



29 April 2019 Comments on National Park Service (NPS) FR Doc # 2019-03658

Archaeology Southwest offers these comments on the Proposed Rule governing the determinations of eligibility and the listings of properties on the National Register of Historic Places (NRHP), pursuant to 36 CFR § 60 and 36 CFR § 63. Our comments distill to requests that the Proposed Rule be withdrawn and that the National Park Service (NPS) follow existing law and policy until it completes all required consultations and revises the Proposed Rule to comport with federal law.

Archaeology Southwest is a Tucson-based nonprofit organization with nearly 2,500 members dedicated to the preservation, enjoyment, and investigation of the American Southwest's heritage. Our comments are inspired by our mission—to protect the places of the past by working with tribes, private partners, and governments at all levels through research, outreach, and planning programs. Our comments are also informed by our ethical obligations as cultural resource researchers and stewards.

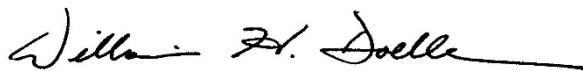
Furthermore, two core aspects of the National Historic Preservation Act (NHPA) guide Archaeology Southwest in our approach to the NRHP. First, the NHPA statute and its current implementing regulations affirm interests on the part of the American people and our federal government in historic properties in general and National Register-listed properties in particular. These places are the essential and often irreplaceable embodiments of our collective American senses of place, identity, and unity through diversity. Second, the interests and preferences of federally recognized tribal governments and of American Indians, Alaska Natives, and Native Hawaiian organizations (we use the cover term of “tribes”) require the due consideration of their needs, interests, and preferences on par with or ahead of state and local governments in all policy and practice regarding the NHPA. Under no circumstances should any rulemaking erode the modest progress enabled by the 1992 NHPA amendments toward full tribal partnership in the federal historic preservation program.

With these guiding principles in mind, we object to the Proposed Rule for four principal reasons.

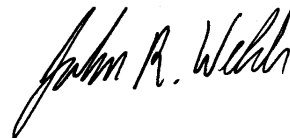
1. The Proposed Rule was developed without consultation with states, tribes, tribal historic preservation offices (THPOs), state historic preservation offices (SHPOs), the National Trust for Historic Preservation, the Advisory Council on Historic Preservation, or any of the subject matter experts who, pursuant to law and common sense, should have been given opportunities to assist the NPS in taking steps toward perfection of the NRHP. It is apparently necessary to remind the NPS that a comment period is not and must not be confused with, nor must any attempt be made to substitute a public comment period for,

- tribal consultation. It will be interesting to learn which organizations were consulted in the creation of the Proposed Rule.
2. The Proposed Rule appears to have been prepared so as to exclude participation by tribes, local communities, and other parties who deserve and require opportunities to (a) submit National Register nominations, (b) submit requests for formal determinations of eligibility, and (c) offer information, perspective, and opinion on National Register determinations of eligibility and on proposed listings, especially as regards properties located on federal public land. The attempt made in the Proposed Rule to limit and confound tribal, SHPO, and public participation in NRHP processes is unmistakably inconsistent with Congress's intent in the NHPA and its 2016 amendments.
 3. The Proposed Rule exceeds the authorities Congress gave the Department of the Interior and NPS to structure and limit the Keeper of the Register's decision making. Proposals to allow either the federal agency land manager or the Keeper to put nominations on indefinite hold and prevent due process appear to be an especially egregious and unreasonable interpretation of the 2016 Centennial Act, which Congress passed to provide more options for National Register nominations, not fewer.
 4. The Proposed Rule gives undue weight to large landowners, potentially allowing a single landowner's opinion to override majority, even consensus, decision making regarding the presentation of nominations to the Keeper of the Register. Needless to say, this seems a patently un-American violation of the cherished principle of "one person, one vote."

The National Park Service is advised to withdraw the Proposed Rule. The NPS must initiate meaningful and transparent consultations with tribes, states, and other stakeholders. Moreover, the NPS must commit to procedures and practices that honor Congress's clear intent in the creation and structuring of processes for National Register determinations of eligibility and listings of eligible properties in which a majority of owners concur.



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