



# HISTORY Colorado

## Public Information Sheet on Proposed Rule Changes for the National Register of Historic Places

Several changes to the rules and procedures for listing properties in the National Register are proposed by the Secretary of Interior. History Colorado has prepared official comments and strongly encourages anyone interested in our state's historic places and their preservation to also comment on the proposed changes to the National Register of Historic Places program by the **April 30 deadline**.

### Posting of Proposed Changes for Public Review:

<https://www.federalregister.gov/documents/2019/03/01/2019-03658/national-register-of-historic-places>

**Online Portal for Comments** (*important*- be sure to reference the Regulation Identifier Number (RIN) 1024-AE49): <https://www.regulations.gov/>

**History Colorado's official comments submitted to the Secretary of Interior can be found on our website:** <https://www.historycolorado.org/national-state-registers>

The **National Trust for Historic Preservation** also has a webpage that summarizes the proposed changes and the large impact they would have on the National Register nomination process, as well as a template for comments: <https://forum.savingplaces.org/blogs/special-contributor/2019/04/05/alert-proposed-rule-changes-national-register>

Please see below a few examples of how the proposed changes to National Register regulations would impact the ability of local communities to participate in the program.

Remember, listing in the National Register **does not impose any restrictions** on property owners as to what they may do with their property. However, National Register listing is an important tool for preservation because it:

- 1) recognizes and honors historically important places;
- 2) creates a document of what makes a place significant; *and*
- 3) provides opportunities to access financial incentives for preservation and rehabilitation, such as the Federal Historic Income Tax Credit.

### Example #1

A National Register nomination for a downtown historic district encompasses 100 properties of equal size that are owned by a total of 60 owners. Ten of these owners own multiple parcels within the nominated district, equaling 55 of the 100 properties. All owners are notified by History Colorado of the nomination and their right to comment or object.

- Under current National Register regulations, if 31 of the owners submit a notarized objection to the nomination, then the district cannot be listed in the National Register.

- Under the proposed changes, if 50 owners support the nomination and do not object, but the 10 owners who own a majority of the property within the district do object, then the district cannot be listed in the National Register.

**Example #2**

A National Register nomination for a historic district includes properties owned by private owners, local government, and the Federal government. Historic buildings on the federal land are an important part of the historic development of the district and are integral to the nomination. All the private and local government owners support the nomination and do not object during the notification process.

- Under current National Register regulations, the Federal agency that owns the land is given the opportunity to review the nomination and certify that it agrees or disagrees that the district meets the National Register criteria. If it agrees, the Federal agency forwards the nomination to the Keeper of the National Register for review and listing. If the Federal agency does not forward the nomination, this failure to forward can be appealed by anyone, such as one of the supporting owners in the district, allowing for the nomination to be forwarded to the Keeper for consideration and listing.
- Under the proposed changes, if the Federal agency declines to forward the nomination, an appeal can only be made if six conditions are met – **one of which is that the Federal agency has forwarded the nomination to the Keeper**. But if the agency has forwarded the nomination, there is no need to appeal, creating a circular procedure that cannot be followed or met. The district can't be listed because the Federal agency hasn't forwarded the nomination, but another owner in the district can't appeal the Federal agency's decision either, thereby preventing the private property owners from taking advantage of financial incentives.

**Example #3**

A National Register nomination has been prepared for a small historic district that consists of 5 properties totaling 6 acres. Ownership of each property is outlined in the table below:

Property	Number of owners	Property size
A	4 (ownership shares unknown)	5 acres
B	1	.25 acre
C	1	.25 acre
D	1	.25 acre
E	1	.25 acre

Owners of properties B, C, D, and E support the nomination and do not object during the notification process. Two of the owners of Property A object to the nomination.

- Under current regulations, since only 2 of the 8 owners object, the nomination can still be listed in the National Register.
- Under the proposed changes, it is unclear how the ownership of the 5-acre Property A would be calculated, resulting in a number of issues:

- How does the State Historic Preservation Office determine the percentage of ownership of the 5-acre property held by the two objecting owners? This may require complex deed research that is beyond the ability of short-staffed SHPOs to undertake and/or confirm.
- Or, would each owner of Property A be considered as owning the 5 acres? How would majority of land ownership be calculated in this case? The proposed changes do not shed any light on how such a case would be handled in a fair and consistent manner.