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ARIZONA
STATE PARKS & TRAILS

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Honorable Sara Bronin, Chair
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DC 20001

Dear Chair Bronin:

Thank you for the opportunity to comment on the Advisory Council on Historic Preservation's (ACHP) *Draft Program Comment on Accessible, Climate-Resilient, and Connected Communities (PC)*.

As State Historic Preservation Officer of Arizona, I view one of my significant responsibilities as ensuring that Section 106 National Historic Preservation Act (NHPA) consultation process is efficient and that federal programs and funds can be effectively deployed in our state to ensure the continued economic prosperity and health and safety of Arizonans. As an appointee of the last two seated Governors, I not only fulfill the roles and responsibilities of the SHPO as defined in Section 101 of the NHPA (54 USC 302303), but also work with our administration to ensure that these federal funds are utilized in a manner which achieves our State's sustainability objectives and protects the natural and cultural resources that are so essential to Arizona's history, character, and identity.

Today I write to you in full support of the statements made by the National Conference of State Historic Preservation Officers in their letter dated September 27, 2024, and those by the Society for American Archaeology in their letter dated September 20, 2024. As you are aware from my remarks made in consultation meetings, I believe this PC *fundamentally undermines* the intent of the framers of the NHPA, to build a federal preservation program that not only recognizes, but gives primacy to, the rights of state and local governments to have a seat at the table with regards to federal decision making that affects the tangible elements of their history. The creation of SHPOs, certified local governments (CLGs) and Tribal Historic Preservation Officers (THPOs), through subsequent amendment, is a cornerstone of the NHPA and here in Arizona, is the structuring principle that ensures that federal decision making reflects the priorities of our communities.

The prologue to the PC establishes, "(this) Program Comment aims to achieve objectives laid out in ACHP policy statements, to advance historic preservation goals, and to help satisfy the nation's pressing needs to expand access to housing, facilitate climate-resilient and zero emissions buildings, and promote climate-friendly transportation." With all due respect, I would argue that it not only fails to achieve these goals but also jeopardizes current collaborative efforts between federal agencies, tribes and the state to address these important sustainability objectives in a manner that privileges local expertise; social, economic and environmental contexts; and historic preservation priorities.

While our office largely supported the ACHP's policy statement on *Housing and Historic Preservation*, formally adopted December 23, 2023, this policy focused on best practices that could be employed by federal, state, tribal and municipal governments to facilitate the adaptive reuse of historic buildings within a collaborative framework. To wit, the policy statement concludes with the assertion that "the impacts of America's housing shortfall are so wide ranging that collaboration among public-serving institutions, developers, financial institutions, philanthropic organizations and others in the private sector is essential." The Arizona SHPO is somewhat perplexed as to how this exhortation for enhanced collaboration has

resulted in the unprecedented, unilateral development of a PC by the ACHP that would effectively undermine current collaborative efforts underway within states to promote use of existing building stock to promote the development of climate-resilient affordable housing.

Furthermore, we at the SHPO are concerned with the broad-brushed approach to development of a PC that targets not only federal programs related to affordable housing and clean energy, but also transportation. Arizona's federal-aid transportation program is administered through Federal Highway Administration (FHWA) assignment, which has required our Department of Transportation (DOT) to develop a comprehensive Programmatic Agreement (PA) to govern assumption of FHWA's Section 106 responsibilities. The resulting PA, negotiated through robust consultation with Arizona's 21 tribes, represents a highly successful streamlining tool for delivery of federally funded transportation projects in Arizona. It does so within the context of Arizona's commitment to the tribes to properly consider the extensive subsurface archaeological remains that are present in both urban and rural settings, as well as the broader cultural landscape within which properties of religious, traditional and cultural value to tribes are located. The protocol developed through collaboration with the DOT, SHPO, state and federal land managers, and the tribes provides for a 14-day review period for all projects with a finding of "no adverse effect," while preserving robust consultation with tribal governments. The potential for this PC to invalidate this agreement would have disastrous consequences for historic preservation in Arizona, affecting not only the appropriate consideration of traditional cultural properties for which tribal knowledge is key to identification and evaluation, but also destabilizing the relationship of trust built between the tribes and the state.

Over the past ten years, the Arizona SHPO has proactively worked with federal agencies to execute PAs that provide critical streamlining provisions, screened exemptions and batch consultations for undertakings that are either routine in nature or have minimal potential to create adverse effects to historic properties. These PAs reflect the collaborative efforts of federal, state, tribal and local governments to craft common-sense approaches that meet the needs of all parties and include:

- **Individualized agreements** with local governments for the administration of HUD-funded programs that customize process and codify decision making at the local level, where project priorities and schedules can best be addressed.
- **Novel agreements**, such as that developed in Arizona for landscape-level vegetation management and fuels reduction, to allow federal and state agencies, municipalities, and tribal governments to deploy routine practices as well as emergency response measures across multiple land jurisdictions. Identification of agency "leads" across multiple jurisdictions allow to minimize repetitive consultations and allow for swift decision making on what has increasingly become a significant climate-related threat for the State.
- **Enhancement of nationwide agreements** that recognize agency expertise and the long history of collaboration between SHPO and administrative units of federal agencies. Examples of such include our current agreements with the Arizona State Office of the Bureau of Land Management (BLM) and Regional Programmatic Agreement with the United States Forest Service (USFS) which enhance highly-knowledgeable agency personnel's ability to make in-house decisions. Our federal colleagues appreciate the ability to utilize such agreements as they often allow for more nuanced (i.e., less formulaic) treatment of resources unique to their jurisdictions. To wit, Grand Canyon National Park has initiated the development of a Park-specific PA with the SHPO, ACHP, and tribes that would expand the provisions of the current NPS Nationwide PA to include

use of substitute materials and agreed-upon avoidance measures to ensure preservation of Register-eligible archaeological resources.

I encourage the ACHP to expand the analysis undergirding its assumption that PCs would have the desired result of facilitating federalized housing, transportation and climate resiliency projects to include **state-specific** inquiry into the presence of PAs, Section 106 review times and federal agency state/regional feedback on the effectiveness of consultation. I imagine you will find more states—like Arizona—that routinely track their responsiveness to agency requests for consultation as a function of internal process improvement and agency accountability. The Arizona SHPO has five years of data indicating that when provided sufficient information by the federal agency/applicant, concurrence on finding of effect is provided an average of 14 days of receipt of consultation. We report this data on a quarterly and annual basis to the Governor’s Transformation Office according to the principles established under the Arizona Management System (<https://results.az.gov/arizonas-approach>.)

From my over twenty years of experience assisting federal agencies with compliance with NHPA Section 106 and eight years of experience as a SHPO, I strongly suspect that the elimination of our office from Section 106 decision making process would have quite the opposite result of that which is intended under the PC. Without the involvement of SHPOs, the Section 106 review process for even the most routine undertakings will suffer from absence of a key check on federal agency accountability. For every project that may receive the (in Arizona, nominal) benefits of enhanced streamlining, I predict there will be at least five projects that experience unnecessary delays due to lack of federal agency staff prioritization, errors in defining the undertaking, incomplete identification efforts, and most concerningly, discoveries of significant archaeological properties and burials of ancestors descended from one or more of Arizona’s 21 tribes.

The staff at the Arizona SHPO certainly have additional concerns on specific provisions of the PC as they pertain to public consultation requirements of Section 106; unilateral federal agency treatment decisions that are not tied to determinations of NRHP-eligibility; the evaluation of historic properties under Criterion Consideration G; and the potential phasing and/or segmenting of projects to “fast track” isolated components that meet the requirements for the PC while deferring other components for standard Section 106 consultation. These are valid concerns that have been raised by other commenters. However, I have chosen to focus for purposes of this initial review on what I believe is an **epistemologically flawed** approach to addressing a “problem” that—at a minimum—has not been analyzed adequately and that for many states, may not even exist. To fundamentally undermine one of the basic precepts of the federal preservation program—the inclusion of state, tribal, and local voices in decision making—in pursuit of unclear gains in “efficiency” poses a threat to the very nature of historic preservation in the United States.

Thank you once again for the opportunity to provide comment on this PC. As always, I appreciate your strong leadership in guiding federal historic preservation policy and welcome the opportunity to work with you, the ACHP and staff to enhance the effectiveness of the implementing regulations of the NHPA. To that end, please feel free to reach out to me directly at 602.542.4009 or by email at KLeonard@azstateparks.gov.

Respectfully,

A handwritten signature in black ink, appearing to read "Kathryn Leonard". The signature is fluid and cursive, with the first name "Kathryn" and last name "Leonard" clearly distinguishable.

Kathryn Leonard
State Historic Preservation Officer
Arizona State Parks and Trails

cc:

Eric M. Hein, Executive Director, National Conference of Historic Preservation Officers
Valerie J. Grussing, Executive Director, National Association of Tribal Historic Preservation Officers
Reid Nelson, Executive Director, Advisory Council on Historic Preservation
Daniel H. Sandweiss, President, Society for American Archaeology
Amanda Stratton, Executive Director, American Cultural Resources Association
Abbey Christman, Chair, National Alliance of Preservation Commissions