

Fall 2014 E-Blast

Information for SHPO National Register Staff

This edition features:

- National Register (NR) State Review Board member expertise and procedural clarifications
- Alternative procedures for State Review Boards

The following is additional guidance regarding NR Review Board member expertise and meeting procedures. It serves as supplemental policy guidance to the Manual for State Historic Preservation Review Boards <http://www.nps.gov/nr/publications/bulletins/strevman/>. A special thank you goes to the NJ SHPO staff for requesting the following clarifications.

Q. Is there a Federal requirement that a Review Board member representing a required discipline be present at a Review Board meeting when that discipline is relevant?

A. No. There is no National Park Service (NPS) requirement that a Review Board member representing a required discipline must be present at a Review Board meeting when that discipline is relevant to the matter that the Review Board is considering. The requirement is that the Review Board has access to the relevant expertise when considering a matter relating to the identification, evaluation, registration, documentation, or treatment of a historic or prehistoric property.

This requirement relates to disciplines represented on the Review Board as well as to historic preservation-related disciplines that are not represented on the Review Board. When relevant expertise is not available for a meeting, the SHPO must arrange for someone not on the Review Board to be present at the meeting to share the expertise. In most States, a member of the State staff will provide that expertise. This policy parallels the policy related to what States must do when there is a vacancy in a required discipline for the Review Board.

Unless the Review Board has an arrangement for alternate members, the person providing the extra expertise does not count as a Review Board member and thus cannot vote or be counted toward the minimum quorum.

The rationale for obtaining extra expertise is that the provision of all applicable expertise gives the Review Board the best opportunity to make an informed recommendation.

Q. Even though there is no Federal requirement that the Review Board member representing a required discipline be present at a Review Board meeting when that discipline is relevant, would it be a good idea for a Review Board to establish such a rule as a part of its definition of what constitutes a quorum?

A. No. To tie a particular Review Board member's presence to the definition of what constitutes a quorum would give that member a veto over the proceeding just by not showing up. Just as no one member's opinion overrides the opinion of the Review Board as a whole; no one member can veto the Review Board's decision.

That said, attendance at Review Board meetings should be a relevant factor in determining whether a

Review Board member should stay on the Review Board.

Q. Are written comments sent by a Review Board member sufficient for providing expertise on a particular subject matter?

A. Generally no, but there are exceptions. Except in the event of a noncontroversial nomination for which all required parties have signed off on the process, written comments by the person providing the extra expertise is not sufficient. The person providing the extra expertise must be able to see and hear everything that the Review Board hears and sees and must be present to answer any question that Review Board members might have at any point during the determination process, especially for the public part of the process. These are the standard rules for face-to-face meetings. Note that, depending upon the specifics of the situation, a video or audio conference could satisfy the "face to face" requirement.

Q. Are there Federal rules related to what constitutes a Review Board quorum?

A. No. Quorum rules are State, not Federal. That said, NPS does require that the Review Board have bylaws and rules of operation and that certain subjects be addressed (e.g., conflict of interest); the details are up to the State. In short, each SHPO should check the State's rules for advisory committees. As long as the State rules are not inconsistent with Federal program requirements, NPS will not contest those rules.

Review Board decisions are advisory to the State Historic Preservation Officer. Therefore, most States want to know which Review Board members were present for meetings at which the advisory opinions are reached. The National Park Service has an interest in ensuring that each State Review Board is "adequate and qualified" to carry out its responsibilities.

Q. What are the federal laws and regulations related to State Review Boards?

A. Authorities for NPS rules relating to State Review Boards. Section 101b (1)(B) of the National Historic Preservation Act, as amended, (NHPA) (16 USC 470a (b)(1)(B)) requires that every State Historic Preservation Office have an "adequate and qualified" State Review Board.

Section 301(12) of the NHPA (16 USC 470w (12)) defines "State historic preservation review board." This is the source of the historic preservation-related disciplines requirement.

Our implementing regulations expand somewhat on how NPS will implement the statutory requirements. 36 CFR 61.4(f) refers to the "adequate and qualified" nature of Review Boards. 36 CFR 61.4(f)(3) specifies that when there is a Review Board vacancy, the State must ensure that the Review Board has access to appropriately qualified individuals. 36 CFR 61.4 (f)(5) states that the State Review Board must adopt written procedures governing its operations consistent with 36 CFR 61.4 plus related NPS guidance.

The Historic Preservation Fund Grants Manual for States, Chapter 3, Section B3 essentially repeats the regulation but specifies that the Review Board procedures must address conflict of interest issues in a way that is consistent with NPS requirements.

Alternative Procedures for State Review Boards

The 1999 revisions to 36 CFR 61 provided State Historic Preservation Offices with increased flexibility in carrying out certain National Register nomination procedures within the framework of 36 CFR Part 60. The following FAQs provide guidance and clarification on the implementation of some of these procedures.

Q. How many Review Board Meetings must a State hold each year?

A. Each Review Board must meet as often as is necessary to carry out its responsibilities in a timely fashion, but at a minimum, the Review Board must meet at least once each fiscal year.

Q. Must every meeting of the Review Board be held in person?

A. No. The regulations allow a number of options to in-person, face-to-face meetings, including telephone conferencing and live video conferencing. In addition, under special circumstances alternative procedures may be developed for obtaining Review Board recommendations without the normal public discussion of the merits of the nomination among Review Board members, through either electronic or written polling provided that all relevant parties (i.e., the property owners, the chief elected local official, the SHPO, and the Review Board) concur in writing to the procedure.

Q. Must alternative Review Board meeting procedures be approved by the National Park Service?

A. Yes. NPS approval of such procedures will be based on satisfactory evidence that:

- all notification requirements under 36 CFR 60.4 will be completed as required;
- the procedures will be implemented with only non-controversial nominations;
- the procedures require prior written acceptance by all property owners and the chief elected local official of consideration of the nomination by the review board without a face-to-face meeting;
- the review board members will be provided copies of the nomination and sufficient time to evaluate the nominations under consideration;
- copies of the nominations will be available to the public for review;
- there is a systematic method for recording and documenting the opinions of the review board members regarding the eligibility of the property; and
- the grounds for terminating such expedited review procedures are explicitly specified.

Approval can be made on a case by case basis, or for permanent State alternative procedures.

Q. Can we use remote polling of the Review Board members as an alternative to meeting in person?

A. Yes. As long as the system provides for the requirements noted above and the nominations are of a noncontroversial nature.

Q. Can States assign nomination notification responsibilities to other parties?

A. Yes. The regulations provide that an SHPO may seek assistance in meeting the notification responsibilities under 36 CFR Part 60 by entering into cooperative agreements with any party, including statewide non-profit organizations, certified local governments, local or regional planning agencies, municipalities, or other interested parties. Such agreements must specify the exact responsibilities to be carried out in order to meet the NR program regulations. Note that while the State may delegate some of the work related to notification, the State retains ultimate responsibility for compliance with Federal rules.

Q. Can a Certified Local Government (CLG) assist a state in carrying out its NR nomination responsibilities?

A. Yes. A CLG can be authorized to take over the owner notification responsibilities for pending nominations as well as having the CLG's local commission authorized to act on behalf of the State Review Board, if endorsed by the SHPO in a written agreement. Any such arrangements will be developed at the SHPO's discretion with the full support of the involved CLG. Regardless of the delegation of work, the SHPO remains the final nominating authority under the regulations.

Please contact your NPS NR Reviewer if you have any questions regarding this information.