

19 April 2019

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

Re: Comments on Proposed Department of the Interior, National Park Service Rule Changes – National Historic Preservation Act, Regulation Identifier Number (RIN) 1024-AE49

Dear NRHP Staff:

The Society of Architectural Historians (SAH) offers the following comments on the proposed Department of the Interior rule changes.

On 1 March 2019, the Department of the Interior (DOI) proposed amendments to the regulations implementing the National Historic Preservation Act of 1966 (NHPA) and its 2016 amendment, the National Parks Centennial Act (H.R. 4690, P.L. 114-289). The 2016 change was intended to mandate consultation with State Historic Preservation Officers (SHPOs) on National Register nominations by federal agencies. Our concerns with regard to this proposal are as follows:

1. The proposed rule change is contrary to the intent of the 2016 amendment. Instead of giving the states a voice in federal undertakings, it allows federal agencies to block both the determination of National Register eligibility and the listing of historic resources located on federal property.
2. At present, organizations, communities, and individuals can nominate historic resources on federal property to the National Register. The proposed rule change, however, takes this right away from American citizens by allowing only federal agencies to identify or nominate such historic resources. The proposed rule further specifies that the Keeper of the National Register may only determine eligibility in response to a request from the relevant State Historic Preservation Officer and the federal agency. This undermines the Keeper's independence and ability to render decisions pursuant to the National Historic Preservation Act, as it implies a need for approval by the affected federal agency. By withholding that approval, a federal agency could effectively block any nomination it did not support.
3. Under the proposed rule change, if a federal agency refuses to seek an eligibility determination or to nominate a historic property, the arbiter of an appeal is that federal agency itself. This circular process effectively forecloses on citizen participation.
4. The proposed rule changes the requirement for objection to a proposed National Register district from "a majority of property owners" to include "owners of a majority of the land area of the property." This gives large landowners greater influence than smaller landowners, which is wholly undemocratic. This also presupposes that all land data at the local level is accurate enough to make such a determination, which is unlikely. Further, it places the burden on the states to review, assess, and render determinations regarding which of these fortunate landowners is granted a greater voice than their fellow citizens simply because of property size.

5. We note that the idea of “land area” is not mentioned in the NHPA, and the NHPA does not give the Secretary of the Interior the authority to institute this change.
6. Finally, the proposed rule change in no way recognizes or furthers the interests of Native American tribes, Alaskan Native groups, or Native Hawaiian groups in historic resources located on federal land that are significant to them. It explicitly presumes that there will be no impact on indigenous people, which is dismissive and entirely unacceptable.

The United States is blessed with a wealth of significant archaeological sites, architectural resources, and cultural landscapes that embody our unique national history. This wealth belongs to all of our citizens – not just those who own large amounts of land, whether private or federal. To foreclose on citizens’ right to participate in and guide the treatment and protection of these resources goes against everything that we as Americans should hold dear, and is contrary to the purpose and intent of the National Historic Preservation Act. The Society of Architectural Historians objects to the specified provisions of the proposed rule change for these reasons, and strongly encourages the Department of the Interior to revise its approach to these rule changes.

Sincerely,

A handwritten signature in black ink, appearing to read "B_C_G" followed by a horizontal line.

Bryan Clark Green, Ph.D., LEED AP BD+C
Chair, Society of Architectural Historians Heritage Conservation Committee

cc: Mr. Kenneth Breisch, Ph.D.; Mr. Jeffrey Cody, Ph.D.; Mr. Anthony Cohn, AIA; Ms. Phyllis Ellin; Mr. David Fixler, FAIA; Mr. Sandy Isenstadt, Ph.D.; Ms. Pauline Saliga; Ms. Deborah Slaton; Members SAH Heritage Conservation Committee.