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Officially known as the Zuni Tribe of the Zuni Indian Reservation

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Mr. President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. President,

The Pueblo of Zuni thanks the Biden and Harris Administration and the Office of Management and Budget (OMB) for the opportunity to provide productive, and hopefully long-lasting, input on material changes that are necessary to meaningfully and effectively advance equity and support by the government for underserved communities. We particularly seek to provide comments that address how opportunities in select governmental policies, regulations, and guidance can affirmatively and equitably be applied and programmatically operationalized to both address and provide solutions to some of the most intensive underlying causes of systemic inequities in American society for the *A:shiwi*, the Zuni people.

Specifically, the Pueblo of Zuni offers meaningful, restorative, and pragmatically operational observations regarding government agency responsibilities, obligations, and measures for actionable accountability under the National Historic Preservation Act (NHPA), the National Environmental Policy Act (NEPA), and their associated, but often neglected, procedures, mandates, amendments, and guidance. The Zuni comments are presented first through a brief background of the social, historical, and geographical context of the inequities the Zuni Tribe and Zuni people—and, indeed, all Native peoples—continue to face in the United States. This is followed by recommendations that are applicable to and implementable through the five sections identified by OMB—(1) Equity Assessments and Strategies; (2) Barrier and Burden Reduction; (3) Procurement and Contracting; (4) Financial Assistance; and (5) Stakeholder and Community Engagement—in response to the Administration’s Executive Order (E.O.) 13985 and its call for inclusive and equitable systemic changes. Because these recommendations are interconnected, and must be mutually developed and implemented to be effective in advancing inclusive and equitable systemic change, they are offered under a single collective heading of *Equity Advancement for Zuni People through NHPA and NEPA Processes*.

The Zuni people have maintained a continuous occupation and presence in the American Southwest since time immemorial. Some archaeologists believe that Zunis are the descendants of the Clovis culture of the Paleoindians that were part of the first wave of immigrants into the Western hemisphere (Matson 2007:23). This archaeological perspective aligns with Zuni traditional history that recounts our ancestors emerging into this world at Ribbon Falls in the Grand Canyon a very, very long time ago. Our deep time presence in the Southwest is authenticated by our language which is a linguistic isolate that has no known genetic relative; that is, there are no known languages that resemble Zuni because we are descended from a common ancestor approximately 7,000 to 8,000 years ago, or near the beginning of what archaeologists define as the Archaic period (Hill 2007:23). Linguistic evidence further suggests that Zuni ancestors were living in the west-central New Mexico region at least since the time of their earliest historical linguistic “visibility,” perhaps around A.D. 1100-1300. We, *A:shiwi*, managed to maintain our unique identity and language for at least two millennia in a pre-colonial world dominated by speakers of the Uto-Aztecan languages (Hill 2001). Some scientists think that the emergence of Zuni as a

distinct linguistic isolate may have occurred prior to or during the transition to modern plant communities in the Southwest (Gregory and Nials 2007:54; Matson 2007).

We, Zuni, are a proud and distinct people in the American Southwest and our unique relationship to our cultural landscape has existed since time immemorial. The Zuni people and our traditional beliefs and religious activities are under constant economic, social, cultural, religious, and linguistic threats from the dominant Euro-American culture. The Zuni people, our traditional culture and way of life are “endangered.” Our critical habitat is the Zuni cultural landscape that defines, in part, who we are as a distinct and unique people. This critical habitat extends from the Sandia mountains in the east to the Grand Canyon and San Francisco Peaks in the west. The importance of this area to the Zuni people and the validity of our claims to this landscape have been officially recognized through the United States Claims Court by Judge Yannello in 1987.

As Zuni people, we have a deep historic and contemporary understanding and knowledge of, an affinity with, and empathy for the environment (landscape) in and with which we live. We believe in the conservation of the landscape from the point of view of caring for our relatives rather than from a scientific perspective of conserving or managing natural resources, and we have many generations of experience in providing this care. We, as *A:shiwí*, want, above all, to have non-Zunis (including, specifically, federal agencies) fulfill their responsibilities to understand the depth of our relations with the landscape and our deep respect for the environment, the same kind of respect that we have for our cherished friends and families. Our relationship with the environment permeates not only our religious use of the land but also our everyday use. Every kind of activity that we, as Zuni people, carry out is associated, in some fashion, with a socio-cultural and religious pursuit and use.

Our long association with the landscape has developed in the Zuni people an extensive knowledge of the plants, animals, insects, and water sources with whom we share the landscape. As a result, we, *A:shiwí*, maintain a strong sense of stewardship and an associated powerful responsibility toward the environment that is strengthened by our familial and spiritual connection to animals, plants, and other aspects of the environment. For us, the ability to correctly collect and use plants, animals, minerals, water, and places on the landscape (mountains, buttes, mesas) involves recognition that these material resources and places are also sentient beings, possessing a spiritual essence, who respond, positively or negatively, if they are treated appropriately or inappropriately.

As members of a federally-recognized Native American Tribe, each Zuni holds dual status as citizens of both the Pueblo of Zuni, a sovereign Indigenous Nation, and the United States. As a Native people and as Tribal citizens, *A:shiwí* have persevered in the face of over a century of social, environmental, and ecological imbalances promoted and perpetuated by United States governmental and colonial-settler actions of geographical dispossession, enclosure, containment, and extraction. As citizens of the United States, *A:shiwí* have endured—*often violent and traumatic*—historical and ongoing governmental attempts at social, psychological, cultural, ideological, and economic assimilation, disenfranchisement, silencing, and erasure. As both Native people and American citizens, *A:shiwí* have not only been underserved by the United States government, *but dis-serviced by it*. This disservice has governmentality been enacted and performed through most often purposeful—and perhaps at times accidental—impositions of inequity on every arena of *A:shiwí* life. Regardless of whether or not such actions have been intentionally imposed, the inequities they created are still the same for those peoples experiencing ongoing social, psychological, material, cultural, economic, and health effects (see Pulido 2000, for example). Thus, the input provided here is most directly intended to address and initiate redress for inequities in specific governmental policies, programs, and practices that have long-served as persistent barriers to undermine equal opportunities and considerations for the Zuni Tribe and Zuni people, and these comments uniformly apply to *A:shiwí* as citizens of the United States. Indeed, these comments are equally applicable to other underserved and disenfranchised Native American Tribes and Indigenous communities that have and continue to face—similar

social, psychological, ideological, historical, geographical, environmental, and ecological processes of disservice and inequity (see Curti et al. 2020; Whyte 2017).

All lands and waters within and intersecting the borders and boundaries of the United States are Native lands and waters (see <https://native-land.ca/>). This basic fact must first formally be addressed, officially recognized, operationally accounted for, and serve as the basis of any honest and sincere effort at advancing equity and support for the underserved *A:shiwí* community and Pueblo of Zuni. Recalling your own recent words this past June Mr. President, “Great nations don’t ignore their most painful moments. They don’t ignore those moments of the past. They embrace them. Great nations don’t walk away. We come to terms with the mistakes we made.”

Similar to countless other Native peoples of the lands and waters that today comprise the United States, *A:shiwí* neither recognize nor practice artificial dichotomies or separations between humans and the environment nor compartmentalized or closed distinctions between natural resources and cultural resources (see Curti et al. 2020; Martin 2001; Pablo 2001; Wemytewa 2012; Young 1988). Moreover, *where* significant Zuni historical, cultural, religious, and economic events have occurred are in many ways more central in importance than *when* they occurred for *A:shiwí* (see Curti et al. 2020; Deloria 1994; Young 1988). Any sincere effort to address and advance equity and support by the government for underserved Native communities thus must come to terms with—and simultaneously provide actionable and material correctives for—the ongoing spatial dispossession and alienation imposed by American colonial-settler society on Native American geographies and human-environment relationships and practices. As Hunkpapa Lakota scholar, historian, and theologian Vine Deloria, Jr. (1994), analyzed and explained at length over two decades ago:

When domestic [American] ideology is divided according to American Indian and Western European immigrant [societies] ... the fundamental difference is one of great philosophical importance. American Indians hold their lands—places—as having the highest possible meaning, and all their statements are made with this reference point in mind. Immigrants review the movement of their ancestors across the continent as a steady progression of basically good events and experiences, thereby placing history—time—in the best possible light. When one group is concerned with the philosophical problem of space and the other with the philosophical problem of time, then the statements of either group do not make much sense when transferred from one context to the other without proper consideration of what is taking place [Deloria 1994:62-63].

Marcia Pablo of the Confederated Salish and Kootenai Tribes (CSKT) of the Flathead Nation simply and succinctly reinforces the centrality of space in any sincere attempt to advance equity and support for underserved Native American communities:

[T]he First Nations of this continent did not have a written history in book form, as did the non-Indian peoples who came here. Our history is written within our unique and specific cultural landscapes. These places hold the memories of our ancestors, speak to us in the present, and are crucial to our survival, as Indian people, into the future [Pablo 2001:18].

As just these two experientially informed and lived insights should make readily clear to the Biden-Harris Administration and OMB, addressing and redressing the vast spectrum of inequities faced by *A:shiwí*—including those born by and through social and ecological imbalances, structural and institutional racism, and environmental, legal, and historical injustices—must begin spatially, materially, and restoratively, that is, they must always be based on and begin with Zuni geography.

Lest the immediate and holistic implications of this input be missed or misinterpreted either entirely or in part, any sincere, meaningful, and effective advancement in equity and support for underserved and disenfranchised *A:shiwí* as citizens of both the Pueblo of Zuni and the United States must start with, work through, and be supported by land-based, water-based, and air-based restorative strategies and solutions as a matter of formal policy and practice. The continued disregarding or treating of systemic inequities faced by *A:shiwí* in particular and Native peoples in general as having the same underlying causes as those faced by colonial-settler immigrants or other communities of color is to, *in effect*, perpetuate the same acts and practices of governmental and colonial-settler marginalization and violence that have continually worked to ethnically cleanse Native peoples from Native lands and waters of the United States.

The Pueblo of Zuni would be remiss in this context to remain silent on the recent legal position taken by the Biden-Harris Administration's Department of Justice (DOJ) regarding *Chi'chil Bildagoteel* (i.e., Oak Flat) and the Resolution Copper mine in Arizona. The Administration's stated position is unfortunate and extremely troubling, as it is in fact little more than a continuation of a policy of containment and erasure of Native peoples (see Whyte 2017) that directly contradicts in substance, content, and spirit the Administration's own E.O. 13985. This position is a reinforcement and reproduction of racist legal legacies of Native dispossession in the United States (see Hand et al. 2012; Hutt 2009; Miller 1998) that gives preference to and promotes resource extraction and environmental destruction to the detriment of the capacities Native people indelibly require for any advancement or support of equity. It cannot be stated strongly enough that this position advanced by the United States government and its DOJ are some of the most intensive institutional and structural barriers that continue to undermine equal opportunities, produce and reproduce social and economic inequities and health disparities, and—in effect if not intent—work to simultaneously promote and perpetuate material, epistemic, and ontological injustices on Native peoples (see Hand et al. 2012; Fricker 2009; Kidd et al. 2017; Miller 1998; Tsosie 2012; Wilson 2017).

This consideration is fundamental and its foundational geographical implications and explications cannot be overstated for the Pueblo of Zuni and, indeed, all Native peoples of the lands and waters that comprise the United States: without directly, foundationally, and restoratively confronting and continually materially addressing and redressing geographical injustices of governmental and colonial-settler actions, programs, and procedures that have occurred—and continue to occur—over space and time, the Biden-Harris Administration and OMB cannot sincerely, meaningfully, honestly, or effectively advance any reasonable levels or forms of equity and support for Native peoples. On the contrary, the Administration will simply perpetuate and reproduce ongoing injustices of ethnically cleansing Native peoples from Native lands (see Kantor 2007; Wemytewa 2012; Whyte 2017; Wildcat 2013).

It is in these contexts that the Pueblo of Zuni offers input on pragmatic ways the Biden-Harris Administration and OMB can meaningfully, honestly, and sincerely address the calls of E.O. 13985 for inclusive and equitable systemic change. It is the Pueblo of Zuni's position that, while not directly or explicitly promulgated or designed to address the concerns presented here, good faith and meaningful application and operationalization of both NHPA and NEPA policies, regulations, and guidance offer the most practically immediate and promising opportunities to begin to address and provide restorative justice to some of the most intensive underlying causes of systemic inequities in American society for *A:shiwí*, the Pueblo of Zuni, and other Native peoples of the lands and water of the United States. In what follows, the Pueblo of Zuni offers input on opportunities in the NHPA and NEPA to address and provide correctives to some of the most intensive underlying causes of systemic inequities through the five area sections identified by OMB.

Equity Advancement for Zuni People through NHPA and NEPA Processes

Both NHPA and NEPA offer pragmatic opportunities and accessible frameworks for the development and implementation of holistic and policy-specific assessments of equity and advancement of equity for underserved and disenfranchised people by various public sector entities. These opportunities especially apply to public entities that either serve as federal land management agencies and/or potential lead federal agencies when government undertakings are subject to these Acts.

To date, when input and concerns of barriers to equity have been presented by the Pueblo of Zuni as part of government-to-government consultation associated with and required under these (and other) regulatory processes, they have all-too-often been largely ignored if not outright dismissed by both responsible government agency personnel and their consultants. This has been an ongoing failure in governmental and professional obligations to achieve good faith and reasonable considerations in compliance under NHPA and NEPA procedurally and genuinely. This repeated and ongoing institutional and structural negligence in consultation associated with review and compliance under NHPA and NEPA has functioned as one of the most intensive and systemic barriers for the Zuni Tribe and Zuni people to achieve equity.

NHPA and NEPA have both built in procedural and associated guidance mechanisms that require and direct governmental agencies on how they must account for, respect, and be inclusive of *A:shiwí* special expertise and sovereignty in findings, considerations, and decision making. However, efforts to fulfill such obligations and responsibilities for meaningful considerations of Zuni human-environment and people-place relationships and direct, indirect, and cumulative adverse effects and impacts that may occur—and are occurring—to them reasonably and in good faith are repeatedly neglected. The norm for government agencies has been exclusionary, manipulated, and negligent applications of the regulations and procedures guiding NHPA and NEPA. This in turn—whether wittingly or unwittingly—has been commonly and regularly used to perpetuate—if not reinforce—policies of inequity creation through bad faith approaches that result in racist programs and the simultaneous privileging of extractive and destructive industries and reproduction of social, environmental, epistemic, and ontological injustices on and to Native peoples (see Curti and Moreno 2014; Dongoske et al. 2015; Fish 2005; Milholland 2010; Schumann 2019).

Amendments added to the NHPA in 1992 were intended to directly confront such governmental negligence, and they explicitly mandate that agency officials “shall acknowledge that Indian tribes and Native Hawaiian organizations possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them” (36 CFR 800.4(c)(1); see King 2003). Such acknowledgment and inclusion in good faith is especially imperative to advancing equity for *A:shiwí*—and, indeed, all Native peoples—because, as associated Advisory Council on Historic Preservation (ACHP) guidance has underscored:

There are very different views [between federal agencies and Native American tribes] on *the treatment of effects* to traditional cultural landscapes. Non-native people tend to think in a linear fashion while native peoples tend to think cyclically. *This difference in world view affects not only whether or not the significance of sacred places is understood but also how such places should be treated. These places are part of living communities and are their actual history* [Emphasis added; ACHP 2011:2].

It should be noted that the 1992 amendments to the NHPA were made necessary because certain federal agencies—including the Bureau of Land Management (BLM), U.S. Forest Service (USFS), and Bureau of Indian Affairs (BIA)—selectively excluded Native Americans from their interpretations of NHPA mandates to account for historic properties important to “our past” and “our history” as well as “information important in history and/or prehistory,” and did not consider Native American places and properties of traditional religious and cultural importance worthy enough to be eligible for listing on the National Register of Historic Place (NRHP). To counter

such racist, exclusionary, and marginalizing practices, the term Properties of Traditional Religious and Cultural Importance to an Indian tribe or Native Hawaiian organization (PTRCIs) was added as clarification of their NRHP eligibility and the necessity of full consideration for them as part of NHPA review processes (King 2003:35).

NEPA similarly requires analyses and assessments of impacts on resources of traditional use and importance. This includes assessments of direct, indirect, and cumulative effects (40 CFR 1508.8)¹ to historic and cultural resources (40 CFR 1502.16(g)), as well as the human environment. 40 CFR 1508.14 defines the “Human Environment” broadly, stating that the:

Human environment shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment.

40 CFR 1508.27(b)(8) also stipulates those considerations must be given to how the NHPA 106 Process will inform NEPA review. While coordination and substitution processes exist for NHPA and Section 106 review (see 36 CFR 800.8), neither process relieves an agency of its responsibilities under each act (CEQ-ACHP 2013). Often, agencies will attempt to have Section 106 review stand in for historic and cultural resources and use associated findings as part of NEPA review and compliance. This, however, is insufficient. *NEPA is much broader than NHPA insofar that assessments of and considerations for impacts or effects to historic/cultural/heritage properties and resources (such as culturally important places, landscapes, and treaty waters and lands and their associated resources) are not limited to those eligible or potentially eligible for listing in the NRHP.* In this context, and as part of the NEPA process, it is vital to recognize and underscore that for the Zuni Tribe—and all Native peoples—natural resources *are* cultural resources.

NEPA presents general standards for data and information used in Environmental Assessments (EAs) and Environmental Impact Statements (EISs). 40 CFR 1500.1(b) and 40 CFR 1502.24 respectively mandate that decisions be made using “high quality” information and “professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements.” To achieve both high quality and integrity it is necessary that these standards always be coupled with the stipulations at 40 CFR 1502.6 “Interdisciplinary preparation,” which state that:

Environmental impact statements shall be prepared using an inter-disciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts (section 102(2)(A) of the Act). The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process (§ 1501.7).

Important to consider as part of the sequential steps of NEPA review and how they can work towards advancements of equity for Zuni people, these standards and appropriate disciplinary approaches exist to help fulfill the overall purposes of the NEPA process: “to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment” (40 CFR 1500.1(c)).

As part of both NHPA and NEPA review, “[c]onsultation with an Indian tribe must recognize the government-to-government relationship between the Federal Government and Indian tribes, and should be conducted in a sensitive manner respectful of tribal sovereignty” (36 C.F.R. 800.2(c)(2)(ii)(B) and (C); see CEQ-

¹ The Council on Environmental Quality (CEQ) provided rule updates to the regulations implementing the procedural provisions of NEPA on July 16, 2020. It is unknown at the time of this writing how different federal agencies will respond to this decision. See: <https://www.federalregister.gov/documents/2020/07/16/2020-15179/update-to-the-regulations-implementing-the-procedural-provisions-of-the-national-environmental>.

ACHP 2013). Moreover, as the quick review above demonstrates, information and data informing both NHPA and NEPA review is supposed to be gathered, analyzed, and considered by and through Tribal values and uses, lived perspectives, meanings, and practices (i.e., ontologies and epistemologies)—as self-defined and directed by affiliated tribes, as *knowledge-sovereigns*, themselves—in equal standing with mainstream Western scientific methodologies and findings. Knowledge sovereignty is inextricably tied to cultural, social, and political sovereignty and associated relationships of ecological health and wellbeing (see Norgaard 2014:2), and should be understood “[f]rom a local indigenous knowledge perspective” and in processes advancing equity as:

the freedom to recapture and utilize indigenous [traditional and scientific] knowledge as a peer to [mainstream Western] scientific knowledge, to move it from ‘invisible to visible[,] ... to challenge the fundamental dichotomies of [Western] scientific thought such as object/subject, rational/irrational and White/Black’ So, to be knowledge-sovereign is to have the ability to choose one’s own knowledge system, and to be able to use it freely to critique dissimilar constructions of knowledge without being subsumed by them [Fre 2018:16].

This respect for and attention to knowledge sovereignty directly speaks to environmental justice concerns and how Section 106 review can and should inform these issues. The Council on Environmental Quality (CEQ) Executive Office of the President and the ACHP provide guidance that states:

Environmental justice issues encompass a broad range of impacts covered by NEPA, including impacts on the natural or physical environment and interrelated social, cultural, and economic effects. In Section 106 consultations, representatives of affected communities may also raise environmental justice issues. Such issues which can be addressed through historic preservation considerations may contribute to the agency’s overall environmental justice compliance [CEQ-ACHP 2013:16].

What is sorely missing are accompanying equity assessments and joint actionable accountability measures for ongoing agency failures to achieve good faith and reasonable compliance for the procedures that direct NHPA, particularly its Section 106 Process—but also its Section 110 Process—and NEPA.

Any and all competent, appropriate, and applicable strategies for identifying barriers and burdens that undermine equal opportunities and considerations for the Zuni Tribe and Zuni people—and all Native peoples—must directly and pragmatically confront how historic and ongoing practices and policies fail to fulfill the substance, content, and directives of NHPA and NEPA by generating:

an epistemic hierarchy that celebrates the virtues of science and capitalism, and universalizes Western values. It achieves this by marginalizing non-Western ways of being, seeing and knowing ... that emphasize the importance of reproduction. Coloniality destroys life through well-worn tropes of private property; of possessive individualism and endless consumption; of sustainable development and green economy; of progress measured by economic growth and consumption; and of instrumentalist and ecologically destructive conceptions of nature as a source of profit and an object of domination [Adelman 2015:19].

Strategic assessments should both be based in NHPA and NEPA requirements and work through and evaluate how agency personnel must “engage in a process of respect, reciprocity, and mutual benefit wherein the research [for NHPA and NEPA reviews]: (a) is informed by the viewpoints of indigenous peoples involved in open negotiation; (b) benefits the community; and (c) results in a product that is shared with the community, and in

which the community's participation is clearly acknowledged" (Herman 2015). Assessments must therefore also gauge steps that must be taken to:

decolonize research methodologically: to use research methods that are collaborative and reciprocal rather than exploitative and authoritative.... [T]o decolonize research epistemologically: to understand Indigenous cultures on their own terms, via their own worldview[s], without imposing Western knowledge structures on them.... [And] to ensure protection of Indigenous intellectual properties [Herman 2015:1].

The ACHP (2017:3) and others committed to and responsible for historic preservation in the United States recently noted in *Commemorating 50 Years of The National Historic Preservation Act* that:

While the NHPA provides for formal participation of Indian tribes and Native Hawaiian organizations, in practice they are often overlooked or excluded. The result is that the resources important to their identity and culture, and the intangible and tangible cultural heritage associated with them, are not properly recognized or valued by the larger society. They are often not fully considered in mandated preservation processes.

This negligence in consideration and recognition is indelibly entangled in racist perspectives and practices that structurally underpinned—and continue to largely guide and dictate—the development and formation of historic preservation values and approaches in the United States—and which are continually reproduced in dominant cultural resource management practices today. In particular, “[s]tructural racism impacts the practice of archaeology [in the United States], the sites that we commemorate, and the narratives that we construct,” and “[t]he dearth of preserved and commemorated historical sites that are associated with marginalized people impacts our public historical narratives. It perpetuates previous forms of structural racism in the ways we remember and memorialize the past” (Schumann 2019:255). Important to confront here is the fact that the perpetuation and reproduction of racism *need not be intentional*: “multiple forms of racism exist, including less conscious forms not characterized by malicious intent and hostility” (Pulido 2000:33).

Select institutional and structural barriers and burdens that reproduce and perpetuate racist actions in NHPA and NEPA processes must be critically assessed, directly confronted, and productively and inclusively transformed to begin to achieve equity for Zuni people. Considerations in these respects must include, but not be limited to:

- How, as part of every sequential step of NEPA review and the NHPA process, support of knowledge sovereignty regarding historic and cultural resources and historic properties and places with traditional significance must be respected per the mandates at 40 CFR 1502.6, guidance of National Register Bulletin 38, and stipulations at CFR 800.4(c)(1).
- An explicit recognition and corrective confrontation of one of the racist legacies of the NHPA—even with the described 1992 amendments—and other cultural resource legislation in the United States is that:

CRM [i.e., Cultural Resource Management], its legislative base, together with its principles and practices, establishes and maintains the primary relevance of archaeological knowledge in understanding the entirety of the American past. In effect, embedded within the [NHPA and other cultural resource legislative acts] are referents to the knowledge base, dominant ideas and values that underpin the discipline at a particular point in time. Thus, one of the consequences of the Acts has been to redefine American Indian material culture as archaeological – a labelling process of some symbolic significance. In defining Indian material culture as ‘archaeological’ any non-archaeological claims to know the significance and meaning of the

pasts and histories this material represents are immediately undermined and called into question. This then permits governments and their policy makers to, if they so choose, dismiss or de-legitimize non-archaeological claims about the role of material culture in supporting claims to certain cultural affiliations and traditions and thus land.

This situation is reflected in the critiques of archaeology offered by American Indians who have consistently questioned the ability of archaeological research to provide anything constructive for American Indians [Smith 2004:137].

- How direct inclusion must involve early collaborative development of study parameters, research design, appropriate methodologies, and who is to conduct natural and cultural research in NHPA and NEPA review.
- How meaningful and good faith accounting for cultural resources in general, and those with traditional significance in particular, can only be accomplished if those developing *and* performing associated research are trusted by the Zuni people for whom these resources and properties/places are culturally and religiously important. Free, Prior, and Informed Consent (FPIC) must be obtained from each participating Zuni representative prior to any study implementation to ensure that knowledge sovereignty, confidentiality protocols, and information sharing concerns are honored and respected.
- How, to address and confront inequity creation and associated burdens and barriers, information and data informing NHPA and NEPA review must be gathered, analyzed, and considered by and through Zuni values and uses, perspectives and meanings (i.e., ontologies and epistemologies)—as self-defined and directed by the Zuni Tribe, as a Tribal *knowledge-sovereign*, in equal standing with mainstream Western scientific methodologies and findings; this is essential to both reduce barriers and burdens the Zuni people have long faced and collectively fulfill, both meaningfully and in good faith, the overall purposes and mandates of NHPA and NEPA.
- How perpetuation and reproductions of structural racism in NHPA and NEPA processes by government agencies and their consultants—whether intentional or not—works through various forms and mechanisms, including:
 - Lack of respect for and attention to cultural protocols around information sharing, confidentiality, and sensitivity;
 - Tasking non-subject matter experts with planning, reviewing, identifying, evaluating, and/or assessing adverse effects on Zuni historic properties/places and human-environment relationships, especially those with traditional significance—this includes agency personnel and consultants;
 - Approaching Native American Tribes as a homogenous group—each federally-recognized Indian Tribe is a *sovereign nation*, and must be approached, respected, and treated as such;
 - Treating Zuni properties/places, land/waterscapes, and cultural resources as procedural check boxes for compliance rather than collaborative partnerships and negotiations in the protection, preservation, avoidance, and mitigation for properties/places, lands/waterscapes, and resources essential for the preserving and flourishing of Zuni practices and identities in violation of the very stated purposes of NHPA and NEPA;
 - Artificially limiting the review and consideration of Zuni historic properties/places, land/waterscapes, and cultural resources to the limitations of the NHPA and NRHP rather than reviewing them under the full spectrum of compliance, such as NEPA stipulations related to the human environment and historic and cultural resources.
- How structural racism against *A:shiwí* and the Pueblo of Zuni is reinforced and reproduced in NHPA and NEPA laws and practices when narrow disciplinary archaeological interpretations and disciplinary perspectives and values are privileged in the identification and evaluations of ancestral/archaeological sites (resources) and effects/impacts to their integrity.

- How assessing and confronting barriers and burdens that undermine opportunities and capacities for equity among Zuni people and the Pueblo of Zuni require accountings for how structural and institutional racism often occurs when archaeologists and other non-subject matter experts are given oversight and/or attempt to police, silence, absence, and/or change findings of studies that require training and knowledge in specialized approaches and methodologies for which they are unqualified and uninformed, such as Zuni-defined methodologies and understandings and practices of valid knowledge production and/or ethnography.
- How institutional and structural racism and inequities are continually reinforced against Zuni people through common tendencies to only accept Native American/First Nation perspectives as valid once they have been subjected to evaluation and authentication through the tenets of mainstream Western disciplines. Native American perspectives, knowledge of the environment, and practices of place and heritage are elemental aspects of Tribal knowledge sovereignty and political sovereignty.

Select financial and contracting matters relevant to NHPA and NEPA review that must be systemically confronted and resolved to overcome institutional and structural government agency barriers that continue to promote and perpetuate inequities among Zuni people that include, but are not limited to:

- How, per stipulations at CFR 800.2(a), *A:shivi* inclusion and involvement must not place any undue burdens, financially or otherwise, on Zuni people or the Pueblo of Zuni: “It is the statutory obligation of the Federal agency to fulfill the requirements of section 106 and to ensure that an agency official with jurisdiction over an undertaking takes legal and financial responsibility for section 106 compliance” (CFR 800.2(a)).
- How project proponent and agency budgets and schedules *do not define or direct compliance*; rather, any good faith, reasonable, and meaningful compliance requirements, efforts, and measures are what substantively must direct and help define project schedules and budgets;
- Relatedly, how Section 110 of the NHPA has, since its promulgation and enactment, been woefully underfunded—or not funded at all. This lack of care and prioritization of attention to places, properties, and resource essential to Zuni identities, practices, opportunities, and capacities to persevere and flourish *as a people* perpetuates public entity failures to consider—let alone address—the inequities the Pueblo of Zuni and Zuni people—and, indeed, all Native peoples—continue to face in the United States, of as a matter of *formal policy*.
- Explicit recognition that, by definition, good faith and reasonable compliance cannot be achieved by people with whom the Pueblo of Zuni does not have or hold relationships of trust.
- Funds allocated to NHPA and NEPA compliance studies and mitigation must be appropriately and commensurately geared towards relevant Zuni-defined priority areas, departments, and associated people-place and human-environment values, practices, and perspectives.

Select geographical matters relevant to NHPA and NEPA review that must be systemically confronted and resolved to overcome institutional and structural government agency barriers that continue to promote and perpetuate inequities among Zuni people include, but are not limited to:

- Providing ongoing opportunities for access to and protection of the integrity, availability, and use of heritage and cultural resources;
- Preserving and protecting Tribal historic properties and places of traditional religious and cultural importance;
- Enhancing capacities of traditional ecological systems and cultural landscapes in Tribally-defined and appropriate ways;
- Reawakening, reconnecting, and reliving ancestral and sacred geographies to overcome legacies of governmental and colonial-settler violence on Zuni social, cultural, religious, economic, and individual and community health and well-being;

- Accounting for cumulative effects inclusive of independent actions under NHPA and NEPA review per all applicable ACHP guidance, CFR 800.4(D)(2), and CFR 800.5, adverse effects and impacts to historic properties/places with traditional significance should be assessed and formulated with consideration to and respect for Zuni's unique cultural practices and understandings of integrity. It is thus central to confront and remediate for barriers and burdens of equity that the stipulations of CFR 800.5(a)(1) be fully applied as part of all associated compliance obligations:

An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative [CFR 800.5(a)(1)].

- Accounting for Tribally informed and true Areas of Potential Effects (APEs) under NHPA and NEPA review. Because, as National Register Bulletin 38 guides, it is the "the traditional history and culture of the group that ascribes significance to" (Parker and King 1998:14) historic properties with traditional cultural and religious significance that must be privileged, appropriate avoidance, protection, preservation, mitigation, and qualities and forms of integrity necessary for a historic property/cultural resource to continue to convey its significance also cannot be adequately decided or dictated by anyone other than the group for whom they hold traditional religious and/or cultural importance. The fact that this continues to be done as part of NHPA and NEPA processes both perpetuates and reproduce the structural racism that has long underpinned governmental practice.
- All appropriate and respectful mitigation must address and respond to the potential for cultural and identity damage and loss, matters only the Native American tribes can appropriately define. Equally, because historic properties/places with traditional cultural and religious significance are about the *relations* between tangible properties/places, land/waterscapes, and resources, embodied cultural practice, and intangible perspectives, values, beliefs, and identities, it is integrity of *associations*—as defined by and understood through Zuni worldview, belief, and value systems—that are most essential and necessary to consider and which must guide adverse effect and impact assessments and resolutions to achieve good faith and meaningful compliance (see Curti and Moreno 2014; Dongoske 2020).

Equity assessments must both develop actionable accountability measures at the policy level and identify how current laws and their implementation by agencies, their personnel, and their consultants promote uneven power geometries, marginalize Tribal input, and serve to continually undermine Zuni capacities of and for equity, health, and social, cultural, economic, and ecological well-being. Assessments and strategies to achieve equity must link current NHPA and NEPA procedures *as* practiced by public entities and their consultant with Indigenous ways of knowing, understanding, and living in and with the world. Associated work identifying culturally responsive assessment practices in educational arenas provide promising guidance and principles to leverage in this area (see, for example, Williams and Perrone 2018; Montenegro and Jankowski 2017). Equity assessments and strategies also must be virtue-based (see Anderson 2012), and institutionally and structurally work towards cognitive—that is epistemic *and* ontological—justice (Burman 2017) to meaningfully and effectively advance equity and support for the Pueblo of Zuni, Zuni people, all Native peoples, and all underserved communities whose rights continue to be neglected and subverted through NHPA and NEPA review processes.

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Letter to President Biden

RE: Pueblo of Zuni Comments on Executive Order 13985

01 July 2021

The Pueblo of Zuni appreciates this opportunity to provide these comments to your Administration and the Zuni people anticipate more productive and fruitful conversations with representatives of your Administration. To these ends, the Pueblo of Zuni feels here it is important to remind the Administration and all of its representatives that "Great nations don't ignore their most painful moments. They don't ignore those moments of the past. They embrace them. Great nations don't walk away. We come to terms with the mistakes we made." If you have any questions or require additional information, please contact me at 505.782.7000 or Kurt Dongoske, Zuni Tribal Historic Preservation Officer, at 928.587.1901.

Most Respectfully,

A handwritten signature in black ink, appearing to read "Val Panteah, Sr.", written in a cursive style.

Val Panteah, Sr.

Governor

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