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Sent: Thursday, November 7, 2019 12:46 PM

To: Manzanares, Mallery, NMDOT <Mallery.Manzanares@state.nm.us>

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Subject: NMPRM Local Government Transportation Project Fund Comments

Mallery,

I am providing comments on the proposed rules for 18.27.6 NMAC as they relate to environmental certification issues. Specifically, my concerns are in regard to sections 18.27.6.15 B. and E.

Section 18.27.6.15.B.:

I recommend a mechanism be included in the rule or established as a policy that District Engineers shall consult with the NMDOT Environmental Bureau (EB) prior to authorizing requests for Local Government project development on NMDOT right of way or NHS routes. The EB has access to cultural and natural resource databases that provide location and details of environmental resources that could be damaged during construction and can typically be avoided through fencing and other mitigation measures. Local Governments, in most cases, do not have access to this archival data. Based on the scope of a project, it may be reasonable and prudent to conduct resource surveys to ensure state and federal protection laws are not violated. Many of these routes cross federal and NM Trust land and are held in easement by NMDOT. Cultural and Natural resources on the federal lands are subject to the National Environmental Policy Act (NEPA), Archaeological Resource Protection Act (ARPA), Clean Water Act (CWA) including SWPPP management, and other federal statutes. Resource protection on NM Trust Lands must comply with state statutes and meet the requirements of the State Land Commissioner.

Section 18.27.6.15. E.

I have several comments regarding the removal of any NMDOT environmental oversight for these state funds:

It appears that this portion of the proposed rule is an attempt to sidestep perceived delays resulting from environmental reviews. I was informed that the assertion had been made that the EB review process was “too slow”. In the last 12 months, EB Local Government Coordinator Brian Cribbin certified 249 state-funded (no federal funds) projects. The average certification time from receipt of scope of work was eight days. Eight projects were delayed for over a month due to lengthy NM SHPO comments or competing internal work load within the EB. In the vast majority of cases the Local Government project is certified within a few days. Mr. Cribbin, who reviews project scopes of work and determines whether historic districts, archaeological sites, or natural resources are present, is able to provide “one-stop” certification for the Local Government applicant. This is especially helpful for small governments who do not have staff who are qualified to provide environmental review. In fact, the majority of governments, large and small, do not have staff that have experience with the environmental compliance process. Under this rule, most will likely ignore environmental requirements. Those that attempt to comply will need to pay consultants, who will charge as much as possible, to conduct the environmental requirements. The existing process is streamlined and straightforward and benefits the Local Government by providing valid evidence that environmental requirements have been met at minimal cost or delay.

As written, there is no way for NMDOT to ensure that environmental requirements have been met. It may be legal to delegate all environmental compliance to Local Governments, but it will likely be seen by other state and federal agencies as a negative development since NMDOT will not be taking responsibility for violations that occur on lands they own or administer. The rule, as currently written, would set a precedent that would call into question NMDOT’s long standing adherence to environmental responsibility and pro-active stewardship.

Thank you for considering these comments.

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