



Preservation League of NYS

April 18, 2019

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Joy Beasley
Keeper of the National Register of Historic Places
National Park Service
1849 C Street NW
MS 7228
Washington, DC 20240

Re: Proposed Regulation Changes Governing National Register of Historic Places
Designations

Dear Ms. Beasley:

I write on behalf of the Preservation League of New York State, New York's statewide historic preservation nonprofit, regarding the National Park Service's proposed changes to the rules governing listing on the National Register of Historic Places (National Register).

The National Park Service's (NPS) proposed revisions are broken into two parts. The first part responds to a 2016 amendment to the National Historic Preservation Act of 1966 and the second changes the consideration of owner objections in the National Register nomination process.

The Preservation League believes that all of the revisions proposed by NPS circumvent the intent of the National Historic Preservation Act and subsequent amendments. Indeed, we believe that the proposed revisions are hostile to the National Register nomination process.

National Register Designation of Federal Property

The additional requirements of the NPS for National Register nominations of federal property create multiple burdens and roadblocks to designation of culturally and historically significant public land. These requirements remove the public voice from nominating or commenting on National Register nominations of federal property.

Currently the public can submit National Register nominations for federal resources to their State Historic Preservation Office, who can then nominate the property to the National Register. The proposed rule change would eliminate that opportunity and only allow a National Register nomination from the relevant federal agency.

NPS requests comment on whether the 2016 amendments can be interpreted to allow the Keeper of the National Register to make eligibility determinations for federally-owned property. We believe that **yes**, the amendment can be interpreted to allow for these eligibility determinations, regardless of whether all procedural requirements for a nomination have been met, at the Keeper's discretion.

The Preservation League has grave concerns about the rule revisions relating to compliance with Section 106 of the National Historic Preservation Act. The revision changes the ability of the Keeper to make an eligibility determination on federal property, stating that such a determination can only be made "after consultation with and a request from the appropriate SHPO and concerned Federal agency." This takes away the public's voice and fundamentally restricts the Section 106 process, so that only the federal agency involved with the proposed action can request an eligibility determination.

Contrary to the NPS statement that they have "evaluated this rule under the criteria in Executive Order 13175 and under the Department's tribal consultation policy and has determined that tribal consultation is not required because the rule will not have a substantial direct effect on federally recognized Indian tribes," these rules have a substantial impact on cultural resources of religious and cultural tribal significance.

New York State has multiple federally-recognized tribes, from the Shinnecock Nation on Long Island to the Saint Regis Mohawk Tribe in northern New York, and significant federally-owned historic and cultural resources without current National Register designation or eligibility determinations, such as the Brookhaven National Laboratory in Suffolk County (c. 1947) and Fort Drum in Jefferson County (c. 1908). These rule changes will have a negative affect on our federal historic and cultural resources.

Changes to Owner Objection Procedures

Currently a property or district shall not be listed on the National Register if NPS receives objections to listing from a majority of property owners. The proposed rule change adds to this provision by including a clause that if "owners of a majority of the land area of the property" object, then the designation cannot move forward. This undemocratic proposal is contrary to our country's principle of "one person = one vote" and instead harkens back to a feudal system of law.

We believe that this rule change is not in keeping with the National Historic Preservation Act and associated amendments, nor does that act give the Secretary of the Interior the ability to make such a substantive change to the National Register objection process.

This rule changes creates significant concern for the Preservation League, as it creates an ambiguous standard without defining “land area,” while also burdening State Historic Preservation Offices with the task of defining, evaluating and quantifying land area ownership. The land area definition ambiguity could create negative impacts for historic districts with multistory buildings, if the definition is interpreted to include floor area.

In New York State, the implication of this land area objection standard would give owners of large properties or multiple properties within a district an outsized ability to object. Many potential historic districts in New York State are threatened under this proposed change. These include districts where a few properties have a lot of surrounding land, as well as districts where property owners own multiple potentially contributing buildings, such as communities that include a college or university.

As to the question of whether requiring a notarized objection statement was an undue burden on property owners, we believe that obtaining a notarized signature is one of the easiest and clearest mechanisms for registering an objection and certifying identity.

Conclusion

The Preservation League believes the proposed changes to the National Register, our country’s archive of historically and culturally significant places, will substantially harm the program. We believe that these changes overstep the Secretary of the Interior’s authority.

The Preservation League urges the NPS and Secretary of the Interior to reconsider the rule changes, engaging with the National Conference of State Historic Preservation Officers, National Association of Tribal Historic Preservation Officers, members of Congress, and other stakeholders in considering any revisions to the rules governing the National Register.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay DiLorenzo". The signature is written in a cursive, flowing style.

Jay DiLorenzo
President