

Congress of the United States
House of Representatives
Washington, DC 20515-0301

June 26, 2015

The Honorable Jonathan B. Jarvis
Director
National Park Service
1849 C Street NW
Washington, DC 20240

Ms. Stephanie Toothman
Keeper of the National Register of
Historic Places
National Park Service
1849 C Street NW
Washington, DC 20240

Dear Director Jarvis and Ms. Toothman,

It has come to our attention that the National Park Service published a Notification of Pending Nomination and Related Actions for the National Register of Historic Places on June 9th, which was subsequently revised and reissued on June 12th. This notice contained a reference to Pinal County (Arizona) "Chi'chil Bildagoteel Historic District, Address Restricted, Kearney, 15000358."

Given that Pinal County is included in both of our Congressional Districts, we are writing to express our concern that these notices do not provide adequate information about the area that is being nominated for the National Register of Historic Places or follow the proper regulations for notice and comment from the public under the Administrative Procedures Act (APA).

Given the opaqueness of the Federal Register Notice and lack of detail in the filing, it is virtually impossible for our constituents who may be affected to participate in the public comment process.

As such, we urge you to withdraw the nomination of "Chi'chil Bildagoteel Historic District, Address Restricted, Kearney, 15000358" until such time as you can properly describe the location, scope and extent of the impacted area and comply fully with the requirements of the APA.

Geographic Accuracy

The phrase "Chi'chil Bildagoteel Historic District" does not currently appear on maps maintained by the National Geologic Service, nor is it referenced in any National Park Service maps of the Tonto National Forest. In a simple internet search using Google,

the only results obtained for the phrase ““Chi’chil Bildagoteel Historic District” are references to the June Federal Register notices by the Park Service.

The phrase “Chi’chil Bildagoteel Historic District” therefore appears to be merely a creation of the Park Service for purposes of this nomination, thus making it nearly impossible for residents that may be impacted – positively or negatively – to participate in the comment process. Area residents are likely to have never heard of “Chi’chil Bildagoteel Historic District” because it does not exist.

The Apache language phrase ““Chi’chil Bildagoteel” has recently been associated with the Oak Flat Campground in the Tonto National Forest. If the intent of the nomination is to cover all or part of the Oak Flat Campground, then the reference to “Kearney”, Arizona is inaccurate and deceptive. The nearby town’s name is “Kearny” not “Kearney”. Further, the Oak Flat area is over 20 miles from Kearny, Arizona and would be more logically associated with the towns of Superior or Top-of-the-World. As it now stands, residents from Kearny to Top-of-the-World would not know if their interests are impacted, even if they were perceptive enough to spot the Federal Register notice from June 9 or June 12.

Compliance with the Administrative Procedures Act (APA)

Pursuant to 36 USC Sec. 60.13(a), nominations are to be published by the Park Service with appropriate "notice in the Federal Register that the property is being considered for listing in the National Register." For notice to be valid, and fair, the Park Service must use the correct legal description of the property in order to actually give notice to the public of the area that has been nominated and is under consideration.

The act allowing for placement on the historic register mandates compliance with the Administrative Procedures Act (APA) -- Section 4 of the APA, 5 U. S. C. §553. This section requires a three-step procedure for "notice-and-comment rulemaking." The agency must issue a "[g]eneral notice of proposed rulemaking," ordinarily by publication in the Federal Register. §553(b). Second, if "notice [is] required," the agency must "give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments." §553(c). An agency must consider and respond to significant comments received during the period for public comment.

Though it is long accepted that the requirement under § 553 to provide the public with adequate notice of a proposed rule is generally achieved through the publication of a notice of proposed rulemaking in the Federal Register, the APA requires that the notice of proposed rulemaking include “(1) the time, place and nature of public rulemaking proceedings; (2) reference to the legal authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.”

If the Oak Flat Campground is in fact intended to be the true coverage of the nomination, rather than areas around Kearny, then an accurate description in the nomination will allow all stakeholders the opportunity to share their views. Fundamental to the notice process is correct factual information. Use of the correct name and location, if not maps or detailed descriptions, is required by law in that it does not "afford interested persons a reasonable and meaningful opportunity to participate in the rulemaking process."

Divergent Views Regarding Oak Flat's Cultural Significance

Many of our constituents have different views of the Oak Flat Campground area. Controversy and disagreement about the eligibility or appropriateness of a nomination is of course not a new issue in regard to TCP listings. The National Register Bulletin #38 provides guidance for such situations:

"When one individual or group asserts that a property has traditional cultural significance, and another asserts that it does not or where there is disagreement about the nature or extent of a property's significance, the motives and values of the parties and the cultural constraints operating on each must be carefully analyzed. In general, the only reasonably reliable way to resolve conflict among sources is to review of a wide enough range of documentary data, and to interview a wide enough range of authorities to minimize the likelihood either of inadvertent bias or of being deliberately misled."

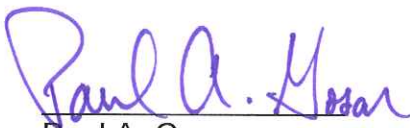
Members of the public with views on either side of this question should have a full and fair opportunity to contribute their perspective and understand the scope of the listing.

Withdrawal of Nomination

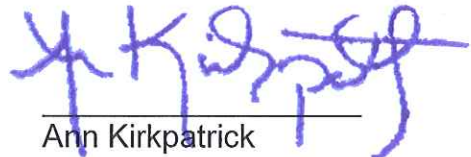
For the above reasons, we urge you to withdraw the nomination of "Chi'chil Bildagoteel Historic District, Address Restricted, Kearney, 15000358" until such time as you can properly describe the location, scope and extent of the impacted area and properly follow the requirements of the Administrative Procedures Act.

We look forward to your prompt confirmation of the withdrawal of this nomination by June 29, 2015.

Sincerely,



Paul A. Gosar
Member of Congress



Ann Kirkpatrick
Member of Congress