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July 6, 2010

Ms. Carol Shull, Keeper  
National Park Service  
National Register of Historic Places  
1201 Eye Street, N.W.  
Washington, D.C. 20005

Mr. Randall Reid-Smith, State Historic Preservation Officer  
West Virginia Division of Culture and History  
The Cultural Center  
Capitol Complex  
1900 Kanawha Boulevard East  
Charleston, WV 25305-0300

Re: Petition for Reconsideration of Decision by the Keeper of the National Register To Remove  
Blair Mountain Battlefield from Listing in the National Register of Historic Places

Dear Ms. Shull and Mr. Reid-Smith:

Pursuant to 36 C.F.R. § 60.15(a)(4), the National Trust for Historic Preservation in the United States (“National Trust”), the Sierra Club, and the Ohio Valley Environmental Council (“OVEC”) (collectively referred to herein as “Petitioners”) hereby petition for reconsideration of the decision made by the Keeper of the National Register (“Keeper”) on January 6, 2010, to remove Blair Mountain Battlefield – the site of the largest armed labor conflict in our nation's history – from the National Register of Historic Places (“National Register”).

As will be discussed herein, the Keeper improperly relied on a list of 57 owners “recalculated” by the West Virginia State Historic Preservation Office (“SHPO”) on March 26, 2009, in determining that a majority of owners objected to the National Register listing of Blair Mountain Battlefield. In fact, the list of owners compiled by the SHPO in October 2008 and forwarded along with the nomination of Blair Mountain Battlefield to the Keeper on January 13, 2009, was the only list of owners compiled in conformance with the National Park Service (“NPS”) regulations. Those regulations require that owner objections be calculated based on a list of owners compiled from land or tax records “within 90 days *prior to* the notification of intent to nominate,” which occurred on November 24, 2008. 36 C.F.R. § 60.6(c) (emphasis added). The March 26, 2009 “recalculated” list of 57 owners was based on changes in ownership that

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occurred *after* notification was published in the Logan Banner in November 2008, and therefore did not conform to the NPS regulations.

Petitioners request that the Keeper reconsider the decision to de-list Blair Mountain Battlefield in order to correct this clear-cut legal error. In initiating the action to de-list Blair Mountain pursuant to 36 C.F.R. § 60.15(k), the Keeper was responsible for reviewing the compilation of the list of owners and the calculation of owner objections in accordance with the NPS regulations. If the Keeper had used the proper list of owners and undertaken an independent review of objections, the result would have been a determination that less than a majority of owners on the October 2008 list had submitted valid objections to the National Register listing of Blair Mountain Battlefield.

While Petitioners believe that the SHPO discharged its regulatory responsibility by compiling a valid list of owners in October 2008, Petitioners understand that there is a disagreement between the Keeper and the SHPO over who is responsible for reviewing the disputed issues regarding owner objections in this context. This petition is therefore directed at both the SHPO and the Keeper. It is incumbent on both agencies to ensure compliance with the law so that this clear-cut legal error can be promptly addressed through this administrative review rather than through litigation.

Petitioners further request that this petition be addressed expeditiously. A large portion of Blair Mountain Battlefield has been acquired by mining interests, who intend to undertake mountain removal mining activities within the site notwithstanding the widespread recognition of Blair Mountain's historic significance. The protection afforded by National Register listing under West Virginia's mining regulations is crucial to protecting Blair Mountain Battlefield from being destroyed as a result of these planned mining activities.

### **Factual Background**

Efforts to list Blair Mountain Battlefield in the National Register date back to 1999, when the site was identified by the NPS as a potential National Historic Landmark due to its role as the site of the 1921 battle of Blair Mountain. In that conflict, an army of at least 7,500 miners, seeking the right to unionize and exercise civil liberties, was met with a force of 3,000 law officers, many of whom were on the coal companies' payrolls. These forces dropped homemade bombs on the miners, dug trenches, blocked roads, felled trees and mounted machine guns along the 15-mile ridgeline of Blair Mountain.

The National Register listing of Blair Mountain Battlefield was delayed for more than a decade by well-funded opposition from the mining companies, who sought to prevent the property from being listed based on the owner objection provisions of the National Historic Preservation Act, 16 U.S.C. § 470a(1)(6). After several nominations were withdrawn in response to various procedural objections mounted by mining companies, Blair Mountain Battlefield was

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finally listed in the National Register on March 30, 2009, based on a nomination submitted by the West Virginia SHPO on January 13, 2009, pursuant to 36 C.F.R. § 60.6(w).

In its letter forwarding the nomination of Blair Mountain Battlefield to the Keeper, the SHPO indicated that legal notice of the nomination had been placed in the Logan Banner on November 24, 2008. The notice advised that owners had 30 days to submit comments or objections to the listing, and that all objections received in response to prior efforts to nominate Blair Mountain Battlefield in 2005 and 2008 would be counted, provided that the objectors' names were on the current list of property owners within the boundaries of the nominated property. No new objections or affidavits of ownership were submitted within this comment period.

The SHPO's January 13, 2009 nomination letter included two lists of property owners identified as being within the boundaries of the nominated property. The first was a list of property owners compiled by the West Virginia Attorney General's office based on research into property records conducted on October 24, 2008, showing 67 owners.<sup>1</sup> The SHPO indicated that 25 owners on this list had previously submitted objections to the nomination. In fact, seven additional objections that had been submitted directly to the Keeper in response to prior nominations were erroneously omitted from the SHPO's calculation.<sup>2</sup> However, even including these seven objections, less than a majority of owners (67 owners/32 objections) objected to the nomination.

The SHPO's January 13, 2009 nomination also included a second list showing 75 owners and 33 objectors. This second list included eight additional property owners who were also objectors. The eight additional owners were not on the October 24, 2008 list, but were added to the second list based on "affidavits" of ownership submitted in 2005 in response to prior nominations by Jackson Kelly, legal counsel for several mining companies that owned property within the nomination boundaries. The SHPO advised the Keeper that, even if this second list were used, less than a majority of (75 owners/33 objectors) objected to the listing.

Pursuant to 36 C.F.R. § 60.6(t), Jackson Kelly petitioned the Keeper to reject the nomination, by letter dated February 27, 2009, asserting a number of grounds, including disputes concerning the boundary of the site as well as "corrections" to the list of owners submitted with the SHPO's nomination. Jackson Kelly also requested that the "period of review" be extended for 30 days, pursuant to 36 C.F.R. § 60.12(a), to allow for the submission of "additional

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<sup>1</sup> Although the SHPO counted 66 owners on this list, the list in fact identifies 67 owners: Perry Ray Osborne and Helen Osborne were mistakenly counted as one rather than two separate owners.

<sup>2</sup> These seven overlooked objectors were Claude Gill, French and Peggy Burke, Larry and Lisa Bryant, and Samuel and Bonnie Craddock. Each of these objectors appeared in the October 2008 list of owners and were therefore qualified objectors.

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documentation.”

On March 13, 2009, the NPS requested that the SHPO re-examine the boundary map and property list submitted on January 13, 2009, based on the Jackson Kelly comments. The SHPO responded to the NPS by letter dated March 26, 2009. In response to the Jackson Kelly comments on the October 2008 list of owners, the SHPO stated, “[s]ince some property may have indeed changed owners in the recent months, we recalculated the numbers using Jackson Kelley’s ‘yellow’ list” of February 27, 2009. *Id.*

The SHPO’s March 26, 2009 “recalculated” list resulted in a new, shorter list of only 57 property owners based on changes in ownership that occurred *after* the official notice. Nonetheless, the SHPO concluded that this “recalculated” list of owners “still arrived at less than fifty percent of objections (57 owners/22 objectors).” Four days later, on March 30, 2009, the SHPO again recalculated the objections in order to count two new objections received in March 2009, increasing the number of objections to 24. Even so, the SHPO determined that the number of objectors was still less than a majority (57 owners/24 objectors). Accordingly, on March 30, 2009, Blair Mountain Battlefield was listed in the National Register.

On April 6, 2009, however, the SHPO advised the NPS that six objectors had been “unintentionally overlooked,” and that they were now counting 30 objections out of a total of 57 owners.<sup>3</sup> Therefore, the SHPO stated that “we request that the Keeper consider Blair Mountain Battlefield as determined eligible for, rather than listed in, the National Register.” On May 21, 2009, the SHPO prepared a new list of property owners and objections, showing 57 owners and 30 objections, and forwarded this list to the Keeper. However, as the SHPO’s website, “Division News,” acknowledged, “the State has not petitioned the Keeper for removal of the Blair Mountain Battlefield from the National Register in accordance with 36 CFR 60.15.”

By letter dated July 7, 2009, the NPS advised the SHPO that attorneys for the Department of the Interior had determined that one of the objectors – Loretta White Life Estate – had only a life estate and could not be counted, but that 29 out of 57 (or 56 if the fee owner for the Loretta White parcel was “already on the owners’ list”) still constituted a majority of objectors. Letter from Paul Loether, NPS, to Randall Reid-Smith, WVSHPO (July 7, 2009). The NPS determined that “[w]e consider the erroneous counting to constitute a procedural error, as discussed in 36 CFR 60.15(a)(4).” *Id.* Accordingly, the Keeper “intends to remove the Blair Mountain Battlefield from the National Register, pursuant to the provisions of 36 CFR 60.15(k).” *Id.*

On July 9, 2009, the NPS placed a new legal notice in the Logan Banner to notify affected owners of the Keeper’s intent to remove Blair Mountain Battlefield from the National Register

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<sup>3</sup> These overlooked objectors were: Claude Gill, French and Peggy Burke; Larry and Lisa Bryant; and Sandra Bailey. These objectors were included in the list of owners, but their objections, submitted in 2008 in response to a prior nomination for the Battlefield, had been inadvertently overlooked.

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and “to provide an opportunity for comment.” *Id.* The Preservation Alliance of West Virginia requested and received a 45-day extension from the August 8, 2009 comment deadline. Harvard Ayers then submitted timely comments on September 9, 2009, identifying numerous errors and disparities in the ownership information in the tax maps and the land records, based on title research into West Virginia land records conducted by attorney John Kennedy Bailey.<sup>4</sup> However, the Keeper refused to consider this information based on the view that, per 36 C.F.R. § 60.6(g), “it is the responsibility of the [SHPO] ‘to ascertain whether a majority of owners of private property have objected’ to a National Register nomination.” Letter from Paul Loether, NPS, to Susan Pierce, Deputy SHPO (Oct. 14, 2009).

On January 6, 2010, the NPS formally notified the SHPO that Blair Mountain Battlefield had been removed from listing in the National Register based “on the motion of the Keeper on the basis of the procedural error” identified by the SHPO concerning “a miscalculation of the percentage of property owners.”

### **Discussion**

#### **A. The NPS Has the Authority to Entertain this Petition for Reconsideration.**

The NPS regulations provide that “Properties removed from the National Register for procedural error shall be reconsidered for listing by the Keeper after correction of the error or errors by the [SHPO], Federal Preservation Officer, person or local government which originally nominated the property, *or by the Keeper, as appropriate.*” 36 C.F.R. § 60.15(a)(4) (emphasis added). “The procedures set forth for nominations shall be followed in such reconsiderations.” *Id.*

Here, the Keeper is the appropriate official to reconsider the decision to remove Blair Mountain Battlefield from listing in the National Register. The Keeper, on its own motion, initiated the proposal to remove Blair Mountain Battlefield from the National Register pursuant to 36 C.F.R. § 60.15(k). Moreover, it is the Keeper who unlawfully acted to remove Blair Mountain Battlefield from the National Register based on a calculation of owner objections that violated the methodology and procedures set forth in the NPS regulations.

As discussed in more detail below, the SHPO’s nomination and initial calculation of owner objections based on the October 2008 list of owners, submitted on January 13, 2009, was free of this procedural error, since this calculation was based on a list of owners “obtained from either official land recordation records or tax records . . . *within 90 days prior to the notification of intent to nominate.*” 36 C.F.R. § 60.6(c) (emphasis added). By contrast, the Keeper’s removal of

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<sup>4</sup>For example, Mr. Bailey determined that owner and objector Corbet Craddock had died in 1983. An objection “for Corbet Craddock,” submitted in 2005 by his daughter, Nellie Craddock, was nonetheless counted by the SHPO.

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Blair Mountain from the National Register was improperly based on a list of owners “recalculated” by the SHPO on March 26, 2009. This “recalculated” list of owners was not compiled “within 90 days prior to the notification of intent to nominate” Blair Mountain for listing in the National Register, as required by 36 C.F.R. § 60.6(c), but instead, long after the November 24, 2008 notification of intent to nominate.

The Keeper is the appropriate official to entertain this petition for reconsideration, in light of the Keeper’s *sua sponte* decision to remove Blair Mountain Battlefield from listing in the National Register pursuant to 36 C.F.R. § 60.15(a)(4). Nonetheless, as noted above, in light of the disagreement between the SHPO and the Keeper over who is responsible for calculating owner objections, even in the context of a removal action initiated by the Keeper, this petition is directed at both the SHPO and the Keeper.

**B. The Keeper’s Decision to De-List Blair Mountain Battlefield – Based on a Finding of Prejudicial Procedural Error Involving the SHPO’s “Recalculation” of Objecting Owners – Was Arbitrary, Capricious, an Abuse of Discretion, and Contrary to the NPS’ Own Regulations.**

In determining that there was prejudicial procedural error in the SHPO’s calculation of owner objections, the Keeper improperly relied on the SHPO’s March 26, 2009 “recalculated” list of 57 property owners rather than the October 2008 list of 67 owners, in violation of 36 C.F.R. § 60.6(c). Had the Keeper complied with its regulations in calculating owner objections, it would have determined that the calculation of owner objections must be based on the October 2008 list of 67 owners transmitted by the SHPO to the Keeper, and that less than a majority of the owners on this list submitted qualifying objections. The Keeper’s removal of Blair Mountain Battlefield based on a purported “prejudicial procedural error” in the calculation of property owners was therefore arbitrary and capricious, an abuse of discretion, and contrary to its own regulations.

**1. The Keeper Relied on the Wrong List of Property Owners to Calculate Owner Objections, in Violation the NPS Regulations Requiring that the Calculation of Objections Be Based on a List of Owners Compiled Within 90 Days Prior to Publication of Notice of the Nomination.**

Recognizing that property ownership may change, even from day to day, the NPS’ regulations appropriately establish a defined period of time for compiling the list of owners that are entitled to object to the National Register listing of their property. These regulations specifically provide that the “list of owners shall be obtained from either official land recordation records or tax records, whichever is more appropriate, *within 90 days prior to the notification of intent to nominate.*” 36 C.F.R. § 60.6(c) (emphasis added). Additional owners may be added to the list compiled by the SHPO in response to the public notice only “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

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owner of a nominated private property” 36 C.F.R. § 60.6(g). No such notarized statements were submitted here.

Strict adherence to this time period is important as a matter of policy since it establishes a firm cut off date that prevents the submission of “new” information about property ownership as the nomination progresses. This cut-off date insures that the calculation of owner objections does not become a moving target, and also prevents land acquisition campaigns or partisan submission of partial “corrections” designed to change the baseline number of landowners, and thereby skew calculation of owner objections. That is, in fact, what occurred here.

Here, the requisite notice of the SHPO’s “intent to nominate” Blair Mountain Battlefield occurred by virtue of the legal notice placed in the Logan Banner on November 24, 2008. Therefore, any list of owners on which the SHPO was entitled to rely must have been compiled between August 24 and November 24, 2008. The only compilation of property owners that occurred within this period is the list of 67 property owners compiled by the WV Attorney General based on research in the tax records at the Logan County Courthouse on October 24, 2008 (the “October 2008 list”).<sup>5</sup> No new affidavits of ownership or objections were submitted within the relevant comment period or prior to when the SHPO forwarded the nomination to the Keeper on January 13, 2009; all of the objections had been submitted in response to previous nominations in 2005 and earlier in 2008. Any objectors who did not appear on the October 2008 list of owners were therefore not entitled to be counted.

However, the record is clear that the Keeper’s decision to de-list Blair Mountain Battlefield relied on the SHPO’s subsequent “recalculated” list of 57 property owners prepared on March 26, 2009, rather than the October 2008 list of 67 owners. The March 26, 2009 “recalculated” list included information about intervening changes in ownership that occurred *after* the notice of the nomination published on November 24, 2008, in violation of the NPS’s regulations. Moreover, this new information was submitted by Jackson Kelly, the law firm representing mining interests, not by affidavits from the owners, and included only “corrections” that favored the objectors’ interests. The Keeper therefore violated its own regulations in removing Blair Mountain Battlefield from the National Register based on the March 26, 2009 “recalculated” list of owners.

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<sup>5</sup> The list of 75 owners attached to the January 13, 2009 nomination letter does not comport with the NPS’ regulations, and therefore should not provide the baseline for calculating owner objections. Each of these additional eight owners and objectors had submitted their objections and ownership information in 2005, in response to a prior nomination. However, these persons did not appear on the October 2008 list of owners, and did not submit “affidavits of ownership” in response to the November 2008 notice. Their claim of ownership was rendered obsolete and superseded by the October 2008 research by the West Virginia Attorney General’s office. Therefore, the October 2008 list of owners was the only list that can properly be used to calculate owner objections for the January 13, 2009 nomination of Blair Mountain Battlefield.

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Further, the NPS's regulations do not permit the submission of new objections and updated property ownership information as part of the Jackson Kelley petition requesting the Keeper to reject the nomination pursuant to 36 C.F.R. § 60.6(t). This provision merely permits petitions requesting the Keeper "either to accept or reject a nomination." *Id.* § 60.6(t). There is no provision for extensions of the period set by 36 C.F.R. § 60.6(c) for compiling owner information or for submitting new objections after the close of the comment period set forth in the public notice of the nomination. To the contrary, the regulations make clear that, once the nomination has been forwarded to the National Register, the only changes that the Keeper is permitted to consider are "notarized statements from the owner(s) of private property that the owner(s) *no longer object to listing.*" *Id.* § 60.6(s) (emphasis added).

Accordingly, the Keeper violated its own regulations when it relied on the March 26, 2009 "recalculated" list of 57 owners to determine that 30 of the owners on this list objected to the National Register listing of Blair Mountain Battlefield. Rather, the SHPO's compilation of 67 owners in October 2008, forwarded to the Keeper on January 13, 2009, appropriately compiled owner information in compliance with the NPS regulations. As discussed below, even counting the objections that were mistakenly overlooked by the SHPO, less than a majority of the owners on the October 2008 list filed qualifying objections. The Keeper therefore erred in relying on the March 26, 2009 "recalculated" list of owners, rather than the properly compiled October 2008 list of owners, as the basis for calculating owner objections.

**2. Any "Procedural Error" by the SHPO Was Not Prejudicial Because Fewer Than A Majority of Owners Submitted Qualifying Objections Prior to the National Register Listing of Blair Mountain Battlefield on March 30, 2009.**

The SHPO, when inexplicably asked by staff in the Keeper's office in March 2009, to "choose" a list of owners, incorrectly selected the list of owners "recalculated" on March 26, 2009, rather than the October 2008 list of owners forwarded to the Keeper on January 13, 2009. However, this error was not a "*prejudicial* procedural error in the nomination or listing process" within the meaning of 36 C.F.R. § 60.15(a)(4) (emphasis added). Rather, the record before the Keeper when Blair Mountain Battlefield was listed on March 30, 2009, included the correct October 2008 list submitted with the January 13, 2009 nomination, which represented the only list that could properly be the basis for calculating owner objections. The Keeper therefore should have relied on this list of owners in determining whether there was a prejudicial procedural error in the nomination or listing process.

Had the Keeper properly relied on the October 2008 list of owners, as required by its own regulations, the Keeper would have concluded that less than a majority of property owners objected to the listing. The October 2008 list identified 67 owners and 25 objectors. As the Keeper appropriately determined, one of the objecting "owners" – the Loretta White Life Estate – was clearly not a valid owner, and her name should have been removed from both the list of owners and objections, leaving the count at 66 owners/24 objectors. *See* 36 C.F.R. § 60.3(k).

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When the objections of the seven owners who were mistakenly omitted from the list objectors are added to the list of 24 objectors forwarded to the Keeper on January 13, 2009, the total number of objectors is 31, which is still less than a majority of the 66 owners.

Moreover, as noted above, the NPS had no authority to reopen the comment period after the nomination was forwarded to the Keeper on January 13, 2009. Therefore, the objection of Charles Carpenter – submitted in March 2009, two months after the nomination had been forwarded to the Keeper – should not have been counted even though he appears on the October 2008 list of owners. However, even if the objection of Charles Carpenter is counted, the total number of objectors would still be 32, less than a majority of owners. Moreover the objection of “Corbet Craddock” was improperly submitted by his daughter Nellie Craddock “For Corbet Craddock,” and therefore should not have been counted. *See* 36 C.F.R. § 60.6(g) ( the “owner” must certify in a written notarized statement that the party is the sole or partial owner of a nominated property” and “objects to the listing.”) The final tally would therefore be 66 owners/31 objectors if the belated Charles Carpenter objection were counted.

As the foregoing demonstrates, had the Keeper reviewed the SHPO’s calculation of owner objections in accordance with the NPS regulations, the calculation would have determined that less than a majority of owners on the October 2008 list objected to the listing of Blair Mountain Battlefield, and that the Battlefield was properly listed in the National Register. Therefore, the Keeper’s removal of Blair Mountain Battlefield from the National Register was arbitrary, capricious, an abuse of discretion, and not in accordance with law.

**C. The Keeper Should Reconsider the Removal of Blair Mountain Battlefield from the National Register In Order to Undertake An Independent Review of The SHPO’s Calculation of Owner Objections.**

In taking action to remove a property from the National Register under 36 C.F.R. § 60.15, the Keeper is responsible for making an independent determination of whether there was “prejudicial error in the nomination or listing process.” *See Moody Hills Farms Limited Partnership v. U.S. Dep’t of the Interior*, 205 F.3d 554, 561 (2d Cir. 1999). Here, however, the Keeper failed to undertake an independent investigation into the SHPO’s calculation of owner objections to determine whether there was such a prejudicial error.

The Keeper’s reliance on 36 C.F.R. § 60.6(g) as support for its view that the Keeper had no responsibility for calculating owner objections, even in the context of a removal action initiated by the Keeper itself, is misplaced. The procedures set forth in 36 C.F.R. § 60.6(g) relate specifically to a National Register *nomination by the SHPO*, not a removal action under 36 C.F.R. § 60.15. Unlike National Register nominations by the SHPO under Section 60.6, removal actions under Section 60.15 do not provide any process at all for recalculating objecting property owners by either the SHPO or the Keeper. Instead, these procedures merely provide for notification of property owners of the proposed removal decision and providing these owners an opportunity to

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comment on the removal action. 36 C.F.R. § 60.15(d). This regulation therefore provides no support for the NPS' refusal to undertake an independent review of the question of whether there had been an error in the SHPO's calculation of owners and objections.

The only circumstance in which the NPS regulations require the SHPO to recalculate property owners in the context of a removal action is where the removal action is initiated by any "person or organization" under 36 C.F.R. § 60.15(c) (*i.e.*, not by the Keeper itself), and the SHPO elects to have the State Review Board consider the request. 36 C.F.R. § 60.15(g). However, this process is not available for removal actions such as this one, initiated by the Keeper under 36 C.F.R. § 60.15(k), or where, as here, the removal request is based on "procedural grounds." *Id.* § 60.15(g).

Accordingly, the NPS regulations do not support the Keeper's contention that the SHPO was the sole entity responsible for considering comments bearing on whether there was a procedural error in the calculation of objecting property owners in the context of a removal petition *initiated by the Keeper*. Rather, in initiating the de-listing on its own motion – particularly here, where purported errors by the SHPO in the calculation of objecting property owners are the basis for the de-listing – the Keeper had an independent obligation to review the SHPO's calculation of the owners and objections, and to base its decision on the applicable regulatory standards and procedures.

Indeed, the Keeper's own actions – in eliminating the Loretta White Life Estate from the list of owners and objectors – reflects the Keeper's recognition of its independent responsibility to review the SHPO's conclusions regarding owners and objections. The Keeper's appropriate decision to overrule the Loretta White entry and remove it from the SHPO's list cannot be reconciled with the Keeper's failure to ensure that the calculation of owner objections was based on a list of owners compiled within the time frame mandated by 36 C.F.R. § 60.6(c).

Had the Keeper made even a superficial review of the SHPO's submissions, applying the requirements of the NPS regulations, it would have determined that the SHPO's October 2008 list of 66 owners (67 minus the Loretta White Life Estate) was the correct baseline list of owners and that fewer than a majority of owners on this list had submitted qualifying objections to the nomination. The SHPO's reliance on the reduced list of 57 owners "recalculated" on March 26, 2009, was improper and contrary on its face to the NPS' own regulations. Therefore, the Keeper's conclusion that there was a prejudicial procedural error in the SHPO's calculation of owner objections was arbitrary, capricious, an abuse of discretion, and contrary to law.

### **Conclusion**

Petitioners request that this petition for reconsideration of the removal of Blair Mountain Battlefield from the National Register be granted, and that the Battlefield's National Register listing be reinstated. Petitioners further ask that this petition be considered and resolved

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expeditiously. Mining companies own a substantial amount of the land within the Blair Mountain Battlefield, and absent the special protection afforded under West Virginia law by National Register listing, they intend to proceed with mountaintop removal mining operations, substantially destroying this important historic site. Given this serious threat, Petitioners intend to file suit in federal district court before September 2010, challenging this clear-cut error unless this petition for reconsideration is granted.

Please feel free to contact me at (202) 974-5142 if you have any questions or would like to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read 'Andrea C. Ferster', with a large, sweeping flourish at the end.

Andrea C. Ferster