



August 31, 2022

Jaime Loichinger
Assistant Director
Advisory Council on Historic Preservation
401 F Street NW, Suite 308
Washington, DC 20001
Via email: program_alternatives@achp.gov

Re: Revised Proposed Exemption Regarding Historic Review Process for Undertakings Involving Electric Vehicle Supply Equipment

Dear Assistant Director Loichinger:

The American Cultural Resources Association (ACRA), the trade association for firms that specialize in cultural resource management (CRM), appreciates this opportunity to comment on the Advisory Council on Historic Preservation's (ACHP) revised proposed "Exemption Regarding Historic Review Process for Undertakings Involving Electric Vehicle Supply Equipment."

ACRA member firms undertake much of the legally mandated CRM studies and investigations in the United States and employ thousands of CRM professionals, including archaeologists, architectural historians, historians, and an increasingly diverse group of other specialists. To help guide smart, sustainable economic development and safeguard important historic and cultural heritage assets, ACRA members apply specialized research skills within a framework of federal, state, local, and/or tribal law and facilitate an open dialog where every stakeholder has a voice.

ACRA acknowledges the Council's efforts in its revised proposed exemption to address some of the issues raised by ACRA in its June 4, 2022, comments regarding the Council's "Notice of Intent To Request Public Comment on Draft Exemption From Historic Preservation Review for Electric Vehicle Supply Equipment," as well as issues raised by others.

As noted in its June 4 letter, ACRA does not oppose the proposed exemption, but it does remain concerned about some aspects of how the exemption will be implemented. In particular, ACRA asks the Council to pay close attention to the following issues:

- *Effects to Properties of Religious and Cultural Significance to Indian Tribes and Native Hawaiian Organizations.* The Council states that "While it is possible that some EVSE locations will be adjacent to such properties, because the exemption requires that ground disturbance be limited to the depth of previous construction and that the EVSE be minimally visible, the ACHP believes the exemption will reasonably ensure that any effects from the proposed EVSE undertakings to historic properties are minimal or not adverse."

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However, the exemption does not fully address situations where places of religious or cultural significance, while not related to ground disturbance, are impacted by visual or other sensory disturbances. Furthermore, the analyses of such properties may not have been adequately considered when the “previous construction” occurred. Although the proposed exemption encourages agencies to “discuss the projects with...Tribes,” we remain concerned that such consultation might not happen without an explicit requirement.

- *Use of Qualified Professionals.* The Council states that “the ACHP has further specified and clarified the conditions under which the exemption may be used, so that it is possible for non-preservation professionals to appropriately utilize the exemption.” Nonetheless, ACRA remains concerned that, without the use of a qualified professional who meets the Secretary of the Interior Professional Qualifications Standards, there is a greater risk that exemptions may be used for undertakings that either fail to meet the revised exemption’s criteria, or for undertakings where inadvertent discoveries are made.
- *Reporting.* Noting that some commenters, including ACRA, “request[ed] that agencies provide reporting at regular intervals on the usage of the exemption,” the Council states that “such reporting is inconsistent with the intent of the exemption, which would result in minimal or no adverse effects to historic properties.” However, the Council says that it will “commit to routinely querying federal agencies, through the triennial Federal Property Stewardship Report, on the use of the exemption to determine if amendments are necessary to ensure successful usage and to share success stories.”

We appreciate the Council’s commitment to querying federal agencies about the efficacy and usage of the exemption. However, we recommend that the Council commit to closely assessing and evaluating the use of the exemption on a regular basis to determine whether the exemption is meeting the purposes of Section 106. Simply relying on agency feedback on their use of the exemption, particularly when agencies are not required to use qualified professionals to assess the applicability of the exemption, might not uncover potential issues with how the exemption is being used. The Council’s active involvement in assessing situations where the exemption is utilized will be critical to ensuring it is not abused.

ACRA recognizes the value of providing exemptions and program alternatives to Section 106 where appropriate, provided that they are carefully drafted and subject to ongoing review. Furthermore, it is impossible to account for every scenario and contingency in an exemption. We appreciate the Council’s work in drafting this exemption, and pledge to work with the Council to ensure that it is deployed in ways that uphold the intent of Section 106 and balance the need for EV infrastructure with the importance of protecting historic and cultural resources.

Sincerely,



Amanda Stratton
Executive Director