

April 22, 2019

Joy Beasley  
Acting Associate Director for Cultural Resource Partnerships and Science  
National Park Service  
1849 C Street NW, MS 7228  
Washington, DC 20240

**RE: Comments on Proposed Rule Changes to the National Register of Historic Places  
National Park Service, RIN – 1024-AE49**

Dear Ms. Beasley:

The National Alliance of Preservation Commissions is a national non-profit organization with a 35+ year history of providing education, advocacy, and training in support of strong local preservation programs across the country. Our members and partners include big cities and small towns, suburban communities and rural places, stretching from Maine to California. What these communities share is a commitment to using historic preservation as a means to protecting and enhancing community identity, distinctiveness, quality of life, and prosperity. Reaching these goals requires multiple strategies and tools, including listing significant properties and neighborhoods in the National Register of Historic Places. **NAPC believes the rule changes proposed for the National Register program will negatively impact historic communities by undermining the processes used by local governments, civic leaders, and individual citizens for decades to preserve important historic places and affect positive change in their communities. The proposed rule changes will employ inherently less democratic procedures that will severely limit the use of the National Register by making it inoperable. These changes will undermine an otherwise successful program, calling into question the wisdom and necessity of these proposals in the first place.** In response, NAPC offers the following comments on the proposed changes to the rules governing the National Register of Historic Places.

- 1. NAPC supports the proposed non-substantive changes to the rules governing the National Register listing process.**

All changes that reduce barriers to access and inclusivity, including modernization of paperwork, terminology, and documentation practices should be pursued as proposed.

- 2. Decision-making about what properties should be listed in the National Register will be removed from local communities and States and transferred almost exclusively to the Federal government.**



One of the hallmarks of the National Register, and the National Historic Preservation Act which created it, is that the system is designed to be responsive to local and state priorities. While the National Park Service is tasked with developing guidance and administering the listing process, the legislation and regulations intentionally rely upon State Historic Preservation Offices and local communities to identify priorities and make informed recommendations about how and where these programs should be implemented. ***The proposed rules turn this system on its head and create a series of procedural dead ends that collectively shift the power to nominate properties to the National Register away from States and localities to the Federal government.*** This is especially important in situations such as historic districts, which may contain a proportionately small number of Federal properties (i.e. post offices, Amtrak stations, office buildings) compared to a larger number of properties owned by non-Federal entities. Specific proposed changes that will create this condition include deletion of §60.6(y), and the changes to §60.9(c), which removes the ability of SHPOs to submit nominations that include Federal property and rests it solely with Federal agencies.

The deletion of the 45-day timeframe for action by the Keeper in nominations involving Federal property in §60.9(i) creates another procedural dead-end that may be employed to prevent listing of nominations including Federal property, even if the agency does submit the nomination for listing. This would allow the National Park Service to withhold action on a nomination for any reason or no reason, yet still require States to comment within 45 days.

**3. Federal agencies will be given nearly unchecked ability to halt, stall, or thwart National Register nominations indefinitely.**

Because the proposed rules will require nominations that include Federal properties to be submitted to the Keeper by the agencies themselves, those agencies alone will have the ability to determine whether the National Park Service can even consider a nomination for listing. An agency that is not supportive of listing for any reason or no reason could simply refuse to forward the nomination to the Keeper, resulting in a pocket veto, irrespective of community sentiment or the opinion of the SHPO. Changes to the appeal process in §60.12(b) only allow appeals to be considered if the federal agency has actually submitted the nomination, but nothing in the rules obligates them to do so. ***This is a circular system in which action is not required and inaction is not appealable and allows Federal agencies to subvert the will of the community with no discernable recourse.***

**4. Individuals, corporations, and institutions that own large land areas or multiple properties will be given disproportionate influence over whether properties may be listed in the National Register.**

Changes to the manner in which owner objection is calculated as described in §60.6(g), 60.6(n), and 60.6(r) will give unequal weight to large land owners, allowing a small number, or even a single property owner the ability to thwart a nomination. The current system is based on the principle of one person-one vote, a foundational concept in American democracy. National Register listing rarely, if



ever impacts a private property owner's ability to use, alter, or destroy their property with private funds and absent Federal permits or licenses. Today, there are more advantages and opportunities than disadvantages for property owners if their property is listed, including eligibility for Federal and State tax credits, grants and potentially zoning or other incentives. ***This provision would give a small number of property owners the right to deprive neighboring properties of these benefits.***

**5. The proposed rules lack appropriate definition and guidance on the concept of “majority of the land area” and how it can be fairly and accurately measured.**

As written, the proposed rules create significant murkiness and ambiguity about the meaning of “land area” and how SHPOs are to be tasked with verifying this information. How should issues of vertical ownership that may exist in condominium buildings, or communal ownership that may exist in certain religiously-affiliated and tribal properties be handled? The use of this imprecise term along with the affirmative obligation for SHPOs to verify this information will create a largely unworkable system that is likely to be exacerbated by inconsistent, incomplete, and inaccessible property records at all levels of government.

**6. The proposed rules remove important procedural safeguards related to identity verification for property owners who oppose National Register listing.**

The current regulations require property owners who object to National Register listing to provide a notarized letter to the SHPO memorializing that objection. This provision serves to verify the identity of the objector and avoids frivolous and potentially fraudulent letters of objection. The proposed changes remove the notarization requirement, creating an opportunity for bad actors to submit multiple letters under false identities. The incredible burden for identifying such a scenario and investigating the accuracy of the documentation submitted would fall to SHPOs.

**7. Individually and collectively, the proposed rules will significantly limit or eliminate access to important economic development and incentive programs for historic properties.**

Listing in the National Register provides both symbolic and tangible benefits for historic properties and communities. Most notably, listing is required for property owners to utilize the Federal Historic Preservation Tax Credit (HTC), recently reauthorized in Tax Reform Act of 2017. The HTC incentivizes the rehabilitation and reactivation of historic properties of all types for income-producing uses. Tax credit projects are critically important economic development activities and not only create jobs, but also generate local, state, and federal tax revenue by returning old buildings to productive use. More than 35 states also have state-level historic tax credit programs, many of which mirror the eligibility and technical requirements of the Federal program to allow the incentives to be paired easily.

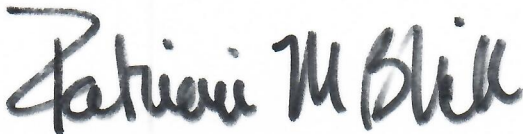
Similar to tax credits, many grant programs at the Federal, state, and local levels require properties to be listed in the National Register to qualify for assistance. These resources are often owned by non-

profit organizations and local governments that rely upon grant support to maintain these properties for the public good. If these places are not yet National Register listed, the proposed rules will create potentially insurmountable hurdles to listing, particularly for resources whose greatest chance of listing is as a contributing resource in a historic district.

The availability of these incentive programs is of critical importance to communities of all sizes and locations and the proposed changes will create an air of uncertainty that will depress interest and activity in these projects and negatively impact historic properties and the communities where they are located.

The proposed rule changes are in stark contrast to the spirit, intent, and letter of the National Historic Preservation Act, which Congress passed in response to decades of nearly unchecked federal destruction and indifference toward historic places. These proposals also far exceed the legislative changes made as part of the Centennial Act, and were developed without meaningful consultation with Federally-recognized Tribes. Cumulatively these rules will have the effect of making the National Register of Historic Places inoperable and if implemented, the proposed changes will deprive communities of the ability to recognize important historic resources, avail themselves of financial and economic development incentives, and participate equitably in the national historic preservation system Congress established more than 50 years ago. NAPC respectfully suggests the National Park Service abandon all substantive changes to the National Register of Historic Places rules as proposed. Thank you for the opportunity to submit these comments on behalf of our Board, members, partners, and allies.

Sincerely,

A handwritten signature in black ink that reads "Patricia M. Blick". The signature is written in a cursive, slightly slanted style.

Patricia M. Blick, Chair  
NAPC Board of Directors

cc: Erik Hein, NCSHPO  
NAPC Board of Directors