

National Register Coordinator NR Email Blast – Summer 2011

Upcoming National Register Workshops

National Register Consultants Seminar – September 10, 2011

Location: Chicago, IL

Co-sponsored by: Illinois State Historic Preservation Office and Illinois Association of Historic Preservation Commissions.

Contact: amy.hathaway@illinois.gov or call (217)782-8588.

Cultural Landscapes in the Western United States – October 4-5, 2011

Location: Denver, CO

Co-sponsored by: Colorado Office of Archaeology and Historic Preservation and NPS.

Contact: astrid.liverman@chs.state.co.us for more information.

National Register Historic Districts – October 13, 1-5 pm

Location: Stuart, Florida

Sponsor: Pioneer America Society/Association for the Preservation of Artifacts and Landscapes (PAS/APAL) and NPS.

Brief Description: This one-day workshop will be held in conjunction with the PAS/APAL annual meeting (October 12-15, 2011). The workshop will be led by NPS Historian, Jim Gabbert. The cost is \$25 and registration is limited to 30 participants. Please go to www.pioneeramerica.org for registration details for the 2011 annual meeting. Those wishing to attend may register only for the workshop, but are encouraged to register for the entire annual meeting.

Check out more preservation events at

<http://www.nps.gov/nr/feature/index.htm#newpreservation>

National Register Print Publications - Web Information

End of Summer Publications Blow Out!

Like archeologists uncovering information in layer after layer on our shelves, we have the following print publications to offer. Most NR publications are now digitized and available online. We will no longer be reprinting our bulletins. Order any remaining print publications using the following form:



Publications_Summer_Publication_Blow_Out.pdf

Website Updates:

We have changed the look of our NR website to coincide with the overall NPS design. All of the pages and information should still be in the same location at <http://www.nps.gov/history/nr/>

During this past month of August, the National Register of Historic Places celebrated "Archeology Month." Our aim with this feature was to promote understanding of this very significant resource type, encourage people to think more about archeology and its significance, and introduce both professionals and the public to how the Register and other National Park Service programs preserve these exceptional resources. For 2011, feature highlights included Pottersville kiln site and Sams Tabby Complex in South Carolina, Paulino Outdoor Oven in Guam, and the MPS 18th-Century Archeological Resources of Smyrna Settlement in Florida. This online (and printable) feature can be accessed at www.nps.gov/history/nr/feature/archeology/.

Upcoming Feature Months

November is American Indian Heritage Month. If you have recommendations for properties that showcase the history and culture of American Indians and Alaska Natives please contact: jeff_joeckel@nps.gov.

December is Maritime Heritage Month. If you have recommendations for maritime properties, particularly aids to navigation, contact: jeff_joeckel@nps.gov.

National Historic Landmarks

Check out the National Historic Landmark's new webinars! <http://www.nps.gov/nhl/webinars.htm>. To attend a webinar, please contact Caridad de la Vega at 202-354-2253 or caridad_de_la_vega@nps.gov.

The next National Historic Landmarks Committee meeting is scheduled for November 8-10, 2011 in Washington, D.C. The final agenda and proposed nominations will be available on the NHL website by September 9, 2011 at <http://www.nps.gov/nhl/>. Questions? Contact Patty Henry at Patty_Henry@nps.gov.

National Register Program Information

Modern, Modern, Modern

Check out the latest midcentury modern historic context and survey: <http://montanahistoricalsociety.org/shpo/modernism.asp#>

Homeowners Insurance for National Register Properties *(submitted by Gretchen Brock, GA SHPO).*

The issue of homeowners insurance for NR listed properties is a question that often comes up by the public and from some insurance agents. I have called our state's insurance commissioner's office in the past and spoke with the homeowner's analyst about whether insurance companies can refuse to underwrite houses that are listed in the NR and was told "no" they cannot. You may want to do the same with your state's insurance commissioner's office--referring property owners or insurance companies to a regulatory agency sometimes works wonders. I would also ask if there is a policy or position paper regarding insuring NR listed properties in your state. The closest in GA is a regulation against excluding houses because of the age of the house.

Another suggestion is to have a property owner request where in the insurance company's policy it specifically says, "We do not insure National Register listed properties." I have yet to see anything actually in print that states this.

State National Register Review Board Conflict-of-Interest Issues (*questions submitted by Patricia Duncan, LA SHPO with informal responses provide by John Renaud, NPS Historic Preservation Grants*). As always for this kind of draft document, these opinions are John's own and do not necessarily represent the official opinions of the Historic Preservation Grants Division, the National Register of Historic Places, or the National Park Service. Any questions, please contact John Renaud at (202) 354-2066 or John_Renaud@nps.gov.

General Comments:

Relevant documents:

National Park Service's (NPS') Regulation 36 CFR 61 "Procedures for State, Tribal, and Local Government Historic Preservation Programs"

Chapter 3, Section C of the Historic Preservation Fund Grants Manual for States, "Conflict of Interest"

National Park Service's Publication: Manual for State Historic Preservation Review Boards, Part 2 "Conflict of Interest"

Louisiana's State Review Board Rules of Procedure

Louisiana's State Conflict of Interest Rules

All Federal requirements for State Review Boards flow from Sections 101 and 301 of the National Historic Preservation Act, as amended, and its implementing regulations; primarily 36 CFR 61. The Grants Manual and the Review Board Manual flow from the statute and the regulation. NPS expects each State to act in accordance with State Government rules relating to conflict of interest except to the extent that the State requirements are inconsistent with Federal requirements – a conflict which rarely occurs. The Louisiana State Review Board Rules of Procedure must be consistent with both Federal and State requirements.

Question # 1

As long as he/she is not associated with the grant project, can an academic who teaches in a university/college school of architecture or preservation-related program serve on the National Register Review Committee if his department receives grants from the SHPO?

Example, Professor Smith teaches architectural history in the School of Architecture of X University. Professor Jones also teaches in that School of Architecture and is project director for its HABS program. Every year the School of Architecture applies to the SHPO and receives a grant to do a HABS project. As long as Professor Smith agrees not to apply for a grant or participate in any grant project awarded to his school, can he legally serve on the SHPO's National Register Review Committee?

Response # 1:

The answer to question #1 depends upon a couple of factors. That is, 1) would the professor be the only Review Board member representing a required discipline and/or providing needed professional expertise and 2) does the Louisiana Review Board advise the State Historic Preservation Officer regarding the selection of subgrants?

If the answer to both question 1) and 2) is “no”, then the answer to question #1 is relatively easy. That is, the professor can be a Review Board member so long as certain procedures are followed. For example, if a National Register nomination comes before the Review Board and that nomination is the result of a State-selected HABS grant to the professor’s university, then to avoid an appearance of a conflict of interest, the professor would need to declare (in writing) the apparent conflict and recuse herself/himself from all discussion and voting relating to that nomination. This information should be included in nomination-related materials that the Review Board provides to the SHPO and that the SHPO sends to the National Register. This material will allow the SHPO/National Register to make an informed decision as to whether a substantive review is warranted.

To do otherwise, would create the impression that the University gained an inside advantage by having a professor on the Review Board. This shouldn’t be a problem because the need for recusal would be rare and also the Review Board would have other members with similar expertise when the professor has to recuse herself/himself. Because the Review Board’s role is advisory, we are dealing with the appearance of a conflict of interest, rather than an actual conflict.

If the answer to question 1) or 2) is “yes,” the situation becomes more difficult for two reasons. First, the State Office would have to find an alternative source for the Review Board for the expertise lost during the recusal. Second, if the Review Board reviews and advises the SHPO on subgrant selection, the professor would have to recuse herself/himself on all subgrant selections in addition to the occasional National Register nomination. Documentation of such a recusal in the subgrant selection process should be kept in the subgrant selection files as proof that an open project selection process took place. NPS generally recommends that if a Review Board member has a pattern of recusals and/or routinely has to recuse himself/herself, that person probably should not be a Review Board member.

Question #2

Will the National Historic Preservation Act and/or the NPS National Register Regulations allow a substitute to take the place of an absent Review Committee member if state law so allows? (We understand that the substitute could not be a member of the SHPO staff.)

If substitutions are allowed, what kind of requirements would the substitute have to meet? For example, if an architectural historian was absent, would the substitute have to be an architectural historian? Could the substitute be an interested lay person? Could the state law designate what qualifications the substitute would have to meet?

Other than amending state law according, would anything else have to be done to make the substitute “legal” so the Committee’s decisions would be valid?

Response # 2:

Generally speaking, if a proposed activity is not inconsistent with statutory, regulatory, or policy requirements, it is permitted. I am aware of no Federal requirements that would prohibit creation/use of substitute/alternate Review Board members. As you point out, such a substitute should not be a member of the SHPO staff because such a situation would damage the appearance of the independence and objectivity on the part of the Review Board. One NPS staff person recommends the use of Certified Local Government (CLG) qualified Commission members or staff as a potential source of substitutes/alternates, c.f., see the parameters discussed below.

The substitute would have to meet the same requirements that any Review Board member has to make. That is, he/she would have to meet the general requirements that all Review Board members must meet plus the discipline-specific requirements if the State wants the substitute to count as a historian, archeologist, etc. If the State wants the substitute/alternate to have additional expertise beyond the Federal minimum requirements, that is up to the State.

There are at least three additional things that the State needs to do to make the substitute "legal." First, the Review Board's Rules of Procedure needs to be adjusted to allow for how substitutes are selected, used, declared, documented, etc. Because this is a new concept for NPS, I would recommend that the State get prior approval on the revised Rules of Procedure. Second, the State would have to inform NPS about its roster of substitutes/alternates in the same way that the State informs NPS about changes in Review Board membership. Third, the Review Board must document the presence of the specific substitute/alternate for each activity that involves the participation of an alternate/substitute.

Question #3

If state law so allows, does the National Historic Preservation Act allow Review Committee members to take leaves of absence?

If this is allowed, does the leave of absence reduce the number of people needed for a quorum?

Response # 3:

a. Within certain parameters, the National Historic Preservation Act, as amended, and its implementing regulations and policy do not prohibit Review Board Members from taking leaves of absence. The parameters referred to above depend upon whether or not the Review Board member is the sole representative of a required position under 36 CFR 61. If the member in question is not the sole representative of a required position, then (most likely) there is no problem with taking a leave of absence.

NPS would treat a leave of absence in a required position as a vacancy (albeit a temporary one). 36 CFR 61's rules for filling the vacancy in required positions would apply. Thus, the leave of absence cannot be so long that it would raise questions under 36 CFR 61. Also, the leave of absence cannot be so long that it substantively inhibits the Review Board from carrying out its responsibilities in a timely fashion. There are no national time limits associated with either parameter. The criteria that

NPS would apply would involve the level of the Review Board's activity and the frequency of its meetings.

b. No.

Question #4

If a discipline is not represented at a Review Committee meeting because all the members practicing that discipline are absent, what impact does this have on the nominations falling within that discipline or on the meeting as a whole?

Response # 4:

The absence of a pertinent discipline, when the Review Board is considering a National Register nomination, creates certain procedural requirements, but it need not hold up the processing of nominations. The purpose of the required disciplines on the Review Board is to provide to the Board -- as a whole -- with the historic preservation expertise that the Board is likely to need during its deliberations. No Review Board member(s), however, can block a nomination via nonparticipation in the process. To the extent practicable, SHPO staff should arrange that the Review Board has access to the missing expertise. If a Review Board member knows that she/he will be absent for a meeting, it is a good idea to provide comments for the record prior to the meeting. Prior commenting, however, does not eliminate the need of the Review Board to have access to relevant expertise during the discussion/deliberation. This is especially true for controversial nominations. The record should note the absence of members with the needed expertise. This information should be included in nomination-related materials that the Review Board provides to the SHPO and that the SHPO sends to the National Register. This material will allow the SHPO/National Register to make an informed decision as to whether a substantive review is warranted. National Register staff members recommend that the State ask for a substantive review in these circumstances.

The absence of a pertinent discipline when the Review Board is carrying out its other responsibilities has parallel consequences.

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