

## **RECOMMENDATIONS FOR IMPROVING THE CONSIDERATION OF PROPERTY OWNERS RIGHTS IN THE NATIONAL REGISTER OF HISTORIC PLACES NOMINATION PROCESS**

*This is a companion piece to “The National Register of Historic Places and Due Process”.*

### **BACKGROUND**

At a hearing conducted on June 3, 2003, Representative George Radanovich, the Chairman of the National Parks, Recreation and Public Lands Subcommittee of the House Committee on Resources, asked John Nau, the Chairman of the Advisory Council on Historic Preservation (Council) for recommendations to improve the consideration of private property owners’ right in the National Register of Historic Places nomination process. On August 13, 2003, the Council conveyed to Congress its recommendations. The National Conference of State Historic Preservation Officers (NCSHPO) was encouraged to take a leadership role in emphasizing the importance of respecting private property rights in the National Register nomination process.

### **RESEARCH METHODOLOGY**

Prior to developing this paper, it was necessary to determine how states currently notify property owners of an impending nomination to the National Register of Historic Places. The United States was divided into 8 regions and, within those regions, the states with the highest and lowest number of FY’02 nominations to the National Register were selected as case study states.

It was decided that the websites for each of the case-study states would be reviewed for information about property owner notification since an ever-increasing number of people now use the internet to seek out information and many use internet resources as their primary source of information. It is especially important to consider the role of websites in this economic climate – with budgets severely restricted, or even cut, in most states, producing and printing brochures or other print material may be viewed as an expense that cannot be accommodated or must be limited (i.e. instead of printing a run of 5000 brochures, only 1500 are printed). In addition to the printing costs, there is the cost of mailing the material to be factored in as well. Thus, brochures and printed materials are at risk of becoming an item that is too costly to be used to disseminate information to a large constituency. This is not to suggest that brochures and printed materials will not continue to be sent out to constituents who request them, but rather the distribution of these materials may be limited. For example, if a property owner calls the State Historic Preservation Office (SHPO) for some basic information about the National Register, the property owner may be directed to get this information from the website and if web site access is not convenient, they may be sent a printed brochure.

## **SUMMARY OF RESEARCH**

Each website was reviewed from two perspectives: 1) a property owner seeking information about the National Register and how to get their property listed; and 2) a property owner who does not want their property listed. Of the 18 websites surveyed, the majority (13) of them had very basic information about the role of the property owner in the nomination process. However, other than mentioning that the property owner can object to listing, most websites did not provide any more information i.e. “how” (by mail, certified mail, a phone call, etc?) and “when” (45 days, 30 days prior to the review board meeting, etc?) are property owners notified of nomination, nor information about what a property owner can do if they object to the nomination.

## **NOMINATIONS TO THE NATIONAL REGISTER OF HISTORIC PLACES**

The regulations governing the National Register of Historic Places are set forth in 36 CFR § 60. These regulations require that the property owner(s) be notified of the impending nomination and prohibits the listing of properties if the owner(s) objects to such listing. These regulations are iterated in Appendix 1 of this document.

## **RECOMMENDATIONS**

In their August 13, 2003 recommendations to Congress, the Council offered the following as possible solutions to the concerns raised by Representative George Radanovich.

**Recommendation 1:** “NCSHPO should urge SHPOs to make useful information readily available to property owners regarding their rights in the National Register process and the effects of National Register decisions on their ability to use their property. This information should be prominent on the SHPO websites and available in printed form.”

To implement this recommendation, **at a minimum**, SHPO websites **should** provide a link to the National Park Service (NPS) National Register of Historic Places website, especially if there is currently no link provided. This website address is: <http://www.cr.nps.gov/nr/index.htm>. In response to Representative George Radanovich’s concerns, the Council recommended that the NPS make useful information more readily available to property owners. In January of 2004, the NPS added information to their website which is specifically geared to property owners. This website address is: <http://www.cr.nps.gov/nr/owners.htm>.

Ideally, SHPO websites **should** contain information that addresses the following frequently asked questions:

- What is the National Register of Historic Places;
- How a Property is Nominated to/Listed in the National Register of Historic Places;
- The Results of Listing in the National Register of Historic Places; and
- What are the Rights of Property Owners.

All of the above information **should** also be made available in printed form.

Several SHPOs have stated that the written notice that the NPS requires SHPOs to send to property owners informing them of the intent to nominate, the results of listing and their right to comment and/or object to listing is too bureaucratic and that much of the confusion about nomination and listing stems from this notice. To resolve this, the NCSHPO **encourages** the SHPOs to write a “plain English” letter that explains, in a clear and straightforward manner, the results of listing as they apply to their respective State (i.e. a State that does not have coal deposits does not need to

address surface coal mining permits) and the rights of the property owner to comment and/or object to listing. This “plain English” letter **should** accompany the written notice required by the NPS. To assist SHPOs in creating a “plain English” letter, the NCSHPO **will** solicit letters from SHPOs and develop a means by which these letters can be posted on the NCSHPO website with the intent being to provide examples and sample language. The posting of these letters will also serve as a means to share SHPO “best practices”, which is discussed further in Recommendation 3.

Finally, the NCSHPO **encourages** that all materials – both on websites and in printed form – be written in “plain English” to enable a full comprehension of the subject matter.

**Recommendation 2:** “NCSHPO should urge SHPOs to designate contact staff within the State National Register program to whom property owners can bring their concerns about the process and its impact on their properties.”

SHPOs that do not already have a contact person(s) designated, **should** resolve this immediately. Contact information **should** be prominently displayed both on websites and in printed form.

**Recommendation 3:** “NCSHPO should encourage, through sharing of ‘best practices’ and other means, SHPOs to work with owners to improved their understanding of the National Register process and in particular to resolve objections to nominations when raised by owners.”

To address this recommendation, the NCSHPO **will**:

- Make this paper available on the NCSHPO website;
- Post “plain English” letters (see Recommendation 1) on the NCSHPO website;
- Post exemplary SHPO property owner notification processes on the NCSHPO website; and
- Look into the possibility of creating a message board for SHPOs to post their questions and comments as a means to determine how other SHPOs handle specific issues, share thoughts and ideas and explore ways to improve the National Register program.

## APPENDIX 1

The regulations governing the National Register of Historic Places are set forth in 36 CFR § 60. The relevant sections pertaining to the rights of property owners are iterated below.

### **Regarding nominations with less than 50 property owners** [36 CFR § 60.6(c)]

1. The State shall send written notice of impending nomination to the property owner(s) at least 30 days, but not more than 75 days, before the State Review Board meeting. The written notice may vary in some details of wording as the States prefer, but the content must be approved by the National Register division of the National Park Service.
2. The written notice shall give the owner(s) at least 30 days, but not more than 75 days, to submit written comments and either concur in, or object to, the nomination of the property;
3. At least 30 days, but not more than 75 days, before the State Review Board meeting, the State is also required to notify by the above mentioned National Register approved notice the chief elected official of the county (or equivalent governmental unit) and municipal political jurisdiction in which the property is located;
4. The National Register nomination should be on file with the State Historic Preservation Office during the comment period. If requested by the public, a copy must be made available by mail or at a location that can be reasonably accessed by all affected property owners, such as a local library, courthouse, or other public place. This copy must be made available prior to the State Review Board meeting so that written comments regarding the nomination can be prepared.

### **Regarding nominations with more than 50 property owners** [36 CFR § 60.6(d)]

1. For a nomination with more than 50 property owners, the State is required to notify in writing the chief elected official of the county (or equivalent governmental unit) and municipal political jurisdiction in which the property or district is located. This notification must occur at least 30 days, but not more than 75 days, in advance of the State Review Board meeting;
2. The State shall provide a general notice to property owners informing them of the impending nomination. This notice shall be published at least 30 days, but not more than 75 days, before the State Review Board meeting. The notice shall give the owners the opportunity to submit written comments and either concur in, or object to, the nomination. Such notice must be published in one or more local newspapers of general circulation in the area of the nomination. The content of the notice must be approved by the National Register division of the National Park Service.
3. If a general notice is used for a nomination with more than 50 property owners, it is suggested that a public information meeting be held in the immediate area before the State Review Board meeting;
4. If the State wishes to individually notify all property owners, it may do so, pursuant to the procedures specified in subsection 60.6(c). If property owners are notified individually, the State is not required to publish a general notice.

### **Regarding property owner objection to nomination** [36 CFR § 60.6(g)]

1. A property owner who wishes to object to nomination must submit a notarized statement certifying that they are the sole, or partial, owner of the property and that they object to the nomination. This statement must be submitted to the State Historic Preservation Officer.
  - a. For nominations with multiple ownership of a property, or of a district, the property will not be listed if a majority of the owners object.

- i. Upon receipt of objection(s) to a nomination for a property with multiple owners, or of a district, it is the responsibility of the State Historic Preservation Officer to ascertain whether a majority of owners of the property, or in the district, have objected.
  - ii. If an owner whose name did not appear on the list certifies in a written notarized statement that the party is the sole or partial owner of a nominated property such owner shall be counted by the State Historic Preservation Officer in determining whether a majority of owners has objected.
2. Each owner of a property in a district has one vote regardless of how many properties or what part of one property that party owns and regardless of whether the property contributes to the significance of the district.

**Regarding property owner objection to nomination**

[36 CFR § 60.6(n)]

[36 CFR § 60.6(s)]

1. If a property owner, a majority of multiple owners of a single property, or a majority of owners of properties in a district, objects to nomination, the State Historic Preservation Officer shall submit the nomination to the Keeper of the National Register for a determination of eligibility only.
2. The Keeper of the National Register shall review the nomination and make a determination of eligibility with 45 days of receipt or nomination.

**Regarding support for or objection to nomination by any person or organization [36 CFR § 60.6(t)]**

1. If any person or organization supports or objects to nomination, they may petition the Keeper of the National Register to either accept or reject the nomination. The person or organization must state the reason for the petition and request, in writing, that the Keeper of the National Register review the nomination.
2. Petitions received by the Keeper of the National Register prior to the listing of a property or a determination of eligibility if the property owner(s) object to listing will be considered and the nomination will be substantively reviewed.

**Regarding notification of listing or a determination of eligibility**

[36 CFR § 60.6(u)]

[36 CFR § 60.6(v)]

1. When a property, or district, is listed in the National Register, the State Historic Preservation Officer is required to inform the property owner(s) and the chief elected official of the county (or equivalent governmental unit) and municipal political jurisdiction in which the property, or district, is located.
  - a. When there are more than 50 property owners, they may be notified by the same general notice specified in subsection 60.6(d).
  - b. States that notify all property owners individually are not required to publish a general notice.
2. If a property owner, a majority of multiple owners of a single property, or a majority of owners of properties in a district, objects to nomination but the Keeper of the National Register has determined that the property or district is eligible, the State Historic Preservation Officer is required to inform the property owner(s) and the chief elected official of the county (or equivalent governmental unit) and municipal political jurisdiction in which the property(s) is located.
  - a. When there are more than 50 property owners, they may be notified by the same general notice specified in subsection 60.6(d).
  - b. States that notify all property owners individually are not required to publish a general notice.

