources as Congress intended.

Honoring the History of our Nation

As the nation approaches the 250th anniversary of American independence in 2026, now is the time for Congress to reaffirm its commitment to preserving the places that tell the story of our country. Since 1966⁴, the NHPA has fostered cooperation among federal, state, and local governments – and between public and private partners – to ensure that modern progress and historic preservation coexist “in productive harmony.” Likewise, the establishment of the HPF during the Bicentennial reflected Congress's dedication to investing in America's heritage. SHPOs remain steadfast in their commitment to identifying, protecting, and maintaining our nation's historic resources – both in our home states and territories, and nationally through NCSHPO. On behalf of all 59 SHPOs, I thank Chair Lee, Ranking Member Heinrich, and all members of the U.S. Senate Committee on Energy and Natural Resources for your interest in historic preservation and for the opportunity to express our views.

⁴ NHPA, title 54 U.S.C. 300101 et seq. <https://ncshpo.org/wp-content/uploads/2017/02/nhpaTitle54Dec2016.pdf>.



National Congress of American Indians | 1516 P St NW, Washington, DC 20005 | (202) 466-7767 | www.ncai.org

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November 12, 2025

Hon. Mike Lee, Chairman
Hon. Martin Heinrich, Ranking Member
Senate Committee on Energy and Natural Resources
304 Dirksen Senate Office Building
Washington, D. C. 20510

Re: Comment on NHPA Section 106 Consultation Process Related to the
October 29th, 2025 Hearing

Dear Senators,

The National Congress of American Indians (NCAI), founded in 1944 and based in Washington, D.C., is the oldest, largest, and most representative national organization comprised of American Indian and Alaska Native Tribal governments and their citizens. NCAI advises and educates the public, state governments, and the federal government on a broad range of issues involving Tribal sovereignty, self-government, treaty rights, and policies affecting Tribal Nations. NCAI's primary focus is protecting the inherent sovereign legal rights of Tribal Nations through positions dictated by consensus-based resolutions. These resolutions are promulgated at NCAI's national conventions by the organization's membership, representing approximately 300 Tribal Nations that renew membership annually.

Through policy resolutions and other processes, NCAI also serves the broad policy interests of Tribal governments by working daily to promote strong Tribal and federal government-to-government policies. It should be emphasized that Tribal Nations are diverse in their history, culture, and resources, with differences that are acknowledged and respected during the consensus-based decision-making process.

I. Section 106: legislation and regulations

In 1966, Congress enacted the National Historic Preservation Act¹ (NHPA) to preserve for future generations an opportunity to enjoy this country's national heritage, which was being lost to an increased pace of commercial, industrial,

¹ *et seq.*, PL 89-665 (1966).

and infrastructural development.² The NHPA originally conceived of a system to protect significant places through placement on the National Register, with grants to states to register sites and fund their restoration, protection, and preservation.³ Secretaries with jurisdiction or licensing authority over projects were empowered to consider the effect of a proposed action on a registered place, and were to consult with the Advisory Council on Historic Preservation (Advisory Council) established by the NHPA.⁴ In 1976, Congress expanded the scope of places subject to this consultation to those that were on the register or eligible for inclusion, and simultaneously established the National Historic Preservation Fund to provide ongoing appropriations.⁵

In 1980, as the federal government moved further into its overarching policy of Tribal self-governance, Congress again amended the NHPA, noting that despite legislation to date, significant heritage properties were still being lost or altered with increasing frequency.⁶ At this juncture, Congress expressly included Tribal Nations in the body of governments partnered to implement the statute, and authorized grants to fund preservation of their cultural heritage in the same manner as American heritage.⁷

In 1992, Congress again acted to ensure that the protective mechanisms were available to Tribal Nations by expressly expanding the language to include Tribal Nations and Native Hawaiian organizations.⁸ It authorized Tribal Historic Preservation Offices on par with State Historic Preservation Offices and mandated the Secretary to consult with Tribal Nations to establish and implement Tribal programming.⁹ The Advisory Council was expanded to include one member of a Tribal Nation or Native Hawaiian organization.¹⁰ In addition, the authorization to withhold information about protected places was extended to include places that were still subject to use as a traditional religious site.¹¹

The 1992 amendments broaden the general scope of the statute as well, by defining an “undertaking” to its present definition and by expanding the scope of protection to include artifacts, records, and materials related to a place on the register or eligible for inclusion.¹² Into the 21st century, Congress began to modernize the process through continued authorizations and digitizing the Council’s work, and in 2006, extended direct grant eligibility to Tribal Nations.¹³

The regulations promulgated by the Advisory Council reflect the Congressional intent of early consultation among developers, state historic preservation officers, and Tribal historic preservation officers. Unlike the National Environmental Policy Act (NEPA), the NHPA assigns

² PL 89-665(c).

³ PL 89-665, § 101.

⁴ PL 89-665, §106.

⁵ PL 94-411, § 201.

⁶ PL 96-515, § 101(a).

⁷ *Id.*, § 201.

⁸ PL 102-575, Title XL, § 4002(2).

⁹ *Id.*, § 4006(a)(2).

¹⁰ *Id.*, §4016(3).

¹¹ *Id.*, § 4020.

¹² *Id.*, § 40019(a)(5).

¹³ PL 109-453, §120

full regulatory authority directly to the Advisory Council.¹⁴ This regulatory authority is a powerful tool that can be used to address concerns raised during Senate hearings regarding delays that affect various projects.

The current regulations governing Section 106 processes were adopted in 2000. They provide direction for agency officials to obtain and review information, in no small part by conferring with states, Tribal Nations, and applicants as consulting parties.¹⁵ For states and for many Tribal Nations, this is through the role of a state Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO), though if a Tribal Nations does not have a designated THPO, the Tribal Nation itself is considered a consulting party.¹⁶

The initial consultation process consists of gathering information from these contacts, and for expediency, an agency may use existing data collected by states, Tribal Nations, or other jurisdictions.¹⁷ At present, timelines throughout the initial consultation process are delineated, usually in 30-day increments, for consulting parties to review and respond to agency decisions.¹⁸ In nearly every instance, failure of a consulting party to respond allows the agency to proceed in compliance, meaning there should be no scenario where a SHPO, THPO, or even the Advisory Council itself is delaying the review process beyond a 30-day objection period.¹⁹ Failure to respond is prejudicial to the consulting party, as the agency is not required to reconsider any previous findings that did not receive a response.²⁰

The purpose of consultation between an agency and all consulting parties is to gather information and knowledge about historic properties within an area of potential effects and to identify how the undertaking may affect those properties.²¹ It is difficult, if not impossible, to imagine how an agency official would comply with the NHPA and determine the historical or cultural significance of a site without speaking to the actual inhabitants near the site who consider it significant. This is especially true as the NHPA pertains to Indian and Native Hawaiian religious and cultural sites, because even non-Indian and non-Native Hawaiian locals are likely unaware of the ancient and closed practices conducted within an area.

The agency and consulting parties apply the eligibility criteria for the National Register of Historic Places. Eligibility for placement on the register does not foreclose an undertaking from continuing — instead, it triggers a review of whether the undertaking would have adverse effects on the site.²² Consulting parties, including Tribal Nations, provide views which must be considered but are not dispositive on the agency official's ultimate decision.²³

¹⁴ 42 USC § 4321 *et seq.*; *Marin Audubon Society v. Federal Aviation Administration*, 121 F. 4th 902 (D.C. Cir. 2024); 54 USC § 304108.

¹⁵ 36 CFR § 800.3(f)(1)-(2).

¹⁶ 36 CFR § 800.3(d).

¹⁷ 36 CFR § 800.3(b).

¹⁸ 36 CFR § 800.3(c)(4); 36 CFR § 800.4(d)(1)(i)-(ii); 36 CFR 36 CFR § 800.3(c)(4); 36 CFR § 800.4(d)(1)(i) - (iv); 36 CFR § 800.5(c); 36 CFR § 800.5(c)(1)-(2).

¹⁹ 36 CFR § 800.3(c)(4); 36 CFR § 800.4(d)(1)(i); 36 CFR 800.4(d)(1)(iv); 35 CFR 800.5(c)(1).

²⁰ 36 CFR § 800.3(c)(4).

²¹ 36 CFR § 800.4.

²² 36 CFR § 800.5.

²³ 36 CFR § 800.5(a).

The applicable criteria are common-sense examples of what would render an effect that would be generally unfavorable to the site's historic and/or culturally important character. For example, removing the headstones from Arlington Cemetery or blocking the view of Mount Rushmore would likely be considered adverse effects on those properties. An agency official then makes a finding of either no adverse effects or of adverse effects. Of the 15% of reviews that pass the historic property threshold, only about 2% result in findings of adverse effects.²⁴

Consulting parties have the opportunity to object to a finding of no adverse effect within a 30-day period and may request that the Advisory Council conduct a review.²⁵ If a review is requested, the Advisory Council must provide an opinion within 15 days, and a lack of response allows the agency to proceed.²⁶ The majority of undertakings that reach this stage are resolved with a memorandum of understanding by and among the consulting parties that outlines the way the project will proceed with mitigating or ameliorating the adverse effects of the historic property.²⁷ No consulting party, including a Tribal Nation, has the power to veto a memorandum of understanding unilaterally, and agreement of all consulting parties is unnecessary for implementation.²⁸ Any party may terminate consultation if it determines that the activity will no longer be productive, but the termination of consultation does not prevent the agency from continuing its course of conducting or approving the undertaking.²⁹

II. Principles of consultation

Although Tribal Nations are distinct among consulting parties under the statute, they do not carry any authority to direct or interfere with an agency's ultimate decision. However, the existing statutory and regulatory language makes clear that the principles of the law require heightened consultation considerations to Tribal Nations and Native Hawaiian organizations, in recognition of their unique political relationship with the United States.

Best practices for Tribal consultation are easily described. First, consultation should occur early in every federal decision-making process, before any decision has actually been made.³⁰ Next, a federal agency should provide Tribal Nations with sufficient and substantive notice prior to a consultation — meaning that Tribal Nations should be given enough time to review, digest, and prepare for meaningful discussions on a topic before the consultation.³¹ The best practice for prior substantive notice occurs when the federal office provides Tribal Nations with a clear description of the matter subject to consultation, a description of proposed or potential actions or alternatives, if any, and all supporting information.³²

²⁴ U.S. CONGRESS, CRS REPORT No. R47543, *Historic Properties and Federal Responsibilities: An Introduction to Section 106 Reviews* (2023).

²⁵ 36 CFR § 800.5(a)(2)(i)-(iii).

²⁶ 36 CFR § 800.5(a)(3)(i).

²⁷ CRS REPORT No. R47543, *supra n. 24*.

²⁸ 36 CFR § 800.6(c)(8).

²⁹ 36 CFR § 800.7.

³⁰ Letter from Coalition for Tribal Sovereignty to Secretary Doug Burgum, July 9, 2025; Seth Davis & Daniel B. Rodriguez, *Consultation with State, Local, and Tribal Governments in Regulatory Policymaking*, p. 73 (May 29, 2025) (report to the Admin. Conf. of the U.S.).

³¹ Letter from CTS to Sec. Burgum, *supra n. 30*.

³² *Id.*

Complaints from permit applicants about delays imposed by consultation should be carefully reviewed for timing. Consulting with a Tribal Nation too late in the process can result in delays if locations are identified that warrant further review. In addition, costly and time-consuming litigation can occur if a THPO or Tribal Nation is not properly consulted. These are not flaws in the system; rather, these are the mechanisms that are intended to make the system work in a way that balances an applicant's interest in a timely permitting process with the SHPO, THPOs, Tribal Nations, and the public's interest in preserving historic and traditional properties.

A. Pertaining to the Hearing

Because Tribal Nations and Native Hawaiian organizations are explicitly considered consulting parties with heightened rights of review under NHPA, as well as independent rights of consultation under the federal trust relationship, it would have been appropriate for the Senate Committee to engage in practices close to those described as best practices for consultation.

The hearing was announced with less than one week of notice. A customary Senate letter describing the subject matter of the Committee's inquiry has not been published to date. Witnesses were not announced until the hearing commenced. The title of the hearing, with its aim to "examine the consultation process," is ambiguous. Did the Committee intend to examine the consultation process *except* as it pertains to Tribal Nations, due to their independent, extrastatutory right to consultation? Or did the Committee intend to examine and perhaps reconsider the specific statutory protections extended to Tribal consultation under the NHPA? Even after the hearing, based upon statements and testimony, it is not clear what aspect of the consultation process the Committee intended to examine.

In short, the Committee is encouraged to consult with Tribal Nations and Native Hawaiian organizations to the same extent that prior Congresses intended agencies to consult when the law was enacted.

B. Pertaining to Section 106

At the Committee hearing, questions from select Senators suggested that it is specifically the consultation provisions in Section 106 that cause undue delay to projects, such as critical energy infrastructure build-outs. However, none of the witnesses attributed delays to consultation requirements. The Committee is encouraged to redirect its oversight to the actual impediments to timely workflow, as described by witnesses.

Mr. Andy McDonald, Environmental Compliance Manager for Montana-Dakota Utilities, in particular, attributed delays in the Montana-Dakota Pipeline to ambiguity in what constitutes an "area of potential effects," resulting in a difference of subjective opinions between two federal agencies.³³ There is nothing about the statutory requirements to consult with Tribal Nations that affects subjective dispute between two federal agencies; indeed, Mr. McDonald indicated that the mitigation process around an area of cultural significance was operating as intended and did not contribute delays to this process.³⁴ If anything, Mr. McDonald's testimony warrants

³³ Full Committee Hearing to Examine the Section 106 Consultation Process Under the National Historic Preservation Act, 119th Cong. (2025), Written Testimony of Mr. Andy McDonald, p. 3.

³⁴ *Id.*, p. 2.

streamlining an order of preference among federal agencies to allocate primary responsibility between or among agencies to avoid duplication of efforts or differences of opinion.

The Committee is also urged to consider the testimony regarding the delays caused by subjectivity as a comment on statutory or regulatory interpretation, rather than on the subjectivity of place being historically or culturally important. Subjectivity is unavoidable, especially considering that, historically, the United States at times acted with intent to eradicate what was subjectively sacred to distinct populations. The cultural importance of the National Cathedral is inherently subjective to Americans; monuments to General George Custer or Robert E. Lee may likewise be regionally subjective. **The subjective nature of what constitutes historical or cultural importance should not be viewed as an impossible obstacle to consultation, cooperation, or creative solutions to accommodating new development.**

III. Implementation of Section 106

Section 106 of the NHPA is inherently a cooperative process, with communication, disclosures, and information exchanges from the inception of a project. The consultation process itself does not delay review time so much as a failure to comply with the consultation process, which can lead to delays in implementing the reviews or even litigation.

Private applicants in the process, such as developers and utilities, often initiate projects that trigger Section 106 when they seek federal permits, licenses, or funding. Although they do not make the final decision, they are central to compliance. They must provide accurate project information, cooperate in consultations, and fund required surveys or mitigation. Applicants may be invited to participate as consulting parties and are expected to act in good faith with SHPOs, THPOs, and Tribal Nations. Best practice is to engage affected Tribal Nations early, before formal submission, to identify potential conflicts and demonstrate respect for cultural resources. As Mr. McDonald's testimony reflects, this can lead to cooperative efforts that do not impair a project's expected timeline.

States carry out Section 106 through the SHPOs, who assist federal agencies by identifying and evaluating historic properties and advising on project effects. SHPOs maintain statewide site inventories, apply National Register criteria, and help develop Memoranda of Agreement to resolve adverse effects. When projects affect Tribal lands or cultural sites, SHPOs coordinate with THPOs and the responsible federal agency to ensure proper consultation. Dr. Chris Merritt's testimony, as the Utah SHPO, supported that early consultation leads to better outcomes. Dr. Merritt described a well-funded office that has digitized its processes and is proactive in leveraging programmatic agreements under the NHPA to reduce the administrative burden and settle expectations of applicants and consulting parties.

It is ultimately the federal agencies that are legally responsible for compliance with Section 106. The agency proposing, funding, or licensing a project must define the undertaking, determine the area of potential effects, and begin consultation with all relevant parties, including Tribal Nations and the Advisory Council on Historic Preservation (ACHP). Agencies evaluate eligibility for the National Register, assess adverse effects, and develop mitigation measures through consultation. They must document each step and ensure transparency. **The federal government has a special trust responsibility to consult directly with Tribal governments**

when a project may affect sites of religious or cultural importance. It should be noted that consultation as a principle of federal Indian law exists independently of the NHPA, and that permitting or proceeding with projects through traditional cultural sites or through Indian land are likely to warrant careful consultation processes regardless of whether the NHPA mandates such processes.

Tribal Nations are sovereign governments and distinct consulting parties under Section 106. When a federal undertaking may affect a property of religious or cultural significance to a Tribal Nation, the agency must consult directly with that Tribal Nation. Where a Tribal Nation has a Tribal Historic Preservation Officer, the THPO carries out duties equivalent to those of the SHPO for undertakings on Tribal lands. Tribal Nations provide essential cultural and historical knowledge that is often unavailable in written records. Although Tribal Nations do not have veto power, **their views must be meaningfully considered and integrated into agency decisions.**

Chronic underfunding of THPO programs limits their ability to meet consultation deadlines, creating capacity gaps that can delay reviews. Effective consultation begins early, with clear notice and sufficient information to support informed dialogue and meaningful mitigation. Dr. Merritt testified that his state office operated on an annual budget of approximately \$1.8 million, with funding primarily from the federal government and supplemented by the state. This has led to a full staff, digitalization of records, and the ability to avoid delays by negotiating programmatic agreements with the preemptive collaboration of consulting parties. On the other hand, Mr. Concho, Tribal Historic Preservation Officer for the Pueblo of Acoma, testified that — by contrast — approximately \$23 million is available *for all Tribal Nations* to fund their THPO programs.³⁵ This averages out to around \$100,000.00 per Tribal Nations, as is borne out by Mr. Concho's testimony about his own budget.

Successful implementation of Section 106 depends on cooperation among all participants. Private proponents supply project data and fund mitigation, states and Tribal Nations contribute cultural and technical expertise, and federal agencies hold the legal duty to ensure compliance. When consultation begins early and proceeds in good faith, Section 106 works as intended, balancing preservation of the Nation's heritage with responsible development. Rather than declaring Section 106 a bureaucratic impediment to development, Congress is urged to fund THPOs adequately, cure bickering among federal agencies, and allow the statute to fully operate as intended before considering it a failure.

IV. Core issues

The challenges in the Section 106 process, often cited as "project delays" or "denials," are not flaws in the law itself. Rather, they are symptoms of a process that is consistently misapplied and chronically under-resourced by federal agencies.

A. Problem: project delays and denials

The NHPA consultation process is often criticized for project delays and, in rare cases, denials. NCAI believes both issues stem from the same root cause: federal agencies initiating

³⁵ Full Committee Hearing to Examine the Section 106 Consultation Process Under the National Historic Preservation Act, 119th Cong. (2025), Written Testimony of Mr. Steven Concho, p. 2.

consultation too late. When Tribal Nations are engaged at the project's late stages, their input is perceived as a "delay." If that late-stage input reveals an unresolvable conflict with a sacred site, it is perceived as a "denial." These are not procedural failures; they are predictable outcomes of treating consultation as a last-minute checklist rather than a foundational planning tool.

Solution 1: Mandate and Regulate Early Consultation: The single most effective solution for both delays and denials is to require agencies to initiate consultation at the earliest conceptual phase. The regulations are built for this, stating consultation should occur "early in the planning process"³⁶ and encouraging efficiency.³⁷ If a project's footprint would destroy a site central to a Tribal Nation's religious practice, it is far better for all stakeholders, especially the project proponent, to know this in "month one" when alternatives can be analyzed, rather than in "year three," after years of investment in a non-viable route.

Solution 2: Improve Funding for THPOs: A significant and quantifiable bottleneck is the inadequate federal funding for THPOs. THPOs are legally required to fulfill the same consultation responsibilities as SHPOs but receive a fraction of the funding. It is unrealistic to expect a one- or two-person THPO staff to provide a timely 30-day turnaround on a review for a massive infrastructure project. This is a federal capacity failure, not a procedural one.

Solution 3: Support the Federal, State, and Tribal Historic Preservation Offices (HPO) Workforce: This capacity problem extends to the federal agencies themselves. High turnover and a lack of trained, experienced cultural resource staff at agencies lead to inconsistent application of the law, poor consultation practices, and further delays. Congress must support agency budgets for a robust, permanent HPO workforce and fund federal training on the government-to-government relationship.

Dr. Merritt testified that cuts to federal funding and federal staffing shift burdens to state and Tribal offices, and that vacancies on the Council itself have the potential to impose the delays and obstacles that the Committee appears to attribute to present consultation requirements. None of the witnesses described consultation as causing delays or denials so as to warrant their removal from the process.

Solution 4: Integrate Consultation and Support Meaningful Mitigation: Early consultation, once initiated, must be an iterative dialogue, not a one-time event.³⁸ When adverse effects are unavoidable, agencies must support mitigation that is meaningful to the Tribal Nation. Too often, agencies default to "data recovery", i.e., photographing and documenting a site before it is destroyed. This is not mitigation; it is the documentation of destruction. True mitigation, as defined in collaboration with the affected Tribal Nation, may include land swaps, conservation easements, or co-management agreements.

B. Case law demonstrates agency failures in consultation

³⁶ 36 C.F.R. § 800.1(c)

³⁷ 36 C.F.R. § 800.3(g)

³⁸ Exec. Order No. 13,175, 65 Fed. Reg. 67,249 (2000)

Opponents of Section 106 often allege that Tribal Nations use "frivolous litigation" to stop projects. **This is false.** In reality, litigation is rare and used only as a last resort when the federal government fails to fulfill its statutory duty. The case record shows that when Tribal Nations are forced to sue, it is often because agencies have blatantly failed to comply with the law, and the courts frequently agree. A non-exhaustive survey suggests that cases brought by Tribal plaintiffs frequently reflect a failure in the consultation process that, if conducted as intended to begin with, would have avoided litigation and associated delays.

In a pair of separate cases,³⁹ the Pit River Tribe twice won summary judgment with remand to the agency for appropriate consultation. In the second of those cases, a federal district court ordered the Bureau of Land Management to provide a written legal analysis for any reason it thought that consultation under the NHPA would not be necessary.⁴⁰ Tohono O'odham Nation also succeeded on a claim that the Department of the Interior violated a programmatic agreement formulated under the NHPA, on a matter that rose to the 9th Circuit.⁴¹ Within the last 15 years, multiple Tribal Nations have been awarded restraining orders or judgment on the pleadings for agencies' failure to conduct appropriate consultation under NHPA.⁴² This hardly makes such claims frivolous or abusive, even when not all claims succeed.

It should be noted that among the unsuccessful cases brought by Tribal Nations, it is rare for a dismissal to be premised on adequate consultation, with summary judgment to defendants. Cases were more likely to be dismissed for procedural issues: omitting a plea under the APA (as the NHPA lacks a private right of action), lack of personal jurisdiction, or unripe claims.⁴³ Only one recent case was located with a finding that consultation was adequate so as to deny a motion for preliminary injunction, and it should be noted that there is precedent for such a case being later resolved in favor of a Tribal Nation on the merits.⁴⁴

Tribal Nations using appropriate legal procedures - whether they prevail at every step or not - can hardly be described as radicalized or abusive. The delays brought by litigation can be avoided by compliance by applicants and agencies early in the process. Consultation is the cure for such delays, not the cause.

C. Destruction of sites of historical or cultural importance

³⁹ *Pit River Tribe v. Bureau of Land Mgmt.*, No. 2:02CV1314 JAMJFM, 2008 WL 5381779, at *3 (E.D. Cal. Dec. 23, 2008), *aff'd in part, rev'd in part sub nom. Pit River Tribe v. U.S. Forest Serv.*, 615 F.3d 1069 (9th Cir. 2010); *Pit River Tribe v. Bureau of Land Mgmt.*, No. 2:04-CV-00956 JAM-AC, 2017 WL 395479, at *2 (E.D. Cal. Jan. 30, 2017), *aff'd sub nom. Pit River Tribe v. Bureau of Land Mgmt.*, 939 F.3d 962 (9th Cir. 2019).

⁴⁰ *Pit River Tribe v. Bureau of Land Mgmt.*, 939 F.3d 962 (9th Cir. 2019).

⁴¹ *Tohono O'odham Nation v. United States Dep't of the Interior*, 138 F.4th 1189, 1204 (9th Cir. 2025).

⁴² *Quechan Tribe of Fort Yuma Indian Rsv. v. U.S. Dep't of Interior*, 755 F. Supp. 2d 1104, 1119 (S.D. Cal. 2010); *Confederated Tribes & Bands of the Yakama Nation v. U.S. Fish & Wildlife Serv.*, No. 1:14-CV-3052-TOR, 2015 WL 1276811, at *9 (E.D. Wash. Mar. 20, 2015); *Federated Indians of Graton Rancheria v. United States Dep't of the Interior*, No. 24-CV-08582-RFL, 2025 WL 2522376, at *1 (N.D. Cal. Sept. 2, 2025); *Hualapai Indian Tribe v. Haaland*, 755 F. Supp. 3d 1165, 1199 (D. Ariz. 2024).

⁴³ *San Carlos Apache Tribe v. United States*, 417 F.3d 1091, 1099 (9th Cir. 2005) (affirming *San Carlos Apache Tribe v. United States*, 272 F. Supp. 2d 860, 886 (D. Ariz. 2003); *Narragansett Indian Tribe By & Through Narragansett Indian Tribal Historic Pres. Off. v. Pollack*, No. CV 20-576 (RC), 2022 WL 782410, at *6 (D.D.C. Mar. 15, 2022); *Reno-Sparks Indian Colony v. Haaland*, No. 323CV00070MMDCLE, 2023 WL 7412483, at *3 (D. Nev. Nov. 9, 2023).

⁴⁴ *San Carlos Apache Tribe v. United States Forest Serv.*, No. CV-21-00068-PHX-DWL, 2025 WL 2377321, at *49 (D. Ariz. Aug. 15, 2025); see *Confederated Tribes & Bands of the Yakama Nation v. U.S. Fish & Wildlife Serv.*, No. 1:14-CV-3052-TOR, 2015 WL 1276811, at *9 (E.D. Wash. Mar. 20, 2015).

There is no remedy for permanent destruction once it occurs. The only effective protection is early, meaningful consultation that prevents loss before it happens.

V. Recommendations:

The most effective "reform" is not to weaken protections, but to ensure the existing process works as intended. We offer the following practical, actionable recommendations to improve the efficiency, predictability, and effectiveness of the Section 106 process for all stakeholders.

A. Set an example of consultation for agencies

The most effective way for Congress to improve agency compliance is to model the correct behavior. NCAI urges the Committee to engage in full, meaningful, and early government-to-government consultation with Tribal Nations as it considers and drafts legislation affecting cultural resources, energy, and infrastructure. By setting this standard, the Committee reinforces the expectation that federal agencies must also treat consultation as a foundational part of their planning, not as a procedural hurdle.

B. Regulate and enforce agencies consulting with one another and with Tribal Nations

The primary cause of project delays is not the Section 106 process itself, but that federal agencies initiate it far too late. NCAI recommends the Committee direct the Advisory Council on Historic Preservation (ACHP) to use its full regulatory authority to mandate and enforce "early consultation" at the earliest conceptual phase of a project or programmatic agreement.

This "front-loading" of the review provides predictability and certainty to project proponents, allowing conflicts to be identified and resolved before millions are spent on flawed designs. This action is consistent with NCAI's membership, which has formally called on Congress to strengthen, not weaken, Tribal involvement by amending the NHPA to afford Tribal Nations signatory status for properties of religious and cultural significance ([NCAI Resolution #ANC-22-034](#)).

C. Support adequate appropriations

A significant and avoidable bottleneck is the chronic lack of capacity of THPOs. THPOs are required to respond to consultation requests from all federal agencies but receive a fraction of the funding provided to their State (SHPO) counterparts. This is not a procedural flaw; it is a federal funding failure.

NCAI urges the Committee to champion robust, consistent, and equitable appropriations for the Historic Preservation Fund (HPF), with a clear path to achieving full funding parity for THPOs. This is a workforce and capacity solution that will clear backlogs and ensure timely reviews, and it is a core component of the federal government's trust and treaty responsibilities. This commitment aligns with [NCAI Resolution #GBW-05-018](#), "Opposing Amendments to the National Historic Preservation Act Which Diminish Protections of Tribal Sacred Sites."

D. Support private interests in compliance and historical preservation

Federal agencies are the formal link, but private proponents (e.g., energy companies) are the primary drivers of most projects. NCAI recommends the Committee direct federal agencies to

develop guidance and incentives for project proponents to engage in pre-consultation directly with Tribal Nations.⁴⁵

Agencies should be encouraged to provide preferential or expedited review treatment for applications where the proponent can demonstrate they have already engaged in meaningful pre-application dialogue with affected Tribal Nations. This market-based approach allows private industry to proactively reduce project risks, a principle reflected in NCAI resolutions such as [#PDX-20-036](#). "Calling on the U.S. Insurance Industry to Adopt Policies to Ensure that the Projects they Insure Have Obtained the Free, Prior, and Informed Consent of Impacted Tribal Nations."

Respectfully submitted,



Larry Wright, Jr.
Executive Director
National Congress of American Indians

CC:

The Hon. Doug Burgum, Secretary, U.S. Department of the Interior
The Hon. Jordan Tannenbaum, Chair, Advisory Council on Historic Preservation
The Hon. Katherine Scarlett, Chair, Council on Environmental Quality
The Hon. Ted Cruz, Chair, Senate Committee on Commerce, Science, and Transportation
The Hon. Lisa Murkowski, Chair, Senate Committee on Indian Affairs
The Hon. Brian Schatz, Vice Chair, Senate Committee on Indian Affairs
Mr. Reid Nelson, Executive Director, Advisory Council on Historic Preservation

⁴⁵ U.S. House of Representatives, Subcommittee on Indian, Insular, and Alaska Native Affairs. (2017, March 9). Improving and expanding infrastructure in tribal and insular communities: Oversight hearing (Serial No. 115-1, pp. 30–31). U.S. Government Publishing Office.



**SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
366 DIRKSEN, SENATE OFFICE BUILDING**

**FULL COMMITTEE HEARING TO EXAMINE THE SECTION 106 CONSULTATION
PROCESS UNDER THE NATIONAL HISTORIC PRESERVATION ACT**

**COMMENTS FROM CAROL QUILLEN, PRESIDENT AND CEO OF THE
NATIONAL TRUST FOR HISTORIC PRESERVATION**

October 27, 2025

Chairman Lee, Ranking Member Heinrich, and Members of the Senate Energy and Natural Resources Committee:

Thank you for the opportunity to provide testimony from the National Trust for Historic Preservation for this hearing to examine the Section 106 consultation process under the National Historic Preservation Act (NHPA), one of our nation’s landmark laws enacted in 1966. While the NHPA contemplates several integrated and complementary components of the policy approach to preserving our nation’s heritage, our comments address the specific requirement in Section 106 of the NHPA that federal agencies must “take into account” the impact of their actions on historic properties.¹ The implementing regulations for Section 106 provide agencies with guidance to assist them in satisfying this requirement through a unique consultation process.²

Interests of the National Trust for Historic Preservation

The National Trust for Historic Preservation in the United States (“National Trust”) is a privately-funded charitable, educational, non-profit organization chartered by Congress in 1949 to further the purposes of historic preservation policy in the United States.³ The intent of Congress was for the National Trust “to mobilize and coordinate public interest, participation, and resources in the preservation and interpretation of sites and buildings.” With headquarters in Washington, D.C., 28 historic sites, and more than one million members and supporters around the country, the National Trust works to protect significant historic places and to advocate for historic preservation as a fundamental value in programs and policies at all levels of government.

As the National Trust reflects on 75 years of our long-standing involvement in supporting preservation initiatives and looks ahead to our nation’s semi-quincentennial celebration, we deeply appreciate our collaboration with Congress—and particularly this Committee—to advocate on behalf of irreplaceable historic and cultural resources. Our testimony for this hearing highlights background on the NHPA and Section 106 consultation process in advance of the Committee proceedings and for what we hope will be further collaboration with Congress on these issues.

¹ 54 U.S.C. § 306108.

² 36 C.F.R. Part 800.

³ 54 U.S.C. §§ 320101, 312102.

NHPA and Section 106 Process

The policy origins of the National Historic Preservation Act provide important context for any examination of the Section 106 consultation process. Congress passed the NHPA in response to public outcry over the widespread demolition of our nation's historic resources by large-scale federal projects. Prior to enactment of the NHPA, federal agencies did not consider impacts to historic resources in their decision making, and there were no opportunities for stakeholder input to help avoid and minimize harm to our nation's shared heritage. This lack of consideration led to nationally painful losses, including the notable demolition of the architectural achievement and iconic Pennsylvania Station in New York City, which helped galvanize public concern about the loss of America's architectural heritage. In 1965, the U.S. Conference of Mayors produced a report highlighting the alarming rate of historic resource loss and advocated for a unified, national approach to preservation. In 1966, the NHPA was enacted—in part—to ensure that federal agencies balance historic preservation concerns with the needs of federal projects.

Section 106 Consultation Process

Section 106 review is a “stop, look, and listen” process, which is designed to assist federal agencies with their compliance with the NHPA and to help avoid and minimize the destruction of our nation's historic resources. The Section 106 process is triggered when there is a federal undertaking that has the potential to affect historic resources.⁴ Section 106 compliance is governed by regulations issued by the Advisory Council on Historic Preservation (ACHP),⁵ which guide federal agencies in identifying historic properties, assessing adverse effects of their actions, and resolving those adverse effects through a distinctive process of consultation that is designed to achieve consensus.

Section 106 consultations always include the federal agency responsible for the undertaking and the relevant State and/or Tribal Historic Preservation Officers (SHPOs and THPOs). The ACHP is also afforded the opportunity to comment on all Section 106 consultations that involve adverse effects to historic resources. Typically, additional consulting parties include local governments, federal permit applicants, and other stakeholders with a demonstrated interest in the undertaking. The National Trust frequently participates as a consulting party in Section 106 consultations to assist federal agencies in finding ways to avoid, minimize, and mitigate harm to historic properties, while allowing undertakings to move forward.

Role of the Advisory Council on Historic Preservation (ACHP)

ACHP administers Section 106 by issuing regulations that define the process, overseeing federal agency compliance, and being available for advice and dispute resolution. Its role includes providing guidance, developing programmatic agreements to tailor review processes, and participating as a formal consulting party in cases involving potential adverse effects on National Historic Landmarks (NHLs) or other significant disputes. The ACHP's involvement helps to ensure consistency in the assessment and resolution of adverse effects to historic properties, but it is the federal agency's responsibility to conduct the primary Section 106 consultation with parties like SHPOs and the public. Unfortunately, the ACHP's capacity has been severely reduced in recent months because of dramatic budget cuts. Restoring and expanding the ACHP staff would substantially assist all parties in achieving efficient and effective compliance with Section 106.

⁴ An “undertaking” is a project, activity, or program that is carried out, funded, licensed, or approved by a federal agency. 54 U.S.C. § 300320. “Historic properties” are sites, buildings, structures, districts, or objects that are listed or eligible for listing in the National Register of Historic Places. *Id.* § 300308.

⁵ 36 C.F.R. Part 800.

Public Participation

The views of the public are essential to informed federal decision-making in the Section 106 process:

“The agency official shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, the likely interest of the public in the effects on historic properties, confidentiality concerns of private individuals and businesses, and the relationship of the Federal involvement to the undertaking.”⁶

Public participation is vital to implementation for Section 106 of the NHPA because it provides valuable community knowledge, fosters democratic engagement, and offers the public an opportunity to influence projects that could affect historic properties in their communities. This input helps federal agencies identify potential issues early, build relationships with the public, and achieve project outcomes that genuinely serve the American people.

Policy Considerations

As the Committee examines the NHPA and Section 106 consultation process, we welcome the opportunity to work with you to share our experience with a range of Section 106 cases and its implementation nationwide. We offer the following brief policy issues for your consideration.

Minimal Regulatory Burden

The vast majority of federal undertakings reviewed each year by SHPOs and THPOs result in findings of “no historic properties affected” or “no adverse effect,” and these reviews are completed efficiently when offices have adequate funding and staff. The ACHP reports that approximately 120,000 projects undergo Section 106 review each year,⁷ and of those, approximately 2,000 result in a finding of adverse effect— or less than 2 percent of all federal undertakings. SHPOs are generally required to respond to Section 106 requests within 30 days, and for the over 98 percent of undertakings that do not result in a finding of “adverse effect,” the review process is typically quick and straightforward. The small number of outliers that require more extensive consultation are projects that will result in significant and irreparable harm to our nation’s historic resources. The goal of those consultations is to help those projects avoid, minimize, or mitigate harm, not to stop or prevent the proposed projects.

High Degree of Flexibility

The ACHP’s regulations offer several alternative approaches for satisfying Section 106 requirements that create efficiencies that save time and resources. Programmatic Agreements (PAs) provide flexibility by establishing alternative, tailored review procedures for both complex and routine projects. PAs streamline compliance by addressing an entire program or category of undertakings, rather than requiring the standard, case-by-case review for every project—an approach that saves time and resources while still protecting our nation’s historic properties.

A federal agency may negotiate a PA for a specific program, for multiple undertakings within a particular area, or for a single complex project. The available options include:

- **Agency-specific Program PAs:** A federal agency can develop a process tailored to its programs, which may involve similar or repetitive effects on historic properties. This allows for streamlined review without the need for individual consultations for every project. For example, the U.S. Coast Guard has a PA for the outleasing of historic lighthouses.

⁶ 36 C.F.R. § 800(d)(1).

⁷ Advisory Council on Historic Preservation, “[About the ACHP Fact Sheet](#),” 2025.

- **Nationwide Programmatic Agreements:** A federal agency, working with the ACHP and the National Conference of State Historic Preservation Officers (NCSHPO), can establish a nationwide process for a specific type of undertaking. For example, both the National Park Service (NPS) and the Bureau of Land Management (BLM) have Nationwide PAs for Section 106 compliance tailored to their specific needs.
- **Prototype Programmatic Agreements:** These provide a template for agreements covering projects in multiple jurisdictions. While the ACHP and other parties help develop the template, the final agreement is signed by the federal agency and the respective state. For example, the Federal Emergency Management Administration (FEMA) has adopted a Prototype PA that can be adopted to expedite Section 106 review for disaster recovery.
- **Project PAs:** Used for single, complex projects where the full effects on historic properties cannot be fully determined in advance. For example, a PA was adopted for the adaptive reuse of St. Elizabeths Hospital National Historic Landmark to serve as the new headquarters for the Department of Homeland Security.

The ACHP is also empowered to grant exemptions to Section 106. For example, the General Services Administration (GSA) was granted an exemption from Section 106 in 2023 for routine maintenance of its historic properties because of its excellent track record and expertise.

Nine Mile Canyon Case Study: Section 106 Process

Through the Section 106 process, stakeholders involved in the Nine Mile Canyon project in Utah successfully protected prehistoric artifacts while allowing for valuable energy development. The Nine Mile Canyon case, involving energy development on the West Tavaputs Plateau, serves as an illustrative example of the value of Section 106 consultation. The consultation process demonstrates how stakeholders can create sustainable solutions benefiting all parties.

In the early 2000's, Nine Mile Canyon faced a significant threat. This area—internationally recognized for its extensive collection of Native American rock art and other cultural sites—was also the site of planned oil and gas exploration. The potential conflict was clear: the expansion of drilling and industrial vehicles with the potential project posed a direct risk to the fragile and irreplaceable historic properties in the canyon. Without proper mediation, this situation could have led to protracted disputes and potential damage to the canyon's invaluable heritage.

To navigate this complex challenge, all parties entered into a Section 106 consultation process, overseen by the ACHP. The key participants included the Bureau of Land Management (BLM), preservation advocates, local communities, Native American tribes, and the energy industry. This process was not an exercise to produce obstacles or delays, but a structured negotiation aimed at finding a mutually acceptable solution. It resulted in a historic Programmatic Agreement (PA) that laid out a path forward for both energy extraction and resource protection.

The resulting PA delivered tangible benefits for all parties, proving that development and preservation are not mutually exclusive. The agreement established a protective buffer around Nine Mile Canyon, moving some drilling locations to shield the most concentrated and significant rock art and cultural sites from harm. The agreement provided the energy companies, including Bill Barrett Corporation, with a clear and legally sound pathway to proceed with development on the West Tavaputs Plateau. The outcome demonstrated how agencies like the BLM, in collaboration with the ACHP and the Utah State Historic Preservation Office, can effectively balance multiple-use mandates with preservation responsibilities.

Milwaukee Soldiers Home Case Study: Section 106 Process

The rehabilitation of the Milwaukee Soldiers Home in Milwaukee, Wisconsin stands as a model of successful Section 106 consultation under the National Historic Preservation Act. This collaborative process brought together the U.S. Department of Veterans Affairs (VA), the Wisconsin State Historic Preservation Office, the Advisory Council on Historic Preservation, the National Trust for Historic Preservation, local veterans' and preservation organizations, and private development partners to ensure the long-term preservation and reuse of one of the nation's most significant historic campuses for veterans.

Through constructive dialogue and creative problem-solving, consulting parties developed an agreement that balanced the VA's mission to serve veterans with the need to protect and revitalize the site's nationally significant historic buildings—many of which date to the post–Civil War era.

The resulting Section 106 Memorandum of Agreement paved the way for an innovative public-private partnership that leveraged federal historic tax credits and private investment to rehabilitate the six most at-risk historic buildings for use as supportive housing for veterans and their families. Completed in 2021, the Milwaukee Soldiers Home rehabilitation project has restored the historic core of the campus, provided nearly 100 units of affordable housing, and ensured that these irreplaceable landmarks continue to serve those for whom they were originally built—America's veterans. The project exemplifies how the Section 106 process can produce outcomes that honor history, meet federal agency goals, and deliver enduring community benefits.

The ACHP documents⁸ success stories for Section 106 consultations that demonstrate the wide variety of examples where the process has produced successful project outcomes as a result of consultations. These projects and Section 106 success stories also include establishing NPS designations such as the multi-state Manhattan Project National Historical Park in New Mexico, Washington, and Tennessee and non-federal sites such as the New Fork River Crossing Historical Park⁹ in Wyoming. Extensive documentation of these successful Section 106 consultations in all 50 states, the District of Columbia, and Puerto Rico demonstrates the flexibility of the process for federal projects and preservation.

Opportunities for Improvement

- Optimize Predictability of the Consultation Process
 - Policymakers can optimize the predictability of the Section 106 consultation process by expanding the use of programmatic agreements, integrating Section 106 more effectively with other reviews like NEPA, and enhancing transparency and tribal consultation. These strategies create more standardized and efficient pathways for common undertakings, reducing the risk of project delays caused by unexpected findings.
- Strengthen Coordination Among Consulting Parties
 - To improve efficiencies around assembling Section 106 consulting parties, policymakers can implement measures that centralize information, streamline communication protocols, and standardize the invitation process. Specifically, improvements could be made in identifying Indian Tribes, leveraging technology, and establishing clear roles and responsibilities. Using technology for online virtual meetings can substantially reduce the time and budget for the consultation process.
- Cross-border Consultations Benefit from Enhanced Communication and Planning

⁸ ACHP; Section 106 Success Stories; <https://www.achp.gov/success-stories>.

⁹ ACHP; Section 106 Success Story: New Fork River Crossing Historical Park; https://www.achp.gov/sites/default/files/2017-02/Section106SuccessStory_ForkRiverPark.pdf.

- When a federal project with potential adverse impacts crosses multiple states, policymakers can improve the Section 106 process by implementing measures that enhance interstate and inter-agency coordination, streamline multi-jurisdictional agreements, and clarify lead agency responsibilities. Clear, standardized protocols are key to managing the complexities of multiple State Historic Preservation Offices, Tribal Historic Preservation Offices, and public constituencies.
- Improve Coordination and Communication
 - Appoint a Clear Lead Agency: As soon as a multi-state project is identified, the involved federal agencies should designate a single lead agency responsible for coordinating the Section 106 consultation on behalf of all federal entities. This prevents duplicative efforts and provides a consistent point of contact for consulting parties. A Memorandum of Understanding (MOU) can formally document this arrangement.
 - Create a Unified Consultation Plan: The lead federal agency should develop a comprehensive plan at the outset to synchronize communication among all parties, including all relevant SHPOs, THPOs, and other consulting parties across state lines. This plan should include a timeline and an agreement on how information will be shared and public input will be handled consistently across different jurisdictions.
 - Establish a Single Administrative Record: To manage the volume of documentation, the lead agency should create and maintain a single administrative record. This centralizes all project documents, findings, and correspondence, providing a transparent and consistent record for all stakeholders.
- Streamline Multi-Jurisdictional Agreements
 - Expand the Use of Programmatic Agreements (PAs): Policymakers should expand the use of multi-state or regional PAs for federal projects that frequently span multiple jurisdictions, such as transportation, energy transmission, and broadband infrastructure. These agreements can establish standardized procedures for common project types, thereby eliminating the need for individual project-by-project Memoranda of Agreement (MOAs) with every state. For example, NASA recently executed a nationwide PA that covers all of its installations and activities.

Further Discussion

The Section 106 process provides a critical tool to preserve our nation's historic resources and helps guide federal agencies in identifying historic properties and resolving any adverse effects of federal undertakings through a unique consultation process designed to achieve consensus. The National Trust appreciates the committee devoting time to discussing the Section 106 process at this hearing, and we look forward to submitting additional comments in response to issues raised during committee deliberations. We welcome continued collaboration with you to address any comments or questions and be a resource to the committee for this and other preservation issues.

Sincerely,



Carol Quillen
President and CEO
National Trust for Historic Preservation



The Navajo Nation DR. BUU NYGREN *PRESIDENT*

Yideeskáadi Nitsáhákees | Think for the Future

November 4, 2025

The Honorable Mike Lee
Chairman
Committee on Energy and Natural Resources
United States Senate
304 Dirksen Senate Office Building
Washington, DC 20510

Re: Hearing on "To Examine the Section 106 Consultation Process under the National Historic Preservation Act"

Dear Chairman Lee,

On behalf of the Navajo Nation ("**Nation**"), we appreciate the opportunity to submit written comments for the record of the Senate Energy and Natural Resources Committee hearing titled "*To Examine the Section 106 Consultation Process under the National Historic Preservation Act.*"

The Navajo Nation is the largest American Indian tribe in the United States encompassing over 27,000 square miles including portions of Arizona, New Mexico, and Utah. Currently, the Nation has over 400,000 enrolled members, half of whom reside within the Navajo Nation boundaries. In 1868, the United States entered a treaty with the Navajo Nation promising health care, education, agricultural assistance, and to improve the well-being of the Navajo people in perpetuity.

As such, the United States is legally and morally bound with a treaty responsibility and a sacred trust obligation to support the Nation in securing and improving the quality of life for our citizens. It is with these treaty obligations in mind that we engage in submitting written comments to the Senate Committee on Natural resources to provide feedback to strengthen our nation-to-nation relationship.

We are specifically concerned by the January 2024 invocation of an "energy emergency" as justification for the use of the National Historic Preservation Act's (NHPA) emergency procedures (36 CFR 800.12) to bypass established consultation requirements under Section 106. According to the U.S. Energy Information Administration, U.S. crude oil and total energy production reached record highs in 2024, contradicting the assertion that an energy emergency exists. This approach is inconsistent with both the law and the intent of meaningful government-to-government consultation. Furthermore, ongoing restrictions on renewable energy projects, such as offshore wind, further weaken the justification for invoking emergency authority. If such an emergency were genuine, federal policy would promote the development of all viable energy sources rather than selectively advancing fossil fuel projects.

Even if an energy emergency were substantiated, applying the NHPA's emergency procedures under 36 CFR 800.12 to this project would still be inappropriate. The project in question is not part of an "essential and immediate response" to an emergency; rather, it is a long-term undertaking that will take years to complete. Replacing the well-established tribal consultation process with a seven-day notification period will not accelerate energy production or meaningfully contribute to resolving any energy shortfall. The emergency procedures under the NHPA were designed for undertakings that respond to an immediate threat to life or property and not for projects undertaken under the guise of urgency.

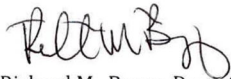
The Nation views the use of 36 CFR 800.12 in this context as an unnecessary and improper effort to "streamline" lawful processes and limit the federal government's statutory duty to engage in meaningful, government-to-government consultation with Tribal Nations, as required by 54 U.S.C. § 302706(b). Such action undermines Tribal sovereignty and violates the federal government's trust responsibility.

Should the agency proceed under the NHPA's emergency provisions, it must still comply with additional procedural requirements: (1) apply any existing Section 106 agreements that include emergency provisions, and (2) notify the Advisory Council on Historic Preservation (ACHP). The Nation requests confirmation of whether such an agreement exists, and if so, why it is not being utilized. We also request verification of when the ACHP was notified regarding the invocation of the NHPA's emergency procedures.

Given the existing statutory and regulatory framework that already governs federal and tribal coordination under Section 106 of the National Historic Preservation Act, the Nation finds any attempt to invoke emergency procedures under 36 CFR 800.12 to be unwarranted and contrary to the principles of consultation and shared stewardship. The Nation has consistently demonstrated its commitment to protecting cultural resources while supporting balanced development that benefits both our communities and the Nation as a whole. Actions that sidestep consultation not only diminish this partnership but also erode trust in the government-to-government relationship. We therefore urge the Committee to ensure that Section 106 remains fully intact, that emergency authorities are applied only in truly urgent circumstances, and that Tribal Nations are meaningfully consulted on all undertakings that may affect their cultural heritage and ancestral lands.

Thank you for the opportunity to submit these comments. We look forward to continued engagement and a fair resolution that respects the rights of the Nation and its citizens. Should you have any further questions or concerns, please do not hesitate to contact Richard Begay, Department Manager, Navajo Historic Preservation Department at (928) 871-7198. We look forward to the opportunity to engage further on this issue. *Ahéhéé* (Thank you).

Sincerely,



Richard M. Begay, Department Manager
Navajo Nation Heritage and Preservation Department

From: [nathan.nietering](#)
To: [fortherecord \(Energy\)](#)
Subject: Nietering - Public comment for October 29, 2025 — Full Committee Hearing to Examine the Section 106 Consultation Process Under the National Historic Preservation Act
Date: Wednesday, November 5, 2025 12:50:39 PM

Regarding proposed reforms to the Section 106 consultation process, take note: historic places cherished by individuals, families, and citizens across the country *exist today* because of the long standing Section 106 consultation process that gives local communities and individual states the ability to speak up for the important places that matter to them. It doesn't matter what state you live in, the Section 106 process has protected historic places you and your constituents value.

Nathan Nietering
311 S Maple St
Zeeland, MI 49464

Sent from my iPhone

**Ms. April Snell
Executive Director
Oregon Water Resources Congress**

**Written Testimony submitted to
United States Senate
Committee on Energy and Natural Resources**

Oversight to examine the Section 106 consultation process under the National Historic Preservation Act

October 26, 2025

Chairman Lee and Ranking Member Heinrich:

Thank you for holding this hearing today and for the opportunity for the Oregon Water Resources Congress (OWRC) to submit written testimony for the record on the challenges National Historic Preservation Act (NHPA) implementation creates for efforts to operate and upgrade aging water and power facilities in Oregon.

OWRC was established in 1912 as a trade association to support the protection of water rights and promote the wise stewardship of water resources statewide. OWRC members are local governmental entities, which include irrigation districts, water control districts, drainage districts, water improvement districts, and other agricultural water suppliers that deliver water to roughly one-third of all irrigated land in Oregon. Our members are actively planning and implementing water infrastructure projects with a myriad of economic and environmental benefits, including increased water conservation and enhanced resilience to drought and water scarcity.

Sec. 106 Compliance and Aging Water and Power Infrastructure

As multi-year drought, climate change, growth and other factors continue to increase the pressure on our western water resources, OWRC members are committed to providing farms and communities with the reliable water supply needed to provide food security for the nation, protect strong rural economies, and improve wildlife habitat and the environment. To deliver on these promises, irrigation districts across Oregon operate a complex set of water management systems, including water supply reservoirs, canals, pipelines, fish screens, and hydropower facilities. Most of this critical infrastructure is over 50 years and requires significant investment to maintain and upgrade to ensure responsible and efficient operation.

Modernizing these aging systems is critical to conserve water, extend the useful life of facilities, and improve operational capabilities, and typically requires compliance with Section 106 of the NHPA due to the age, federal ownership, and/or federal investment in upgrade projects. Unfortunately, NHPA compliance has increasingly become a very time-consuming and expensive process, with even the simplest improvements often requiring months or years-long reviews.

OWRC members are proud of the critical role of its irrigation projects in the history of our state and region. We celebrate that history not only by documenting and educating the public about the

development and operation of our facilities, but also by looking forward to ensure our systems can continue to provide the multiple benefits first realized decades ago when the projects were developed.

Ultimately, it is critical that the NHPA be implemented in a way that recognizes honoring and protecting the history of irrigation works in Oregon and across the West cannot mean preserving the inefficiencies caused by a facility's age or antiquated functionality. Equally important is ensuring compliance can be done in a timely, affordable and transparent way. One important way that could quickly improve implementation of the law is to develop a consistent set of mitigation measures or a checklist that applies each time certain common activities must comply with Section 106 to avoid shifting requirements and allow SHPO's to "rinse and repeat" for each alike project.

We have highlighted a number of examples below that illustrate implementation challenges that should be considered as policymakers address NHPA.

Examples of Implementation Challenges

Deschutes Basin – The irrigation districts in the Deschutes River Basin in Central Oregon, which collectively make up the Deschutes Basin Board of Control (DBBC), have developed a comprehensive strategy that will safeguard the future of agriculture in the region while balancing environmental needs. This strategy hinges on infrastructure development and improvements that modernize irrigation systems and upgrade infrastructure in the Basin to reduce water losses – freeing up the water necessary to meet instream requirements and still deliver agricultural water supplies.

Irrigation modernization and infrastructure development plans are largely centered around piping, pressurizing, and automating open canals, but also include development of mechanisms to transfer water, relocating pumping facilities, upgrading fish screens, and a variety other activities. In addition, in many cases, irrigation modernization projects include the installation of hydro generation to increase renewable, carbon free energy that benefits the entire region.

An important component of the plans is Central Oregon Irrigation District (COID) piping 21 miles of the Pilot Butte Canal, which can lose up to 50% of its water in delivery certain stretches. One segment of the canal in Bend, Oregon, was listed on the National Register of Historic Places in 2016 at the request of neighboring communities and over the objections of the COID – the asset owner – due to the need to modernize these facilities. Due to this designation and federal financial assistance in modernizing the COID system to conserve significant water, COID has been working through mitigation for piping this stretch of canal. Unfortunately, this has taken years and at times resulted in recommendations that this canal segment be left unlined which would undermine the entire modernization effort because it does not function from an operational standpoint. Acceptable and common-sense solutions that balance modernization with historic preservation were eventually settled on, but not before losing multiple construction cycles and at significant cost. Mitigation ultimately included detailed documentation, interpretive signage, and public outreach which has been required with other similar projects, and it seems reasonable that this outcome could have been reached in a much more efficient way with improvements to the law and its implementation.

Important and well-intentioned laws like NHPA must acknowledge the pressure to complete irrigation modernization plans, which is hard to overstate. Pressure on water resources from drought and environmental flows continues to grow, and a future for agriculture in the Basin requires moving ahead

with infrastructure projects with a greater sense of urgency. In addition to threats from worsening droughts, HCP mandated winter releases for the Oregon Spotted Frog are only 5 years from **tripling** and without significant progress on infrastructure improvements, it will be crippling to Districts and patrons. Delays in project delivery from inefficient NHPA implementation are a threat to completing needed infrastructure projects in time to mitigate significant impacts to communities.

Klamath Basin – In FY 2022, Congress provided \$5 million for the Bureau of Reclamation to install Supervisory Control and Data Acquisition (SCADA) systems throughout the Klamath Project to enhance automation and water conservation. The contract, awarded to the Farmers Conservation Alliance (FCA) in March 2024, identified over 150 installation sites, with 20 prioritized for Phase 1 under an existing NEPA Categorical Exclusion to enable completion by summer 2024. However, installation did not begin until August 2025—an 18-month delay—due largely to Reclamation’s decision to require a full cultural resources review for the small, low-impact devices. The review process became overly burdensome, with detailed scrutiny of minor design elements, ultimately costing FCA an additional 400 staff hours and \$55,000 in subcontractor expenses, illustrating that such an extensive review was unnecessary for the project’s limited scope.

The Klamath Water Users Association submitted testimony that provides additional details about this experience that provide valuable perspective as you consider improvements to NHPA.

Owyhee Irrigation District – The Owyhee Irrigation District (OID) in Eastern Oregon operates the Reclamation-owned Owyhee project, which consists of the Owyhee Dam, the 53-mile-long Lake Owyhee, pipelines, tunnels, 9 pumping plants, and more than 900 miles of canals and drains. With many facilities nearing their 100th year of operation, OID is pursuing a long-term effort to modernize its facilities and prepare the District for another 100 years of operation. This work involves replacing aging and failing facilities, piping open canals, increasing automation, and a variety of other improvements, all of which require compliance with Section 106 of the NHPA.

In a recent phase of work that involves piping a portion of the Kingman Lateral and maintaining the siphon that runs underneath the Owyhee River, OID attempted to get ahead of potential mitigation and were informed in initial verbal and informal comments from the Oregon SHPO that a cultural review was needed. While complying with that feedback and producing a report the SHPO came out with its official comments requiring a cultural historian to review the project. Ultimately, that review led to the requirement of ensuring the date stamp on the existing siphon that goes under the Owyhee River remains visible. Unfortunately, during review of the response to that initial requirement, the SHPO then added an additional requirement for an interpretive sign, before adding a third requirement of an entry in the Oregon Encyclopedia. In each instance of additional requirements, the challenge was not so much the mitigation measures required, but the fact that each was added after 30 days of us submitting the response to the preceding ask from SHPO. This made for a much more time-consuming process that was unnecessary to accomplish the goal of preserving the historic value of these facilities.

Conclusion

Oregon has a long history of collaborative, locally driven solutions at the watershed level. OWRC members are working with our state and local stakeholders plan and implement innovative infrastructure projects and programs benefiting irrigated agriculture, communities, and the environment. Finding a balanced approach that preserves history while enabling progress is an

important and welcome effort and we appreciate the Committee beginning a conversation on the matter. We stand ready to engage with the Committee on solutions to the implementation challenges we've faced.

From: [Katherine Peresolak](#)
To: [fortherecord \(Energy\)](#)
Subject: Peresolak - October 29, 2025 — Full Committee Hearing to Examine the Section 106 Consultation Process Under the National Historic Preservation Act
Date: Tuesday, November 4, 2025 7:47:00 PM

Good evening,

I am a Secretary of the Interior- Qualified Archaeologist working toward the cultural resources management of heritage in Pennsylvania. I urge you to support the existing NHPA and Section 106 laws and implementing regulations as they currently are before this Administration targets it.

The public benefit for increased research, increased understanding of our shared past, tourism opportunities and economic gain, and the overall increase in sense of place are just some of the benefits of the NHPA and resulting surveys, reports, public outreach, and successful completion of the Section 106 process.

The willful disregard for the Section 106 process with the total destruction of the White House's East Wing is horrifying and shows a blatant disregard for existing cultural resources management law by this Republican Administration and Donal Trump and his supporters. Federal agencies and many others have successfully completed the Section 106 process without undue delay to the project, and as one small piece of the other required surveys and laws that must be followed during overall project movement and completion. Data shows that archaeology and cultural resources management DOESN'T unduly slow or stop projects like so many like to say.

Please support the current law and support and fund the necessary organizations and departments (THPOs, SHPOs, the ACHP, etc) that fulfill their legal commitment to help carry this process through to completion!!

Kate Peresolak
373 N. Meadow Lane
Harrisburg, PA 17112



Full Committee Hearing to Examine the Section 106 Consultation Process Under the National Historic Preservation Act

**Statement of Russ Carnahan
President, Preservation Action**

Senate Committee on Energy and Natural Resources

November 04, 2025

Chairman Lee, Ranking Member Heinrich, and members of the Committee:

Preservation Action appreciates the opportunity to present written testimony about the Section 106 consultation process and the National Historic Preservation Act (NHPA).

Preservation Action members and supporters include thousands of preservation advocates, professionals, developers, and community leaders across the country, including members in nearly every state who work directly with federal, state, and local partners to protect and revitalize historic places. Since our founding in 1974, we have served as the national voice for preservation advocacy—mobilizing citizens to engage with Congress and federal agencies on the policies that shape America’s preservation system.

NHPA: A Proven, Bipartisan Framework

The NHPA was enacted nearly 60 years ago in response to a collective realization that too many of our historic places that help tell the story of America were being destroyed, in many cases due to federally funded infrastructure projects.

The NHPA created a national framework that allows us to identify, protect, and celebrate the historic places that tell our shared history. The Act established State Historic Preservation Offices and later Tribal Historic Preservation Offices (SHPOs & THPOs), and the Advisory Council on Historic Preservation (ACHP) — building a partnership that connects local voices to federal decision-making. **Section 106 reviews ensure that federal agencies consider the impact of federal undertakings on historic and cultural resources before decisions are made.** When implemented properly, it brings community input, Tribal Nations, and preservation expertise to the table early and often to help projects move forward.

This framework has succeeded because it **balances preservation with progress.**

Efficient, Collaborative and Flexible

Section 106 does *not* stop or block projects. Instead, it puts forth a consultation process that ensures federal agencies ***consider*** historic properties early in project planning and seek ways to avoid, minimize, or mitigate adverse effects. The process does not dictate or require a certain outcome and ultimately, even when there are disagreements between stakeholders, the final decision on a project proceeding rests entirely with the federal agency.



Section 106 reviews are largely an efficient and predictable process. SHPOs and THPOs review tens of thousands of federal undertakings annually, **the vast majority of those reviews find no adverse impacts** and are completed within a matter of days. SHPOs are required to respond to Section 106 requests within 30 days and many are completed much quicker. In Washington state, for example, out of more than 5,000 Section 106 reviews performed by the SHPO in FY25, only 8% found adverse effects and the average review response time for undertakings was 3.7 days. In Kentucky, out of nearly 3,000 reviews in FY24, only 2.2% found adverse effects, and the average turnaround was 11 days.

In addition to the roles of SHPOs and THPOs, the Advisory Council on Historic Preservation (ACHP) plays a vital role in Section 106 reviews by administering regulations that help guide the process and developing programmatic agreements. Every year, ACHP staff participate and assist in some of the most important and complicated cases by helping to resolve disputes. The ACHP also provides a very well-regarded training program to educate federal officials and other stakeholders on the Section 106 process. These ACHP functions are critical to ensure consistency in the assessment and resolution of adverse effects on historic resources, which allows federal projects to move efficiently throughout the process.

Section 106 actually helps avoid delays by finding and addressing potential adverse impacts early in the process. By ensuring that the public is consulted at the outset, costly project redesigns and delays from litigation are avoided.

Section 106 regulations have built-in flexibility that can improve effectiveness and efficiency. Section 106 provides multiple ways for federal agencies to comply. Program alternatives, like Programmatic Agreements, allow agencies to expedite review for routine or recurring project types, which can accelerate federal project delivery while ensuring preservation values are upheld. For instance in Utah, the SHPO signed a Programmatic Agreement with the Federal Emergency Management Agency to navigate cultural resource effects during a declared emergency.

Section 106 has a proven track record of success with countless successful federal projects completed — highways, energy infrastructure, housing, and more — while protecting historic places of national and community importance.

Improvements to Section 106

While the NHPA and the Section 106 consultation process have been hugely successful, we recognize that no process is perfect and there are opportunities for the federal permitting process to be improved and made even more efficient. However, **changes that weaken the NHPA, call for arbitrary timelines, or exempt certain project types from review don't lead to a more efficient process** — in fact they often lead to more project delays and higher costs. Bypassing Section 106 and avoiding public engagement often causes more controversy later on, leading to more costs, delays, and litigation.

Consistent with what we heard from witnesses during the hearing, Preservation Action agrees that some of the primary causes of inefficiencies in the process and for project delays are not starting Section 106 reviews early enough in the process; a lack of consistency in how Section



106 reviews are administered across federal agencies; a need to digitize historic records; and insufficient funding and staffing for SHPOs and THPOs. Preservation Action recommends:

1. Increased investment in State and Tribal Historic Preservation Offices and the Advisory Council on Historic Preservation

The Section 106 process relies on the capacity of SHPOs and THPOs, who perform the bulk of review work and consultation in addition to myriad of other duties including evaluating nominations to the National Register of Historic Places, administering the Historic Tax Credit Program, and much more.

SHPOs and THPOs are funded through the Historic Preservation Fund (HPF), which derives its funding from Outer Continental Shelf royalties, not tax-payer dollars. The HPF is currently authorized at \$150 million annually, which has not been increased since the HPF was established over 50 years ago.

In recent years, the demand on HPF funds has increased dramatically. Demand on SHPOs and THPOs continues to grow with increased federal investments, yet funding for SHPOs and THPOs has not kept pace with this increased workload. This is especially pronounced for THPOs as more and more THPO offices are established every year. Increased federal support for SHPOs and THPOs would allow these offices to hire and retain qualified staff to review projects in a timely manner and expand the use of digital tools and mapping systems to further streamline the review process.

Additionally, the ACHP plays a critical role in the efficiency of Section 106 by administering regulations that guide the process, developing programmatic agreements, offering important training programs, and assisting federal agencies in some of the most complicated Section 106 cases. Unfortunately, recent dramatic budget cuts to the ACHP threatens to cause more uncertainty for federal agencies in the review process. **Restoring and providing robust funding for the ACHP would further promote an effective and efficient Section 106 process.**

Simply put, adequate funding is essential to maintaining the efficiency and effectiveness of Section 106 and ensures that preservation continues to be a partner in federal project delivery.

2. Encourage Agencies to begin the Section 106 process as soon as possible.

As we discussed earlier, an agency should commence Section 106 reviews at the beginning of a federal undertaking. This can be completed concurrently with other reviews and helps to avoid potential delays or increased costs later in the process.

Additionally, providing increased training for federal agencies about the Section 106 process, including on program alternatives like Programmatic Agreements, would provide more consistency and predictability in the application.

Conclusion



The **National Historic Preservation Act** and its **Section 106 consultation process** represent a **bipartisan success story**. For nearly six decades, they have demonstrated that preservation and progress are not competing goals—they are complementary responsibilities of good governance.

As we prepare to commemorate the 250th anniversary of our nation, the 60th anniversary of the NHPA, and the 50th anniversary of the Historic Preservation Fund in 2026, we encourage the Committee to reaffirm the importance of the NHPA.

We recognize that permitting can be improved and made more efficient. Increased funding for SHPOs and THPOs would enhance staffing, technology, and consultation capacity, helping them process reviews more efficiently, and keep pace with growing federal project demands. And encouraging agencies to commence Section 106 reviews early in the process can avoid potential delays and costs later on.

Preservation Action thanks the Committee for holding this important hearing and appreciates the opportunity to provide written testimony. We look forward to working with you and are happy to answer any questions.

Joseph B. Herrera
Governor



Jeff M. Suina
Lt. Governor

P.O. Box 255
255 Cochiti Street
Cochiti Pueblo, NM 87072-0255
PH# (505) 629-4284
cochiti.org

October 29, 2025

The Honorable Chair, Senator Mike Lee
The Honorable Ranking Member, Senator Martin Heinrich
United States Senate Committee on Energy & Natural Resources
366 Dirksen Senate Building
Washington, DC 20510

Re: Pueblo de Cochiti Testimony Regarding Oversight Hearing entitled “Full Committee Hearing to Examine the Section 106 Consultation Process Under the National Historic Preservation Act”

Dear Chairman and Members of the Senate Committee on Energy & Natural Resources,

On behalf of Pueblo de Cochiti, I am honored to submit the following testimony for the Committee’s consideration on its review of the National Historic Preservation Act (NHPA) Section 106 Consultation Process. Our Tribal Nation appreciates the Committee’s attention to how the federal government is continuing to implement consultation under the Section 106 Process with Tribes.

I. Introduction

Our Pueblo is a sovereign Tribal Nation who, since Time Immemorial, has maintained an ongoing connection and commitment to the lands, waters, traditional cultural landscapes, and historic resources within what is now considered New Mexico and across the broader Southwest. Our cultural survival, history, prayers, and very identity depend on the integrity of the land and sacred sites. The preservation of these cultural resources and sacred landscapes is a critical and enduring priority in our legacy responsibility to ensure the health and well-being of our nation, community, families, and future generations.

The NHPA Section 106 consultation process is one of the few legal shields we have to ensure federal agencies pause and consider the effects of their decisions on these irreplaceable sacred places, both at the individual project level and across broader cultural landscapes. Section 106 consultation is not simply an opportunity for public comment, it is a government-to-government process that affirms the legal and moral obligation of the United States to engage Tribes as sovereign Nations. It is through this process that the trust responsibility is put into practice.¹

¹ 36 C.F.R. § 800.2(c)(2)(ii)(A) (agencies must consult with any Indian tribe that attaches religious and cultural significance to historic properties that may be affected). Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) (2000). Executive Order 13007 (Indian Sacred Sites) (1996).

II. Our Pueblo's Experience with Section 106 Consultation

At the individual level of our Pueblo, Section 106 has been both a critical tool and a significant challenge in our efforts to protect sacred and cultural sites. In recent years, our Pueblo has participated in consultation for several federal undertakings, including the Electrical Power Capacity Upgrade Project (EPCU) in the Santa Fe National Forest and led by the National Nuclear Security Administration's Los Alamos Field Office with the U.S. Department of Energy, as well as the U.S. Forest Service (USFS) within the U.S. Department of Agriculture. The Project is in progress, despite the Pueblo de Cochiti's vocal and written objections as specified in the Pueblo de Cochiti Tribal Council Resolution No. 2025-05. The Pueblo de Cochiti was notified late in the process regarding the proposed EPCU. This lack of timely consultation has limited the Pueblo's ability to adequately review, assess, and provide input on potential impacts to our lands, resources, and cultural interests. Early and meaningful engagement is essential to ensure that our sovereignty and environmental concerns are fully respected in such projects.

In addition, as part of larger collectives through the All Pueblo Council of Governors, our Pueblo has demonstrated the strength and necessity of the landscape-level approach through our long-standing advocacy to protect sacred places such as Chaco Canyon, Bears Ears, and the Grand Staircase Escalante. These regions hold interwoven histories, stories, migration routes, ceremonial significance, and hundreds of thousands of cultural resources shared across our Pueblo with many other Pueblos and Tribes. Through Section 106 consultation, our Pueblo has consistently emphasized that these are not isolated archaeological sites, but living cultural landscapes that continue to shape our identity, religions, and stewardship responsibilities. Our advocacy in these areas shows that when Section 106 is properly implemented with early engagement, adequate funding, ongoing collaboration, and genuine respect for Tribal sovereignty, it can not only safeguard entire cultural ecosystems central to our ways of life and survival but also lead to the best outcomes for all stakeholders involved.

At the same time, our experience revealed persistent challenges that limit the effectiveness of Section 106 in practice. Too often, consultation begins after key project decisions have already been made, leaving little opportunity to meaningfully influence scope, design, or alternatives. Our staff face barriers of limited resources, capacity, and access to complete and timely information. The documents we receive are frequently technical or redacted, making it difficult to assess the full extent of potential harm. Indigenous knowledge systems—our oral histories, ceremonial teachings, and cultural frameworks—are often undervalued or treated as supplemental rather than foundational to understanding a site's significance. Even when agreements are reached, implementation and compliance may proceed without sufficient Tribal oversight or accountability. These challenges weaken what is otherwise one of the few legal mechanisms available to ensure that federal agencies pause and fully consider the effects of their undertakings on sacred places, traditional lifeways, and the broader landscapes that define our heritage.²

III. Our Pueblo's Concerns with Recent Section 106 Reforms

The recent federal administrative and executive reforms to the Section 106 process deepen existing challenges. New policies and actions by the federal government and the Advisory Council on Historic Preservation (ACHP)—particularly those aimed at “fast-tracking” infrastructure and energy development—are actively undermining the intent of the National

² 54 U.S.C. § 306108 (formerly 16 U.S.C. § 470f)—the Section 106 provision of the NHPA. 36 C.F.R. Part 800 (Protection of Historic Properties).

Historic Preservation Act and the federal government’s trust responsibility to Tribes. The expanded use of so-called “emergency” procedures, which now include energy supply chain disruptions, allows agencies to rush projects forward with little to no meaningful consultation. Under these procedures, Tribes and the public are sometimes given as little as seven days to respond to consultation notices, while agencies bypass cultural resource surveys and dismiss Traditional Indigenous Knowledge as optional.³

Such practices directly contradict the government-to-government principles that Section 106 is meant to uphold. They strip away the very process that ensures our sacred landscapes, ceremonial areas, and traditional cultural places are identified and respected before they are damaged or destroyed. When agencies rely solely on incomplete records and ignore the deep cultural knowledge passed down through generations, the result is predictable: sacred sites go unrecognized, traditional cultural properties remain unmapped, and the living heritage of our people is placed at greater risk. These reforms represent a deliberate shift away from meaningful consultation toward expediency, a tradeoff that sacrifices Tribal cultural preservation for bureaucratic convenience.

The government shutdown has had a substantial impact on the Pueblo de Cochiti, particularly due to the suspension of operations within the Bureau of Indian Affairs (BIA), BLM, and USFS. These interruptions have delayed coordination and management activities at Kasha-Katuwe Tent Rocks National Monument and have impeded ongoing discussions concerning energy transmission development on the Caja del Rio plateau. Furthermore, the shutdown has stalled progress on the land-into-trust process, creating additional obstacles to the Pueblo’s efforts to safeguard and effectively manage our ancestral lands. This lack of communication and accountability during the shutdown amplifies the existing inequities in the consultation process and further undermines Tribal trust in federal commitments to uphold Section 106 and the trust responsibility.

Perhaps most importantly, these policy changes undermine the solemn Indian federal trust responsibility. This responsibility is not symbolic—it is a binding legal obligation arising from treaties, statutes, and the recognized fiduciary relationship between the United States and American Indian Tribal governments. The Supreme Court has long affirmed that the United States’ trust duties toward Tribes must be carried out with the “most exacting fiduciary standards” and the “moral obligations of the highest responsibility and trust.”⁴ Federal agencies therefore have a legal duty to protect Tribal lands, resources, and cultural heritage with diligence, good faith, and full transparency. By prioritizing administrative expediency and development over meaningful consultation, federal agencies fail to uphold this standard of care. When Section 106 processes are abbreviated, underfunded, or ignored, it not only weakens the protection of sacred sites but also violates the government’s fundamental obligation to honor Tribal sovereignty and safeguard the cultural continuity of Tribal Nations. The trust responsibility, as carried out in part through the Section 106 Process, is the cornerstone of the government-to-government relationship and must guide every federal action affecting Tribal lands and heritage.

³ 36 C.F.R. § 800.12 — Emergency Situations. Advisory Council on Historic Preservation (ACHP) “Program Comment on Emergency Situations,” 2024 (Federal Register Vol. 89 No. XXX). See also ACHP Guidance on Section 106 Reviews in Emergency Situations (2020 update).

⁴ *Seminole Nation v. United States*, 316 U.S. 286, 297 (1942); *United States v. Mitchell*, 463 U.S. 206, 225 (1983).

IV. Recommendations

To restore the integrity of the Section 106 process and uphold the federal government's trust and treaty responsibilities to Tribes, our Pueblo offers the following recommendations:

1. **End Misuse of “Emergency” Procedures.** Federal agencies must immediately stop applying the NHPA's emergency consultation provisions to non-disaster-related projects, especially those involving energy infrastructure, transmission corridors, or critical minerals near Tribal lands. Sacred sites and cultural landscapes are not emergencies; they deserve the full, deliberate review that the law requires.
2. **Guarantee Sufficient Consultation Time.** Federal agencies should be required to provide Tribes with a minimum of 30 days to respond to consultation notices, with extensions as needed to accommodate cultural protocols, internal review, and the involvement of traditional leaders and preservation staff.
3. **Require Full Cultural Resource Surveys Before Project Approval.** Agencies must conduct comprehensive field surveys, led or co-led by Tribal cultural specialists and traditional knowledge holders, prior to issuing any findings of effect or approvals. Reliance on incomplete or outdated records should be prohibited.
4. **Recognize and Integrate Traditional Indigenous Knowledge (TIK).** Federal regulations should explicitly require that TIK be treated as authoritative and integral to cultural resource identification and evaluation—not supplemental or secondary to Western archaeological frameworks.⁵
5. **Strengthen Enforcement and Accountability.** The Advisory Council on Historic Preservation (ACHP) and lead federal agencies should establish mechanisms for independent Tribal review and enforcement when consultation obligations are not met. This includes penalties for agencies or applicants who proceed without adequate consultation or compliance with executed agreements.
6. **Reaffirm the Federal Trust Responsibility.** Congress and the Administration must ensure that all Section 106 reforms are consistent with the government's trust and treaty responsibilities, including the duty to protect Tribal cultural heritage, sacred sites, and the continued exercise of religious and traditional practices.
7. **Appropriately Dedicate THPO Funding.** To ensure true parity in consultation, Congress should appropriate dedicated, recurring funding for Tribal Historic Preservation Offices (THPOs) and cultural departments to engage in Section 106 reviews. Without this support, consultation remains an unfunded mandate.⁶

⁵ See Advisory Council on Historic Preservation Policy Statement on Indigenous Knowledge and Historic Preservation, March 21, 2024.

⁶ 54 U.S.C. § 302701 (Establishing the Tribal Historic Preservation Officer Program). Department of the Interior Secretarial Order 3403 (2021) — Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in Decision Making Processes).

8. **Ensure Continuity of Tribal Coordination During Government Shutdowns.** Establish contingency protocols within BLM, BIA, and USFS to maintain communication and critical project progress with tribal governments during funding lapses, preventing disruptions to land management, access, and trust processes.
9. **Expedite the Land-Into-Trust Process.** Streamline administrative procedures and allocate dedicated staff and resources to address backlogs and ensure tribal land restoration efforts are not delayed by federal shutdowns or staffing shortages.
10. **Enhance Interagency Coordination.** Improve communication among federal entities (BLM, BIA, USFS, DOE, etc.) to ensure consistent and transparent consultation with tribes on projects affecting ancestral and culturally significant lands.

Congress and federal agencies should establish protocols to maintain communication and critical coordination with Tribal governments during government shutdowns to prevent disruptions to land management and trust processes. Early, meaningful consultation must be required for all federal projects—such as infrastructure and energy upgrades—to ensure Tribes are notified in time to provide meaningful input on potential impacts. Additionally, agencies should streamline and adequately staff the land-into-trust process and strengthen interagency coordination to ensure consistent, transparent engagement with tribes on matters affecting ancestral and culturally significant lands. By implementing these measures, the federal government can begin to repair the damage caused by recent administrative changes and strengthen the Section 106 process so that it once again serves its intended purpose—protecting the living cultural landscapes that define our identity, history, and survival as Pueblo peoples.

Thank you for reviewing our testimony.

Respectfully,



Joseph B. Herrera
Governor, Pueblo de Cochiti



Jeff M. Suina
Lieutenant Governor, Pueblo de Cochiti



Quinault Indian Nation

POST OFFICE BOX 189 • TAHOLAH, WASHINGTON 98587 • TELEPHONE (360) 276-8211

November 05, 2025

The Honorable Mike Lee
Chairman
Senate Committee on Energy and Natural
Resources
304 Dirksen Senate Building
Washington, DC 20510

The Honorable Martin Heinrich
Ranking Member
Senate Committee on Energy and Natural
Resources
304 Dirksen Senate Building
Washington, DC 20510

Dear Chairman Lee and Ranking Member Heinrich,

The Quinault Indian Nation ("QIN") respectfully submits this letter for inclusion in the official record of the Senate Committee on Energy and Natural Resources' hearing entitled "Examining the Section 106 Consultation Process Under the National Historic Preservation Act," held October 29, 2025. We appreciate the Committee's attention to this critical issue and welcome the opportunity to share the QIN's perspective on how Section 106 of the National Historic Preservation Act ("NHPA") can better fulfill its intent to protect Tribal cultural heritage and uphold Tribal sovereignty. For any questions concerning or additional information regarding these comments, please reach out to John Loving at JLoving@ktslaw.com or Tyson Johnston at TJohnston@quinault.org.

Section 106 consultations remain one of the most important mechanisms through which the federal government fulfills its trust responsibilities to Tribes. Through the Section 106 process, Tribes can ensure that culturally significant areas, sacred sites, and other traditional cultural properties (TCPs) are identified and respected before being impacted by federal actions.

For the QIN, and other Tribes, the Section 106 process is essential because many of the places that embody a Tribe's history, spirituality, and identity often lie outside present reservation boundaries. For example, much of the Quinault people's ancestral homelands, which continue to sustain our community today, encompass extensive river systems, forestlands, and coastal areas outside the Quinault Indian Reservation.

Section 106 is the primary avenue through which the QIN's voice can be heard when federal projects may affect these places. Preserving the ability of Tribes to provide input on off-reservation ancestral and sacred areas is essential to honoring both the letter and spirit of the NHPA.

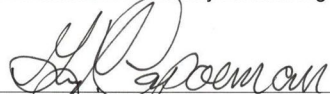
Equally important, Section 106 supports Tribal self-determination. It affirms that the federal government must engage in direct government-to-government consultation. Consistent, meaningful implementation of Section 106 allows Tribes to define what is culturally significant and to ensure that Tribal knowledge informs project planning. On-reservation, Tribes should retain the principal authority to make determinations regarding the identification and treatment of historic and cultural resources.


Unfortunately, implementation of the Section 106 process remains inconsistent across federal agencies and administrations, resulting in confusion and inefficiency. Chronic underfunding further undermines the effectiveness of the process. Many Tribes, including the QIN, must operate with limited staff and resources to review a growing number of federal undertakings. Without stable and sufficient federal support for Tribal Historic Preservation Officers (THPOs) and consultation capacity, Section 106 risks becoming a procedural formality rather than a meaningful exercise of consultation, consent, and trust responsibility. Sustainable funding is essential to ensure timely, substantive engagement and to prevent the very delays the process seeks to avoid.

The QIN therefore offers the following recommendations to concerning the Section 106 process:

1. Congress should provide dedicated, recurring funding that reflects the actual workload facing Tribal preservation offices. The current funding structure for THPOs remains inadequate given the volume and complexity of federal undertakings requiring review. Strengthened and sustained funding would enable Tribes to participate fully and efficiently in the Section 106 process, while also supporting job development and training.
2. Federal departments and agencies must adhere to consistent and accountable consultation standards. The Section 106 process functions best when consultation begins early, continues throughout project planning, and allows for meaningful dialogue rather than after-the-fact notice. Establishing uniform requirements across agencies would help ensure that all Tribes are treated equitably and that the federal government meets its trust and statutory obligations in a predictable and transparent manner.
3. Congress should further reaffirm that Tribal governments hold the primary authority to determine the significance and appropriate treatment of cultural resources located within their own lands. Agency actions within reservation boundaries should defer to Tribal expertise and decision-making, recognizing that Tribes are best positioned to identify and protect their own cultural and historic resources. Respecting Tribal determinations in this context advances both self-governance and efficient use of federal resources.
4. Federal law should explicitly protect off-reservation ancestral lands, sacred sites, and other TCPs that remain central to Tribal identity and cultural continuity. Ensuring that Tribes retain the ability to identify and advocate for the protection of these areas is critical to honoring the government's trust responsibility and to preserving the integrity of our shared national heritage.

The Quinault Indian Nation appreciates the Committee's commitment to strengthening the Section 106 process. We look forward to continuing to work with you to ensure that federal actions respect Tribal sovereignty, protect sacred and culturally significant sites, and provide the resources necessary for meaningful consultation.


 Guy Capoeman
 President Quinault Indian Nation


 Noreen Underwood
 Vice President Quinault Indian Nation

From: [Stuart Rathbone](#)
To: [fortherecord \(Energy\)](#)
Subject: Rathbone - October 29, 2025 - Full Committee Hearing to Examine the Section 106 Consultation Process Under the National Historic Preservation Act
Date: Wednesday, November 5, 2025 1:31:04 PM

During the recent hearing there were several attempts to portray the Section 106 process as an impediment to progress, that halted projects for facile reasons. None of these attempts to characterize the process in this manner were successful, and no examples of such failures were provided. It was however acknowledged that the Section 106 process is not perfect and that good faith efforts to improve efficiency and clarity could be undertaken.

Much of the discussion focused on inter-agency agreements that could be put in place to speed up the process and minimize the problems that can occur when different agencies reach different conclusions regarding the same project. This has much merit and should be encouraged. However very little time was spent discussing the fieldwork and reporting that occurs ahead of the SHPO performing their Section 106 review. At present thousands of cultural resources specialists are employed across the US on cultural resources inventory occurring on Federally owned land, or relating to projects that receive Federal funding or are subject to Federal oversight. It should be acknowledged that they are typically overworked and underpaid, highly qualified and experienced professionals who receive one of the lowest financial returns of any graduate level career. One person questioned why Section 106 should lead to hard working construction workers being unable to work, although he provided no examples of this actually happening, and clearly demonstrated a poor understanding of how flexible the construction industry is; there is ALWAYS another job to go to. But why should cultural resources staff not receive the same level of concern if their livelihoods were to be threatened by changes to the current implementation of Section 106? I assure you that they work equally as hard, and likely far harder, during the typical field season than many construction workers. They endure the same long workdays, same exposure to heat, same requirements to travel long distances away from their homes, but are also spending each shift hiking 10 or more miles over rough terrain, or excavating large trenches by hand, something no construction worker would ever undertake today.

As now practiced Cultural Resources Inventory for Section 106 approaches a minimum level of recordation. Resources are identified, rapidly investigated, mapped, photographed and brief descriptions are prepared. Later this data will be transferred to a simple form and simple recommendations about whether the resource has eligibility for the National Register are included, following the clear and long-established guidelines that were included in the NHPA. There is no feasible way to reduce this minimalist level

of recording beyond simply not recording at all. Which is exactly where I personally believe there could be a saving in time and effort. If clear national guidance were produced by the Advisory Council on Historic Preservation or some other valid body, there is a small class of frequently encountered resource types that could be given a broad exemption from the requirement to record them in detail. These could include transport related features such as minor historic-era paved roads, dirt roads, railroad grades, and infrastructure related features such as power lines and irrigation ditches. Such features rarely benefit from detailed field examination and are potentially better understood at a much wider, regional scale. As such mapping these resource types using handheld GPS units and providing a few photographs to capture their appearance should be sufficient. That data could then be used in the future to understand regional patterns about the development of transportation and infrastructure, should someone choose to do so. Additional examples of feature types that could be handled by a simple GPS boundary and a few photographs might include unassociated historic trash scatters, mining claims, mining prospect pits, historic fences etc. Any such provisions for exemptions should include clear instructions that any individual resource should be subject to more detailed recordation if the cultural resources specialists on the ground determine there is good reason to do so.

Such systematic exemptions are already in place at a local scale for land controlled by certain Federal Agencies, for example the National Forests in California already exempt minor logging roads, forest service system roads, and minor logging railroads from the need to record them, arguing that these are ubiquitous throughout the forests and lack individual significance. The existing use of such exemptions could be reviewed, improved, and then rolled out at a national level. This could provide a non-trivial reduction in time and money expenditure without any reduction in our duties to protect the historic environment.

Finally, the question of Indirect Visual Impacts was repeatedly mentioned in the hearing. I would agree that defining where indirect Area of Potential Effect boundaries should be defined is currently vexing. I remain quite confused that the viewshed analysis tools included in GIS software packages are not routinely used for these determinations, but there is a current lack of guidance on how this should be implemented. As mentioned at the hearing, there are many different environments in the US. The extent of visual impacts will alter radically between, for example, an open sage brush plain and a heavily forested mountainside. Contra to the Utah SHPO, I believe that a national level GIS protocol could be established that takes into account local differences in terrain, vegetation, and the level of the built environment. This could be very simple to use and very effective. What would remain to be established then is how far from a historic

resource a development will have a legitimate negative impact. That could easily be determined at a national level, and take into account the different potential impacts of a range of project types from large buildings to small utility lines. Such a system could be easily implemented, using existing technology and software already used by the Federal Agencies. The results of each viewshed analysis should be subject to SHPO review and modification, allowing for the sort of local knowledge mentioned by Dr Merritt to influence the final outcome. This is a relatively simple measure that could be achieved through a small allocation of congressional funds that could make a significant and long-lasting impact on the efficiency of the Section 106 Process.

Thank you for your time, I trust this is a good faith effort to reform Section 106 in a useful and positive manner, and not merely a performative act ahead of an intended gutting of the legislation. We are all custodians of this country's heritage, and it is beholden on all of us, whether directly involved in the process or not, to protect those parts of the historic environment that are important to us in the present, and that will be important to future generations. There is no reason for the desire to protect the historic environment to be in conflict with the need for economic and social development in the present. It's called Cultural Resources Management for that very reason. Let's manage it.

Dr Stuart Rathbone, RPA
Nicholls Consulting Engineering,
300 E. 2nd Street, Suite 1210
Reno, Nevada 89501

Stuart Rathbone

Project Architectural Historian & Archaeologist

p (775) 329-4955

e srathbone@ncenet.com



300 E. 2nd Street, Suite 1210, Reno, NV 89501

www.ncenet.com

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From: [Haley Receveur](#)
To: [fortherecord \(Energy\)](#)
Subject: Receveur - October 29, 2025 - Full Committee Hearing to Examine the Section 106 Consultation Process Under the NHPA
Date: Wednesday, November 5, 2025 9:18:39 AM

Dear Senators,

I watched the hearing to examine Section 106 live and with great interest. I have worked in the field of historic preservation for the past 25 years, and for much of that time have been involved with Section 106 compliance.

The context for why we have the National Historic Preservation Act of 1966 (NHPA) is vital in understanding why the process is so important to giving citizens of the United States a voice. Prior to its passage, swaths of neighborhoods, places of cultural and historical significance, and sacred spaces were sacrificed with little consultation in the name of progress. The most vulnerable were communities populated by marginalized populations, who sometimes saw their communities irreparably and permanently destroyed.

I'd like to echo the data shared by Dr. Chris Merritt and Senator Gallego that demonstrates that a very small percentage of Section 106 consultations result in an Adverse Effect finding, and that these reviews often result in outcomes that meet the needs of all interested parties. As Mr. Steven Concho eloquently stated, 106 is not a courtesy but is a legal duty of our government—it is a duty that works and helps protect our nation's irreplaceable cultural heritage.

As a practitioner, I agree that efforts should be made to make the process more efficient. As Dr. Merritt, Senator Cortez Masto, Senator Heinrich, and Senator Hickenlooper all pointed out, efficient reviews require adequate funding and staffing. Early coordination with stakeholders and better cross-agency coordination will help expedite timelines.

Determining significance of cultural resources is always going to be a subjective process requiring the guidance of subject matter experts who are trained to weigh the varying aspects of significance and integrity. Our cultural heritage is worthy of such scrutiny and care. Generations who came before recognized these truths and fought to create the legal framework that exists under the NHPA. Please protect this vital and successful legislation.

Sincerely,

Haley Receveur

6888 Challenge Lane
Indianapolis, IN 46250

From: dawnreid@archcon.org
To: [fortherecord \(Energy\)](#)
Subject: Reid - Hearing to Examine Section 106 Consultation Process under the NHPA-October 29
Date: Tuesday, November 4, 2025 11:23:45 AM

I viewed your committee's hearing on the Section 106 process with great interest and was disappointed with the narrowness of the scope. The THPO and SHPO representatives presented coherent testimony. Unfortunately, the representative from the energy sector focused solely on a relatively small project being conducted by a relatively small firm. If you are truly interested in how the Section 106 consultation process is affecting our nation's energy infrastructure project, I suggest you gather information from larger firms, such as Duke Energy, Dominion Energy, and other similar corporations.

As a Cultural Resources Management professional for 35 years, I have never had a project stopped for issues pertaining to cultural resources. There are processes in place to address all disturbance/damage to significant cultural resources, including cemeteries (which can be relocated if necessary). Likewise, in direct contradiction of Senator Cotton's remarks, I have never been involved in any lawsuits instigated by "radical environmentalists" or others pertaining to cultural resources. As CRM consultants are such a vital part of the consultation process, their views would provide real world information on how the regulations are addressed by the various federal and state agencies. In general, we archaeologists are on the ground many months or even years before a project is slated for construction. According to my clients, cultural resource consultation comprises a minute percentage of energy project budgets and rarely result in construction delays.

Certainly, the consultation process could be improved and Dr. Merritt presented some very good suggestions. However, it is the federal agency who grants the permit under which Section 106 is activated. The SHPO are consulting parties and, although frequently deferred to by the permitting agency, they are state agencies and operate based on their individual office's interpretations of the regulation. Based on Dr. Merritt's testimony, Utah SHPO has an extremely efficient and effective system in place. In my state of North Carolina, SHPO reviews can take up to 90 days. While this does become a frustration for many of my clients, it has never resulted in construction delays or shutdowns of any project that I am aware of. But, again, this is due to the individual SHPO office and not the regulation per se. If more specific guidance for state agencies could be provided by the federal permitting agencies, this issue could possibly be improved.

Cultural resource regulations are not resulting in our nation's inability to meet our energy needs. If indeed, we have an energy "emergency," it would be more prudent to further expand our renewable resources, as has been the focus of much of my company's work for the last decade. But roadblocks to renewable energy have been put in place by the current administration, thus belying the "truth" of the energy emergency.

I appreciate your committee's efforts to examine the Section 106 consultation process, but encourage you to conduct further research on the issue. Hard data on the costs incurred and possible construction conflicts due to cultural resource regulatory consultation should be gathered nationwide in order to adequately determine if Section 106 is a real problem or simply the current scapegoat.

Thank you for your consideration of my views.

Dawn Reid, President
Archeological Consultants of the Carolinas, Inc.

**Testimony of Katherine Slick,
New Mexico State Historic Preservation Officer 2003-2009
Senate Energy and Natural Resources Committee
Regarding Consultation Process Under the National Historic Preservation Act
October 29, 2025**

I appreciate the opportunity to submit this testimony as the New Mexico State Historic Preservation Officer from 2003 through 2009. My staff and I administered the Section 106 process for the state balancing preservation with development by ensuring public consultation and responsible decision-making. We found the 106 process provides for transparency and accountability in federal decision-making, ensuring that stakeholders, including our office, Tribal Historic Preservation Officers (THPOs), local governments and the public, had a voice in the project outcomes.

The vast majority of Section 106 reviews are conducted efficiently and without significant delay. For example, during the 2024 fiscal year, the New Mexico SHPO had a total of 2,571 Section 106 undertakings, 26 were found to have adverse effects on the cultural resources. The NMSHPO reviewed the total number of undertakings on average in 11.25 days.

To achieve that efficiency, in 1980, the State of New Mexico worked with state and federal agencies to develop an archaeological records system. In 1993, the New Mexico Cultural Resource Inventory System upgraded the technology to prevent unnecessary delays by digitizing archeological records and historic property inventories. Today it is an automated database that can be accessed from the field 24 hours of the day for managing and accessing information on cultural resources, including archaeological sites and historic properties. It integrates geographic, management, and research data from various sources, and is designed to maintain the confidentiality of cultural resource information while providing access to qualified users.

In addition, the New Mexico SHPO, federal agencies and tribes have 40 active Programmatic Agreements that establish identification and consultation processes, exempted activities or undertakings, and agreed-upon time frames for the 106 review while ensuring that mandated historic preservation compliance responsibilities are met. Agreements provide industry and project proponents with more predictability and control over schedules and budget necessary to operate efficiently while demonstrating the value of cultural resources. I have included examples of undertakings in the record that illustrate how adverse effects were resolved and resulted in programmatic reviews in place today.

Federal agencies and SHPOs/THPOs often face resource constraints in carrying out the 106 process and as with any process, opportunities exist to improve the efficiency of Section 106, with the goal of making the process more pragmatic and solution-focused. Directives to federal agencies to initiate the Section 106 process as early as possible in project planning would facilitate reviews. Increases in funding and staffing for Federal agencies, SHPOs, and THPOs will improve timely reviews and consistent application of the regulations. Supporting the use of

technology will facilitate decision-making by providing early information for planning in order to avoid destruction of cultural resources.

I have found Section 106 provides is a critical framework for balancing stewardship with responsible development. By addressing implementation challenges through improved resources, coordination, and clarity, we can ensure the process operates more efficiently without compromising the vital protections it provides for our national heritage.



November 5, 2025

The Honorable Mike Lee
 Chairman
 Senate Committee on Energy and Natural Resources
 304 Dirksen Senate Building
 Washington, DC 20510

The Honorable Martin Heinrich
 Ranking Member
 Senate Committee on Energy and Natural Resources
 304 Dirksen Senate Building
 Washington, DC 20510

SUBJECT: / RE: Section 106

Dear Chairman Lee and Ranking Member Heinrich:

This letter is written on behalf of *sduk^walbix^w*, “The People of Moon the Transformer,” the Snoqualmie Indian Tribe (“Snoqualmie” or “Tribe”), a federally recognized Indian Tribe and sovereign and self-determined government. We write this letter in reference to the Full Senate Committee (“Committee”) on Energy and Natural Resources Hearing to Examine the Section 106 Consultation Process under the National Historic Preservation Act (NHPA) held Wednesday, October 29, 2025, at 9:30 a.m. Our Tribe respectfully submits this letter for inclusion in the official written record of the hearing. If you have any questions or would like further clarifications on our comments, please reach out to John Loving at jloving@ktslaw.com and Michael Ross at m.ross@snoqualmietribe.us.

We thank the Committee for holding a hearing that included statements on the importance of the Section 106 consultation process under the NHPA. Section 106 Tribal consultations are the primary mechanism for sovereign Tribal governments to participate in a federal review process that brings heightened attention to otherwise ignored and neglected Tribal relationships with places and landscapes. The NHPA Section 106 process is the cornerstone of protecting and preserving historic properties and properties of traditional religious and cultural importance in the United States. Therefore, robust consultation at every step of the process is critically important in protecting Tribal traditional religious and cultural freedoms and practices. It is also an elemental process to better ensure Tribal rights and opportunities are afforded within the frameworks of the federal government’s trust responsibility through its various departments and agencies.

We would like to focus our comments on two statements made in the hearing, the first on the 106 process being “ambiguous” and that protecting cultural resources can make developments difficult to begin and complete. We are in full agreement with Mr. Steven Concho, Tribal Historic Preservation Officer for the Pueblo of Acoma, and his statement that, “Section 106 is procedural. It ensures agencies consider effects and consult in good faith; it does not mandate a particular substantive outcome or prohibit development. This point bears repeating: consultation is important as it enables an agency to take into account effects but does not dictate a particular result.”

9571 Ethan Wade Way | Snoqualmie, WA 98065 | P: 425.888.6551 | www.snoqualmietribe.us | Page 1 of



The second statement we would like to address is this; “the reliance on subjective and difficult-to-measure concepts like traditional cultural properties (TCPs) allows for decisions that go beyond clear statutory requirements, treating vague concepts with the same significance as clearly delineated historic sites.” To say that TCPs are “subjective and based on difficult-to-measure concepts” could not be further from the truth. Such characterizations overlook decades of federal guidance, scholarship, and precedent affirming that TCPs are integral components of our Nation’s shared heritage and are evaluated using well-established rigorous criteria within the National Register of Historic Places (NRHP) frameworks.

Like many religious and sacred places for peoples of different communities, for the Snoqualmie Tribe, Snoqualmie Falls, and its contributing lands, airs, and waters, is rooted in the ancestral heritage of the Tribe and is among the most intensively historic and culturally significant places within our ancestral territory; it is a geographic feature that has been central to our history, religion, spirituality, and traditional religious and cultural practices since time immemorial. In our traditional history, conveyed in a sacred story of transformation and creation, the mists from the Falls connect worlds. Prayers are offered; blessings are delivered. Snoqualmie people practice age-old ceremonies at Snoqualmie Falls to this day. While the Falls are sacred to the Snoqualmie people, they have always been, and always will be, a place of historical, cultural, and geographical importance for all peoples, Native and non-Native alike. The Falls are for all people, for all

Snoqualmie Falls exemplifies why processes to reasonably and meaningfully develop heightened recognition and consideration as well as informed protection and preservation measures for cultural resources, historic properties, properties of traditional religious and cultural importance, and any place or property with TCP significance are essential. The Snoqualmie Falls TCP is listed on the NRHP, creating heightened considerations and some layers of protection and preservation for this sacred site. Before the existence of the NHPA and its Section 106 process, the Falls were desecrated by the development of a hydropower complex. If Section 106 consultation existed at the time of development, appropriate information and greater attention would have been paid to the vital importance of the Falls to and for the Snoqualmie people, and measures established that would have avoided, minimized, and/or mitigated the adverse effects of this development—the very purpose of the Section 106 process.

Central to the considerations of the Committee and while considering any potential legislation, the fact that the Falls are a TCP listed on the NRHP has not stopped the operations of the hydropower complex. Rather, this NRHP status and the Section 106 process pursued in the Federal Energy Regulatory Commission (FERC) re-licensing for the hydropower complex in the mid-2000s better informed how operations can more properly be permitted with respect to and for this sacred geography and our associated beliefs, knowledge systems, and practices as a unique Tribe and people.

For years, the Snoqualmie Tribal Council has diligently worked on behalf of the Snoqualmie people and with the federal government to ensure trust responsibilities are upheld and all legal rights and



opportunities afforded to the Tribe in order to avoid, minimize, and/or mitigate, where possible, any adverse effects on our cultural resources, historic properties, properties of traditional religious and cultural importance, and sacred sites. The Tribe has relied on the rights and opportunities of the Section 106 process as the only body of law attentive to place specificity to better protect our traditional religious and cultural freedoms and practices that are irrevocably tied to specific locales, sites, and landscapes. To close, we underscore that any attempt to exempt, streamline, or expedite the consultation opportunities afforded in the 106 process is, by definition, an effort to extinguish Tribal rights and neglect federal trust responsibilities to Tribes as sovereign governments.

Snoqualmie Tribe's Recommendations to Strengthen Section 106

1. Increase funding for the Tribal Historic Preservation Officer/s (THPO) fund. Any legislation considered should increase funding to the THPO fund to ensure that Tribes can independently and expeditiously work through the Section 106 process with the federal government. This additional funding would help address any perceived delays in the Section 106 consultation process.
2. Strengthen the Section 106 government-to-government consultation process in legislation to ensure that federal departments and agencies initiate early and meaningful consultation with Tribes, and defer to Tribal consultation standards and protocols as identified in Executive Order 13175. Our experience has been that Section 106 reviews for projects are often delayed by ongoing and repeated attempts by federal agencies, developmental project proponents, and/or their consultants to evade, undermine, usurp, or otherwise alienate Tribal rights during Section 106 reviews.
3. Ensure Tribes are provided the opportunities and compensated for the studies required to address and inform Section 106 consultation and sequential compliance processes outlined at 36 Code of Federal Regulations (CFR) Part 800 to provide clear pathways for Section 106 reviews to be accurate, effective, efficient, and timely, and to rectify associated concerns raised by the Committee.

Again, thank you for holding a hearing on the Section 106 consultation process and for allowing us to submit these comments for the record that address the federal government's trust responsibilities to the Tribe. We look forward to working with you on future legislation developed on this important issue that acknowledges the obligations that the Snoqualmie Tribe and other Tribal Nations have to protect the lands, airs, and waters and all associated cultural resources, historic properties, properties of traditional religious and cultural importance, and sacred sites.

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Respectfully,

DocuSigned by:
Steven Moses 11/5/2025
BFAA35FF98E048D.

Steven Moses, Director of Snoqualmie
Tribe Department of Archaeology &
Historic Preservation

DocuSigned by:
Michael Ross 11/5/2025
E0D268DD359B44F.

Michael Ross, Deputy Director of
Snoqualmie Tribe External Affairs



SOCIETY FOR AMERICAN ARCHAEOLOGY

Testimony of the Society for American Archaeology Before the Senate Energy and Natural Resources Committee Regarding the Section 106 Consultation Process Under the National Historic Preservation Act

October 29, 2025

The Society for American Archaeology (SAA) appreciates this opportunity to present testimony on the consultation process under the National Historic Preservation Act (NHPA). The Section 106 review procedure and its requirement for consultation is the mechanism by which the foundational law of historic preservation in the United States—the NHPA—functions. The facts show that the reviews are carried out efficiently, with an overwhelming number of undertakings having no adverse impact on historic properties. In addition, when the surveys are carried out properly, the projects that do impact historic resources are seldom delayed during the construction phase because those issues are dealt with during the planning process. This ensures that infrastructure development can proceed in a timely manner while preserving and protecting irreplaceable heritage for future generations.

The SAA is an international organization that, since its founding in 1934, has been dedicated to research about and interpretation and protection of the archaeological heritage of the Americas. With more than 6,000 members, the SAA represents professional and avocational archaeologists, archaeology students in colleges and universities, and archaeologists working at tribal agencies, museums, government agencies, and the private sector. The SAA has members throughout the United States, as well as in many nations around the world.

The Section 106 process

The NHPA is the cornerstone legislation for preserving the historic, prehistoric, and traditional cultural places loved and revered by the people of this nation. It was passed in 1966 because Congress recognized (in Section 1 of the law) that “the spirit and direction of the Nation are founded upon and reflected in its historic

heritage,” and that “historic properties significant to the Nation’s heritage are being lost and substantially altered, often inadvertently, with increasing frequency.” Congress went on to assert in this first section of the statute that “the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans.”

The method by which the authors of the bill achieved this vision was to require federal agencies to have procedures (under Section 106 of the Act-) for identifying historic properties impacted by federal or federally sponsored undertakings and evaluating their eligibility for listing in the National Register of Historic Places (NR). The NHPA further requires that agencies’ procedures for Section 106 include consultation with State Historic Preservation Offices (SHPOs), local governments, Tribal Historic Preservation Offices (THPOs), and others to take into account any adverse effects on properties listed in the NR or found through the Section 106 process to be eligible for listing on the NR.

Once research and ground surveys are completed, if the agency, the SHPO, or THPO agree on the eligibility of a property, then that property is treated as eligible or not eligible. If a property is determined eligible, it simply means that project planners must consider the effects of the undertaking on that property. It does **not** mean that the undertaking cannot proceed or that the property must be preserved. It simply means that undertakings can be altered or redesigned, if reasonably possible, so that the damage to an NR eligible historic property or properties is minimized, mitigated, or avoided. If doing so is not reasonably possible, the undertaking can proceed following thorough documentation of the historic property before it is damaged or destroyed.

Consultation is the key

The consultation requirement for identification of historic properties and evaluation of their NR eligibility is the critical component of the Section 106 process. For federal agencies to consider the effects of their actions on historic properties during project planning, they need to know what historic resources are located within the area. This identification and determination of historic properties within a project’s scope of work cannot take place without consultation.

It is the SHPOs, THPOs, local groups and governments that are best positioned to know and understand the historic resources in their areas. In fact, the NHPA was written in the way it was precisely to ensure that these voices were heard during the planning and construction of federal undertakings. Prior to 1966, federal

planners would design and build infrastructure and other projects with little or no input from state, tribal, or residents, resulting in the irretrievable loss of historic and cultural resources. The NHPA was designed to avoid this outcome and to ensure accountability to resources important to taxpayers who ultimately fund federal undertakings.

The data show that the Section 106 process is working

In Utah from 2020 to 2024 the SHPO reviewed 8,088 undertakings. Of these, 7,036 were by consensus determination classified as *No Historic Properties Affected*, allowing these undertakings to be approved by federal agencies. In Montana, over the past five years 4,408 undertakings have been reviewed, with only 98 resulting in a finding of adverse effect. In Arizona in 2024 the SHPO reviewed 1,451 undertakings. Just 24—less than 2%—required additional measures such as memoranda of understanding to resolve adverse effects.

At the national level the picture is similar. Between 2001 and 2021, more than 4.2 million undertakings took place in the 50 US states, the District of Columbia, the five territories, and three freely associated states. Of those, about 3.3 million, or more than 78%, were found to not have NR eligible properties or to have no adverse effect. These data clearly demonstrate that Section 106 is functioning as intended, with most undertakings cleared quickly.

While SHPOs and THPOs are meeting their 30-day review timelines, inadequate funding and the recent withholding of FY 2025 Historic Preservation Fund (HPF) appropriations by the administration have pushed these offices to their limit. They rely upon HPF grants for the federal share of their operating budgets. Further, many THPOs are still one-person offices that also run cultural and language education programs. Their workload is significant and growing. The HPF's authorization expired in 2023, and in addition funding for SHPOs and THPOs has not kept pace with inflation. Reauthorization by Congress and an increase of the HPF appropriations to \$250 million per year is vital if SHPOs and THPOs are to continue their consultation work.

Projects that do adversely impact historic properties are not delayed by Section 106 consultation

In those 20 years between 2001 and 2021, about 457,000 federal undertakings were found to include an NR eligible property or to have an adverse effect on that property. Most of these undertakings were altered or redesigned so that damage to

the historic resources was avoided or mitigated. Those modifications were carried out in direct consultation with SHPOs and THPOs in an expeditious fashion. Of the millions of total Section 106 undertakings during that time, **less than 0.5%** required the creation of a formal agreement document among the relevant SHPO, federal agency, affected Native American tribes, project proponent, local jurisdictions and communities, and other interested public groups in order to resolve the project's harmful effects on significant historic properties.

Protecting historic properties through Section 106 creates economic growth

Americans value their history, and the growth of heritage tourism demonstrates that fact. People visit archaeological and historic sites. Since 1908, Mesa Verde National Park has hosted about 37 million visitors. Since 1934 Gettysburg National Military Park has been visited by more than 136 million people. Since 1983 the San Antonio Missions National Historic Park has been visited by more than 42 million people, easily exceeding an average of one million visitors a year since its inception. This means money and jobs for the local communities in which these historic sites reside. According to one recent report by Astute Analytica¹, heritage tourism in the United States generated \$125.2 billion in 2023. The table at the end of our testimony demonstrating archaeological site visit revenue and job creation in Arizona is taken from an April 2025 article by former SAA president Dr. Jeffrey Altschul in *Popular Archaeology*². It is Section 106 reviews that help identify and preserve such places for tourism activity.

A great example of how Section 106 can work to the benefit of both the economy and historic preservation is the Little Rock River Port in Arkansas. This location, according to state and local sources, has a rich history that includes precontact and historic archaeological sites. It is also a major location for economic growth, with many companies building production facilities and creating jobs for Arkansans. One of these companies, which builds composite wood decking material, chose a location in the port that contained the oldest recorded archaeological site in the county as well as the remains of a historic plantation. The Section 106 consultation process involved the United States Army Corps of Engineers, the Little Rock River Port, the Arkansas Historic Preservation Program and State Historic Preservation Office, the Arkansas Archeological Survey, and several tribal partners, particularly the Quapaw Nation. Extensive archaeological investigations of the site were conducted, and certain features of the site, including precontact Native American mounds, were preserved. The company in question was still able to build on the

site. There is a display of the project and its cultural resources discoveries in the Little Rock River Port headquarters.

Section 106 reviews also create jobs

The committee also needs to be aware of the employment ramifications of this issue. The cultural resource management industry is composed of hundreds of businesses that generate more than \$1.2 billion per year and employ over 20,000 people. These are the private sector firms and personnel that conduct most of the Section 106 surveys. Their work directly supports the consultation process between agencies, SHPOs, THPOs, and local governments.

In conclusion, the SAA strongly supports the NHPA, Section 106, and the consultation process that makes it all possible. This system is efficient and effective. When it is carried out properly, Section 106 enhances project delivery by ensuring that progress is not interrupted by the inadvertent discovery of historic resources during construction. This saves the taxpayer time and money, generates economic development, and facilitates infrastructure deployment and other growth, all while still preserving our historic resources.

Table 1. Visitation rates, economic output, and jobs created by National Park Service Units in Arizona (2023-2024). Statistics for visitation are for 2024 (NPS 2025); economic output and jobs are for 2023 (Flyr and Koontz 2024).

<u>Park (NP), Monument (NM), Historic Site (NHS), or Memorial (NMem)</u>	<u>Visitors</u>	<u>Economic Output</u>	<u>Jobs</u>
Archaeological or Historical			
Wupatki NM	220,205	\$18,743,000	190
Canyon de Chelly NM	387,433	\$53,029,000	574
Tuzigoot NM	108,283	\$10,543,000	93
Montezuma Castle NM	379,967	\$37,554,000	332
Tonto NM	30,840	\$3,221,000	28
Casa Grande NM	104,429	\$11,527,000	102
Fort Bowie NHS	8,483	\$382,000	4
Tumacacori NM	35,256	\$3,309,000	33
Hubbell Trading Post NM	46,419	\$4,301,000	49
Walnut Creek NM	187,205	\$12,072,000	126
Coronado NMem	164,246	\$12,311,000	123
Total	1,672,766	\$166,992,000	1654
Natural			
Pipe Spring NM	24,530	\$2,038,000	22
Grand Canyon NP (GCNP)	4,919,163	\$1,022,191,000	10,600
Navajo NM	58,442	\$2,606,000	37
Sunset Crater Volcano NM	73,260	\$6,451,000	67
Petrified Forest NP	559,254	\$43,596,000	451
Organ Pipe NM	182,612	\$18,754,000	164
Saguaro NP	946,369	\$112,857,000	982
Chiricahua NM	71,390	\$4,561,000	51
Total	8,507,786	\$1,380,046,000	14,028
Excluding GCNP	3,588,623	\$357,855,000	3,608
Percentage of Arch and His with GCNP	19.7	12.1	11.8
Percentage of Arch and His without GCNP	46.6	46.7	45.8

ⁱ <https://www.astuteanalytica.com/industry-report/heritage-tourism-market>

ⁱⁱ <https://popular-archaeology.com/article/in-defense-of-section-106-of-the-national-historic-preservation-act/>



Executive Summary
Testimony of the Society for Historical Archaeology
Before the Senate Energy and Natural Resources Committee
Regarding the Section 106 Consultation Process
Under the National Historic Preservation Act
October 29, 2025

Section 106 is an Efficient and Essential Process

The Society for Historical Archaeology (SHA) strongly affirms the **effectiveness and necessity of the Section 106 process** under the National Historic Preservation Act (NHPA). Data decisively demonstrates that Section 106 is not a significant source of project delay but is, in fact, a vital procedural framework that facilitates informed federal decision-making and protects irreplaceable national cultural and historical assets.

Key Takeaways

The evidence presented by the SHA, supported by data from State Historic Preservation Officers (SHPOs) and research, leads to the following conclusions:

Section 106 Does Not Cause Widespread Project Delivery Delays:

- SHPOs reviewed approximately **4.3 million** Section 106 undertakings between 2001 and 2021.
- The majority of these reviews resulted in findings of "no historic properties" or "no adverse effect," allowing projects to proceed **quickly and efficiently**. SHPO reviews were often conducted within 30 days.
- Less than **0.5%** of all reviewed projects resulted in an adverse effect requiring a formal Section 106 agreement to address the adverse effect.
- **Consultation is Key and Efficient:**
 - The Section 106 process is a **procedural statute** requiring federal agencies to consider effects through consultation with SHPOs, Tribal Historic Preservation Officers (THPOs), federally recognized Tribes, local governments, and the public.
 - State data shows **rapid turnaround times**; for example, the average SHPO review time is less than four business days in several states.
- **Project Delivery Delays are Due to Misapplication of Section 106 Regulations:**
 - Project delays attributed to Section 106 are overwhelmingly the result of **late engagement** by federal agencies and project proponents. This includes initiating the Section 106 process late,

- failing to use available Geographic Information Systems (GIS) and other databases for early planning, and making late design changes during project development.
- Effective early planning, as demonstrated by the Federal Highway Administration and state Departments of Transportation, **streamlines project delivery**.
 - **Tools for Efficiency are Working:**
 - Federal agencies, in partnership with the Advisory Council on Historic Preservation (ACHP) and SHPOs/THPOs, have implemented **Programmatic Agreements** and **national program alternatives** to exclude low-risk, small-scale projects from individual Section 106 reviews.
 - The use of **Historic Preservation GIS and databases** (e.g., in Washington State) is accelerating review comments to a matter of days.
-

Recommendations

The SHA urges the Senate Committee to recognize Section 106 as an effective, streamlined process. To further enhance efficiency and uphold the NHPA's Section 106 mandate, we strongly recommend that Congress:

1. Reaffirm commitment to the Section 106 process and the principles of the National Historic Preservation Act.
2. **Increase Funding for THPOs and SHPOs:** Lack of resources at Tribal and State Historic Preservation Offices is a known source of delay. **Increased funding** via the Historic Preservation Fund (HPF) is essential to ensure adequate staffing and to expand the use of technological tools like historic preservation GIS, which are proven to expedite reviews.
3. **Promote Early Planning:** Encourage and incentivize federal agencies and project proponents to fully utilize existing **historic preservation data and early planning approaches** to avoid adverse effects *before* formal Section 106 initiation.



**Testimony of the Society for Historical Archaeology
Before the Senate Energy and Natural Resources Committee
Regarding the Section 106 Consultation Process
Under the National Historic Preservation Act
October 29, 2025**

On behalf of its members, the Society for Historical Archaeology (SHA) appreciates the opportunity to present testimony for the Senate Committee on Energy and Natural Resources' hearing examining the Section 106 process under the National Historic Preservation Act (NHPA).

The SHA was formed in 1967, and is the largest scholarly group concerned with the archaeology of the modern world (A.D. 1400-present). SHA has 1,230 members representing professionals from academia, governments sectors, and private companies. The main focus of the SHA is the era since the beginning of European exploration. SHA promotes scholarly research and the dissemination of knowledge concerning historical archaeology. The SHA is specifically concerned with the identification, excavation, interpretation, and conservation of sites and materials on land and underwater.

The Section 106 Process

The Section 106 regulations at 36 CFR § 800 require federal agencies to consider the effects of federally funded, permitted, or licensed projects (i.e., "undertakings" as defined in the Section 106 regulations) on places listed in or determined eligible for listing in the National Register of Historic Places (i.e., historic properties). These historic places include historic buildings, districts and structure; archaeological sites; and places of religious and cultural significance to Native American Tribes, Native Hawaiian organizations, and other descendent communities.

As stated in 36 CFR § 800.1(a), the purpose of Section 106 is to accommodate historic preservation concerns with the needs of federal undertakings through consultation among federal agencies and other parties with an interest in the effects of the undertaking on historic properties. The steps in the Section 106 process begin with the identification of historic properties within a project area, and if there are historic properties within a project area, the federal agency assesses the effects of the proposed project on these historic properties. If the project will adversely affect historic properties, then the agency resolves the adverse effect through avoidance, minimization, or mitigation of the effects, again in consultation with other parties.

Consultation is the Core Element of the Section 106 Process

During each step in the Section 106 process, the federal agency is required to consult with several consulting parties, including State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs), federally recognized Tribes, local governments, and citizens or citizen groups with a vested interest in the project or project area. These consulting parties are best

positioned to know and understand the historic properties in their jurisdictions and their value to their respective communities. The NHPA was written to ensure that these voices were heard during the advancement of federal undertakings. If a project is being proposed by a non-federal entity, such as a state Department of Transportation, then this project proponent is also a required consulting party under the Section 106 process. The federal agency also consults with members of the public. The Advisory Council on Historic Preservation (ACHP) may also be involved in the Section 106 consultation process. The ACHP oversees the Section 106 process and acts as an interpreter for the Section 106 regulations and as an arbiter or facilitator between federal agencies and consulting parties if disagreements arise. The criteria for ACHP participation in the Section 106 process are laid out in the Section 106 regulations, found in Appendix A of 36 CFR § 800. The final decision on the outcome of the Section 106 process, no matter the views of the ACHP or consulting parties, lies with the federal agency.

In summary, Section 106 is a procedural statute that does not establish a required outcome. The Section 106 process does not stop or impede development projects. Instead, through the consultation process, Section 106 of the NHPA provides an important opportunity for all Americans to have a voice in federal activities.

The Section 106 Process Results in the Preservation of Our Nation’s Historical and Cultural Heritage

As demonstrated in the Success Stories showcased on the ACHP website¹, the outcomes of the Section 106 process often result in the preservation of irreplaceable historic properties. The following is just a partial list of examples included in the ACHP website:

- A routine bridge replacement in Chester County, South Carolina saves a Revolutionary War battlefield.
- A creative partnership among the Section 106 parties restores a healing landscape for veterans in Dayton, Ohio.
- A historic hotel complex in Monterey, California is updated to meet National Defense needs.
- Creative mitigation involving a historic bridge in Milton/Madison, Wisconsin is heralded as a success for the local economy.

Majority of Federal Undertakings Do Not Affect Historic Properties

Altschul (2025)² provides a summary and expansion on a report commissioned by the National Conference of State Historic Preservation Officers (2023:22)³ that examined the results of SHPO Section 106 reviews for the period 2001 to 2021. The report shows that during this period:

- More than 4.2 million undertakings took place in the 50 U.S. states, the District of Columbia, the five territories, and three freely associated states.
- The majority of these undertakings were found to have no effect on historic properties.
- Fewer than 500,000, or about 10%, were found to have an adverse effect on historic properties, and most of these undertakings were altered or redesigned by project proponents so historic properties would not be impacted, and the project proponent was then free to proceed without project delays.

Of the millions of Section 106 undertakings, less than 0.5% resulted in an adverse effect on

¹ <https://www.achp.gov/success-stories>

² <https://popular-archaeology.com/article/in-defense-of-section-106-of-the-national-historic-preservation-act/>

³ https://www.placeeconomics.com/wp-content/uploads/2023/11/HPF-Cumulative-Report_1.19.2024_smaller.pdf

historic properties that could not be avoided and required the preparation of a Section 106 agreement among the federal agency, relevant SHPO, affected federally recognized Tribes, non-federal project proponent, and local government. These agreements stipulate how all these parties would work together to resolve a project's adverse effects on historic properties. It should be noted that projects requiring the execution of a Section 106 agreement involved properties of significant historical and cultural value to the nation, states, local communities, Tribes, and other descendant communities. These Section 106 agreements protected the values embedded in these significant places while allowing projects to proceed.

The Society for American Archaeology⁴ has also compiled Section 106 review data from specific states:

- So far in 2025 in Washington State, the SHPO has reviewed 5,371 undertakings, with just 45 determined to adversely affect historic properties. That is less than 1%.
- In Montana, over the past five years 4,408 undertakings have been reviewed, with just 98 found to have impacted historic properties.
- In Arizona in 2024, the SHPO reviewed 1,451 undertakings. Just 24, less than 2%, required additional measures to resolve adverse effects through the execution of Section 106 agreements.
- From 2020-2024 the Utah SHPO reviewed 8,088 undertakings. Of these, 7,036 were found to have no historic properties impacted or no adverse effect. Only 264, or 3.2%, were determined to adversely impact historic properties.

Tools and Approaches to Streamline and Expedite the Section 106 Process

Federal agencies, the ACHP, SHPOs, THPOs, Tribes, and many state project proponents currently use a number of tools and approaches to streamline and expedite Section 106 reviews, in addition to bringing predictability to the Section 106 process. These tools include state-specific programmatic agreements that exclude a vast number of small-scale projects from Section 106 reviews, projects that have minimal potential to adversely affect National Register listed or eligible properties. The ACHP, in partnership with federal agencies, has also put in place several national program alternatives that streamline Section 106 reviews or exclude entire classes of federal undertakings from Section 106 reviews.⁵

Several SHPOs have in place historic preservation Geographic Information Systems (GIS) and other databases that serve as the foundation for efficient Section 106 review. As a result of these systems and databases, a few states can provide their review comments on federal undertakings to federal agencies within a matter of days. For example, the Washington State SHPO responds to Section 106 project review submittals between 2.7 days and one business week using the state's historic preservation GIS and database technology for analysis and communication with federal agencies. These state systems and databases are also used by federal, state agencies, and some non-federal and state project proponents during early project planning to identify historic property "red flags" that have the potential to impact project delivery schedules and costs and then use this information to design projects that avoid or minimize impacts on these historic property "red flags" prior to or during initiation of Section 106 reviews.

Linked with the use of these GIS and other types of databases, is the consideration of potential impacts on historic properties during early project planning, often prior to the initiation of Section

⁴ Manager, Government Affairs, Society for American Archaeology, personal communication

⁵ https://www.achp.gov/program_alternatives

106 reviews. As a result, consideration of Section 106 issues can be fully integrated into the project delivery schedule. This early consideration of historic preservation issues is a hallmark of Federal Highway Administration (FHWA) and state Departments of Transportation (state DOT) approaches to effective project delivery. We direct you to a National Cooperative Highway Research Program (NCHRP) report⁶ that details FHWA's and state DOT's effective early consideration of cultural resources as part of project delivery. Though this report was published in 2009, the majority of FHWA and state DOT offices continue to use the tools, approaches, and processes discussed in this report.

Project Delivery Delays Result from Inappropriate Application of the Section 106 Process

When delays to projects occur, it is rarely from inherent issues with the Section 106 process itself but stem from inefficiencies with federal agencies or project proponents. Some of the more common examples of delays include:

1. Project proponents do not conduct early project planning, using available historic preservation records and databases, to determine the potential impacts of their projects on historic properties. As a result, the identification of project impacts on historic properties occurs late in the project development process. As noted above, early consideration of historic preservation issues can avoid this from occurring in majority of cases.
2. Project proponents make late or last-minute design changes during project development, resulting in reopening the Section 106 review process and potentially resulting in newly identified impacts on historic properties. This situation can be avoided by more comprehensive and early project planning.
3. Initiating the Section 106 process late in the project development process rather at the time of project initiation.
4. Not engaging Section 106 consulting parties and the public early in the project development process, only to encounter issues raised by the consulting parties and the public late in project development. This can result in project delays and conflicts with the public and consulting parties.

Lack of Resources and Funding Can Delay the Section 106 Process

The Section 106 review process can also be delayed because of the lack of funding, staffing, and resources within Tribal historic preservation offices:

- As noted by the ACHP⁷ many Tribes do not have the financial resources to effectively participate in the Section 106 review processes or to meet Section 106 regulatory deadlines. This is a result of the lack of funding provided to THPOs through Historic Preservation Fund grants as the number of Tribes with THPOs increases but the HPF funding for THPOs has remained more or less static for years.
- Many SHPOs also do not have sufficient funding to maintain staffing and to make technological improvements that would make the Section 106 process more efficient, such as putting in place GIS and other historic preservation databases or improving and expanding existing state GIS and other databases.

⁶ [https://onlinepubs.trb.org/onlinepubs/archive/notesdocs/25-25\(49\)_FR.pdf](https://onlinepubs.trb.org/onlinepubs/archive/notesdocs/25-25(49)_FR.pdf).

⁷ <https://www.achp.gov/sites/default/files/reports/2018-06/ImprovingTribalConsultationinInfrastructureProjectsFinalApril272017.pdf>

SHA, therefore, strongly recommends that Congress increase funding for and promote the tools and approaches used by federal agencies, SHPOs, THPOs, and Tribes to continue streamlining and expediting Section 106 project reviews.

Thank you for considering SHA's testimony for the Senate Committee on Energy and Natural Resources' hearing examining the Section 106 process under the National Historic Preservation Act. Do not hesitate to contact SHA if you have any questions related to our testimony, or if you require additional information on the effectiveness of the Section 106 process to balance the needs of project delivery and the protection of our nation's irreplaceable archaeological, historical, and cultural heritage.



STEEL MANUFACTURERS
ASSOCIATION

October 29, 2025

The Honorable Mike Lee
Chairman
Committee on Energy and Natural
Resources
United States Senate
Washington, DC 20510

The Honorable Martin Heinrich
Ranking Member
Committee on Energy and Natural
Resources
United States Senate
Washington, DC 20510

Dear Chairman Lee and Ranking Member Heinrich:

The Steel Manufacturers Association (SMA) appreciates the opportunity to submit a statement for the record for the hearing to examine the Section 106 consultation process under the National Historic Preservation Act (NHPA).

SMA represents electric arc furnace steel manufacturers, which account for more than 70 percent of domestic steel capacity. Our members operate across the country and range in size from America's largest publicly traded steel producers to single facility, privately-owned family businesses. They make essential products for America's infrastructure, national security, and energy and manufacturing sectors. Most importantly, they create well-paying, community-sustaining jobs.

Steel manufacturers are investing in America's communities, deploying \$25 billion in capital here in the U.S. to modernize, expand, and construct facilities; unfortunately, many of these investments are delayed by our nation's cumbersome permitting laws. The sad reality is that red tape and complicated bureaucracy from the federal government make it difficult to complete critical economic development projects on time and on budget. We need to fix our broken permitting system.

The NHPA is no exception, and steel manufacturers note difficulties navigating well-intentioned requirements surrounding historic preservation; in particular, the consultation requirements under section 106 of the NHPA.¹ Experiences with these requirements are typified by nebulous timelines, lack of coordination, and varied scope. Taken together as part of comprehensive permitting reform, common sense changes to NHPA section 106 consultation can accelerate project delivery while protecting our nation's historic properties.

¹ See, e.g., America Builds: Clean Water Permitting and Project Delivery Hearing before Subcommittee on Water Resources and Environment, 119th Cong. (2025) (statement of Noah Hanners, Executive Vice President, Nucor Corporation, on behalf of the National Ass'n of Manufacturers). Available at https://transportation.house.gov/uploadedfiles/02-11-2025_wrc_hearing_-_noah_hanners_-_testimony.pdf.



STEEL MANUFACTURERS
ASSOCIATION

As the Committee contemplates NHPA section 106 reforms, SMA respectfully submits several broad principles for consideration:

- Align trigger for NHPA consultation with “major federal action” requirement under the National Environmental Policy Act
- Refine scope of “area of potential effects” and property eligibility determinations
- Clarify consideration of impacts to mean those with direct effects on historic properties
- Establish timelines for consultation with consulting parties
- Prescribe limits to judicial review of agency decisions

Steel manufacturers are committed to responsible stewardship of our nation’s history while advancing projects that promote economic growth and prosperity. SMA looks forward to working with the Committee and interested parties to enact meaningful reforms to the NHPA. Thank you for your consideration.

Sincerely,

Brandon Farris
Vice President, Government Affairs
Steel Manufacturers Association

From: [Kristin Swanton](#)
To: [fortherecord \(Energy\)](#)
Subject: October 29, 2025 — Full Committee Hearing to Examine the Section 106 Consultation Process Under the National Historic Preservation Act
Date: Wednesday, November 5, 2025 10:52:30 PM

My comments are related to the October 29, 2025 hearing regarding “Hearing to Examine the Section 106 Consultation Process Under the National Historic Preservation Act”

Section 106 is an important regulation that identifies historic properties, evaluates impacts to historic properties, and encourages ways to avoid, minimize, and mitigate for adverse effects to historic properties. Based on my observation of the hearing, most of the objection was directed towards the identification portion. These evaluations are often done in tandem with other environmental regulations, including Section 7 of the ESA. This phase is often the most crucial phase because it lets a project proponent know what is in the area and it is our responsibility to balance the needs of the public with environmental concerns.

This phase, as part of all phases for section 106, employes, thousands of archaeologists, historians, and architectural historians across the country. I am one of many archaeologists who have learned from these projects to comply with section 106. The companies I have worked for include small cultural resource firms, state agencies, federal agencies, federally recognized tribes, universities, and international engineering firms. All of these organizations have a vested interest in the outcome of section 106 and offer a lot to local economies when surveys are being performed. By removing the identification process, a significant amount of cultural resource jobs, investment and local economies, and cultural resources will be affected.

As mentioned during the hearing, there are many paths forward to streamline the section 106 process. The importance of technology and having access to updated, reliable, GIS based information is essential for completing desktop reviews.

Agencies communicating with other stakeholders is also an important benefit. Communication should be early and often. It is estimated that one day loss of construction is equivalent to \$15,000, and yet the average 1 acre cultural resources survey is approximately \$30,000. When the work is done upfront, delays are avoided in the backend that reduce a project’s risk.

Another benefit that reduces project reviews are well designed program comments from the ACHP and programmatic agreements between agencies. Please note that many federally recognized tribes are often excluded from these processes, and therefore, under section 106, consultation is required for every project. Therefore, it is integral to provide informational and financial support to tribes to get their input early in the planning process.

The last benefit is having well funded state historic preservation offices and federal agencies with qualified staff. When agencies are shuttered and states have to cut back on their resources because of federal money being withheld, we can’t do our jobs well. As someone who has worked in both the public and private sector, but now works in the public sector, I can tell you that having adequate federal funding makes a huge difference in the final outcome. Let’s explore ways to streamline the process and work on the inefficiencies without throwing the baby out with the bath water.

Thank you for the opportunity to comment.
Kristin Swanton
10 Yardley Avenue
Levittown, PA 19054

From: [Matthew Terry](#)
To: [fortherecord \(Energy\)](#)
Subject: Terry - October 29, 2025 — Full Committee Hearing to Examine the Section 106 Consultation Process Under the National Historic Preservation Act
Date: Tuesday, November 4, 2025 3:20:53 PM

Hello, my name is Matthew Terry. I have been an archaeologist for the last 23 years and have worked in 19 states from Florida to Alaska. I worked on several projects you may have heard of before; DAPL, Sandpiper, Line 3, the Border Wall, are just a few of the more well known projects. After listening to the hearing last week it seems like some folks are wanting to implement some changes to the Section 106 process. I am here to give a couple of ideas that I strongly believe will expedite the Section 106 process while maintaining the integrity of ethical archaeology. The part of any archaeology project that takes the longest is the report writing. A lot of Cultural Resource Management firms tend to only hire a couple staff with a Masters degree in archaeology to manage their projects and write their reports. This is primarily due to the current Secretary of Interior (SOI) standards for an archaeologist. There is a vast network of archaeologists with Bachelors Degrees that can not supervise projects or write reports simply because they do not have a Masters Degree. So my suggestion is to change the SOI standards to include Bachelors Degrees with years of experience in lieu of a Masters Degree. This would also fall inline with President Trumps idea of experience over education.

Another part of the Section 106 process that may slow down a project is the 30 day review period. Due to staff shortages several SHPO and THPO offices are backlogged so much that they are requesting more time than the 30 day review period. Here's my suggestion to alleviate this problem. On projects that either did not find any archaeological sites or will not be having any adverse effects to existing archaeological sites, we could expedite the review process. As long as the report has been completed properly and meets the SHPO's guidelines, we should be able to provide all consulting parties with the negative findings report and give them up to 15 days to review it. They can still ask questions about the report but that would not change the fact than no archaeological sites were found. I have seen projects put on hold because one consulting party requested more information even though that information would not change the results of the survey.

I would also recommend having companies ask an archaeologist early on about their project instead of waiting until the project is ready for construction. For example, I worked on a timber harvest project in southern Missouri and when the client gave me a map of their project area I was able to find historic houses on old topographic maps. I knew if we found anything it would require a full report instead of a short form. So we worked with the client to adjust their timber harvest to avoid the possibility of impacting those historic sites. We quickly finished the survey and had a draft report finished within two weeks.

And the last thing that makes projects go faster is for federal agencies. Instead of contracting out small archaeology surveys we should be utilizing the federal workforce of archaeologists to do these small projects. Why wait three months for a contract to get approved when I could have the survey done in a week or two. And if we could use federal archaeologists across different agencies we could have a network of talented archaeologists that could quickly mobilize for any project in the country. The way this could work out would be to have a pool of interested federal archaeologists and when I have a project that needs 5 archaeologists I can call upon my cohort of archaeologists to come work for a week.

To sum it up, I strongly believe in the importance of the Section 106 process but I also believe I can help you make it more efficient. And if you allow folks with a Bachelors Degree and years of field experience to supervise projects you will have a large group of archaeologists that would work hard to get projects done quickly. I do currently work for the federal government so if you want to discuss any of these ideas more or ask me what I have seen that works or doesn't work, let me know. Thanks for your time and I look forward to hearing back from you.



Central Council of the Tlingit & Haida Indian Tribes of Alaska

907.586.1432 • 800.344.1432
 PO Box 25500 • Juneau, Alaska 99802
TlingitandHaida.gov

October 28, 2025

Honorable Chairman Lee
 U.S. Senate Committee on Energy and Natural Resources
 Washington, D.C. 20510

RE: Section 106 Tribal Consultation Is Not a Barrier - It Is a Legal Obligation of the United States

Dear Chairman Lee and Members of the Senate Committee on Energy and Natural Resources,

The Central Council of the Tlingit and Haida Indian Tribes of Alaska (Tlingit & Haida) is the oldest and largest federally recognized tribe in Alaska, serving 19 villages and representing 38,000 Tribal Citizens in communities stretching over 43,000 square miles across the Southeast Alaska Panhandle. Our region encompasses over a 500-mile strip of coastline and interior waterways, bordered between Canada and the Gulf of Alaska. Tlingit and Haida peoples have stewarded their traditional lands and waters from Southeast Alaska into the Yukon and British Columbia since time immemorial and continue doing so as a sovereign nation.

On behalf Tlingit & Haida, I write to underscore the critical importance of Section 106 of the National Historic Preservation Act (NHPA) and to firmly oppose any effort made by this Committee to weaken, "streamline," or eliminate Such proposals mischaracterize Tribal consultation as a barrier to development when, in truth, Section 106 remains one of the few federal tools that ensure the United States upholds its trust and treaty obligations to Tribal Nations.

Efforts to limit or remove Section 106 would not remove "red tape". It would remove the last procedural safeguard preventing the destruction of our Ancestors, our cultural sacred sites, and homelands that sustain our people. Our "historic properties" are not confined to the past – they remain a foundation for our identity, our governance, and our future.

For Alaska's Tribes and Tribal citizens, traditional cultural properties is not a relic stored behind museum glass. They are burial grounds where our Ancestors rest, sacred sites of ceremony and teachings, traditional hunting and fishing areas that feed our families, and the living record of over 10,000 years of stewardship. Removing or diminishing Section 106 would place these irreplaceable resources directly in the path of unchecked industrial development. That is not "efficiency" or progress, it is erasure.

The narrative that Tribal consultation slows progress omits what experience demonstrates: early, respectful consultation and the statutory review under Section 106 lead to better planning, fewer costly conflicts, and greater preservation of irreplaceable places. Federal agencies must not bypass Tribal Nations simply because we are often the only line of defense for lands and waters others seek to alter.

The circumstances in Alaska make this issue especially urgent. As glacial lakes flood, coastlines erode and permafrost melts, vital cultural sites are vanishing at a faster rate than they can be studied. Simultaneously, mining, energy, transportation, and military projects are expanding across enormous landscapes where Tribal histories remain largely unmapped. Section 106 is often the only statutorily-mandated review by which federal agencies must consider the effects of its action on properties eligible for listing in the National Register before proceeding.

We urge this Committee to stand on the right side of history and uphold its federal obligation:

- Protect Section 106 in full;
- Strengthen enforcement and accountability for federal agencies and development industries;
- Ensure that development does not come at the cost of our very existence.

At a June roundtable hosted by the Alaska Federation of Natives, the Secretary of the Interior emphasized that Tribal Nations are not barriers to progress – we are the original stewards whose knowledge ensures that development serves the people rather than harms them. Empowering Tribal governments is not a risk; it is the right and lawful path forward. Weakening Section 106 would move in the opposite direction of this commitment – silencing the sovereign governments whose laws, languages, and history pre-date the United States.

Our identity, our sovereignty, and our survival are intertwined with these places. Once a sacred site is destroyed, it is gone forever. There is no mitigation for the permanent loss of our Ancestors, our history, and the places that define who we are.

Trust obligations are not contingent upon political priorities or industry demands and timelines. It must persist through all administrations and all project cycles. We call upon you to honor your duty and uphold the law as intended: to ensure that Tribal Nations have a voice in decisions that affect our past, our present, and the generations yet to come.

Gunalchéesh / Háw'aa,



Richard J. Peterson
President

THE TOHONO O'ODHAM NATION
TESTIMONY OF THE HONORABLE VERLON JOSE, CHAIRMAN
U.S. SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
HEARING TO EXAMINE THE SECTION 106 CONSULTATION PROCESS UNDER THE
NATIONAL HISTORIC PRESERVATION ACT

October 29, 2025

Thank you Chairman Lee, Ranking Member Heinrich, and distinguished Members of the Committee for the opportunity to submit testimony on behalf of the Tohono O'odham Nation. We must underscore the vital importance of Section 106 of the National Historic Preservation Act (NHPA) and urge the Committee to strengthen the NHPA's tribal consultation requirements in fulfillment of the federal trust responsibility. The Section 106 government-to-government consultation process is the most meaningful tool available to tribes to ensure that federal decision-makers are provided with sufficient information to understand and to mitigate/avoid impacts to our sacred sites and culturally significant places, when such mitigation is feasible. It also supports better decision-making for federal agencies that ultimately will benefit the federal undertaking. Section 106, however, is not just an important planning tool, it is a core expression of the federal trust responsibility and a recognition of our inherent tribal sovereignty.

The Tohono O'odham Nation maintains a profound and enduring connection to our ancestral homelands. Our ancestral O'odham *jeved*—where our people have lived and thrived for millennia—stretches across the Sonoran Desert from the San Pedro River in what is now southeastern Arizona, west to the Colorado River, south to the Gulf of California in what is now Mexico, and north to the Gila River. Today, within the boundaries of our reservation, we work tirelessly to preserve archaeological, historical, cultural, and sacred sites. Prior to the 1992 amendments to the NHPA, however, we had no effective means to protect the many sites located beyond those boundaries from disturbance, desecration, and at times, complete destruction.

Congress amended the NHPA to provide for the inclusion of tribes in the Section 106 consultation process specifically because our tribal cultural resources extend far beyond the boundaries of our reservation, and because sacred places essential to our cultural continuity are often under federal control. In recognition of this fundamental truth, the National Park Service recommended to Congress that, in order to protect tribal cultural heritage, “Federal policy should require Federal agencies . . . to ensure that Indian tribes are involved to the maximum extent feasible in decisions that affect properties of cultural importance to them.”¹

¹ NAT'L PARK SERV., KEEPERS OF THE TREASURES: PROTECTING HISTORIC PROPERTIES AND CULTURAL TRADITIONS ON INDIAN LANDS 3 (1990), at iv, <https://www.nps.gov/subjects/tellingallamericansstories/upload/Keepers.pdf> [https://perma.cc/K32X-ZR2P].

The Nation’s traditional cultural properties, sacred sites, and cultural landscapes are living parts of our shared cultural identity. Many do not align with or fit neatly within Western definitions of “historic properties,” yet they hold deep spiritual, historical, and cultural significance for our people. When federal actions impact these places—through development, land management actions, or resource extraction—consultation occurs early, before project funds are committed and alternatives foreclosed. These consultations provide for a substantive, government-to-government dialogue that respects tribal sovereignty and incorporates our cultural perspectives into federal decision-making. This fosters mutual respect and understanding. It also promotes informed decision-making that honors our traditions and values.

The Nation established its Cultural Affairs Program in 1997 and assumed Tribal Historic Preservation Office responsibilities under Section 101(d)(2) of the NHPA in 2009. Since then, our Tribal Historic Preservation Officer has participated in hundreds of consultations across our ancestral lands. These efforts have facilitated recovery of ancestral remains, improved mitigation, and minimized harm to cultural resources —outcomes that have benefited the Tohono O’odham Nation, the federal agency involved, and the cultural heritage that enriches all citizens.

Notwithstanding, there are often shortcomings in the application of the consultation process. Consultation too often occurs late in the process, after critical decisions are effectively made, reducing tribal input to a “check-the-box” exercise. Additionally, while recognition of traditional cultural properties has been invaluable, current practices often reduce tribal cultural significance to small, discrete places, failing to reflect our tribe’s holistic relationships with entire landscapes. The Advisory Council on Historic Preservation (ACHP) has recognized that there are large scale historic properties composed of multiple, linked features forming a cohesive area/place that are of deep cultural significance to tribes and has identified them as “traditional cultural landscapes.” These traditional cultural landscapes represent dynamic, living relationships between people, place, and identity. Acknowledging that historic properties may include such landscapes would allow the National Register of Historic Places to better honor tribal cultural meanings and would align with the ACHP’s Section 106 guidance. Congress should take steps to strengthen the consultation process, not eviscerate it. We would be happy to work with the Committee toward that end.

We understand that some characterize historic preservation regulations as overly burdensome to development or perceive the process as delaying certain projects. The consultation process is, however, not an impediment to progress, it is a means of ensuring that decision-makers have all the information and tools they need to make informed decisions. In the vast majority of the over 120,000 NHPA consultations on federal undertakings that affect a historic property, tribal participation does not halt development—rather, concerns are resolved through an MOA or other agreement between the agency and the consulting parties, including tribes.² Federal agencies

² CONG. RSCH. SERV., R4753, HISTORIC PROPERTIES AND FEDERAL RESPONSIBILITIES: AN INTRODUCTION TO SECTION 106 REVIEWS (2023), <https://www.congress.gov/crs-product/R47543>; ADVISORY COUNCIL ON HISTORIC

and tribes routinely work together to protect cultural resources while allowing reasonable progress. Tribes are committed partners and seek balance—not obstruction.

Historic preservation has long enjoyed bipartisan support because leaders across generations have recognized the profound importance of protecting the history and cultural patrimony of all Americans. Our tribal cultural heritage is foundational to the story of the United States. We respectfully urge the Committee to recognize that Section 106 is essential to upholding tribal sovereignty and the government-to-government relationship.

If you require additional information and/or to arrange for tribal consultation, please contact the Nation’s Attorney General, Howard Shanker, at howard.shanker@tonation-nsn.gov.



USET
SOVEREIGNTY PROTECTION FUND

Washington, DC Office
1730 Rhode Island Ave., NW, Suite 406
Washington, DC 20036

Nashville, TN Office
711 Stewarts Ferry Pike, Suite 100
Nashville, TN 37214
P: 615-872-7900 | F: 615-872-7417

November 12, 2025

**Testimony of the United South and Eastern Tribes Sovereignty Protection Fund
For the Record of the Senate Committee on Energy and Natural Resources Hearing to “Examine the
Section 106 Consultation Process Under the National Historic Preservation Act”**

The United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is pleased to provide the Senate Committee on Energy and Natural Resources with the following testimony for the record of the October 29, 2025 hearing to “Examine the Section 106 Consultation Process Under the National Historic Preservation Act.” Section 106 of the National Historic Preservation Act (NHPA) provides a pivotal legal framework that ensures federal decision-making processes consider the rights and interests of Tribal Nations—both within and outside of our current jurisdictional boundaries. The ability of Tribal Nations to protect our sacred sites under NHPA Section 106 procedures is vital to the health and cultural well-being of current and future generations within Indian Country. Consultation with Tribal Nations through Section 106 review is a critical method by which the federal government delivers on its trust and treaty obligations to Tribal Nations and Native people.

USET SPF reminds the Committee that proper implementation of the NHPA, including Tribal consultation and engagement via Section 106, ensures Tribal Nations have a voice in federal decision-making that affects our cultural and historical rights and interests. The NHPA is integral to the protection of our sacred sites and other areas of cultural and historical significance, which support Tribal cultural continuity and community well-being across generations. Section 106 review helps to ensure that federal actions avoid damage to these critical resources and averts the potential for costly litigation. The rescission or limitation of the NHPA Section 106 procedures and requirements is an abrogation of federal trust and treaty obligations to safeguard our sacred sites and cultural and historical resources.

USET SPF is a non-profit, inter-Tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Turtle Island.¹ USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe–Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mi'kmaq Nation (ME), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Tribe (VA), and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Because there is Strength in Unity

Background on the Importance of the NHPA Section 106 Process

Tribal Nations are and have always been inherently sovereign governments, as repeatedly affirmed by the U.S. Supreme Court. Before the arrival of colonizing forces, our territorial jurisdictions and our sacred places stretched across the continent. We held sovereign rights to govern *all* those lands and exercise our traditional lifeways, as well as obligations to steward the cultural and other resources within them. But the United States and its predecessors through war, coerced treaty making, and unilateral actions dispossessed us of or removed us from the vast majority of our homelands. All too often, Tribal Nations have since had little say in what happens to our homelands and sacred places.

Yet, the United States, in taking our lands and resources, assumed debt-based trust and treaty obligations to Tribal Nations and Tribal citizens and communities. In furtherance of those obligations, the United States enacted laws like the NHPA, whereby federal agencies must take into account and mitigate the effects of federal undertakings on historic properties, including properties of traditional religious and cultural importance to Tribal Nations, in consultation with Tribal Nations.

NHPA reviews are critical stopgaps that provide Tribal Nations a seat at the table to weigh in on federal decision-making that affects us. Without the NHPA, Tribal Nations are often stripped of a voice in protecting the lands and resources we have stewarded since time immemorial. When the NHPA review process is employed fully before action is taken, the United States receives critical advice and guidance to inform its decision-making and avoid irreversible harm.

The NHPA is also integral in protecting Tribal Nations' and Native people's religious freedoms. The current Administration has championed religious freedom as a core American value. Tribal religious practices often require access to, and preservation of, specific sacred sites and cultural items—sometimes located on land we no longer hold. The NHPA helps us protect our right to practice our religions without disruption.

Tribal Consultation Under NHPA Section 106 is Critical for the Protection of Tribal Cultural and Historic Resources

Section 106 of the NHPA requires federal agencies to consider the special expertise of Tribal Nations in assessing the existence of historic properties and potential impacts and mitigation measures for those historic properties, as we hold unique and exclusive knowledge about our cultural and historically significant properties. This special expertise must be respected in the process for any federal or federally assisted undertakings. We remind the Committee that Tribal Nations are the final arbiters of cultural significance for our sacred sites and areas of cultural and historic significance. It is essential that federal agencies uphold and adhere to Tribal consultation requirements to provide Tribal Nations with a reasonable opportunity to identify, evaluate, and advise on impacts to Tribal historic properties, and to participate in the resolution of adverse effects.

Congress embedded within the NHPA the recognition that places of “traditional religious and cultural importance” to Tribal Nations are historic properties deserving of protection. 54 U.S.C. § 302706(a). The NHPA recognizes that Tribal Nations have the right to be consulted—and indeed, are *required* to be consulted—when the federal government makes decisions affecting such properties, both on and off Tribal lands. *Id.* §§ 302702, 302706(b); *see also* 36 C.F.R. §§ 800.2(c)(2)(i)(A), 800.2(c)(2)(ii), 800.3(c)(1), 800.3(f)(2). The Section 106 process involves identifying historic properties, 36 C.F.R. § 800.4, assessing adverse effects on them, *id.* § 800.5, and resolving those adverse effects, *id.* § 800.6—all in consultation with relevant Tribal Nations. This “consultation requirement is not an empty formality; rather, it ‘must recognize the government-to-government relationship between the federal government and Indian tribes’

and is to be 'conducted in a manner sensitive to the concerns and needs of the Indian tribe.'" *Hualapai Indian Tribe v. Haaland*, 755 F. Supp. 3d 1165, 1188 (D. Ariz. 2024) (citation omitted) (quoting 36 C.F.R. § 800.2(c)(2)(ii)(C)). Every aspect of this NHPA review process must be protected and preserved unscathed, as it is the means through which Tribal Nations secure a seat at the table for federal decision making that affects us.

It is critical that Tribal Nations are brought in at the very beginning, when the federal government is determining the scope of Section 106 review. As required by the governing regulations, federal agencies in identifying historic properties "shall," in consultation with Tribal Nations, "[d]etermine and document the area of potential effects" and "[r]eview existing information on historic properties within th[at] area." 36 C.F.R. § 800.4(a)(1)–(2). Distinct from a project's physical footprint, the "area of potential effects" encompasses "the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties," and its scope "may be influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking." *Id.* § 800.16(d). This scope of review is vital to identifying and ensuring full protection of Tribal historical and cultural resources that may be impacted by federal undertakings. See *Hualapai Indian Tribe*, 755 F. Supp. 3d 1165.

The NHPA must continue to be implemented with meaningful Tribal consultation, ensuring adequate time, respectful engagement, and sufficient resources for Tribal Nations. Any rescission or limitation of NHPA's Section 106 process can *never* come at the expense of the federal government's trust and treaty obligations to Tribal Nations, including the protection of our religious freedom, cultural heritage, and sacred sites, and ensuring a Tribal voice at the table for decision making. Historically, failures to effectively engage and consult with Tribal Nations have caused irreparable damage and harm to Tribal cultural resources and practices, and they have resulted in costly delays and litigation for developers and the federal government. Any proposal to expedite NHPA Section 106 reviews would directly jeopardize Tribal Nations' efforts to protect and preserve our religious freedoms and cultural heritage and conserve our culturally and historically significant areas.

Further, any attempt to condense Tribal consultation into "stakeholder" or "public" notice-and-comment processes undermines the federal government's trust and treaty obligations. It is critical that Congress maintain that federal agencies must recognize the inherent sovereign government status of Tribal Nations—a status that predates the arrival of outside forces. This status, while existing independently from the United States' affirmation by treaty or otherwise,² is recognized in the U.S. Constitution³ and consistently by the U.S. Supreme Court.⁴ Because of this, Tribal Nations have a unique government-to-government, Nation-to-Nation relationship with the United States. Therefore, federal agencies must not treat or define Tribal Nations as mere "stakeholders" or the "public" for NHPA Section 106 consultation purposes or any other review processes. Rather, Tribal Nations are owed direct consultation and coordination prior to any decision-making process in advance of any proposals for federal or federally assisted projects that may directly or indirectly affect our rights or cultural and historic resources. Meaningful consultation includes timely notification to Tribal Nations, direct engagement with Tribal

² See, e.g., *Worcester v. Georgia*, 31 U.S. 515, 520 (1832) (explaining retained Tribal sovereignty is based on "the settled doctrine of the law of nations"); *Haaland v. Brackeen*, 599 U.S. 255, 308 (2023) (Gorsuch, J., concurring) (describing the concept of retained sovereignty as "a long-held tenet of international law").

³ U.S. Const. art. I, § 8, cl. 3 (Indian Commerce Clause); *id.* art. II, § 2, cl. 2 (Treaty Clause); see also *id.* art. VI, cl. 2 (Supremacy Clause); *id.* art. IV, § 3, cl. 2 (Territory Clause); *id.* art. I, § 2, cl. 3 (Indians Not Taxed Clause).

⁴ See, e.g., *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55–56 (1978); *Brackeen*, 599 U.S. at 308 (Gorsuch, J., concurring).

governments in the earliest stages of project proposals, and positively acting upon Tribal guidance and input. Inappropriately grouping Tribal Nations with “stakeholders” or the “public” would undermine Tribal consultation requirements, risking irreparable damage to our sacred sites and the cultural lifeways and well-being of Tribal Nations across the country, in violation of the federal government’s trust and treaty obligations.

Current Funding for Tribal Historic Preservation Officers to Participate in NHPA Section 106 Reviews is Inadequate, and Expedited Review Would Only Increase the Impacts of Funding Shortfalls

As part of our inherent sovereignty, Tribal Nations have oversight and authority for environmental, cultural, and permitting reviews on Tribal lands. However, the natural resources and taxing and other authorities we would otherwise utilize to generate revenue to fund our governments, including to carry out cultural reviews, have been taken from us by the United States. These takings created debt-based trust and treaty obligations owed to us, but the United States has long failed to fully fund those obligations. This is part of why project proposals and construction on our traditional homelands located outside of our current jurisdictional boundaries often proceed with limited to no coordination with Tribal Nations. This can lead to irreparable harm to our sacred sites and areas of cultural and historical significance to our communities. Just as the federal government has trust and treaty obligations to protect our cultural heritage and lifeways, it also has obligations to empower us to exercise our inherent sovereignty and self-determination to utilize funds and other resources to protect what is important to us.

The federal funding resources available to Tribal Nations to fully participate in NHPA Section 106 review processes have always been inadequate. Many Tribal Nations are unable to fully participate in NHPA Section 106 reviews due to the lack of federal funds to support the functions of Tribal Historic Preservation Officers (THPOs) and the hiring of additional personnel with specific technical expertise required for these reviews. Further, it is important to note that, even in instances where Tribal Nations have a THPO and/or a cultural or natural resources department dedicated to conducting cultural and historic preservation, these individuals and departments are often inundated with multiple projects and permit applications that exceed available capacity and resources. Reviews of these projects can be lengthy because they are often broken into multiple, segmented reviews of a single project and span multiple agency jurisdictions and oversight authorities. Additionally, these individuals and departmental staff may fulfill multiple roles within their Tribal government due to the historic and persistent failures of the federal government to fund its trust and treaty obligations, including appropriating the necessary resources for these positions. It is not uncommon for a THPO/cultural resource manager to also fulfill the role of a natural resource manager or serve in an emergency management role, for example. Additionally, when a Tribal Nation steps in to use its own general government funds to support its THPO office, that Tribal Nation is making the hard decision to pull funding from other essential community services.

The lack of federal support and funding for THPO and Tribal cultural preservation activities was highlighted directly during the Committee’s October 29, 2025 hearing. According to testimony provided during the hearing by Steven Concho, THPO for the Pueblo of Acoma, in Fiscal Year 2024 (FY 2024) an estimated \$23 million was appropriated to fund an average of nearly \$100,000 annually per THPO. This appropriation amount is woefully inadequate to cover the costs to maintain or hire additional staff, cover the costs of travel to project sites, manage review and permitting caseloads, and appropriately and consistently participate in review processes. While the number of recognized THPOs and consultation requests increases as Tribal Nations and the federal government make strides towards a fuller implementation of the NHPA, the funding for THPOs and their offices has remained stagnant and consistently underfunded.

Ultimately, Congress must support additional funding for Tribal Nations and THPOs, as well as for federal agencies, to conduct and fully participate in NHPA Section 106 reviews. Providing sufficient resources for Tribal Nations to adequately participate in the NHPA Section 106 review process and consultation activities will ultimately result in expedited review and permitting timelines and potentially avoid costly litigation and public backlash.

The Training and Retention of Federal Personnel is Essential to Upholding NHPA Section 106 Consultation Requirements

In addition to fully funding resources that support THPO activities and the hiring of additional personnel and technical expertise, Congress must also fund the federal personnel who are essential to supporting Tribal Nations in the NHPA Section 106 consultation and review processes. Until the federal government upholds its trust and treaty obligations to fully fund THPO offices, Tribal Nations will continue to rely on federal personnel for technical assistance for various environmental, cultural, and historical review and permitting processes. These reviews require specific technical expertise and knowledge that Tribal Nations may not have in-house yet, and thus they rely on federal personnel to provide that expertise as part of the United States' trust and treaty obligations. USET SPF stresses the importance of agencies having sufficient federal staffing to provide technical support for Tribal Nations as well as engage in early and meaningful Tribal consultation as required for timely NHPA Section 106 reviews.

Tribal Nations have become increasingly concerned with the federal government's reductions in force (RIFs) and deferred resignation and early retirement program incentives, as these will inevitably affect Tribal consultation activities required by Section 106 of the NHPA (among many other important programs). The loss of knowledgeable federal personnel in these areas combined with the decades-long insufficient and stagnant funding for THPOs will further exacerbate the ability of Tribal Nations in the NHPA Section 106 review process, especially if Congress streamlines or condenses the direct Nation-to-Nation consultation requirements under Section 106. Without these resources, Tribal consultation during the NHPA Section 106 review process amounts to an unfunded mandate, as we are not provided with the necessary resources and assistance to effectively participate in these processes. Under these circumstances, our silence in a Section 106 process should never be interpreted as consent to a project—but sometimes it is.

Conclusion

The NHPA was enacted by Congress with the intention of upholding trust and treaty obligations to Tribal Nations by pulling out a seat at the federal decision-making table so that we may protect our cultural and historical resources. It was meant to honor the unique legal and diplomatic relationship between Tribal Nations and the federal government—rooted in centuries of sovereign-to-sovereign engagement and formalized through the U.S. Constitution, treaties, statutes, Executive Orders, and judicial decisions. While USET SPF is not necessarily opposed to improving NHPA Section 106 and other environmental and permitting review processes *in principle*, we remind Congress that all such review processes must always occur in conjunction with Tribal consultation to ensure that Tribal Nations are involved, and we must be provided the necessary financial and technical assistance support to fully participate in consultation processes. Any resulting modifications of these reviews must protect our inherent rights, and we assert that this must not be accomplished at the expense of Tribal sovereignty and preservation of our cultural lifeways.

In addition, USET SPF remains opposed to any and all NHPA regulatory or policy revisions that would compress the NHPA Section 106 review process, which would further limit Tribal consultation and our

participation in these critical reviews. Any such limitations would undermine federal trust and treaty obligations to Tribal Nations that ensure the protection of Tribal sacred sites and cultural and historical resources in perpetuity. History has shown that inadequate Tribal consultation leads to irreparable damage and harm to Tribal cultural resources and religious practices, and it often results in costly litigation activities. Any legislative proposals to expedite the NHPA Section 106 review process absent early and meaningful Tribal consultation would directly jeopardize Tribal Nations' efforts to protect and preserve our religious freedoms and cultural heritage and conserve our culturally and historically significant areas. Finally, Congress must provide the necessary appropriations to fully fund THPOs and provide the necessary federal technical assistance and resources for Tribal Nations to fully participate in NHPA Section 106 review processes and other consultation activities. We look forward to continuing to work with the Committee and Congress to ensure the preservation of legal protections for Tribal cultural and historic properties, which includes requirements to engage in early and meaningful consultation with Tribal Nations and the resources necessary to fully participate in these critically important processes.



PO BOX 2053 Nome, AK 99762
(907)443-4985
www.villageofsolomon.org

October 27, 2025

Village of Solomon

PO Box 2053
Nome, Alaska 99762
deilah@villageofsolomon.org

To the Honorable Members of the Senate Committee on Energy and Natural Resources

United States Senate
Washington, D.C. 20510

Subject: Upholding and Strengthening Tribal Consultation Amid Alaska's Expanding Energy and Resource Development

Dear Chairman Mike Lee, Ranking Member Heinrich, and Members of the Committee:
On behalf of the Village of Solomon, I extend this correspondence to emphasize the critical importance of maintaining robust and meaningful **Tribal Consultation** as Alaska continues to expand its energy and resource development initiatives. While Alaska is increasingly described as "open for business," we must ensure that such openness does not come at the expense of the rights, voices, and futures of the **Indigenous peoples who have stewarded these lands since time immemorial**.

Alaska is home to **229 federally recognized Tribal Nations**—the highest number of any state in the Union. Each of these sovereign governments possesses distinct histories, cultures, and governance systems, yet all share an unbroken relationship with the lands, waters, and ecosystems that sustain us. Decisions affecting these lands must not proceed without genuine, government-to-government consultation that reflects both the spirit and the letter of **Executive Order 13175, the National Environmental Policy Act (NEPA), the Alaska National Interest Lands Conservation Act (ANILCA), and related federal trust obligations**.

Recent policy discussions have framed Alaska's vast resources as a frontier for opportunity. However, for our communities, these lands are **not frontiers—they are homelands**. The tundra, rivers, and coastlines are woven into the subsistence practices, cultural identity, and intergenerational wellbeing of Alaska Native peoples. Development without sincere consultation risks not only environmental degradation but also the erosion of Indigenous ways of life, traditional knowledge systems, and food security that have



PO BOX 2053 Nome, AK 99762
 (907)443-4985
www.villageofsolomon.org

sustained us for millennia.

We respectfully urge the Committee to:

1. **Reaffirm the federal government's trust and treaty responsibilities** by ensuring early, consistent, and transparent Tribal Consultation in all energy and resource-related actions.
2. **Strengthen federal agency guidance** to ensure consultation occurs before key decisions are made, rather than as a procedural formality after project trajectories are set.
3. **Support Tribal capacity-building initiatives** that enable Alaska Native governments to engage effectively in environmental reviews, permitting processes, and climate resilience planning.
4. **Recognize traditional ecological knowledge (TEK)** as a legitimate and invaluable component of environmental assessment and policy formulation.

For generations, Alaska Native peoples have lived in balance with the land—understanding that prosperity depends on stewardship, not exploitation. The path forward must be built on **partnership, respect, and reciprocity** between Tribal Nations and the federal government. Upholding the principles of meaningful consultation is not only a matter of legal compliance—it is a matter of justice, sustainability, and national integrity.

Thank you for your leadership and for considering these concerns with the seriousness they merit. The Village of Solomon welcomes the opportunity to engage with the Committee and its staff to advance policies that respect Tribal sovereignty while ensuring responsible development for the benefit of all Alaskans.

Respectfully,

Kirsten Timbers President
 Village of Solomon

CC:

US Senator John Barrasso
 US Senator James E. Risch
 U.S. Senator Steve Daines
 U.S. Senator Tom Cotton
 U.S. Senator David H. McCormick
 U.S. Senator Jim Justice
 U.S. Senator Bill Cassidy
 U.S. Senator Cindy Hyde-Smith
 U.S. Senator Lisa Murkowski



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U.S. Senator John Hoeven
U.S. Senator Ron Wyden
U.S. Senator Maria Cantwell
U.S. Senator Mazie Hirono
U.S. Senator Angus S. King, Jr.
U.S. Senator Catherine Cortez Masto
U.S. Senator John Hickenlooper
U.S. Senator Alex Padilla
U.S. Senator Ruben Gallego
U.S. Senator Dan Sullivan
Kawerak, Inc. President, Melanie Bahnke
rachel_lentz@energy.senate.gov

From: [Mariah](#)
To: [fortherecord \(Energy\)](#)
Subject: Walzer - October 29, 2025 - Full Committee Hearing to Examine the Section 106 Consultation Process Under the National Historic Preservation Act
Date: Wednesday, November 5, 2025 3:27:18 PM

Dear Members of the Senate Energy & Natural Resources Committee,

I am writing to urge the committee to uphold and protect Section 106 of the National Historic Preservation Act (NHPA). Section 106 is a cornerstone in preserving and caring for the cultural resources of the United States by ensuring federal agencies take into account the effects of their actions.

I am an archaeologist for the National Park Service, writing in my capacity as a private citizen with specialized knowledge while furloughed. Section 106 forms the heart of my work. When implemented in a timely and proper manner, the Section 106 process is not a burden but rather a useful tool in planning and a central part of building good nation-to-nation relationships with tribal partners. At its best, Section 106 helps agencies and organizations avoid negative impacts to the cultural resources that tell our American stories well before they ever happen, saving time, money, relationships, and reputation.

The Section 106 process works best when it is considered and implemented early in the project planning stage and given appropriate time and staffing to complete its requirements. Good relationships with State and Tribal Historic Preservation Offices, associated Indigenous tribes, local governments, and other interest groups also help the process to be smooth and productive. The goal of Section 106 is never to stop a project (and, to be abundantly clear, it does not have that legal power) but to ensure that federal agencies make the best decisions as stewards of public lands and U.S. history.

I was disappointed to hear some of the Senators speak as if the burdensome nature of Section 106 was inevitable and/or insidious. I was further disappointed that those Senators appeared to fail to listen to the expert witnesses with open, curious minds. Dr. Merritt and Mr. Concho gave solid testimony that the Section 106 process can run smoothly with early consultation and appropriate funding of federal, state, and tribal cultural resources programs. Further, they shared evidence for a primary way to streamline the process further with repetitive undertakings - program comments and national/state programmatic agreements - but this requires the Advisory Council on Historic Preservation (ACHP) to be fully funded and staffed, as well as the federal, state, and tribal programs.

This all underscores my personal experience of Section 106 implementation and where it can and does go wrong: lack of pre-planning and lack of staffing. Instead of weakening the protections for our shared human history (which will ultimately do little to improve efficiency and do much more to harm our resources), the Senate and the rest of the United States government should focus on fully funding and staffing the ACHP, state and tribal historic preservation offices, and cultural resource branches of federal agencies. Adequate staffing and funding would immensely improve the efficiency of the process. Additionally, support for training of project leaders on the Section 106 process and the importance of early consultation would further improve implementation.

Section 106 has been an essential tool in protecting our nation's cultural resources and balancing development with stewardship for over 50 years. It represents decades of work prior to the passage of the NHPA in 1966 and decades of collaboration and research since. It also supports thousands of jobs for Americans every year. I urge you to reaffirm your commitment to protecting our nation's history through the NHPA and ensure that Section 106 remains strong and effective.

Thank you for your attention and consideration.

Mariah Walzer
1090 Pittsfield Lane
Ventura, CA 93001

From: [Ward, Henry](#)
To: [fortherecord \(Energy\)](#)
Subject: Ward - Full Committee Hearing to Examine the Section 106 Consultation Process Under the NHPA
Date: Tuesday, November 4, 2025 10:00:05 AM

US Senate:

As an historian archaeologist and historic preservation professional, I urge congress to work to preserve and protect the provisions of Section 106 of the National Historic Preservation Act. Past and ongoing reforms have already increased the efficiency of the Section 106 process, and we continue to find way to streamline the process, while allowing member of the public tribes and cooperating agencies to participate in the decisions that are made about our precious shared heritage.

I also urge that the important partners in the preservation process, the National Park Service, Advisory Council on Historic Preservation, State/Tribal Historic Preservation Offices also continue to be provided support and adequate finding.

Please, continue to support this vital piece of legislation.

Thank you!

Herbert Henry Ward
WSP
Assistant Vice President – Archaeology

From: [Elizabeth Welch](#)
To: [fortherecord \(Energy\)](#)
Subject: Welch - From Elizabeth Welch, Section 106
Date: Tuesday, November 4, 2025 8:32:07 AM

Dear Members of the Senate Energy & Natural Resources Committee,

My name is Elizabeth L. Welch, and I reside at 525 North Street NE, Leesburg, Virginia, 20176. I am writing to express my strong support for the Section 106 consultation process under the National Historic Preservation Act (NHPA), and to urge the Committee to protect and strengthen this vital framework as you consider permitting reform.

The October 29th hearing made clear that Section 106 is not the source of permitting delays. On the contrary, testimony from Dr. Chris Merritt and Mr. Steven Concho highlighted how early, proactive consultation with State and Tribal Historic Preservation Officers (SHPOs and THPOs) leads to faster project reviews and better outcomes. Tools such as Programmatic Agreements, Program Comments, digitization, and electronic submissions already streamline the process while safeguarding our nation's irreplaceable historic and cultural resources.

Critiques of Section 106 during the hearing lacked substance. Claims of speculative delays were unsupported by evidence, and the data presented showed that most reviews are completed within weeks. In Utah, for example, 97% of reviews are finalized in a matter of days, and adverse effect determinations are rare—less than 3% of cases. These statistics are consistent nationwide and demonstrate that Section 106 is efficient, not obstructive.

Despite this, Section 106 faces growing threats. Legislative momentum for permitting reform risks undermining the consultation process, and unilateral administrative actions—such as limiting applicability through Interim Final Rules or expanding emergency procedures—could erode protections without public input. These changes would disproportionately harm Tribal communities and local preservation efforts, especially given the chronic underfunding of THPOs like the Pueblo of Acoma, whose annual federal support is shockingly low.

Section 106 is not a barrier—it is a bridge. It ensures that development proceeds responsibly, with respect for the places that define our shared heritage. Weakening it would not only jeopardize historic sites but also diminish public trust in federal decision-making.

I urge the Committee to preserve the integrity of Section 106 and to invest in the skilled workforce and funding necessary for SHPOs and THPOs to continue their essential work. Any reforms should enhance—not diminish—the consultation process that has served our nation so well.

Thank you for the opportunity to submit this testimony.

Sincerely,

Elizabeth L. Welch
525 North Street NE
Leesburg, VA 20176

From: [JUDITH WELLMAN](#)
To: [fortherecord \(Energy\)](#)
Cc: [Judith Wellman](#)
Subject: October 29, 2025 — Full Committee Hearing to Examine the Section 106 Consultation Process Under the National Historic Preservation Act
Date: Wednesday, November 5, 2025 3:52:17 PM

To Whom It May Concern on Senate Committee to Examine Section 106 Consultation Process:

I am dismayed to learn that Congress may consider eliminating the Section 106 requirement and defunding State and Tribal Historic Preservation Offices that currently administer this provision.

This consultation process has been in effect since 1965, and it has proven itself to be an effective and efficient means of preserving our nation's irreplaceable historic resources while at the same time moving forward with their appropriate re-use. needs a sufficient, skilled, and stable federal workforce and that SHPOs and THPOs need adequate funding to do their work.

There is not one of New York State's 62 counties and hardly one of its 1600 municipalities that has not benefited, economically, socially, and culturally from identification and preservation of its historic resources, with the help of the State Historic Preservation Office.

Please, please do not recommend cutting these essential (and relatively inexpensive) services.

Thank you for your consideration.

Judith Wellman

Judith Wellman
2 Harris Hill Road
Fulton, New York 13069
315-529-7808
historicalnewyork@me.com

From: [lijedediah](#)
To: [fortherecord \(Energy\)](#)
Subject: Williams - October 29, 2025 — Full Committee Hearing to Examine the Section 106 Consultation Process Under the National Historic Preservation Act
Date: Wednesday, November 5, 2025 12:21:05 AM

Text of email:

Dear Members of the Senate Energy & Natural Resources Committee,

I am writing to urge the committee to uphold and protect Section 106 of the National Historic Preservation Act (NHPA). Section 106 is a cornerstone of America's preservation framework that ensures federal agencies take into account the effects of their actions on historic properties.

It appeared that some of the senators came to the hearing with their mind made up instead of listening to the answers the witnesses provided. Dr. Merritt and Mr. Concho outlined that more funding, earlier communication, and more agreements that streamline the process are needed. While the Senators wanted to just exempt permits from the process.

Section 106 has been around 50 years and is an essential tool for balancing development with stewardship. I urge you to reaffirm your commitment to the National Historic Preservation Act and ensure that Section 106 remains strong and effective.

Weakening or eliminating Section 106 would silence community voices, put irreplaceable cultural resources at risk, and erode one of the few mechanisms that ensures the federal government honors its obligation to protect our shared heritage.

Thank you for your attention and your service to the public.

Levi Williams

From: [Erin Woods](#)
To: [fortherecord \(Energy\)](#)
Subject: Woods - October 29, 2025 - Full Committee Hearing to Examine the Section 106 Consultation Process Under the National Historic Preservation Act
Date: Tuesday, November 4, 2025 9:23:49 PM

Dear Chair of the Senate Energy and Natural Resources Committee,

I am writing to you as a private citizen of Charlestown, Boston, Massachusetts, and as an advocate deeply committed to preserving our nation's heritage, particularly the original Charlestown Peninsula, site of the Battle of Bunker Hill on June 17, 1775. I write to provide informed testimony on the critical importance of maintaining and strengthening the National Historic Preservation Act (NHPA) Section 106 process. Historic preservation and responsible development are not mutually exclusive; the regulations were deliberately written so that preservationists and developers would be required to come to a mutually acceptable agreement. Section 106 functions efficiently and as a genuine safeguard for all parties when the rules are respectfully carried out and not treated as a mere formality.

At its best, Section 106 gives everyday citizens a real voice in shaping the future of the places that define their communities. It ensures that powerful interests, whether government agencies or wealthy developers, cannot erase history without accountability. It is the mechanism through which the American public defends its shared heritage.

Below is my experience with a Section 106 failure in Charlestown, Massachusetts, and the recommendations that arise from it:

Bunker Hill's fiercest fighting occurred between Moulton's Point (the British landing site in the Navy Yard) and the Rail Fence at the base of Breed's and Bunker Hill, where colonial troops held the line. This 27 acre battlefield, once owned by the Bunker Hill Monument Association, was partially sold in the early 1800s to fund the construction of the Bunker Hill Monument. It is now the site of a Housing and Urban Development (HUD) funded public housing development built in the 1940s. Within it lie approximately 20 acres of significant historic public space, designed by noted landscape architect Hallam L. Movius.

In 2015, a public-private partnership advanced a 12 phase redevelopment on this site to construct market rate and limited affordable housing, reducing open space from 20 acres to just 7. Despite early objections from local veterans' organizations and residents emphasizing the site's historical significance and offering alternative designs, these concerns were dismissed.

Two years ago, my public records requests to the Massachusetts State Historic Preservation Officer (SHPO), HUD, the City of Boston, the Boston Landmarks Commission, and the Advisory Council on Historic Preservation (ACHP) revealed a deeply troubling lapse: no Section 106 review had ever been conducted. On Bunker Hill...how could this happen? The City of Boston and the Massachusetts Historical Commission were designated as responsible entities in 2016 and 2017, respectively, yet neither produced a report, instead engaging in mutual finger pointing as "concurring parties." HUD and ACHP cited limited authority to intervene. The development proceeded with no archaeological plan and no monitoring, on a battlefield that many historians regard as the first battle of the Revolutionary War.

This is not an isolated oversight. It exposes a system that jeopardizes irreplaceable historic assets, including battlefield sites that may contain the remains of Revolutionary War veterans and artifacts. Requests for even modest archaeological monitoring have been repeatedly denied, leaving citizens with no recourse short of costly litigation. This failure deprives the public of meaningful opportunities to uncover and understand the national history beneath our feet. As Phase 1 of the project nears completion, irreversible losses are already evident.

Reinforcing checks and balances within the Section 106 process is essential to protecting our historic assets. Reforms should require early and meaningful public consultation, formal initiation and documentation of Section 106 review before any federal funds are committed, and stronger federal intervention when local or state agencies fail to meet their obligations.

Citizens must also have practical tools for accountability, including transparent access to all Section 106 documentation, the right to appeal procedural violations, independent conflict reviews, and a federal mechanism to investigate complaints. Funding incentives and digital tracking systems could further enhance transparency and public participation, ensuring preservation decisions remain fair and trustworthy.

Section 106 must not be weakened or treated as a procedural checkbox. It is a cornerstone of public trust and community identity, and I urge you to advocate for reforms that restore its integrity and effectiveness.

Thank you for your attention and careful consideration of these critical matters.

Erin Woods
49 Chappie Street
Charlestown, Boston, MA 02129

From: [Jessica Young](#)
To: [fortherecord \(Energy\)](#)
Subject: Young - October 29, 2025 - Full Committee Hearing to Examine the Section 106 Process Under the National Historic Preservation Act
Date: Wednesday, November 5, 2025 11:36:02 AM

To the honorable members of this Committee,

My name is Jessica Young. I grew up in West Virginia, and currently live in Georgia.

My address is 201 Forest Glen Way, Avondale Estates GA 30002.

I fell in love with archaeology at the age of 7. I was unearthing rocks in my yard when I pulled up a projectile point, and I was smitten. The idea of the NHPA didn't exist in my mind yet. Section 106 would have sounded like something from the X-Files.

More than 30 years later, I am still following my passion. I have been a cultural resources management professional for more than 13 years, all of which has directly involved the Section 106 review process. I have written eligibility recommendations for resources consisting of nothing more than a trail and small lithic scatter; to historic mining sites once responsible for extracting millions of dollars of ore and fueling the economy of the West.

I believe as a county there is a path forward to honor the past and protect our present. Contrary to fear mongering and the statements of bad actors, historic preservation is not coming in to stop people from painting their houses, it's not giving the government a way to steal your property, and it's not to block progress.

History helps us measure our progress. It can set the standard for forward progress. A future where the past, good and bad, is preserved and can even support development. Through the Section 106 process, monuments have been made. Through the NHPA, priceless cultural goods have been preserved.

The truth is, the vast majority of sites are not found eligible. Rubber-stamped reviews are unfortunately often the norm, due to the pressures on cultural resource professionals to: deliver for clients, meet government regulations, and shepherd projects out the door. I know this is no different for SHPOs and consultants than it is for the esteemed members of this committee. Surely you understand what it feels like to try to marry practicality with ideals, and to know you're doing your best to be efficient, while it is never fast enough for your boss.

Section 106 is really just giving history a chance to not be erased. It's the stopgap between academic archaeology and the bulldozer. We aren't writing dissertations, we're writing down the stories of the past as best we can. Cultural resource professionals realize perhaps more than most that development is necessary. We see, over the centuries, how development - how efficient energy, how clean energy initiatives - have been good for business.

We WANT to find a way to move projects along. We DON'T want to stand in the way of the infrastructure that we use every day. I may be an archaeologist but I still have to sit in Atlanta traffic. I still have a gas bill to pay and utilities to grumble over.

But we NEED to preserve the past. It doesn't need to be zero sum. It never needs to be zero sum.

And on a personal note, Chris Merritt is one of the finest archaeologists I have ever worked with. He deserves all his laurels for his testimony.

Thank you for your time and your service,
Jessica Young

Jessica Young (she/her) | Program Manager

New South Associates, Inc.

A Women-Owned Small Business

6150 East Ponce de Leon Avenue, Stone Mountain, GA 30083

Office: (770) 498-4155 (ext. 152)

[Website](#) | [Facebook](#) | [LinkedIn](#)



Ysleta del Sur Pueblo

119 S. Old Pueblo Dr. P.O. Box 17579 Ysleta del Sur Pueblo, Texas 79907 Tel. (915) 859-7913 www.ysletadelсурpueblo.org

October 28, 2025

The Honorable Mike Lee
 Chair, Senate Committee on Energy and Natural Resources
 United States Senate
 304 Dirksen Senate Office Building
 Washington, D.C. 20510

Dear Chairman Lee, Ranking Member Heinrich, and Members of the Committee:

On behalf of the Ysleta del Sur Pueblo, I write to express our strong and unequivocal support for Section 106 of the National Historic Preservation Act (NHPA) and to urge the Committee to uphold and strengthen this essential framework for government-to-government consultation with Tribal Nations.

For the Pueblo and for Indian Country broadly, Section 106 represents one of the few enduring commitments through which the United States honors its trust responsibility and Tribal sovereignty. It ensures that when federal agencies undertake projects that may affect sites of religious, cultural, or historical importance, they do so in consultation with the Tribes whose heritage and identity are tied to those lands.

Ysleta del Sur Pueblo is a federally recognized Tribal Nation and maintains a Tribal Historic Preservation Office (THPO), which assumes the responsibilities of a State Historic Preservation Officer on Pueblo lands. This means our Pueblo is not only a consulting party but a regulatory partner—responsible for reviewing, guiding, and protecting cultural resources affected by federal undertakings.

Our Pueblo's sacred and cultural sites—such as Na hluhi tui (the Old Village)—are not relics of the past; they are living places of ceremony, prayer, and history that continue to shape our collective identity. Many of these sacred landscapes extend beyond reservation boundaries, across areas now subject to intensive federal and state infrastructure development.

In the El Paso border region, Section 106 consultation is routinely triggered by activities such as Department of Defense expansions, highway and bridge construction, energy transmission projects, telecommunications deployments, and water infrastructure improvements. Through early consultation, we work collaboratively with agencies like the Department of Transportation, Department of Energy, and U.S. Army Corps of Engineers to identify and protect culturally sensitive areas before construction begins.

Without Section 106, these projects could proceed without recognizing the existence or meaning of our sacred places. Once disturbed, these sites—and the knowledge embedded within them—cannot be recovered. For our people, that loss is not merely physical; it is spiritual and generational, a loss to our community's continuity and cultural integrity.

Some have characterized Section 106 as a barrier to development. Our experience shows the opposite. The consultation process helps avoid conflict and delay by identifying potential issues early and allowing for collaborative solutions—rerouting a project, modifying design elements, or developing mitigation measures that respect both progress and preservation.

This framework builds trust and transparency. It does not stop development; it ensures that development proceeds responsibly, guided by the same principle that underlies federal environmental and historic preservation laws: stewardship.

Section 106 also works hand-in-hand with Section 304 of the NHPA, which allows federal agencies to protect the confidentiality of sensitive cultural information shared by Tribes during consultation. For the Pueblo, this protection is indispensable. It enables us to engage in meaningful dialogue about sacred sites without disclosing details that could endanger those places or violate religious privacy.

This confidentiality preserves both the integrity of the consultation process and the sanctity of the knowledge shared.

Proposals to weaken or eliminate Section 106 would represent a profound setback to decades of progress in Tribal-federal relations. They would silence the voices of the very Nations the federal government is legally and morally bound to consult. For Ysleta del Sur Pueblo, such changes would directly jeopardize our ability to protect sacred lands, ancestral burial grounds, and traditional cultural properties that embody our history, sovereignty, and living traditions.

Section 106 embodies the best traditions of American governance—it gives Tribes a seat at the table, promotes accountability, and fosters mutual respect. Any effort to reduce its scope or effectiveness would not only endanger cultural heritage but also erode public trust in the fairness and inclusivity of federal decision-making.

We therefore urge the Committee to reaffirm its support for Section 106 and to strengthen the consultation framework by promoting early engagement, capacity-building for Tribal Historic Preservation Offices, and clear enforcement mechanisms for compliance.

Thank you for your leadership and for your continued partnership with Tribal Nations in preserving America's shared cultural legacy.

Respectfully,



E. Michael Silvas
Governor
Ysleta del Sur Pueblo

From: [Shannon Zuercher](#)
To: [fortherecord \(Energy\)](#)
Subject: Zuercher - October 29, 2025 - Full Committee Hearing to Examine the Section 106 Consultation Process Under the NHPA
Date: Wednesday, November 5, 2025 8:55:21 AM
Attachments: [image001.png](#)

Dear Senators,

I watched the hearing to examine Section 106 live and with great interest. I have worked in the field of historic preservation for the past 25 years, and for much of that time have been involved with Section 106 compliance.

The context for why we have the National Historic Preservation Act of 1966 (NHPA) is vital in understanding why the process is so important to giving citizens of the United States a voice. Prior to its passage, swaths of neighborhoods, places of cultural and historical significance, and sacred spaces were sacrificed with little consultation in the name of progress. The most vulnerable were communities populated by marginalized populations, who sometimes saw their communities irreparably and permanently destroyed.

I'd like to echo the data shared by Dr. Chris Merritt and Senator Gallego that demonstrates that a very small percentage of Section 106 consultations result in an Adverse Effect finding, and that these reviews often result in outcomes that meet the needs of all interested parties. As Mr. Steven Concho eloquently stated, 106 is not a courtesy but is a legal duty of our government—it is a duty that works and helps protect our nation's irreplaceable cultural heritage.

As a practitioner, I agree that efforts should be made to make the process more efficient. As Dr. Merritt, Senator Cortez Masto, Senator Heinrich, and Senator Hickenlooper all pointed out, efficient reviews require adequate funding and staffing. Early coordination with stakeholders and better cross-agency coordination will help expedite timelines.

Determining significance of cultural resources is always going to be a subjective process requiring the guidance of subject matter experts who are trained to weigh the varying aspects of significance and integrity. Our cultural heritage is worthy of such scrutiny and care. Generations who came before recognized these truths and fought to create the legal framework that exists under the NHPA. Please protect this vital and successful legislation.

Sincerely,

Shannon Hill Zuercher
1046 Cherry Street
Huntington, IN 46750



Shannon Hill Zuercher, MS, QP
Project Manager/Architectural Historian
She/Her

Core Hours: 8:00-2:30 Eastern
O/M 317.826.7198

6958 Hillside Court
Indianapolis, IN 46250
metricenv.com

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