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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.