WRITTEN STATEMENT FOR THE RECORD
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BEFORE THE
U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

HEARING: "EXAMINING IMPACTS OF FEDERAL NATURAL RESOURCES LAWS GONE ASTRAY"

July 18, 2017

My name is Patty Brandt and I represent an organization called Keep Eastmoreland Free, which helped more than 1040 property owners oppose a National Historic District designation of the Eastmoreland neighborhood in Portland, Oregon. I thank the subcommittee for holding this important hearing to examine how the National Historic Preservation Act is being abused at a local level and identify potential remedies to restore its original intent by Congress.

Background

Portland, Oregon, is growing at a rapid rate – about 111 people move there each day. The city and state also have landmark urban growth boundaries that cause us to have regular debates about urban density and how to accommodate this growth and protect visual and historic legacies – all while providing affordable housing to working class individuals and families.

I believe that these discussions and decisions are best managed at the local level. Locally elected officials understand the complexities that each neighborhood faces. Unfortunately, some residents are using the National Historic Preservation Act to bypass these local processes to force severe restrictions on private property rights and prevent much needed urban infill.

From the outset, I want to say that our concern is about the local abuse of the federal law and we hope to have a positive conversation with the National Park Service about our situation. That being said, I do believe that the regulations and statute should be improved to prevent local manipulation of the program.

Designation Process

The National Historic Preservation Act created the National Register of Historic Places, which is overseen by the National Park Service. This list includes districts, sites, buildings, structures, and objects worthy of preservation. To be eligible for listing they must meet certain criteria.

Under federal law, the listing of a neighborhood on the National Register of Historic Places is intended to be merely honorary. It is not intended to restrict what homeowners may do with their houses. Any person or group may nominate a neighborhood for national historic district listing. To prevent listing, a majority (50% + 1 person) of the homeowners must sign notarized objection letters. In contrast, all homeowners who are unwilling or unable to sign notarized objection letters

are deemed to consent to the listing. This assumed consent system is undemocratic, but does no harm if the only effect of the listing is honorific, as intended by Congress.

Unfortunately, the listing of an Oregon neighborhood as a national historic district does not end up being merely honorary. In Oregon, any person or a minority of neighbors may use the national historic district listing process, including its assumed consent system, to restrict what all of their neighbors may do with their houses in perpetuity. This is undemocratic and unfair. The NHPA was never designed to permit that to happen.

My neighborhood is facing a potential "historic district" designation impacting around 2000 homeowners. If designated by the National Park Service, this means that local officials will be able to impose restrictions on neighbors' ability to improve, expand, or tear down their homes or garages. About 80% of the homes will be expected to permanently preserve their appearance from the street- hampering or preventing most exterior alterations and redevelopment.

This is how the process unfolded:

Last year, the board of directors of the Eastmoreland Neighborhood Association, which has no governing authority over Eastmorelanders, made a unilateral decision to pursue listing the Neighborhood in the National Register of Historic Places solely as a land use tool to fend off new development, block density, and preserve the single-family character of existing and future homes. One board member of the neighborhood association stated: "We have reached now for a tool…the historic preservation district, that's an imprecise tool, it was designed for something else…but it is…our only option to slow down…it doesn't prevent demolition in some ways…but if you look at neighborhoods that become historic districts, they don't have our problems."

In other words, proponents of historic district designation have acknowledged that the law was intended for other purposes. Take for example the beloved "Father of Oregon" – Dr. John McLoughlin. A bronze statue of him represents Oregon across the street from us here, in the Capitol Visitors Center. Back home, his gravesite and modest home in Oregon City are listed on the National Register – as they should be. He was central to the history of our state. It makes good sense for his gravesite and home to be preserved as an historic treasure.

But that is not what is happening with my neighborhood. Rather, we have about 1700 homes, built in a variety of styles over many decades. The process could not be more frustrating. Once the neighborhood association filed the application for listing, it started a process with the State Historic Preservation Office (SHPO). This process includes notifying homeowners of the nomination and the process for submitting objections. From the outset, there were concerns about the historic nature of the neighborhood, the underlying survey of the area, and the process. In a February 2016 vote, the majority of neighborhood residents voted in opposition to the historic district designation. Yet that same month, the State Advisory Committee on Historic Preservation rubber-stamped its support of the designation. This Committee is separate from the SHPO, and advises the SHPO on National Register nominations. Can you see how the process is already getting complicated?

Then the SHPO itself had to make a decision based on federal law. First and foremost, the SHPO is required to determine whether a majority of the homeowners object to listing. This means 50% of the homeowners, plus one more. The SHPO has had difficulty figuring out what that number is, even though a mailed poll determined that majority of homeowners opposed. The SHPO received at least 1040 notarized objections by June 30 of this year, which was more than SHPO's own threshold, and the process should have stopped right then and there. This process of gauging support is so convoluted that a resident went to court and obtained a temporary stay against the SHPO, because of the inherent flaws in its process and the trampling of individual property rights. His case is pending in state court.

The SHPO sent the National Park Service the historic district nomination without a recommendation to designate – but only because it couldn't determine if a majority of residents opposed or supported the designation. In my mind, the whole process should have stopped there.

If we are unable to prove sufficient opposition to the designation, the National Park Service still must review the application according to the criteria contained in federal regulations developed to implement the National Historic Preservation Act:

> *The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:*
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> ***A.*** *That are associated with events that have made a significant contribution to the broad patterns of our history; or*
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> ***B.*** *That are associated with the lives of significant persons in our past; or*
>
> ***C.*** *That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or*
>
> ***D.*** *That have yielded or may be likely to yield, information important in history or prehistory.*

I love my neighborhood, but not a single one of these criteria is met in the Eastmoreland neighborhood. The application for designation includes an alleged "historic" period from 1910–1961. This wide date range was probably chosen because many of the homes were built after World War II. Yet they possess little, if any, historic significance. Ironically, the time period for the designation excludes the oldest house in the neighborhood, which was built in 1882.

This demonstrates the arbitrary nature of these designations and reveals that they're simple gerrymandering to subvert local planning decisions.

<u>Copycat designations</u>

Within the last year, three neighborhoods in Portland have filed petitions for historic district designation by the National Park Service: Eastmoreland, Laurelhurst, and Peacock Lane. Each of these is clearly and publicly motivated by efforts to curb development, renovation, or demolition. All

are conscious efforts to bypass local planning decisions by moving the decision 3000 miles away to a federal agency.

Possible remedies and reforms

I believe that Congress and the National Park Service can and should take modest steps to ensure that the National Historic Preservation Act is not skewed and abused as it is in Oregon. These actions would include:

- Amending the NHPA to extend or alter the 45-day window for the Secretary of the Interior to make a decision with respect to a designation. For large "district" designations covering hundreds of homes, this time period is too short for the National Park Service to conduct a thorough evaluation of the designation criteria;
- Amending the NHPA to shift the burden to those property owners supporting the designation, rather than those opposing it. In addition, when a historic designation will impact the rights of property owners, the threshold for designation should be greater than 50%+1 showing support. I believe that two-thirds of property owners within a proposed historic district should have the burden of showing support in order for the National Park Service to consider the nomination.
- Implementation regulations (36 C.F.R. § 60.1–.15) should be amended to:
    - Allow the National Park Service to consider whether the nomination is motivated primarily by an effort to alter local zoning or planning restrictions. After all, these designations are supposed to be honorary and to benefit – not punish – property owners.
    - Clarify the calculation of a "majority" of landowners and how and when they are counted. The confusion demonstrated by the SHPO indicates that clarity is warranted.
    - Eliminate the requirement of the Keeper of the National Register to review the nomination and keep it on file even when a majority of property owners object to the designation. (36 CFR § 60.6(s)). As currently drafted, it potentially opens up a perpetual fight amongst landowners to obtain notarized signatures either supporting or opposing the designation. The regulations should require the National Park Service to make one decision at the time of filing, not have an open-ended process. If a majority of property owners object before the time of filing, the National Park Service should not review the petition or keep it on file for future reference. The petition can and should be re-filed if and when a majority (or two-thirds as I suggest) of property owners actually and affirmatively support the designation.
    - Limits should be placed on the size of historic district designations. One thousand homes is excessive. One option would be for the National Park Service to publish an Advanced Notice of Proposed Rulemaking to solicit public comment on potential changes to these regulations.

With only a few changes, the NHPA can be kept from going astray any further. I hope that you will do so, and soon. Thank you very much for the opportunity and the honor to testify before you today.

PROPOSED "HISTORIC DISTRICT"

Eastmoreland Neighborhood

Portland, Oregon

--“Eligible/contributing” property to proposed Historic District

--Built in 1951

6816 32nd Street; Portland, Oregon

--“Eligible/contributing” property to proposed Historic District

--Built in 1947

3645 SE Glenwood; Portland, Oregon

The Russell House

--Built in 1883

--**NOT** eligible/contributing

3814 SE Martins Street; Portland, OR