



April 30, 2019

National Register of Historic Places  
National Park Service  
1849 C Street NW, MS 7228  
Washington, District of Columbia 20240

Re: NPS Proposed Rule-National Register; NPS-WASO-NHPA; PPWONRADE2,  
PMP00EI05.YP0000; RIN 1024-AE49

To Whom It May Concern:

The Coalition for American Heritage appreciates the opportunity to comment on the National Park Service (“NPS”) proposed rule revising regulations governing the listing of and eligibility of properties for listing on the National Register of Historic Places (“National Register”). This rulemaking is problematic for both procedural and substantive reasons. The changes relate primarily to federally-owned properties, and given that the federal government owns countless historic properties and approximately 28% of the land in the United States, the significance of these changes cannot be overstated. Our specific concerns include: (1) NPS’s failure to consult Indian tribes, other agencies, key stakeholders, and preservation experts on this rulemaking; (2) proposed changes that would give federal agencies undue control over nominating federal properties for listing on the National Register to the exclusion of other key stakeholders; (3) problematic changes to the appeals process; (4) changes to the eligibility-determination process that would be detrimental to the Section 106 process; and (5) proposed changes that would improperly give preference to private owners of larger properties who object to a National Register listing—a major change from the current “one property, one vote” system. Generally, these changes give excessive power to the federal agencies and preference larger landowners in ways inconsistent with the National Historic Preservation Act (“NHPA”).

The Coalition for American Heritage (“Coalition”) is an advocacy coalition that protects and advances our nation’s commitment to heritage preservation. Supported by the American Cultural Resources Association, the Society for Historical Archaeology, the American Anthropological Association, and the Society for American Archaeology, the Coalition collectively represents more than 350,000 cultural resource management professionals,



academic archaeologists and anthropologists, and other subject-matter experts with an interest in historic preservation.

Members of the Coalition participate in our national preservation program by documenting, evaluating, and nominating important places to the National Register, conducting research in accordance with the NHPA when historic properties are impacted by federal projects, serving as stewards of historic places, and interpreting these places for the public. The National Register is the vehicle by which the United States recognizes historic properties that warrant consideration in federally funded or approved projects, and the NHPA establishes a process for mitigation from impacts due to federal undertakings. Adjustments to the National Register regulations should therefore only be carefully and cautiously undertaken, after extensive consultation with Indian tribes, preservation experts, and other affected stakeholders. Unfortunately, none of this important collaboration has been conducted for this proposed rule.

Several of the proposed changes, discussed in these comments, are inconsistent with the NHPA and exceed Congressional authority granted to NPS. According to NPS, certain proposed changes implement the 2016 NHPA amendments that were part of the National Park Centennial Act ("NHPA amendments"). H.R. 4680. However, some of the proposed revisions run counter to the intent of the NHPA amendments by excluding important stakeholders instead of making the nomination process by federal agencies more inclusive of local historic preservation advocates. In addition to giving State Historic Preservation Officers ("SHPOs") a more formal role in the nomination process as the 2016 amendments intended, NPS also proposes changes that would give federal agencies effective veto power over the nomination and appeals processes, which is contrary to the 2016 amendments. Additionally, NPS exceeds Congressional authority by proposing to change the eligibility-determination process in a way that would significantly slow down the NHPA Section 106 review process by imposing hurdles on obtaining determinations of eligibility, and **could allow a federal agency to preclude Section 106 review altogether**. Finally, proposed adjustments to the calculation of private property owner objections to listing on the National Register would give owners of larger properties a disproportionate influence over the nomination of historic districts, at the expense of property owners who own smaller pieces of land.

If NPS brings Indian tribes and other federal agencies into the process, as the law requires, NPS could address the problems it seeks to solve without many (perhaps unintended) negative consequences. NPS should go back to the drawing board and consult with Indian



tribes, other agencies, preservation experts, and other important stakeholders before pursuing this rulemaking further.

## **I. The Process for Developing This Proposed Rule Was Deficient and Inconsistent with Law**

The NPS rulemaking process was flawed in at least three respects. First, NPS should have consulted with Indian tribes to develop these proposed regulations because they directly affect tribes in substantial ways. Second, the rule is a significant regulatory action and should have been subject to interagency review. Finally, other key stakeholders, such as SHPOs, should be included in the process. The process of rulemaking is important because it guarantees that the necessary groups are able to participate and provide their perspectives and expertise on changes to existing law.

### **A. NPS Is Required to Consult with Indian Tribes in Developing the Proposed Rule**

NPS is required to consult with Indian tribes because the changes proposed in this rulemaking would have a substantial direct effect on tribes. NPS asserts that it evaluated the proposed rule under both Executive Order 13175 (E.O. 13175) and the Department of the Interior (“DOI”) Policy on Consultation with Indian Tribes and “has determined that tribal consultation is not required because the rule will not have a substantial direct effect on federally recognized Indian tribes.” 84 Fed. Reg. 6996, 7000 (proposed Mar. 1, 2019). This determination is patently flawed.

E.O. 13175 requires early consultation when a regulation has “tribal implications,” which are defined as “regulations, legislative comments or proposed legislation, and other policy statements or actions that have **substantial direct effects on one or more Indian tribes**, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.” Exec. Order No. 13175 §§ 1(a), 5(b), 65 Fed. Reg. 67249 (Nov. 6, 2000) (emphasis added). The DOI Policy on Consultation with Indian Tribes, issued pursuant to the Executive Order, defines “Departmental Action with Tribal Implications” to include rulemakings that “may have a substantial direct effect on an Indian Tribe on matters including... Tribal cultural practices,



lands, resources, or access to traditional areas of cultural or religious importance on federally managed lands[.]”<sup>1</sup>

Contrary to NPS’s assertion, the changes would affect tribes in at least several significant ways with respect to the nomination and determination of eligibility of traditional cultural landscapes, as well as smaller sites on federal lands. The changes increase the control of the Federal Preservation Officer (FPO) over the nomination and eligibility determination processes and decrease input from other parties, including tribes. These changes would make it more difficult for tribes to obtain nominations or eligibility determinations for sacred sites on federal land, which would likely result in significant delays in the Section 106 process and could lead to the inability to obtain a nomination or eligibility determination. Additionally, the changes allowing the owner(s) of a majority of the land area to block a district from nomination could be detrimental to the nomination of traditional cultural landscapes to the National Register, because such landscapes are usually nominated as districts.

Failure to consult tribes on this rulemaking ignores the reality that, due to past and present policies and practices of the federal government, many tribes attach religious or cultural significance to historic properties under the jurisdiction and control of the federal government. This rulemaking has clear tribal implications because several of the changes proposed would give federal agencies authority to block nominations or prevent eligibility determinations of historic properties that are significant to tribes. This proposed rulemaking seeks to silence their voices and subject tribal interests to veto by federal preservation officers.

Allowing tribes to submit comments in the rulemaking process is not a substitute for following the procedures in E.O. 13175, which recognizes the government-to-government relationship between the federal government and tribes. Tribal perspectives on the changes must be accounted for through consultation to ensure this government-to-government obligation is fulfilled. NPS’s failure to consult with tribes on the rulemaking implicates tribes’ relationship with the department, abrogates NPS’s trust responsibilities to tribes, and encroaches on tribal sovereignty. The Coalition strongly urges NPS to initiate government-to-government consultation with potentially affected Indian tribes before this rulemaking process proceeds any further.

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<sup>1</sup> The Department of Interior Policy on Consultation with Indian Tribes is available here: <https://www.doi.gov/sites/doi.gov/files/migrated/cobell/upload/FINAL-Departmental-tribal-consultation-policy.pdf>.



## **B. The Rule Is A Significant Regulatory Action and Should Have Been Subject to Interagency Review**

This rulemaking should be subject to interagency review under Executive Order 12866 because it is a significant regulatory action. A “significant regulatory action” under E.O. 12866 is:

[A]ny regulatory action that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more **or adversely affect in a material way** the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or **State, local, or tribal governments or communities;**
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive order.”

Exec. Order No. 12866 § 3(f), 58 Fed. Reg. 190 (Oct. 4, 1993) (emphasis added). According to the rulemaking, “[t]he Office of Information and Regulatory Affairs has determined that this rule is not significant.” 84 Fed. Reg. 6996, 6999. This determination overlooks the significant impact the proposed changes would have on other federal agencies as well as state, local, and tribal governments. The majority of the changes proposed in this rulemaking affect the process by which federal agencies nominate properties for listing in the National Register and the process for determinations of eligibility for federal properties. The rulemaking therefore implicates all federal agencies with land under their control and is at the very least potentially inconsistent with the processes these agencies have currently developed to carry out their responsibilities under the NHPA.

Further, for all of the reasons discussed in detail below, the proposed changes could adversely affect in a material way state, local, and tribal governments and communities by limiting their authority to nominate or seek eligibility determinations regarding historic properties. The rule is therefore a significant regulatory action that should be subject to interagency review.



### **C. Other Key Stakeholders Should Be Consulted**

In addition to tribes and federal agencies, NPS did not consult other entities that this rulemaking would considerably affect. These include SHPOs, the Advisory Council on Historic Preservation (“ACHP”), and other preservation stakeholders. The exclusion of SHPOs, who are intimately involved with all elements of the National Register eligibility determination, nomination, and stewardship processes, is especially egregious.

### **D. Conclusion**

NPS must bring Indian tribes and federal agencies into the process under E.O. 13175 and E.O. 12866. Moreover, consultation with other key stakeholders, such as SHPOs, would enable NPS to create regulations that successfully implement the NHPA amendments without negative consequences. Many of the issues raised in the comments below could be avoided through consultation with all of the necessary parties.

## **II. The Proposed Regulations Are Not Consistent with the NHPA and Congressionally-Delegated Authority**

The proposed changes exceed the scope of the NHPA and agency authority, including the NHPA amendments, in several respects. Contrary to the letter and spirit of the NHPA, the proposed changes outlined below would exclude important stakeholders from the nomination, appeals, and eligibility-determination processes for federally-owned historic properties on federal land as well as for federal properties in areas where a federal agency owns or controls a subset of the land.

### **A. The Rule Would Give Federal Agencies Exclusive Authority to Nominate Federal Properties**

This rulemaking runs expressly counter to Congressional intent in enacting the NHPA amendments by giving federal agencies exclusive authority to nominate federal properties. Underlying the proposed changes to the nomination process is NPS’s characterization of the NHPA amendments as creating an *exclusive* process for federal agencies to nominate federal properties. The 2016 NHPA amendments aimed to create a process for federal agencies to nominate properties, but by no means did Congress intend to eliminate other avenues for nominating federal properties. The purpose of the NHPA amendments was to achieve more collaboration between state and federal entities by giving state and local entities a more formal role in the nomination process. But this rulemaking proposes to eliminate 36 C.F.R. §



60.6(y), which allows SHPOs to submit nominations of federal properties to the appropriate FPO for “review and comment.” 36 C.F.R. § 60.6(y); 84 Fed. Reg. 6996, 6998.

Preventing SHPOs from preparing nominations of federal properties is exactly contrary to Congress’s intent. Indian tribes, many of whom have historical ties to federal lands, would be especially affected by this change. The ability to prepare a nomination could be critical to a tribe achieving consideration of sites of cultural and religious importance in the Section 106 process, especially in light of the proposed changes regarding eligibility determinations discussed below. SHPOs are dedicated to identification and evaluation of historic properties, and frequently have greater local or topical expertise than regional branches or employees of federal agencies. Removing the ability of SHPOs to make recommendations to FPOs withholds a critical preservation advocate from Indian tribes and local communities. In combination with other proposed changes, such as to the appeals process (discussed below), federal agencies would have far too much control over the process of nominating federal properties.

### **B. The Rule Proposes Problematic Changes to the Appeals Process for Federal Nominations**

In separating the appeals process for SHPO, FPO, and concurrent SHPO and FPO failures or refusals to nominate properties, the proposed regulations create three problems: (1) the changes would remove the Secretary of the Interior’s (“Secretary”) ability to list properties or determine eligibility on his or her own motion; (2) the changes would limit the Keeper of the National Register of Historic Places’ (“Keeper”) jurisdiction to hear appeals in a manner that would allow the federal agencies to effectively veto a nomination; and (3) the changes contain certain ambiguous language that has the potential to limit the jurisdiction of appeals of federal agencies’ failure or refusal to nominate.

The **first** issue involves the Secretary’s ability to make eligibility determinations if an agency does not nominate a property. The proposed section governing appeals of “the failure or refusal of a [SHPO] to nominate a property” (new proposed 60.12(a)) provides: “[t]he Secretary reserves the right to list properties in the National Register or determine properties eligible for such listing on his/her own motion when necessary to assist in the preservation of historic resources[.]” 84 Fed. Reg. 6996, 7004. This provision is in the current 36 C.F.R. § 60.12, and therefore applies to all appeals under the current regulations. Notably, this provision is not in the proposed appeals procedures for FPO nominations or concurrent SHPO and FPO nominations (new proposed 60.12(b) and (c)). Thus, under the proposed changes, the Secretary would not have the authority to make eligibility determinations with



respect to FPO and concurrent nominations. NPS has not provided an explanation for this discrepancy.

The **second** issue with the proposed changes to the nomination appeals processes is that the Keeper would only have jurisdiction to hear an appeal of an agency's failure to nominate a property if the property is in fact nominated. This change would allow a federal agency to refuse to nominate a property, and then prevent an appeal of that same action. This proposed change is especially concerning as it relates to historic districts that include federal properties because a federal agency that objects could block the listing entirely.

**Finally**, there is a discrepancy in the proposed changes to the process for appealing a failure to nominate a property for which no explanation is provided. For a FPO's refusal to nominate a property, proposed 36 C.F.R. § 60.12(b) provides: "[a]ny person or local government may appeal to the Keeper the **failure of** a [FPO] to nominate any property under the jurisdiction or control of a Federal agency[.]" 84 Fed. Reg. 6996, 7004 (emphasis added). For a SHPO's failure to nominate, however, proposed 36 C.F.R. § 60.12(a)) provides that "[a]ny person or local government may appeal to the Keeper the **failure or refusal of** a [SHPO] to nominate a property[.]" *Id.* (emphasis added). Further, in the section regarding appeals of concurrent FPO and SHPO failures to nominate, proposed § 60.12(c), the proposed language provides: "[a]ny person or local government may appeal to the Keeper the **failure of** a [FPO] to nominate any property that is properly considered a concurrent state and federal nomination[.]" 84 Fed. Reg. 6996, 7005 (emphasis added). NPS has not provided an explanation for this difference in language between the different appeals processes. If this distinction does not intend to limit jurisdiction of appeals with respect to FPO or joint failures to nominate, the language should be the same for all appeals, regardless of whether a SHPO or FPO makes the decision.

In combination with the changes to the nomination process, these proposed changes to the appeals process would give federal agencies excessive power. The public has an inherent interest in federally-owned historic properties and should have a say in how these lands are managed for their benefit; these proposed revisions take away important avenues for key stakeholders to voice their opinions by participating in the process of nominating properties that reflect our shared history.



### **C. The Proposed Changes to the Eligibility Determinations Process Are Not Necessary to Implement the 2016 NHPA Amendments and Exceed NPS's Authority**

The NPS proposes two changes to the process of seeking eligibility determinations that exceed the agency's authority to implement the NHPA amendments, which did not include any provisions on eligibility determinations. The proposed changes threaten the protections currently in place for historic and cultural resources in the Section 106 process.

The relevant language, codified at 54 U.S.C. § 302104(c) is titled "Nomination by Federal agency," and does not contain any changes regarding eligibility determinations. This is confirmed by the legislative history behind this portion of the National Park Centennial Act, which indicates that Congress intended to create a process for federal agencies to nominate historic properties, including a requirement that the SHPO weigh in by expressing their opinion. Indeed, the House Report for H.R. 2817 observed that the bill "grants State Historic Preservation Officers a more formal role" which "will help integrate federal and State historic preservation efforts."<sup>2</sup> H.R. Rep. No. 114-740, at 5 (2016). In a hearing on the National Park Centennial Act, H.R. 4680, Representative McClintock similarly testified: "I believe [one of the] greatest challenges to Federal lands management [is]... to restore the Federal Government as a good neighbor to those communities directly affected by the public lands. This bill... repairs the relationship between the Federal and local governments by giving local officials a say in future historic designations." *National Park Service Centennial Act: Hearing on H.R. 4680 Before H. Comm. on Nat. Res., 7208* (2016) (statement of Rep. McClintock).

Yet despite this clear statement of Congressional intent, NPS proposes to amend 36 C.F.R. § 63.4(a). This section, which currently provides that the Keeper "will" make eligibility determinations when returning a nomination for technical or professional revision or for procedural reasons, would be revised to state that the Keeper "will not" make eligibility determinations under those circumstances. NPS specifically seeks comment on whether this proposed change is required by the 2016 NHPA Amendments or "whether the NPS could interpret the 2016 Amendments to allow the Keeper to make eligibility determinations for properties whose nominations have been returned to the Federal Agency." 84 Fed. Reg. 6996, 6998.

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<sup>2</sup> H.R. 2817 was later integrated into the National Park Centennial Act (H.R. 4680).



The Keeper should not be prevented from making eligibility determinations when returning nominations from federal agencies for technical or procedural reasons. The 2016 NHPA Amendments do not require this change, and it in fact runs contrary to those amendments, which only addressed the process for nominations by federal agencies. In stating “[i]f a nomination is not accepted by the Keeper, the Keeper cannot make an eligibility determination [,]” the NPS improperly conflates the process for nominations and the process for determinations of eligibility under the NHPA. 84 Fed. Reg. 6996, 6998.

The change proposed for 36 C.F.R. § 63.4(c) is similarly problematic. This change would, according to NPS, “clarify that the Keeper may only determine the eligibility of properties for listing in the National Register after consultation with ***and a request from the appropriate SHPO and concerned Federal agency***, if any.” 84 Fed. Reg. 6996, 6998 (emphasis added). But as with the change to 63.4(a), the 2016 NHPA amendments did not address eligibility determinations, and this change therefore exceeds NPS’s authority. Limiting the ability of the Keeper to make eligibility determinations to instances where the federal agency specifically makes a request would allow federal agencies to prevent consideration of impacts to federally owned historic properties in the Section 106 process. In cases where both a SHPO and FPO have an interest, either of those individuals could prevent an eligibility determination. Where properties are not listed on the National Register, the ability to obtain an eligibility determination provides the only avenue for those sites to be considered in the course of an undertaking that triggers Section 106 review; taking away this critical protection could have detrimental effects on the ability to preserve sites that are eligible for listing on the National Register but have not been listed.

#### **D. The Proposed Changes Remove Any Deadline for the Keeper to Act After Receiving Nominations**

The changes proposed to current 36 C.F.R. § 60.9(h) (proposed 60.9(i)) would remove a provision which states that nominations “will be included in the National Register within 45 days of receipt by the Keeper or designee unless the Keeper disapproves such nomination or an appeal is filed.” Removing this sentence eliminates any deadline by which the Keeper must act. Currently, if a Keeper does not act on a nomination within 45 days, the property is listed in the National Register automatically. As a result, the Keeper only needs to act on nominations with which he or she disagrees. Removing the automatic listing provision would require the Keeper to act on *every* nomination, even those the Keeper believes should be listed. This change could significantly delay or effectively end the nomination process based on the Keeper’s inaction.



**E. The Proposed Revisions to 36 C.F.R. § 60.10 to Change “Federal ownership or control” to “jurisdiction or control” Is Not Necessary and Is Inconsistent with the Language of the NHPA**

NPS proposes to amend 36 C.F.R. § 60.10, which currently provides: “Federal agencies may nominate properties where a portion of the property is not under Federal **ownership or control.**” 36 C.F.R. § 60.10 (emphasis added). The proposed new language states: “Federal agencies may nominate properties where a portion of the property is not under their **jurisdiction or control.**” 84 Fed. Reg. 6996, 7003 (emphasis added). The NHPA states that heads of Federal agencies “shall assume responsibility for the preservation of historic property that is **owned or controlled** by the agency.” 54 U.S.C. § 306101(a) (emphasis added). NPS should provide an explanation for this change, which deviates from the language of the NHPA.

**F. Proposed Changes Related to Private Property Owner Objections Prioritize Large Landholders and Industries Over Local Communities, and They Exceed the National Park Service’s Statutory Authority**

The proposed changes to the private property owner objection process would dramatically increase the power of the largest, wealthiest landowners and create a feudal system. The current National Register nomination process gives private property owners the opportunity for input and the power to object to having their property listed on the National Register. For example, if the “majority of the owners of privately owned property” object to the listing of a historic district, the district will not be listed. This language, allowing each property owner one vote, is taken from the NHPA: “[i]f the owner of any privately owned property, or a majority of the owners of privately owned properties within the district in the case of a historic district, object to inclusion or designation, the property shall not be included on the National Register... until the objection is withdrawn.” 54 U.S.C. § 302105(b) (emphasis added).

NPS proposes several changes to 36 C.F.R. §§ 60.6, 60.10, and 60.13 that are entirely inconsistent with the NHPA and exceed NPS’s authority. The proposed revisions relate to nominations of private property where there is more than one owner or where the nomination involves a historic district, and would change the language from a “majority of the owners of privately owned properties” to also include “owners of a majority of the land area.”



In enacting the “majority of the owners of privately owned property” language, Congress intended to allow each private property owner to have one vote; allowing those who own more land to have more influence goes against the spirit of the NHPA, which aims to preserve history for communities and future generations. These proposed changes could have a chilling effect on nominations of properties that include large-scale landscapes of historic or cultural significance to Indian tribes or other entities.

These changes would also impact the federal and state historic tax credit programs, which create hundreds of thousands of jobs and more than \$6 billion of rehabilitation investment annually.<sup>3</sup> If historic districts are more difficult to nominate, it would be more difficult for developers to take advantage of historic tax credits. This would be a double loss for both developers and historic preservation. The federal historic tax credit is a highly successful, highly popular vehicle with considerable economic impact that results in a net benefit to the U.S. Treasury.<sup>4</sup>

The proposed changes indicate NPS’s goal to favor large private property owners, but the public is left without an explanation of what motivated this part of the rulemaking. NPS does not claim that these proposed changes are based in the 2016 NHPA amendments, and claims these revisions would “ensure that if the owners of a majority of the land area in a proposed historic district object to listing, the proposed district will not be listed over their objection.” 84 Fed. Reg. 6996, 6997. There is no need to ensure this outcome, however, which is not supported by the NHPA. Without providing a full explanation for what motivated this shift, why it is warranted, or why it would be beneficial, NPS leaves the public unable to propose other solutions to remedy the problem NPS is attempting to solve.

While the impetus behind these changes is not clear, the proposed shift in how the law would assess and calculate property owner sentiment may be attempts to respond to previous or ongoing disputes. For example, the nomination of the Ch’u’itnu Traditional District in Alaska has caused some dispute among Indian tribes, the Alaska SHPO, the U.S. Army Corps of Engineers, and mining project proponents. This dispute has resulted in political pressure, such as when Resource Development Council for Alaska, Inc. and the Alaska Miners Association opposed the listing of the Ch’u’itnu Traditional District. These groups stated in a letter to Senator Lisa Murkowski in 2018: “despite objection by the vast majority of land-based property owners, [the nomination] was accepted by the [Alaska Historical]

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<sup>3</sup> National Park Service Annual Report on the Economic Impact of the Federal Historic Tax Credit for FY 2017. <https://www.nps.gov/tps/tax-incentives/taxdocs/economic-impact-2017.pdf>

<sup>4</sup> Ibid.



Commission.”<sup>5</sup> The letter did not state the method of calculating property ownership, but these entities’ strong interest in the Ch’u’itnu nomination demonstrates that there is evident political pressure to privilege large land owners like mining companies. Similarly, these changes to property owner assessment might be an attempt to prevent future incidents such as Eastmoreland, in Portland, Oregon—in which four households created 5,000 trusts to prevent a historic district nomination.

However, without the crucial context of what problem these proposed changes aim to address, it is difficult to suggest alternatives that would have fewer negative consequences. NPS should go back to the drawing board, articulate the issue or issues it is attempting to solve, and consult Indian tribes, federal agencies, SHPOs, and other stakeholders with the expertise to craft a rule that will address the problem.

#### **G. State Historic Preservation Officers Cannot Feasibly Implement the Private Property Owner Objection Changes**

The addition of a due diligence requirement on SHPOs is not workable and should not be implemented. The proposed changes would impose an additional duty on SHPOs to ensure that the “owner and objector count” is accurate before submitting a nomination to the Keeper. 84 Fed. Reg. 6996, 6998. It is not feasible for SHPOs to assume this onerous due diligence responsibility, especially when the current system functions well. If this change was proposed in response to Eastmoreland, imposing an additional due diligence responsibility on SHPOs would not solve that problem, which needed to be determined by whether the trusts were valid under Oregon law.

#### **H. The Notarization Requirement Does Not Need to Be Revised**

NPS seeks comment on whether it should revise the notarization requirement for private property owner objections and whether there are alternative ways to certify ownership objections, but the current requirement is not unduly burdensome and does not need to be revised. Specifically, NPS asks:

whether it should remove the requirement that objecting property owners submit notarized statements certifying that they are the sole or partial owner of the property in order to submit an objection. The NPS seeks comment on whether there is an alternative way to certify

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<sup>5</sup> The letter can be found here: <https://www.akrdc.org/bulletin38revision>.



ownership, or otherwise object to the listing of a property, that is less burdensome on the property owner but maintains or improves the fidelity of the objection process.

84 Fed. Reg. 6996, 6998. The current process for private property owner objections balances the interests of all involved and does not need to be changed.

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The Coalition believes that private property rights, development needs, federal agency objectives, SHPO processes, and the concerns of tribes and local communities are respected and balanced in the current National Register regulations. The National Register nomination process is currently expensive, time-consuming, complicated, and lengthy. If NPS adjusts these regulations—especially in a manner that would increase procedural hurdles—the process should include careful review by preservation policy experts and consultation with tribes and other stakeholders, so as not to risk removing historic preservation benefits from the public and future generations. The Coalition has grave concerns that these ill-considered proposed National Register regulations will undermine critical elements of the eligibility determination and nomination processes and jeopardize the preservation of our nation's heritage. We urge NPS to reject the rule in its current form.

Thank you for the opportunity to comment. Please do not hesitate to contact us with any questions on these comments.

Best regards,

A handwritten signature in blue ink that reads "Marion F. Werkheiser".

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