



Committee: Senate Energy & Natural Resources Committee
Event: [Full Committee Hearing to Examine the Section 106 Consultation Process Under the National Historic Preservation Act](#)
Date: October 29, 2025
Time: 9:30 AM
Place: 366 Dirksen Senate Office Building

Member Toplines:

*Chair Mike Lee (R-UT)*¹: Lee emphasized the need to reexamine Section 106 of the *National Historic Preservation Act* (NHPA) to ensure it functions as providing a procedural safeguard rather than an obstacle to development. He argued that the consultation process has become overly broad and inconsistent, causing significant delays for energy and infrastructure projects nationwide. Citing examples from multiple states, including solar, wind, and pipeline projects, Lee said the current system often blocks projects supported across party lines. He highlighted the idea that protecting historic sites should not prevent the country from building critical infrastructure.

*Ranking Member Martin Heinrich (D-NM)*²: Heinrich emphasized that NHPA ensures that federal projects consider impacts on historic and cultural sites before construction begins. He argued that preservation and development can coexist, noting that protecting culturally significant sites is essential to maintaining the nation's heritage. Heinrich acknowledged that Section 106 processes can be improved for efficiency but stressed that such reforms must not come at the expense of heritage protection. He also warned that chronic staffing shortages at federal land management agencies are a major cause of permitting delays and must be addressed for any meaningful permitting reform.

Witness Toplines:

[Christopher Merritt, Ph.D., Historic Preservation Officer, State of Utah](#): Merritt explained that Section 106 of NHPA provides a procedural framework to ensure federal projects account for impacts on historic properties. He described Utah's approach as a model for clarity, predictability, and efficiency, noting that his office reviews roughly 1,500 federal undertakings each year, with only 3.2 percent resulting in adverse effects. Merritt highlighted Utah's transition to a fully digital system, interagency agreements to streamline reviews, and collaboration that has reduced review times by more than 75 percent. He cautioned against federal efforts that would weaken state roles or politicize reviews.

[Andy McDonald, Environmental Compliance Manager, Montana-Dakota Utilities Co.](#): McDonald cited the need to improve predictability and consistency in the Section 106 review process under NHPA. He described challenges his company has faced with inconsistent interpretations

¹ Opening testimony was not available at the time of this memo's composition.

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of “areas of potential effect” among federal agencies, which have caused delays for projects. McDonald emphasized that utilities like Montana-Dakota take voluntary steps to protect cultural and environmental resources, but that clearer statutory definitions and uniform interagency standards are needed.

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: Concho emphasized that Section 106 of NHPA is a legal obligation requiring federal agencies to consult with tribes before approving actions that may affect sites of cultural or spiritual importance. He explained that effective consultation does not give tribes veto power but ensures their input is considered to avoid or mitigate adverse impacts. He emphasized that meaningful, early consultation improves outcomes for all parties and urged Congress to strengthen support and funding for Tribal Historic Preservation Offices.

Major Takeaways:

- The hearing focused on how vague and inconsistently applied language in Section 106 of NHPA has led to delays and uncertainty in project permitting. Lee highlighted delayed projects across the country, including solar and wind developments, to illustrate that the law’s inefficiency affects both Republican and Democratic priorities. He cited Utah’s streamlined approach, built around digitized records and clear consultation standards, as a model for how Congress could simplify the process.
 - Merritt agreed that ambiguity makes outcomes unpredictable and described how Utah uses digital systems and early coordination to set clear expectations for project reviews.
 - Merritt explained that indirect impacts like noise or visual changes often make reviews subjective and hard to measure. He said establishing consistent standards before projects begin would make the process more transparent and help both developers and agencies know what to expect.
- McDonald said inconsistent federal interpretations caused more than a year of delay on a small power line rebuild. He said Congress should clarify the law so that reviews apply only to federal lands and so that agencies use the same methods for determining project areas.
- Funding and staffing challenges were also highlighted. Sen. Heinrich pointed out that many preservation offices operate with limited staff and resources and warned that expected federal layoffs could worsen delays.
 - Concho said his office runs on about 100,000 dollars a year, barely enough to handle the number of consultations it receives.
- Sen. **Catherine Cortez Masto** (D-NV) asked whether Section 106 should be repealed, and all witnesses said no.
 - She asked Merritt and Concho on how to make the process clearer without applying a one-size-fits-all rule. Merritt said state flexibility is key because landscapes and project types vary, and both he and Concho said additional funding for tribal and state preservation offices would improve efficiency.
- Sen. **Tom Cotton** (R-AR) said lawsuits filed under environmental laws often delay major projects, arguing that activist groups have exploited the process. McDonald responded

that clearer language in Section 106 would reduce legal uncertainty and make it harder to use the law as a stalling tactic.

- Sens. **John Hickenlooper** (D-CO) and **Alex Padilla** (D-CA) focused on balancing the need for faster permitting with the importance of protecting cultural and historic sites.
 - Merritt pointed to Utah's early planning for geothermal and solar projects as an example of how states can prepare for clean energy growth without sacrificing heritage protection. Padilla emphasized that consultation must be meaningful and ongoing, not just a formality, and said early engagement helps avoid redesigns and additional costs later in the process.