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The Honorable Sara Bronin, Chair
Advisory Council on Historic Preservation
401 F. Street, NW, Suite 308
Washington, D.C. 20001
Sent via email to: Program_alternatives@achp.gov

Re: ACHP's Draft Program Comment on Accessible, Climate-Resilient, and Connected Communities

Dear Chair Bronin:

Thank you for the opportunity to comment on ACHP's proposed Program Comment on Accessible, Climate-Resilient, and Connected Communities. As the New Mexico State Historic Preservation Officer (NM SHPO), I support efforts to streamline Section 106 using program alternatives; however, the proposed comment is too broad and convoluted to implement effectively.

The Program Comment should be revised to clearly list which activities do not require further review in one appendix and which activities must satisfy conditions, exclusions, or requirements in another appendix. The use of two Appendices and two Sub-Appendices and references back to various sections is extremely difficult to follow. Furthermore, I recommend removing the transportation programs and focusing the program comment on housing. The NM SHPO currently has an effective programmatic agreement with FHWA/NMDOT that includes some of the exemptions listed in Appendix C-1, but we do not have a PA for housing.

While an agreement for housing would help streamline Section 106, care must be taken to limit the exemptions to those activities that have minimal potential to affect historic properties; an important distinction from the draft program comment which authorizes undertakings or components of undertakings with no or minimal potential to adversely affect historic properties. The use of the term "minimal potential to adversely affect historic properties" seems to go against recent guidance from the ACHP that exemptions should have no or little potential to affect historic properties. In addition, the inclusion of installation as an action under many of the activities within previously disturbed ground or disturbed rights-of-way is problematic for NM due to the many significant archaeological sites within highway rights-of-way and in urban environments. Many of those archaeological sites include unmarked human burials.

A qualified professional meeting the Secretary of the Interior's Standards should be required to review an undertaking that has the potential to affect any site, object, building, structure, or

historic district listed in the National Register of Historic Places. This includes historic buildings or structures less than 45 years old, within known archaeological sites, or areas with high potential for significant archaeological deposits. Many federal agencies do not have qualified professionals meeting the SOI standards for the applicable discipline, and in these instances consultation with the SHPO should be required.

Specific Comments:

II.E.2 and III.A.1. What is meant by components of an undertaking? I'm also confused by what II.E.2 is intended to do.

III.C. The Use of Qualified Authorities. I'm not sure why we need a term that doesn't exist within 36 CFR Part 800 and the definition and intent of the term is not clear. The definition of a qualified authority seems to mean a person recognized by an Indian tribe or Native Hawaiian Organization to have the expertise identify, evaluate, assess, and treat properties of religious and cultural significance. Yet, in Appendices A-2, B-2 and C-2, a Qualified Authority must make a determination on whether the activity is covered under the program comment. An individual meeting the Secretary of the Interior Qualified Professional Standards should make this determination. Furthermore, the use of a qualified professional should not be limited to historic architecture or architectural history. Many of the activities listed in the appendices have the potential to affect eligible archaeological sites.

II. D. Determinations of Eligibility. This program comment does not require a federal agency to determine whether an involved or affected property is a historic property, except where explicitly stated. If no determinations of eligibility are required, how would the federal agency determine that the undertaking would have minimal potential to adversely affect the property? This is also why the program comment should only include activities with no or little potential to affect a historic property.

VII. Duration. The duration of this proposed Program Comment is too long. The maximum duration should be five years to determine the effectiveness of the agreement before extending the term.

VIII. Amendments. SHPOs should be consulted regarding any proposed amendments.

IX. Withdrawal. SHPOs should be notified of the decision to withdraw from the Program Comment.

X. Reports and Meetings. Federal Agency Annual Reports only require "examples of undertakings covered by Section III.A.1." This gives the Federal Agency leeway to determine which undertakings they want to include in their report and does not give the ACHP a full picture of the undertakings that may have been reviewed under the Program Comment. A copy of the report should also be provided to SHPOs, otherwise we will not know which activities have been completed under the agreement.

IX. Definitions

- **Previously Disturbed ground and previously disturbed right-of-way.** Although this definition does not include historic urban deposits, prehistoric deposits within an urban setting are overlooked and many New Mexico Department of Transportation rights-of-way are previously disturbed ground but still have extant archaeological deposits. In many cases, it is imperative that a SOI qualified archaeologist conduct a records search of our New Mexico Cultural Resource Information System (NMCRIS) to determine if eligible archaeological sites exist or are likely to exist with the APE. Utility work in existing utility corridors throughout the City of Santa Fe routinely uncovers archaeological deposits and ancestral remains. Albuquerque, Las Vegas, and many other communities have eligible archaeological sites and unmarked historic cemeteries within the urban setting. For example, the State of NM General Services Department had to abandon its plans to install carports with solar panels at a state-owned facility due to the presence of an unmarked cemetery in the parking lot and New Mexico Highlands University had to revise plans for the installation of a fire suppression system when unmarked human burials were uncovered in an area of existing trenching. The extent of physically altered soils may not be apparent without testing and as-built drawings and plans are often insufficient to make that determination.
- **Qualified Authority.** As mentioned earlier, the use of this term in the Program Comment is inconsistent with its definition.

Appendices:

- Appendix A-1.2.a,c,e and A-1.3 requires a records check and the agency knowing the age of a building. As these activities require a records check, they be included in Appendix A-2. Records checks should be performed by an SOI qualified professional.
- The inclusion of “installation” is problematic. The installation of fencing, lighting, etc. on or within a historic property or a property less than 45 years old could cause adverse effects to buildings, archaeological sites and historic districts.
- Many of the exemptions (i.e. Site Work) require a SOI qualified professional to perform a records check to determine if archaeological sites are present within the project area. A records check appears to be limited to determining if a historic building or structure is present.
- Landscaping activities do not appear to consider landscaping that may be character defining features of a historic property.
- Foundations and seismic and structural repairs have the potential to adversely affect eligible archaeological sites even within 10 feet of a building.
- Below-ground utilities, including underground water, sewer, natural gas, electric, telecommunications, drainage improvements, septic systems, and leaching systems. This activity has the potential to adversely affect eligible archaeological sites.
- Rehabilitation, replacement, and installation of clean energy technologies. This activity doesn't consider visual affects to a historic district that may occur even if located outside

the boundaries of a historic district.

- Allowed activities may adversely affect character defining features that may not be on a primary façade or visible from a primary right of way.

We look forward to working with the ACHP on a draft of this program comment or the development of programmatic agreements that allow the SHPOs, tribes, and consulting parties to actively participate in the Section 106 process.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. Ensey".

Michelle M. Ensey

Executive Director/State Historic Preservation Officer

State Archaeologist