

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: July 23, 2026

CV-25-0123

In the Matter of SUNOCO, LLC,
Appellant,

v

MEMORANDUM AND ORDER

NEW YORK STATE OFFICE OF
PARKS, RECREATION AND
HISTORIC PLACES et al.,
Respondents.

Calendar Date: May 29, 2026

Before: Clark, J.P., Aarons, Ceresia, McShan and Powers, JJ.

Whiteman Osterman & Hanna LLP, Albany (*Anna V. Seitelman* of counsel), for
appellant.

Letitia James, Attorney General, Albany (*Beezly J. Kiernan* of counsel), for
respondents.

Aarons, J.

Appeal from a judgment of the Supreme Court (Adam Silverman, J.), entered December 20, 2024 in Rensselaer County, which dismissed petitioner's application, in a proceeding pursuant to CPLR article 78, to review a determination of respondents, among other things, designating petitioner's property as part of the Papscanee Island Historic District.

Papscanee Island, located along the Hudson River in the Town of East Greenbush, Rensselaer County, was once home to a Mohican community and is the site where a

prominent Mohican leader, Papsickene, met Henry Hudson in 1609. Dutch settlers also made their home there, including the ancestors of President Martin Van Buren, along with the Staats family, whose farmstead is on the National Register of Historic Places. The island remains largely undeveloped, saving, as relevant here, an industrialized area at the island's northern end and an active fuel terminal on a 38-acre parcel owned by petitioner located at the approximate midpoint of the island.

In 2022, the Stockbridge-Munsee Band of Mohicans sponsored a nomination of Papscanee Island as a historic district on the State Register of Historic Places and the National Register of Historic Places. The proposed district included all of the historic island, including petitioner's parcel and the parcels comprising the industrialized northern end of the island. Respondent Office of Parks, Recreation and Historic Preservation¹ conducted a study resulting in a detailed report of the island's historical significance, which was incorporated into the nomination.

The nomination was considered at a June 2023 meeting of respondent Historic Preservation Board but thereafter tabled. In August 2023, after public comment, a revised nomination was submitted with the boundary of the proposed district redrawn to exclude parcels in the northern industrialized area while leaving petitioner's parcel part of the proposed district. A majority of the property owners within the proposed district objected, and, over those objections, the Board unanimously recommended listing the proposed district in the state register. Respondent Daniel Mackay, a Deputy Commissioner acting on behalf of the Commissioner of Parks, Recreation and Historic Preservation (hereinafter the Commissioner),² approved the Board's recommendation and, again over petitioner's objection, listed the Papscanee Island Historic District (hereinafter the District) on the state register and submitted nomination forms to the Keeper of the National Register.

Petitioner commenced this CPLR article 78 proceeding in March 2024 to annul respondents' determination to include petitioner's parcel within the District and to annul respondents' listing of the District on the state register. Following joinder of issue, Supreme Court dismissed the petition, resulting in this appeal. We affirm.

¹ The agency was incorrectly named in the petition as the Office of Parks, Recreation and Historic Places.

² Mackay was designated by the Commissioner to carry out the latter's duties with respect to the state and national registers, thus our reference to him as the Commissioner.

Where, as here, we are tasked to review an administrative determination made without an evidentiary hearing directed by law, our "review is limited to 'whether [the] determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion' " (*Matter of Lake George Assn. v NYS Adirondack Park Agency*, 228 AD3d 52, 57 [3d Dept 2024], *lv denied* 42 NY3d 908 [2024], quoting CPLR 7803 [3]; *see Matter of White Plains Fine Wine & Spirits LLC v New York State Liq. Auth.*, 184 AD3d 1068, 1069 [3d Dept 2020], *lv denied* 35 NY3d 919 [2020]). "An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts" (*Matter of Murphy v New York State Div. of Hous. & Community Renewal*, 21 NY3d 649, 652 [2013] [internal quotation marks and citations omitted]). "If the determination has a rational basis, it will be sustained, even if a different result would not be unreasonable" (*Matter of Ward v City of Long Beach*, 20 NY3d 1042, 1043 [2013] [citation omitted]).

The Commissioner "shall include in the state register all places he [or she] determines to be of significance after consultation with the [B]oard" (PRHPL 14.07 [1] [g]; *see* PRHPL 14.03 [2]). To aid in this determination, the Commissioner, in consultation with the Board, shall consider "[t]he quality of significance in American history, architecture and culture [that] is present in districts, sites, buildings, structures and objects that possess integrity of location, design, setting, materials, workmanship, feeling and association, and: (1) that are associated with events that have made a significant contribution to the broad patterns of our history; or (2) that are associated with the lives of persons significant in our past; or (3) 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 (4) that have yielded, or may be likely to yield, information important in prehistory or history" (9 NYCRR 427.3 [a]). If the Commissioner decides that listing in the register is appropriate, he or she must issue a decision "with an appropriate finding in support, in writing" (9 NYCRR 427.5 [d]).

In this case, the Commissioner's findings are reflected in the December 2023 packet seeking a determination of the District's eligibility for listing in the national register. To that end, the District's boundary reflects the extent of Papscaanee Island as it would have appeared in the 1600s, and it was "drawn to include the most intact and undeveloped cultural landscape that reflects the themes of Mohican history" from the pre-contact era through Dutch colonization. The District consists of over 500 acres that, as a whole, exhibits "1) extraordinary integrity; 2) abundant archaeological and historic

resources spanning the late pre-contact through early colonial periods; and 3) central importance to the Mohican Community." The northern industrialized area was excluded from the District "due to a paucity of data resulting from development (primarily the installation of industrial infrastructure such as oil tanks) and the lack of the higher level of documentation required for asserting national level significance." As such, the Commissioner's approval of the boundary location in connection with his determination to list the District in the state register is rational and not arbitrary and capricious (*see Matter of Lake George Assn. v NYS Adirondack Park Agency*, 228 AD3d at 62).

We agree with Supreme Court that, contrary to petitioner's characterization, the exclusion of parcels comprising the northern industrialized area from the District did not constitute a prior agency decision on similar facts, the departure from which must be adequately explained to be upheld (*see Matter of Lyell Mt. Read Bus. Ctr. LLC v Empire Zone Designation Bd.*, 129 AD3d 137, 145 [3d Dept 2015]; *compare Matter of Callanan Indus. v Rourke*, 187 AD2d 781, 781, 783-784 [3d Dept 1992] [departure from determination rendered the previous month on similar facts annulled as arbitrary and capricious]). Petitioner further asserts that meaningful judicial review of its challenge to the District is impeded by the Commissioner's failure to address petitioner's parcel or petitioner's objections in his findings, requiring annulment on that basis (*see Matter of Burnham v New York State Governor's Off. of Empl. Relations*, 217 AD3d 1147, 1149-1150 [3d Dept 2023]). We are unpersuaded, as petitioner has not identified any authority mandating parcel-specific findings when including an owner's parcel within a historic district's boundaries, or, relatedly, that inclusion of a parcel within a historic district requires finding that the parcel would, by itself, meet the requirements for inclusion on the state and national registers (*see Friends of St. Frances Xavier Cabrini Church v Fed. Emergency Mgt. Agency*, 658 F3d 460, 465 [5th Cir 2011]).³

Contrary to petitioner's view, respondents appropriately supplemented the administrative record with the affidavits of the Commissioner and Bradley Russell, an archaeologist employed by the Office who worked on the District's nomination and could attest to the information before the Board and the rationale for including petitioner's parcel in the District (*see Matter of Hammonds v New York State Educ. Dept.*, 206 AD3d

³ To the extent petitioner argues that the Commissioner was required to make findings respecting petitioner's parcel as a matter of substantive due process, that argument is advanced for the first time on appeal and, as such, is unpreserved (*see Matter of Keil v Greenway Heritage Conservancy for the Hudson Riv. Val., Inc.*, 184 AD3d 1048, 1050 [3d Dept 2020]).

1334, 1334-1335 [3d Dept 2022]). The Commissioner affirmed that petitioner's parcel, unlike those in the northern industrialized area, was "surrounded by agricultural land typical of the remainder of the District." Russell added, among other things, that petitioner's parcel is located proximate to several historically significant sites and natural resources, and, owing to that location and the amount of undisturbed ground on petitioner's parcel, it has the "potential to provide information important to our prehistory and history" (*see* 9 NYCRR 427.3 [a] [4]). Russell noted that petitioner's parcel has a smaller industrial footprint, is located in a less-industrial portion of the island and is surrounded by agricultural land consistent with what the island may have looked like in the past. Accordingly, although excluding petitioner's parcel from the District would not have been unreasonable, the decision to include it has a rational basis, is grounded in appropriate regulatory and statutory criteria and, as such, will not be disturbed (*see* PRHPL 14.07 [1] [b]; 9 NYCRR 427.3 [a]; *Matter of Ward v City of Long Beach*, 20 NY3d at 1043).

Nor must the District's listing in the state register be annulled because the Commissioner exceeded his authority in nominating the District to the national register. Generally, places considered for nomination on the state register should concurrently be considered for nomination on the national register, and both state and federal regulations should be followed (*see Moody Hill Farms Ltd. Partnership v U.S. Dept. of the Interior, National Parks Serv.*, 205 F3d 554, 562 [2d Cir 1999], *cert denied* 528 US 874 [1999]). Where, as here, a majority of property owners within a historic district object to inclusion on the national register, the Commissioner cannot nominate the district to the national register but must still submit the nomination to the Keeper of the National Register for a determination of eligibility (*see* 36 CFR 60.6 [n]; 9 NYCRR 427.1 [b] [1]). The objections of property owners will not, however, bar a district's inclusion on the state register (*see* 9 NYCRR § 427.1 [b] [1]; [d]). Nomination to the state register is made using the standard national register forms (*see* 9 NYCRR 427.2 [b]). The record reflects that the Commissioner followed this procedure, including by indicating in a cover letter and on the national register nomination form itself that his "nomination" of the District was for an eligibility determination only (36 CFR 60.6 [n]). As such, petitioner's contention in this respect is baseless. We have examined the remainder of petitioner's arguments, and, to the extent not addressed above, we conclude they are without merit.

Clark, J.P., Ceresia, McShan and Powers, JJ., concur.

ORDERED that the judgment is affirmed, without costs.

ENTER:

A handwritten signature in black ink, reading "Robert D. Mayberger". The signature is written in a cursive, flowing style with a large initial "R" and "M".

Robert D. Mayberger
Clerk of the Court