

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 62

RIN 1024-AB96

National Natural Landmarks Program

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule revises the current regulations for the National Natural Landmarks (NNL) Program. These revisions ensure that owners of Potential National Natural Landmarks (PNNL) under consideration for possible national natural landmark designation are notified well in advance of such consideration and have the opportunity to comment on the proposals; that the National Park System Advisory Board reviews all future national natural landmark nominations and provides recommendations to the Secretary of the Interior about their qualifications for designation; and land is not included within an area designated by the Secretary if a private property owner objects to such a designation for his or her portion.

EFFECTIVE DATE: This rule becomes effective on June 11, 1999.

FOR FURTHER INFORMATION CONTACT: Natural Landmarks Program, under Mike Soukup, Associate Director, Natural Resources, Stewardship and Science, National Park Service, 1849 C Street, NW, Washington, DC, 20240-0001. Telephone: 202-208-3884.

SUPPLEMENTARY INFORMATION:**Background**

To identify the full range of geological and ecological features of nationally significant examples of the nation's natural heritage and to encourage their preservation, the Secretary of the Interior established the NNL Program under the authority of the Historic Sites Act of 1935 (16 U.S.C. 461 *et seq.*). Potential natural landmarks are identified in studies by the National Park Service (NPS) and from other sources, evaluated by expert natural scientists, and, if determined nationally significant, designated as landmarks by the Secretary of the Interior. When designated, a landmark is included in the National Registry of Natural Landmarks, which currently lists 587 national natural landmarks nationwide.

The registry includes nationally significant geological and ecological features in 48 States, American Samoa, Guam, Puerto Rico and the Virgin Islands. Of the 587 listed landmarks, half are administered solely by public

agencies; i.e., Federal, State, county or municipal governments. Nearly one-third are owned solely by private parties. The remaining natural landmarks are owned or administered by a mixture of public and private owners. Because many natural landmarks are privately owned or not managed for public access, owner permission must be obtained to visit them. Designation does not infer a right of public access.

National natural landmark designation is not a land withdrawal, does not change the ownership of an area and does not dictate activity. However, Federal agencies should consider impacts to the unique properties of these nationally significant areas in carrying out their responsibilities under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). Designation could result in State or local planning or land use implications. The Secretary is required to provide an annual report to the Congress on damaged or threatened NNLs (Section 8 of the National Park System General Authorities Act of 1970 (90 Stat. 1940), as amended (16 U.S.C. 1a-5)).

Natural landmark preservation is made possible by the long-term, voluntary commitments of public and private owners to protect the outstanding values of the areas. In revising the regulations for the program, the NPS seeks to balance two fundamental goals: identification and preservation of nationally significant examples of the nation's natural heritage and the full acknowledgment and respect of owners' interests at all times.

Since 1989, significant interest in the regulations and operation of the NNL Program centered on three major issues: (1) Notification of owners and other concerned individuals and organizations that PNNL were under consideration for national natural landmark designation, (2) owner consent or objection to designation of property as a national natural landmark, and (3) the effects of national natural landmark designation on private property. In response to these concerns, proposed revisions to the program regulations were published by the NPS as a proposed rule in the **Federal Register** on November 21, 1991 (56 FR 58790), for a 90-day comment period. On February 6, 1992 (57 FR 4592), the comment period was extended to March 2, 1992. In addition, during the comment period, the NPS held public hearings on the proposed revised regulations at nine locations around the country. Date, time and exact location of each hearing was announced in the

Federal Register on December 16, 1991 (56 FR 65203).

The revision of the program regulations is part of an improvement of the operation of the NNL Program by the NPS. On November 28, 1989, the Director of the NPS instituted a moratorium on the NNL Program, during which the NPS did not consider new areas for NNL designation. Because the improvements have been completed, the moratorium will be lifted upon the effective date of the regulations.

Summary of Comments

To date, copies of the proposed revised regulations were sent to over 500 individuals or organizations on an NPS NNL mailing list that was made part of the rulemaking. In addition, the proposed regulations were sent to the State Park Directors and State Historic Preservation Officers of all 50 States. As part of NPS's ongoing corroboration and contact with current owners of the 587 designated NNLs, the proposed regulations were also sent to approximately 8,000 NNL owners whose names and addresses were confirmed.

Comments were received from 236 sources, which included government entities, private organizations, and private individuals. In addition, 894 standardized, completed questionnaires were submitted as comments, and 70 respondents presented oral or written comments at the public hearings. Several respondents stated that the proposed revisions of the program regulations would not resolve the three primary issues. However, other respondents expressed support of the objectives of the program or of the proposed revisions. Some respondents recommended the abolishment of the program. Other respondents stated that the proposed revisions were too extreme for resolution of the issues and were therefore detrimental to the objectives of the program.

Analysis of Comments*Issue 1: Comment Procedure*

Comments: Several respondents suggested that the final rule not be issued until the NPS provided owners of all the designated NNLs, as well as owners of PNNL that had been evaluated but not designated, with the opportunity to comment on the proposed rule. Some respondents noted that the proposed rule was so insufficient that the NPS should make the needed changes and issue another proposed rule for comment prior to issuing any final rule. Some respondents suggested that the proposed

rule be reissued for comment and that the preamble should include a reference to the Department of the Interior Inspector General's report on the NNL Program (December 1991).

Service response: To date, the NPS has taken the following steps to advise and inform owners of the 587 existing NNLs about the NNL Program and the rulemaking process. To confirm the names and addresses of the nationwide owners of the 587 designated NNLs, the NPS wrote to approximately 8,000 owners and provided them with a copy of the proposed revised regulations. Almost all of the owners who submitted comments on the proposed regulations supported the continuation of the NNL Program and endorsed the value of the NNL designation.

The NPS believes that NNL owners and other interested organizations and individuals have had sufficient opportunities to participate in the rulemaking. Additionally, all of the comments on the proposed rule were fully considered in developing changes in the final rule. Therefore, the revised rule is being issued as final.

Comments (major rule): Some respondents disagreed with the Department of the Interior's determinations, as stated in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, of the rulemaking as a non-major rule within the meaning of Executive Order 12291 (46 FR 13193); with the rulemaking as a categorical exclusion from the procedural requirements of the National Environmental Policy Act under Departmental regulations in 516 DM 6 (49 FR 21438); and with the proposed rule as implying a taking of private property as defined under Executive Order 12630. Some respondents questioned whether an assessment of implied taking of private property by the proposed rule had been completed.

Service response: The NPS completed a takings impact assessment. The Department determined that the proposed rule did not imply taking of private property. Executive Order 12291 was revoked by Executive Order 12866, which is addressed in this final rule.

Comments (legislative authority): Several respondents suggested that the legislative authority for the NNL Program was insufficient or non-existent and that the program should be abolished. Several other respondents noted that the NNL Program served a valuable purpose in recognizing nationally significant natural features and therefore should be retained.

Service Response: The NNL Program is based on direction given to the Secretary of the Interior to identify

objects of national significance contained in Section 1 of the 1935 Historic Sites Act (49 Stat. 666; 16 U.S.C. 461 *et seq.*). In addition, since 1962, the Congress has recognized the NNL Program by including specific references to national natural landmarks in several acts. For example, Section 8 of the National Park System General Authorities Act of 1970, (90 Stat. 1940) as amended (16 U.S.C. 1a-5) directs the Secretary of the Interior to prepare an annual report to the Congress which identifies all landmarks which exhibit known or anticipated damage or threats to the integrity of their resources. Section 9 of the 1976 Mining in the National Parks Act (90 Stat. 1342; 16 U.S.C. 1908) mandates that whenever the Secretary determines that a landmark may be irreparably lost or destroyed in whole or in part by any surface mining activity, the Secretary shall notify the person conducting the activity and prepare a report to be submitted to the Advisory Council on Historic Preservation with a request for advice. Finally, the National Parks and Recreation Act of 1978 authorizes appropriations for monitoring the welfare and integrity of landmarks. Thus, the 1935 Act, and subsequent Congressional action provide authority for administering the NNL Program.

Other Issues

The comments received focused on three major areas of the proposed revision of the regulations: (1) Requiring consent of owners for the evaluations and designations of properties, (2) providing owners of designated NNLs with a mechanism for the removal of the designation and (3) determining the effects of NNL designation on private property.

Issue 2: Definitions

Comments (definition of prejudicial procedural error): Some respondents requested that the term "prejudicial procedural error," as a criterion for removal of the NNL designation, be defined in the regulations.

Service response: This term is already defined in § 62.2 and § 62.8(a).

Comments (glossary): One respondent suggested that the regulations include a glossary.

Service Response: Definitions of key terms are already included in § 62.2.

Comments (definition of owner): Several respondents suggested that the definition of owner in § 62.2 include owners of partial interests in land and owners of inholdings and that these owners should receive the same notifications and have the same opportunity to comment and agree with

the proposed NNL designation of a PNNL. One respondent noted that owner should specifically be defined by title search. One respondent noted that the definition of owner should specifically reference Native American owners.

Service Response: The definition of owner in § 62.2 in the final rule was clarified to mean holding fee simple title. A change of the final rule was made to include in this definition Native American beneficial owners of land held in trust by the United States. Other persons or organizations are welcome to comment during the designation a PNNL. Procedures for identifying owners during the second notification stage of the designation process are specified in § 62.4(d)(1).

Comments (definition of national significance): Some respondents questioned the definition of national significance in § 62.2 and the criteria in § 62.5 as too broad and subjective. Some respondents noted that a definition and determination of national significance by natural region as opposed to by nation is inappropriate. One respondent felt that no standards or guidelines were provided to determine national significance.

Service Response: As noted in § 62.5, the natural diversity of the nation is comprised of distinct regional patterns, correlated to broad physiographic patterns. Therefore, the recognition of distinct regional ecological and geological features often found in only one of the country's natural regions, and their comparative assessment primarily to determine a PNNL relative illustrativeness and condition, is the approach used by the NNL Program. No change was made in the final rule.

Comments (other definitions): Some respondents noted that the terms scientist and evaluator had not been defined in the proposed rule.

Service Response: A definition of scientist has been added to § 62.2 in the final rule. Section 62.4(c) has been revised to clarify that evaluators are qualified scientists.

Issue 3: Consent of Owners

Comments (written consent): Several respondents stated that the requirement in § 62.4(d)(4) for written consent from all owners for the designation of an area was unnecessary because designation imposes no regulatory restrictions on owners, was unreasonable because obtaining the required written consent from all owners of most multiple-owner properties would be difficult, and would invalidate or damage the scientific credibility of the program. Some respondents suggested modifying

the requirement for affirmative responses from all owners to two-thirds or the majority of owners. Other respondents felt that an affirmative response was not necessary and that lack of landowner objection was sufficient. One respondent noted that, if landowner consent was required, provisions for protection of designated NNLs must be stronger, such as requiring Federal agencies to avoid or mitigate adverse impacts to NNLs.

Service Response: In response to these concerns, § 62.4(e)(2),(f), and (g)(1) were changed and a new paragraph (d)(5) was added to show that land owned by a private property owner cannot be designated when the private property owner involved has stated, in writing, objection to designation. The NPS believes these changes appropriately achieve the objectives.

Comments (owner consent for evaluation of PNNL): The proposed rule included a provision (§ 62.4(b)(3)) to allow for the use of other information sources by the NPS to evaluate a PNNL without entering onto lands where landowner permission has not been granted. Several respondents stated that a requirement for written landowner consent for designation was not sufficient protection of landowner interests and that the regulations should require written consent, in addition to written notifications of owners, prior to evaluation of the property by the NPS for NNL designation. One respondent noted that, if the NPS elected to complete an evaluation without entering onto lands to which landowners denied access, owners should be notified of the evaluation. One respondent noted that, if the NPS elected to use other information sources for an evaluation without entering lands to which landowners denied access, the information should originally have been obtained with owner consent.

Service Response: The NPS believes that the ability to comparatively evaluate similar or related areas to determine the best examples of certain ecological or geological features is an essential part of the NNL Program. Restricting the ability of the NPS to use existing information sources in completing these evaluations would significantly impair the program. Therefore, this provision was retained in the final rule. Section 62.4(b)(3) of the final rule was changed to show that, when the NPS chooses to complete an evaluation using only existing information, it informs the owners of the decision.

Comments (consent of entire region): Several respondents suggested that the regulations require consent from every

landowner in the entire natural region containing the areas under consideration for designation prior to PNNL evaluations. Some respondents suggested that the consent of owners of properties adjacent to a PNNL also be required for evaluation.

Service Response: These suggestions were not adopted in the final rule. NNL evaluation and designation apply to specific areas, not to adjacent properties or to entire natural regions.

Comments (notification of existing NNL owners): Several respondents suggested that the regulations provide a mechanism to request the removal of NNL designations by property owners. Some respondents suggested the suspension of all 587 existing NNL designations until owners consent. One respondent suggested the retention of only existing NNL designations with which all owners and the appropriate State and local governments concurred. One respondent suggested that no public purpose would be served by allowing owners of NNLs the opportunity to request the removal of designations and that this procedure may lead to the destruction of some NNL's nationally significant values. One respondent suggested the review of NPS records of all NNLs to determine if written owner consent was obtained, whether information about the areas was gathered by entering land without owner permission, and to verify the removal from NPS files and destruction of information about PNNL for which owners did not give consent for designation.

Service Response: Many of the 587 NNLs were designated before 1980, when program regulations were first issued. Furthermore, program funding levels during the decade prior to FY 1992 precluded the comprehensive maintenance of updated documentation of NNL ownership. Therefore, except as indicated below, the NPS will contact the known owners of the existing NNLs in writing. This notice advises owners that they can, within 90 days of this notice, inform in writing the Director of NPS of their wish to have the NNL designations removed from their properties. If owners do not respond within 90 days of the NPS notification, the NNL designations of their properties will be retained. Under these revised regulations, the properties from which the designations are removed may be reconsidered for designation if future changes in ownership or other circumstances warrant such action. These provisions are reflected in a new section, § 62.8(f), which the NPS considers to be an appropriate balance

between the competing points of the described views.

For NNLs with more than 50 owners, the NPS may choose to provide a general notice to owners in one or more newspapers in the area. In addition, in updating its information on names and addresses of owners of NNLs, the NPS has learned that six of the 587 NNLs have a substantially larger and more complex ownership profile than the remaining 581. Given this, the NPS also reserves the right to consider boundary modifications of one or more of the six areas (Mobile-Tensaw River Bottomlands, AL; Anza-Borrego Desert State Park, CA; Ancient River Warren Channel, MN/SD; Nags Head Woods and Jockey Ridge, NC; Canaan Valley, WV; and Baraboo Range, WI) as specified in § 62.7 of the regulations.

Comments (written permission): Some respondents noted that the requirements in § 62.4(a)(1) and (a)(2)(ii) for owner permission for entry onto land should specify that this permission should be in writing.

Service Response: This change has been made in the final rule. Sections 62.4(a)(1), (a)(2)(ii), and (b)(3) were changed in the final rule to clarify that the requirement for landowner permission to enter onto land for PNNL evaluation does not apply to publicly owned lands that are otherwise open to public visitation. Sections 62.6(c)(1) and (c)(2) clarified the situation for monitoring landmarks.

Comment (pending designation following evaluation): Some respondents suggested that the regulations require the NPS to notify owners of PNNL for which an evaluation was completed, and owners of PNNL identified in studies of natural regions but were not designated, and give such owners the right to withdraw from the program.

Service Response: Any future evaluation of PNNL for NNL designation will be done consistent with the program regulations, which include specific requirements for the notification of owners and objections by owners to ensure that owners are fully informed and that private property owners have the option to withdraw their properties from consideration. Therefore, no further change is necessary in the final rule.

Comments (removal of designation): Several respondents recommended a fourth criterion in § 62.8(a) for the removal of future NNL designations: request of the landowner to remove the designation. Other respondents stated their opposition to granting requests for removal of designations by owners. Several respondents suggested an

opportunity for owners to request the removal of the NNL designations of their properties prior to any revision in NNL Program regulations that affect any possible regulatory obligations of the designations on owners. Several respondents suggested that, after ownerships changes, new owners of designated NNLs should be able to request the removal of designations of their properties.

Service Response: Designation of a PNNL by the Secretary as an NNL reflects a determination that the site meets the criteria for national significance and the landowner(s) do not object to the designation. Provisions in the final rule about landowner notification and objection are intended to offer owners full opportunity to participate in the designation process. A program in which an NNL was subject to de-designation whenever an owner so wished or whenever ownership changed would be purely honorific and of little value in achieving the program objectives. Some of these suggestions were therefore not incorporated into the final rule.

Comments (release of information): One respondent noted that information on areas, as described under § 62.9(b), should not be released without private owners' consent. One respondent suggested that § 62.9(b) also include other reasons for restricted dissemination of NNL site information, for example, when an owner does not wish dissemination of information on an area because of concerns over liability or lack of suitable visitor facilities. Some respondents noted that the restriction on dissemination of information for certain ecologically or geologically sensitive areas, as described in § 62.9(b), would be in violation of the Freedom of Information Act. One respondent questioned the need for this provision because of the assumption that owners are voluntarily preserving their NNL property.

Service Response: The NPS considers that § 62.9(b) as proposed represents an appropriate balance between the policy of availability of government information, the need to restrict access to information in certain circumstances, and the requirements of the Freedom of Information Act and related authorities. No change has been made in the final rule.

Issue 3: Effects of NNL Designation

Comments (restrictions on use of property): Several respondents stated that descriptions of the possible effects of NNL designation on property in § 62.3 of the proposed rule were inaccurate and incomplete. Several

respondents stated that the mere consideration of PNNL for NNL designation led to restrictions on the use of property in local, State or Federal regulatory actions; and that, in agreeing to voluntarily help conserve the area, the landowner was giving up interests and rights to the property, which constitutes a restriction on the use of the property.

Service Response: The NPS believes that § 62.3(a) appropriately describes the possible effects of designation. NNL designation does not restrict the use and enjoyment of property by Federal action. The NNL Program provides information on the location and status of important natural features so that they can be considered in regional planning for the use and development of a variety of resources. The NPS encourages owners to protect the nationally significant values of their property, but this voluntary cooperation does not restrict the owner's use of his or her land. The voluntary involvement in the program carries the hope that the owner will not lower the integrity of the resource being recognized. Landmark designation seeks to assist regional development planning and decision making by indicating which resources are relatively significant, and which resources are of lesser importance.

Comments (other regulations/future restrictions): Some respondents suggested that the regulations more specifically describe the possible State and local land use or planning implications of NNL designation on an area referred to in § 62.3(a); some respondents noted that the word restrictions be used in place of implications. Other respondents suggested that the regulations require the NPS to identify and advise owners of Federal, State, or local legal or regulatory restrictions that may apply as a result of NNL designation, including possible future effects of such laws or regulations. Some respondents suggested the revision of § 62.3(a) to state that there will never be any future restrictions on the use of an NNL. Several respondents suggested that the regulations also state that, in addition to possible implications of Federal, State, or local laws and regulations, in some cases non-governmental third parties may use the NNL designation to attempt to influence use or protection of the area. Other respondents suggested that the descriptions in the regulations of effects also clarify the benefits of designation. Other respondents stated that the consideration of areas for NNL designation was a mechanism by the NPS to identify new areas for addition to the National Park System. One

respondent suggested that the regulations also describe the possible effects of designation on owners who own property near or adjacent to the PNNL, such as being required to provide a scenic easement to allow viewing of the landmark.

Service Response: As noted above, designation of a PNNL as an NNL reflects the meeting of criteria for national significance and no landowner objection. One of the objectives of the NNL Program is that owners and Federal, State and local government agencies will take this fact into account when making planning or other future land use decisions. Although this may mean that the decisions may take into account the national significance of the area, the NPS cannot describe or predict the extent to which decisions may be influenced by such designation on lands within or adjacent to areas receiving the NNL designation. Language was added to § 62.3(a) to clarify that, although recognition as an NNL may be used to support certain State or local planning or land use, such State and local actions are not required or mandated by the Department of the Interior as a consequence of the NNL designation. Additional language on the beneficial effects of designation, including possible Federal income-tax benefits from qualified conservation easement donations, was added to § 62.3(b). The title, Implications of Designation, was revised in § 62.3 to "Effects of NNL Designation."

Designation of a PNNL as a national natural landmark is one method used by the Department for recognizing and encouraging the preservation of nationally significant areas as an alternative to Federal acquisition of them for inclusion in the National Park System. Although national natural landmarks have occasionally been subsumed in subsequently created units of the National Park System, and national natural landmarks can be designated in existing national park units, natural landmark designation is not necessarily a first step that ends in adding the area to the National Park System. In considering a possible new addition to the National Park System, the NPS must first determine that an area is nationally significant. While prior designation as an NNL is one indication of national significance, there are several other criteria that must be met before the NPS can support a proposal for a new national park. An area must meet criteria for suitability and feasibility to qualify as a potential addition to the National Park System. To be suitable for inclusion in the System an area must represent a natural

or cultural theme or type of recreational resource that is not already adequately represented in the National Park System or is not comparably represented and protected for public enjoyment by another land-managing entity. To be feasible as a new unit of the National Park System an area's natural landscape and or historic settings must be of sufficient size and appropriate configuration to ensure long-term protection of the resources and to accommodate public use. It must also have potential for efficient administration at a reasonable cost. Other important feasibility factors include land ownership, acquisition costs, access, threats to the resource, and staff or development requirements. Lastly, in all but exceptional circumstances, the Congress must authorize by statute and then appropriate funds for the acquisition of any new unit of the National Park System, or for the significant expansion of existing units.

Comments (effects of designation): One respondent suggested that, as part of the first notification in § 62.4(b), the NPS specify to the owners what consent to NNL designation entails and that a copy of the potential owner consent agreement be provided to the owner as part of the first notification.

Service Response: Information provided to owners as part of first notification under § 62.4(b)(1) and (2) includes an explanation of the effects of NNL designation, as described in § 62.3. A change was also made in § 62.4(b)(1) and (2) in the final rule to clarify that the information provided at this stage also includes an explanation of the designation process.

Issue 5: Area Information

Comments (obtaining area information): Several respondents suggested that the NPS not retain information on PNNL at any stage in the designation process if owners were not informed of this consideration and had not given their consent to having their property considered for designation. One respondent suggested that § 62.4(a)(2)(ii) be changed to specify that the NPS will not consider information recommending a PNNL for possible NNL consideration, when such information was obtained by entering onto land without landowner permission, regardless of whether such information came from NPS or non-NPS sources. Several respondents suggested that the NPS be required to provide positive proof that all information used in the designation process was legally obtained and that any information when such proof did not exist be destroyed.

Some respondents suggested that the NPS retain all properly acquired information on designated and non-designated areas.

Service Response: The NPS believes that the management and analysis of information on NNL areas, and PNNL under consideration in the NNL process, are important objectives of the NNL Program. This information adds to the comparative national-level resource information base used in identifying and comparing nationally significant resources and also furthers informed planning and environmental review. The NPS is also interested in ensuring that information used in the NNL Program is obtained with the knowledge of the landowner and without entering onto private property without permission of the owners. The NPS believes that the final rule establishes an appropriate balance between these property owner concerns and the information required to achieve program objectives.

Comments (retention of area information): Several respondents suggested that as stated in § 62.4(f) the NPS not retain any information on areas that meet the criteria of national significance but were not designated because of owner objection. Some respondents suggested that the NPS publish the list of PNNL that meet the criteria for national significance but were not designated.

Service Response: A change was made in § 62.4(f) of the final rule to show that the NPS will notify owners and others of the decision to retain information on PNNL that meet the criteria for national significance but were not designated because of owner objection.

Comment (authority for area information retention): One respondent requested that the NPS cite the authority for the statement made in the SUPPLEMENTARY INFORMATION section of the proposed rule that NPS has an affirmative responsibility to maintain information on nationally significant resources and to make this information available for planning and environmental review.

Service Response: General authorities for these actions are described in the legal authorities response above. In addition Section 102(2)(C) of the National Environmental Policy Act (83 Stat. 852; 42 U.S.C. 4321) directs Federal agencies to consider the effects of agency action on the environment. Information on unique resources such as those contained in the NNL Program facilitates such planning and evaluation. Section 9 of the Mining in National Parks Act of 1976 (90 Stat. 1342, 16 U.S.C. 1908) mandates that whenever

the Secretary of the Interior determines that an NNL may be irreparably lost or destroyed by any surface mining activity, the Secretary shall notify the person conducting the activity, submit a report to the Advisory Council on Historic Preservation, and request the Council's advice concerning means to mitigate or abate such activity. This mandate presupposes the collection and retention of information concerning such potentially impacted NNLs. Additionally, Section 8 of the National Park System General Authorities Act of 1970 (90 Stat. 1970), as amended (16 U.S.C. 1a-5), specifically requires the Secretary to investigate, study and continually monitor the welfare of areas whose resources exhibit qualities of national significance.

Comments (area information access): One respondent suggested that the NPS provide reasonable access to all NPS information on PNNL at any point in the designation process, not just during specified notification or comment periods. One respondent suggested that the regulations require the NPS to maintain current information on owners and to maintain complete records of all communications with owners and proof that all notification and consent requirements were met.

Service Response: With this program, the NPS maintains records on PNNL and NNL areas, notifications of and communications with owners, and other program activities. This information is available to the public, subject to requirements of the Freedom of Information Act and other applicable statutes. No change was therefore made in the final rule.

Issue 6: Designation Process—Suggestion

Comments: Several respondents suggested the revision of § 62.4(a)(2) to allow other (non-NPS) entities the ability to make suggestions of only publicly owned areas for NNL consideration. Some respondents suggested that suggestions of privately owned areas for consideration be accepted only from owners of proposed properties and that the appropriate government entity propose publicly owned areas after an open public review of the suggestion. Some respondents suggested only owners who owned all of the property could suggest an area for consideration. Some respondents noted that areas owned by State or local governments could be suggested by private advocacy groups, but only in a public political process. Several respondents suggested that all information used to suggest PNNL for possible NNL consideration should be

accompanied by proof of landowner permission to enter private property.

Service Response: A fundamental aspect of the NNL Program is the open process for suggesting areas for NNL designation by any interested agencies, organizations or individuals. The NPS believes the provisions for landowner notification and objection in the final rule ensure that owners are fully informed of and involved in the consideration of their property in the NNL process and give other interested groups and individuals the opportunity for input into this process without restricting the interests of the owners. Therefore, no change is made in § 62.4(a)(2) of the final rule that restricts the sources of PNNL suggestions.

The NPS believes the requirements for the NPS or its representatives not to enter onto private property without owner permission as stated in these regulations are sufficient to protect owner interests. Additional requirements for the NPS to ascertain the origins of PNNL information in this regard would not be a prudent means to achieve program objectives and would put the NPS in the position of having to determine whether particular conduct constitutes trespass under applicable law. When trespass occurs, property owners may exercise legal remedies under State and local law. Therefore, § 62.4(a)(2)(ii) and (a)(3) were changed in the final rule to eliminate the requirement that the NPS ascertain whether information on PNNL under consideration was acquired by entering onto private property without landowner permission. These changes take into account the ability of property owners to object to designation and the inappropriateness of a government agency ignoring factual resource information simply because of the information's origins.

Comments (source of suggestion): Several respondents suggested that, as part of the first notification stage described in § 62.4(b)(1), the NPS inform the owners of the source of the suggestion of their property for NNL consideration.

Service Response: This change has been made in § 62.4(b)(1) and (2) of the final rule.

Issue 7: Designation Process—Notification

Comment (notification process): One respondent suggested that the regulations specify that first notification of owners be by certified mail.

Service Response: Although the NPS may elect to complete the required notification of owners by certified mail, specification of the type of mail for

notification in the regulations is not necessary. No change is made in the final rule.

Comment (second notification): Some respondents suggested that the information provided to owners and others as part of the second notification under § 62.4(d) should specifically reference the required monitoring and reporting for designated areas as specified in § 62.6.

Service Response: Section 62.4(d) includes a reference to § 62.3. As § 62.3 already includes specific references to § 62.6 and the required monitoring and reporting, no change was necessary in the final rule.

Comments (areas with 50 or more owners): Some respondents noted that the requirement in § 62.4(b)(2) for individual notifications of owners for areas with 50 or more owners, in addition to a public notice and possible public meeting, was excessive and that this would add unnecessarily to the cost and time of the designation process. One respondent misinterpreted § 62.4(b)(2) to mean that the NPS would not be providing written notifications to owners of areas with less than 50 owners.

Service Response: First notification requirements for areas with less than 50 owners are specified in § 62.4(b)(1). A change was made in § 62.4(b)(2) of the final rule. The NPS publishes a general notice in one or more local newspapers. Written notice to all owners of areas with more than 50 owners is not provided.

Comment (response time): One respondent suggested that a time period be specified for receiving responses from owners after first notification.

Service Response: As specified in § 62.4(b)(3), the NPS or its representative does not enter onto private property to evaluate a PNNL without receiving permission from the owner(s) of that property. No time limit is being set for receiving this landowner permission. No change is made in the final rule.

Comments (comment period following second notification): Some respondents noted that the extension of the comment period from 60 to 120 days after the second notification, as specified in § 62.4(d)(3) and (4), was excessive.

Service Response: In response to these comments, § 62.4(d)(4) and (5) were changed in the final rule to specify a 60-day comment period. In addition, the comment period relating to designation removal also was changed to 60 days in § 62.8(c). In both cases, 60 days are considered an adequate period that may be extended when warranted.

Comments (notification of local government): One respondent suggested that the first notification specified in § 62.4(b) be given to the appropriate local government agency and to owners. Some respondents suggested that the NPS hold a local public meeting or hearing on every PNNL being considered for NNL designation.

Service Response: As part of the first notification process, notice is provided to owners, as specified in § 62.4(b)(1) and (2), informing them that the NPS is considering their properties for designation and requesting owner permission to conduct an on-site evaluation. After the evaluation, when the NPS determines that an area seems to meet the criteria for national significance, written notice of the proposal is provided under § 62.4(d)(3)(i) to the local government executive at the second notification stage. Section 62.4(d)(2) was changed in the final rule to provide as part of the second notification an opportunity for the NPS to hold a public information meeting for areas with 50 or more owners if public interest warrants or it is requested by the local governmental jurisdiction. This provision was therefore deleted from first notification in § 62.4(b)(2).

Comment (notification of Native Americans): One respondent suggested that the requirements for notification of local, State, and Federal government officials and other interested parties provided under § 62.4(d)(3), § 62.4(j), § 62.7(b) and § 62.8(e) specifically include Native American tribal governments and communities and native villages and corporations.

Service Response: This change has been made in the final rule.

Comments (notification mailing list): One respondent suggested that the regulations include a provision that allows interested individuals and organizations to request placement on a general NPS notification mailing list to be notified of pending evaluations under § 62.4(d)(3)(vi) and of other public comment periods. This respondent also suggested that the list of individuals and organizations be available for public review. One respondent suggested that the regulations require the NPS to notify all organizations interested in protecting private property rights of all future evaluations.

Service Response: Any individual or organization may request placement on a mailing list to receive future notifications or other program documents about consideration of areas for NNL designation or of other program actions and NPS will respond if needed.

Issue 8: Designation Process—Area Evaluation

Comments (evaluation report): One respondent suggested that the evaluation report, as described in § 62.4(c)(1), include a proposed boundary for the site. One respondent suggested that first, second, and third notifications provided to owners under § 62.4(b), (d) and (j) include a full description of the area, including the size and a detailed map of the area. One respondent suggested that the draft evaluation report be distributed to all owners for comment within a specified time period or the evaluation becomes null and void and must be re-done in the future.

Service Response: Section 62.4(c)(1) was changed in the final rule to specifically include a proposed boundary map as part of the evaluation report. § 62.4(d)(1) and (2) were changed in the final rule to specify that, as part of the second notification process, owners are provided a copy of the area evaluation report.

Comments (peer review): Some respondents expressed support for the requirement in § 62.4(c)(2) for three peer reviews of completed evaluation reports. One respondent suggested that this provision be deleted, stating that outside peer reviewers should have no role in the NNL designation process.

Service Response: The NPS believes peer reviews can substantially add to the objectivity of the consideration process; therefore, this provision is retained in the final rule. One respondent suggested that the regulations should state that peer reviewers must be qualified scientists and not just preferably be scientists. This change has been made in § 62.4(c)(2) of the final rule.

Issue 9: Designation Process—Advisory Board

Comments (Advisory Board role and composition): Some respondents suggested that the National Park System Advisory Board not be involved in the consideration and recommendation of PNNL for NNL designation, as required under § 62.4(g)(1), unless the board consists of individuals with appropriate scientific backgrounds who are qualified to make such recommendations. Some respondents noted that the designation process, as described particularly in § 62.4(g) and (h), included too many review levels, including the Director, Assistant Secretary, Advisory Board and Secretary, to be effective.

Service Response: As noted in the proposed rule, section 1211 of Public Law 101-628 (16 U.S.C. 463) requires

the National Park System Advisory Board to provide recommendations to the Secretary on NNL designations. This law also indicates the composition of the board include members who are competent in biology or geology. No change was made in the final rule about the role of the Advisory Board. Sections 62.4(g), (h), and (i), and 62.7(d) were changed in the final rule to eliminate the requirement for the Director to provide NNL materials through the Assistant Secretary.

Comment (procedural requirements): One respondent suggested that the Advisory Board, in addition to reviewing whether PNNL qualified for NNL designation, also review whether procedural requirements had been met.

Service Response: Section 62.4(g)(1) specifies that the Director submits to the Advisory Board only areas that meet the criteria for national significance and for areas where all procedural requirements were met. Therefore, no change was needed in the final rule.

Comment (Advisory Board meetings): One respondent suggested the notice of Advisory Board meetings, specified in § 62.4(g)(2), in addition to being published in the **Federal Register**, be mailed to the owners of PNNL that will be considered at these meetings in addition to being published in the **Federal Register**.

Service Response: This change has been made in the final rule.

Issue 10: Designation Process—Recommendation to Advisory Board

Comments (national significance): One respondent suggested a standard of impracticality due to a large number of owners be added to § 62.5 in addition to the standard of impracticality due to physical size of the feature. One respondent suggested that the national significance criteria include objective standards for area boundaries.

Service Response: Considerations about area ownership are distinct from the criteria for determining national significance; ownership considerations are in § 62.4. Area boundaries are discussed in § 62.4(c)(1).

Issue 11: Designation Process—Other Environmental Regulations

Comment (environmental and economic impact statements): One respondent suggested that the NPS should be required to complete an environmental impact statement and an economic impact statement for each area considered for NNL designation.

Service Response: The development of standards for the identification, nomination, or designation of national natural landmarks or national historic

landmarks is categorically excluded from the National Environmental Policy Act process under the implementation guidelines developed by the NPS under the Act. Additionally, an economic impact statement is not required for activities related to listing. No change was made in the final rule.

Comments (mining): Some respondents suggested that the possible implications of the Mining in National Parks Act, as described in § 62.6(e), be more fully explained in the regulations. Some respondents noted that the definition of surface mining under this act was not clear. One respondent questioned whether the definition of surface mining may include owner-authorized scientific, archeological or paleontological excavations at the area. Some respondents noted that what types of actions the Federal government could take to mitigate or abate surface mining that may cause irreparable loss or destruction of an NNL were unclear. Some respondents noted that actions to mitigate or abate surface mining may constitute a taking of private property and that this would be a contradiction of § 62.3(b).

Service Response: The Mining in the National Park System Act (16 U.S.C. 1908) applies to mining and mineral extraction activities, not to paleontological or archeological excavations. The act does not directly authorize the Secretary or the Advisory Council on Historic Preservation to take any action to mitigate or abate surface mining activities that are found to be damaging national historic or natural landmarks. No change was made in the final rule.

Comment (NEPA): One respondent suggested that § 62.6(f), which provides for Federal agencies to consider NNL existence and location as part of their compliance with NEPA, be deleted.

Service Response: Federal agencies are required under NEPA to assess the effects of their actions on the environment which include potential impacts to exceptional natural areas like national natural landmarks. No change was made in the final rule.

Issue 12: Designation Process—Designation

Comments (county records): Some respondents suggested that existence of the designation be recorded as part of the county lands records; other respondents suggested that the designation should be recorded on the deed.

Service Response: Because the NPS has no regulatory authority over owners regarding the NNL designation, the NPS cannot mandate that the NNL

designation be recorded with property deeds or other lands records; neither is there anything in these regulations to prevent interested owners from recording the fact of the designation in such a fashion. Therefore, no change was made in the final rule.

Comment (acceptance of designation implies contractual arrangement): One respondent suggested that by accepting a certificate or plaque from the NPS recognizing the NNL designation, as specified in § 62.4(k)(1), the landowner enters into a contractual arrangement with the NPS that would somehow obligate the landowner to protect the NNL.

Service Response: As suggested above, no contractual or otherwise binding obligation is involved in a landowner's voluntary consent to having his or her properties considered for NNL designation. Neither is there any legal obligation on the part of the landowners to protect NNL after having accepted a certificate or plaque. A change was made in § 62.4(k)(1) of the final rule to clarify this point.

Issue 13: Monitoring

Comment (periodic contacts): One respondent suggested that the regulations clarify the meaning of NPS making periodic contacts with NNL owners by defining the frequency and nature of these contacts.

Service Response: NPS contacts with owners are generally informal letters or telephone calls to exchange information about the NNL, provide technical assistance, update ownership name and address information, and so on. The NPS also conducts periodic visits to an NNL, with the permission of owner(s), for example, to inspect site condition or meet with owner(s) in person. The exact frequencies of the contacts cannot be specified because they depend on circumstances and events. No change was made in the final rule.

Comment (protection guidelines): One respondent suggested that the NPS be required to give owners guidelines or recommendations for protecting NNLs.

Service Response: As suggested above, the NPS does not dictate or direct landowner actions with regard to use or conservation of an NNL. In some cases, the NPS may be able to provide technical advice about the NNL resources and their conservation. This is done at the request of the landowner and is subject to availability of necessary expertise by NPS.

Comment (permission for monitoring visits): Some respondents suggested that § 62.6(c)(2) specify that written permission of owners is required before

the NPS or its representatives enter onto land for monitoring NNL condition.

Service Response: The NPS does not believe that development of a formal written landowner permission process is necessary for monitoring visits. Non-written permission (e.g., via telephone) is obtained for each visit. Section 62.6(c)(2) has been changed in the final rule to specify that landowner permission is not required for monitoring visits of public lands that are otherwise open to the public.

Comment (participation in monitoring visits): One respondent suggested that owners should be allowed to participate in any NNL monitoring visits and contribute information to the monitoring report.

Service Response: The NPS encourages owners to accompany the individual making the monitoring visit. Contributions of information by owners to the monitoring report are also welcomed and encouraged.

Comments (monitoring report): One respondent suggested that owners be notified of who completed monitoring reports of their properties and be given copies of the reports. One respondent suggested that the NPS give copies of the entire final Section 8 report, not only pertinent portions of the report, to owners and to other parties who requested them.

Service Response: The respective changes were made in § 62.6(c)(2) and (d)(2). In addition, as suggested in § 62.6(d)(1), owners of NNLs listed as damaged or threatened in the draft Section 8 Report are provided opportunities to review and comment on the draft report.

Comments (comment period): Some respondents suggested that § 62.6(d)(1) be revised to allow a 60-day or 90-day comment period, instead of a 30-day comment period, on the draft Section 8 report each year.

Service Response: Because this report is prepared annually, a 60-day or 90-day review of the draft report is impractical. No change was made in the final rule.

Comment (transmitting comments to Congress): One respondent suggested the Secretary transmit to the Congress any comments by owners on the Section 8 report.

Service Response: The Secretary is required, under the National Park System General Authorities Act (90 Stat. 1940) as amended (16 U.S.C. 1a-5), to transmit this report to the Congress. Transmission of the landowners' comments on the report is not required. Individuals or organizations are, of course, free to submit any materials on this or any other issue to the Congress. No change was made in the final rule.

Comments (effect of monitoring report): One respondent suggested the regulations clarify that a probable consequence of having an NNL listed in the Section 8 report is condemnation of private land for government acquisition. One respondent suggested that the regulations explain that, as part of the Section 8 report, the Secretary is also required to recommend NNLs listed in this report for study for addition to the National Park System.

Service Response: Condemnation of private land for government acquisition is not a probable consequence of listing an NNL in the Section 8 report. The fact that the Secretary is required by 16 U.S.C. 1a-5 to provide a report of damaged or threatened NNLs to the Congress and to recommend qualified NNLs for consideration for possible addition to the National Park System does not require subsequent action by the Congress or the Department. A change has been made in § 62.6(b) of the final rule to clarify this point.

Comments (third parties): Several respondents suggested that the regulations eliminate or restrict the involvement of third party organizations or individuals (non-landowner, non-governmental) in the designation and monitoring process. Other respondents suggested that the NPS must ensure the objectivity of these processes and develop procedures to avoid possible conflicts of interest where third parties are suggesting PNNL for consideration, completing or reviewing site evaluations, or monitoring the conditions of designated NNLs. Several respondents suggested the NPS not be allowed to enter into any agreements or contracts with any other agencies, organizations, groups or individuals as specified in § 62.9(a), except when these agencies, groups or individuals are consenting NNL owners. Other respondents suggested that the reference in § 62.6(b) to the use of outside individuals, agencies or organizations to monitor the status of selected NNLs be deleted. One respondent suggested that the regulations prohibit owners from developing or having any substantive contributions of information to the evaluations of their properties for NNL designation because of conflict of interest.

Service Response: In administering the NNL Program, the NPS ensures that any agreements or arrangements with non-NPS organizations or individuals do not have possible conflict of interest implications. Owner consent to such administrative actions is not appropriate, nor would it be appropriate to exclude owners from the designation

process. No change is made in the final rule.

Issue 14: Boundary Adjustments

Comment (boundary modifications): One respondent suggested that the provision in § 62.7(a) for modifying NNL boundaries allows the NPS to take over private land and should therefore be deleted.

Service Response: The NPS does not "take over" private land by landmark designation. As noted above, the NNL Program provides information on the location and status of important natural features. The voluntary cooperation of private property owners does not restrict the owner's use of his or her land. No change is made in the final rule based on this comment.

Comment (modification of nationally-significant values): One respondent questioned the need for a provision, as described in § 62.7(a), to allow for modifications in the description of an NNL's nationally significant values if scientists had correctly identified all nationally significant values during the original designation process.

Service Response: This section is retained in the final rule because new information may be discovered or conditions of an NNL may change.

Comment (procedure reference): One respondent suggested that § 62.7(b) be revised to reference § 62.4(b) through § 62.4(j) when referring to the expansion of the boundaries of an NNL.

Service Response: This change was made in the final rule.

Comments (minor boundary adjustments): Some respondents suggested that what constituted a minor boundary correction under § 62.8(e) was unclear. One respondent suggested that minor be defined to mean that boundary corrections involve only properties owned by existing, willing NNL owners. Another respondent suggested that § 62.7(e) specify that such minor technical corrections only can be made with owner consent. One respondent suggested that the NPS should notify owners of any minor technical boundary corrections under § 62.7(e).

Service Response: Section 62.7(e) was changed in the final rule to include a provision for notifying owners in advance of any proposed minor technical boundary corrections or other administrative changes in documentation. Dependent on owner response to this notification, the NPS will determine whether the proposed changes constitute such minor technical corrections or whether the procedures outlined under § 62.4(d) through (j) should be followed. In addition, § 62.7(e) was changed in the final rule to define a minor boundary correction

as one that represents a change in less than five percent of the original total land area of the NNL.

Comment (boundary delineation): One respondent suggested the addition of a section to the regulations to provide for completion of previously incomplete delineations of boundaries of NNLs.

Service Response: Section 62.7 provides for adjustment of NNL boundaries, including completion of previously incomplete boundary delineations. No change was therefore needed in the final rule.

Issue 15: Removal of Designation

Comment (peer review): One respondent suggested that, when the removal of an NNL designation is considered under § 62.8(b), one of the three peer reviewers of any evaluation removal process be from the NPS to eliminate bias.

Service Response: When possible, the NPS uses non-NPS evaluators and peer reviewers to obtain objective, scientific advice for particular areas and types of resources. In general, NPS representatives do not serve as peer reviewers. The NPS reviews all information available, as described in § 62.8(b), before determining that an area no longer seems to merit designation as an NNL.

Comments (area information retention): Some respondents suggested that information on areas from which NNL designations were removed under § 62.8 not be retained by the NPS.

Service Response: The NPS maintains information as required under Federal records management regulations. Information on areas from which the designations were removed is also maintained to provide a documented record of the actions, decisions, notifications and other pertinent information for the NNL Program. No change was made in the final rule.

Issue 16: Miscellaneous Comments

Comment (American Indians): One respondent suggested that the types of agencies and organizations with which NPS may enter into agreements, as described in § 62.9(a), specifically include Native American tribal governments and native villages, corporations and communities.

Service Response: This change was made in the final rule.

Comments (area information dissemination): One respondent suggested that the dissemination of information on NNLs associated with Native American religious or other traditional uses may reveal such sensitive information. One respondent suggested that, although it was acceptable for the NPS to limit

information dissemination on ecologically or geologically fragile NNLs, the NPS also make a greater effort to disseminate educational information on other NNLs and on the NNL Program.

Service Response: The NPS considers that its general programs and policies about education, protection of sensitive information and culturally significant properties are sufficient. Therefore, no change was made in the final rule.

Comment (procedures handbook): One respondent suggested that the NPS make the program procedures handbook, described in the **SUPPLEMENTARY INFORMATION** section to the proposed rule, available for public comment.

Service Response: The program handbook is an internal NPS administrative manual for which public comment is not required. Copies of the completed handbook will be available to the interested public on request. No change was made in the final rule.

Comment (program documents): One respondent suggested that the NPS be required to maintain and publish an updated list of all NNL Program procedural documents.

Service Response: The already mentioned program handbook will reference and describe other program procedural documents. No change was made in the final rule.

Comments (lawsuits/penalties): Some respondents suggested that the regulations include provisions for civil lawsuits to recover costs, damages and attorney fees if their properties had been evaluated or designated without their consents. Several respondents suggested that the regulations provide for penalties for NPS employees who violate the regulations or otherwise violate landowner rights.

Service Response: The NPS does not believe these measures are necessary, or within its legal authority, and therefore no change was made in the final rule.

Other minor editorial changes were made in the final rule. These changes were to improve readability or clarity.

Drafting information

Authors participating in this rulemaking came from the National Park Service, the Office of the Assistant Secretary for Fish and Wildlife and Parks and the Office of the Solicitor.

Paperwork Reduction Act

This rule does not contain collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995. The notification letter which NPS sends

to landowners requesting their views about NNL designation is specifically exempted from Paperwork Reduction considerations according to Departmental guidelines (381 DM Chapter 2, Appendix 1) under A certifications, consents or acknowledgments. The status form used by NPS to monitor condition of designated NNLs for the annual Section 8 report is primarily filled out by NPS personnel. In some cases, it is completed by NNL patrons, i.e. scientists and others who volunteer to monitor the condition of selected NNLs on behalf of NPS. In other cases, it is filled out by area managers of other Federal or State agencies who own NNLs. It is NPS opinion that completion of the form is not solicited from private individual owners of NNLs and therefore not applicable under the Paperwork Reduction Act.

Compliance With Other Laws

This rule was reviewed by the Office of Management and Budget review under Executive Order 12866. The Department of the Interior has determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or require the preparation of a regulatory analysis. The effect of the revisions made herein ensures that owners, including but not limited to local governments, small businesses, and other small organizations, are fully notified in advance and have the opportunity to comment on the proposed National natural landmark designation and that property is not included in a designation where an owner objects to designation. The total estimated economic effects of this rule on small entities are therefore negligible.

The revisions ensure that all owners are fully notified in advance of the agency's consideration of their properties as potential national natural landmarks, that private properties are not entered for purposes of evaluation without owner permission, and that property is not designated where private property owners have indicated their objection to the designation in a manner specified.

The NPS has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of \$100 million or more in any given year on local, state or tribal governments or private entities.

The Department has determined that this rule meets the applicable standards

provided in Section 3(a) and 3(b)(2) of Executive Order 12988.

This rule is not a major rule under the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)).

The NPS has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce incompatible uses that may compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants. Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment (EA) nor an Environmental Impact Statement (EIS) has been prepared.

The Department of the Interior has reviewed this rule as directed by Executive Order 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights*, to determine whether this rule includes policies that imply the taking of private properties. The Department determined that this rule does not imply the taking of private properties because it does not deny economically viable use of any distinct, legally protected property interest to its owner or to have the effect of, or result in, a permanent or temporary physical occupation, invasion or deprivation. National natural landmark designation does not change ownership of property and does not dictate use of designated property. The effects of the revisions are the strengthening and clarification of notification of owners that properties are being considered, the explicit preclusion of entry onto private property for purposes of program area evaluation without owner permission, and the preclusion of designations of areas where the majority of the private property owners indicated their objection as specified.

List of Subjects in 36 CFR Part 62

Natural resources.

In consideration of the foregoing, 36 CFR Chapter I is amended as follows:

1. 36 CFR Part 62 is revised to read as follows:

PART 62—NATIONAL NATURAL LANDMARKS PROGRAM

Sec.

62.1 Purpose.

62.2 Definitions.

62.3 Effects of designation.

62.4 Natural landmark designation and recognition process.

62.5 Natural landmark criteria.

62.6 Natural landmark monitoring.

62.7 Natural landmark modifications.

62.8 Natural landmark designation removal.

62.9 General provisions.

Authority: 16 U.S.C. 1a–5, 461 *et seq.*, 463, 1908.

§ 62.1 Purpose

The procedures in this part set forth the processes and criteria for the identification, evaluation, designation and monitoring of national natural landmarks.

(a) The National Natural Landmarks Program focuses attention on areas of exceptional natural value to the nation as a whole rather than to one particular State or locality. The program recognizes areas preserved by Federal, State and local agencies as well as private organizations and individuals and encourages the owners of national natural landmarks to voluntarily observe preservation precepts.

(b) The National Natural Landmarks Program identifies and preserves natural areas that best illustrate the biological and geological character of the United States, enhances the scientific and educational values of preserved areas, strengthens public appreciation of natural history, and fosters a greater concern for the conservation of the nation's natural heritage.

§ 62.2 Definitions.

The following definitions apply to this part:

National Natural Landmark is an area designated by the Secretary of the Interior as being of national significance to the United States because it is an outstanding example(s) of major biological and geological features found within the boundaries of the United States or its Territories or on the Outer Continental Shelf.

National Registry of Natural Landmarks is the official listing of all designated national natural landmarks.

National significance describes an area that is one of the best examples of a biological community or geological feature within a natural region of the United States, including terrestrial communities, landforms, geological features and processes, habitats of native plant and animal species, or fossil evidence of the development of life.

Natural region is a distinct physiographic province having similar geologic history, structures, and landforms. The basic physiographic characteristics of a natural region influence its vegetation, climate, soils, and animal life. Examples include the Atlantic Coastal Plain, Great Basin, and Brooks Range natural regions.

Owner means the individual(s), corporation(s), or partnership(s) holding fee simple title to property, or the head of the public agency or subordinate employee of the public agency to whom such authority was delegated and who is responsible for administering publicly owned land. Owner does not include individuals, partnerships, corporations, or public agencies holding easements or less than fee interests (including leaseholds) of any form. A Native American tribe that is the beneficial fee simple owner of lands, with the United States as trustee, will be considered as owner of private property for the purposes of this part. Similarly, individual member(s) of a Native American tribe who are beneficial owner(s) of property, allottee(s) held in trust by the United States, will be considered as owner(s) of private property for the purposes of this part.

Potential national natural landmark means an area that, based on recommendation or initial comparison with other areas in the same natural region, seems to merit further study of its merits for possible national natural landmark designation.

Prejudicial procedural error is one that reasonably may be considered to have affected the outcome of the designation process.

Representative refers to any public or private individual, agency, or organization that is performing actions related to the identification, evaluation, designation or monitoring of national natural landmarks on behalf of or in cooperation with the National Park Service (NPS), either under a contractual agreement or as a volunteer.

Scientist refers to an individual whose combination of academic training and professional field experience in the natural region qualifies him/her to identify and comparatively evaluate natural areas at the regional or national level.

§ 62.3 Effects of designation.

(a) Designation of an area by the Secretary as a national natural landmark is not a land withdrawal, does not change the ownership of an area, and does not dictate activity. However, Federal agencies consider the unique properties of designated national natural landmarks and of areas that meet the

criteria for national significance in their planning and impact analysis (see § 62.6(f)), and there may be State or local planning or land use implications. Designation as a national natural landmark does not require or mandate under Federal law any further State or local planning, zoning or other land-use action or decision. Owners who agree to have their lands designated as a national natural landmark do not give up under Federal law any legal rights and privileges of ownership or use of the area. The Department does not gain any property interests in these lands.

(b) Benefits of national natural landmark designation include the positive recognition and appreciation of nationally significant resources and the ability of public agencies and private individuals and organizations to make more informed development and planning decisions early in regional planning processes. In addition, some private owners of commercially operated national natural landmarks that are open to public visitation may choose to recognize and emphasize the national significance of the areas by providing descriptive information to the public. Under section 170(h) of the United States Internal Revenue Code, some owners of national natural landmarks may be eligible to claim a charitable contribution deduction on their Federal income tax for qualified interests in their natural landmark property donated for a qualified conservation purpose to a qualified conservation organization.

(c) The Secretary will provide an annual report to the Congress on damaged or threatened designated national natural landmarks (see § 62.6(b)). The Secretary will also report to the Advisory Council on Historic Preservation any designated national natural landmarks that may be irreparably lost or destroyed by surface mining activity (see § 62.6(e)).

§ 62.4 Natural landmark designation and recognition process.

(a) *Identification.* Potential national natural landmarks are identified in the following manner.

(1) *Natural region studies.* The NPS conducts inventories of the characteristic biological and geological features in each natural region to provide a scientific basis for identifying potential national natural landmarks. The NPS is responsible for the completion of these studies, which are generally done by qualified scientists under contract. A study provides a classification and description of biological and geological features in that natural region and an annotated list of

areas that illustrate those features. During a study, the NPS or any representative of the NPS may enter onto land only after receiving written permission from the owner(s) of that land, except when the land is publicly owned land and otherwise open to the public.

(2) *Other entities.* (i) Any public or private entity may suggest an area for study and possible national natural landmark designation. The entities include:

(A) Federal agency programs that conduct inventories in order to identify areas of special interest, for example, essential wildlife habitat, research natural areas, and areas of critical environmental concern; and

(B) State natural area programs that systematically and comprehensively classify, identify, locate and assess the protective status of the biological and geological features located in a State.

(ii) If an individual, agency or organization that suggests an area for national natural landmark consideration is not the owner of the area, written permission of the owner(s) is required to enter onto the PNNL to gather information, except when the land is publicly owned and otherwise open to the public.

(3) After receiving the suggestions from a natural region study and suggestions from other sources, the NPS determines which PNNL merit further study for possible national natural landmark designation. This determination is based on comparison with existing national natural landmarks in the natural region, the national natural landmark criteria (see § 62.5) and other information.

(b) *First Notification.* (1) Before a potential national natural landmark is evaluated by scientists as described in paragraph (c) of this section, the NPS notifies the owner(s) in writing, except as specified in paragraph (b)(2) of this section.

(i) This notice advises the owner(s) that the PNNL is being considered for study for possible national natural landmark designation and provides information on the National Natural Landmarks Program, including an explanation of the effects of national natural landmark designation as described in § 62.3.

(ii) The notice also provides the owner with available information on the area and its tentatively identified significance, solicits the owner's comments on the area, including any information on current or anticipated land use or activities that may affect the area's natural values, integrity, or other matters of concern, and informs the

owner of the source of the suggestion for consideration.

(iii) The notice also requests owner permission to enter the property, unless the area is otherwise open to the public, so the NPS or its representative can conduct an on-site evaluation of the PNNL as described under paragraph (c) of this section, and advises the owner of the procedures the NPS will follow in considering the PNNL for possible designation.

(2) Before a potential national natural landmark having 50 or more owners is evaluated by scientists as described in paragraph (c) of this section, the NPS provides general notice to property owners. This general notice is published in one or more local newspapers of general circulation in the area in which the potential national natural landmark is located. The notice provides the same information listed under paragraph (b)(1) of this section.

(3) During an on-site evaluation as described in paragraph (c) of this section, the NPS or any representative of the NPS will not enter onto land without permission from the owner(s), except when the land is publicly owned and otherwise open to the public. The NPS may complete evaluations of PNNL by using other information, including information that was previously gathered by other Federal or State agencies or gained from other scientific studies. The NPS notifies owners if areas are evaluated from existing information not requiring land entry.

(4) The described procedures for providing written notification to owners and receiving responses from owners about the first notification are the responsibility of the NPS and cannot be delegated to any representative of the NPS.

(c) *Evaluation.* (1) The NPS uses the national natural landmark criteria in § 62.5 to evaluate the potential natural landmark. Potential national natural landmarks are evaluated on a natural region basis; i.e., similar areas that represent a particular type of feature located in the same natural region are compared to identify examples that are most illustrative and have the most intact, undisturbed integrity.

(2) Evaluations are done by qualified scientists who are familiar with the natural region and its types of biological and geological features. Evaluators make a detailed description of the area, including a proposed boundary map, and assess its regional standing using the national natural landmark criteria (see § 62.5) and any additional information provided by the NPS. Evaluation reports must have been completed or updated within the

previous 2 years in order to be considered by the NPS.

(3) Completed evaluation reports are reviewed by no fewer than three peer reviewers, who are scientists familiar with the biological or geological features of the area or natural region. These reviewers provide the NPS with information on the scientific merit and strength of supportive documentation in the evaluation report. On the basis of evaluation report(s) and the findings of the peer reviewers, the NPS makes a determination that:

(i) The PNNL does or does not appear to qualify for national natural landmark designation; or

(ii) Additional information is required before a decision can be made about the status of the PNNL.

(4) When a PNNL does not seem to qualify for national natural landmark designation, the NPS notifies the owner(s) as prescribed in paragraphs (b)(1) and (2) of this section.

(d) *Second Notification.* (1) When the Director determines that an area meets the criteria for national significance, the NPS notifies the owner(s) in writing, except as specified in paragraph (d)(2) of this section.

(i) The notice references the rules in this part, advises the owners of the procedures the NPS follows and of the effects of national natural landmark designation as described in § 62.3, provides the owner(s) with a copy of the evaluation report, and provides the owner(s) with the opportunity to comment. The list of owners must be obtained from official land or tax records, whichever is most appropriate, within 90 days before issuing the second notification.

(ii) If in any State the land or tax records are not helpful, the NPS can seek alternative sources to identify the owners.

(iii) The NPS is responsible for notifying only owners whose names appear on the list.

(2) If an area has more than 50 owners, the NPS provides a general notice to the property owners. NPS will publish a general notice in one or more local newspapers of general circulation in the region in which the area is located. A copy of the evaluation report is made available on request. In addition, the NPS may conduct a public information meeting, if widespread local public interest warrants it or if requested by the executive of the local governmental jurisdiction in which the area is located.

(3) In addition, NPS notifies appropriate authorities, organizations and individuals. The notices reference these rules and advise the recipient of

the proposed action, of the procedures the NPS follows, and of the effects of national natural landmark designation as described in § 62.3. Notice of the proposed action is published also in the **Federal Register**. NPS will notify:

(i) The executive of the local governmental jurisdiction in which the area (PNNL) is located;

(ii) The governor of the State;

(iii) Other appropriate State officials;

(iv) Senators and members of Congress who represent the district in which the area is located;

(v) Native American tribal governments and native villages and corporations in the region; and

(vi) Other interested authorities, organizations and individuals as deemed appropriate.

(4) All notified entities, including non-owners, have 60 days to provide comments before NPS decides whether the area meets the criteria for national significance. To assist in the evaluation of a area, comments should, among other factors, discuss the area's features and integrity. Information is also welcome on current or anticipated land use or threats that could effect the area. Any party may request a reasonable extension of the comment period when additional time is required to study and comment on a landmark proposal. The Director may grant these requests if he or she determines they are in the public interest. All comments received are considered in the national natural landmark designation process.

(5) Upon individual or general notification, any owner of private property within a PNNL who wishes to object to national natural landmark designation must submit a notarized statement to the Director to certify that he or she is the sole or partial owner of record and he or she objects to the designation. These statements will be submitted during the 60-day comment period. Upon receipt of objections to the designation of a PNNL consisting of multiple parcels of land, the NPS must determine how much of it consists of owners who object to designation. If an owner whose name is not on the ownership list developed by the NPS certifies in a notarized statement that he or she is the sole or partial owner of the area, NPS will take into account his or her views about designation. In circumstances where a single parcel of land within a PNNL has more than one fee simple owner, an objection to designation of that property must be submitted by a majority of the owners.

(6) All described procedures for the notification of owners and receiving responses from owners in the second notification process are the

responsibility of the NPS and cannot be delegated to any representative of the NPS.

(e) *Significance determination.* (1) NPS will review all documentation including, but not limited to, evaluation reports, peer reviews, and received comments. If NPS determines that a PNNL does not meet the criteria for national significance (see § 62.5), the NPS will notify the owner(s) in writing that their land is no longer under consideration for national natural landmark designation. If PNNL are owned by 50 or more parties, the NPS will publish a general notice as described in paragraph (d)(2) of this section. In addition, the NPS will notify in writing officials, individuals and organizations notified under paragraph (d)(3) of this section.

(2) When the NPS determines that a PNNL meets the criteria for national significance, the NPS determines whether any private property owners submitted valid written objection to designation.

(f) *Areas meeting criteria.* When the Director of NPS determines by all available information that a PNNL meets the criteria for national significance, but some private property owners submitted written objections to the proposed national natural landmark designation, the NPS maintains all this information about the area and which shall be available as part of the environmental analysis for any major federal action for purposes of NEPA which impacts the NNL or these other lands. Notice of this action is provided by the NPS to the owners as specified in paragraphs (d)(1) and (2) of this section and to officials, individuals and organizations notified under paragraph (d)(3) of this section. If some but not all of the property owners within a PNNL object to designation, the NPS will exclude the objecting properties and proceed with the process only if enough area remains of non-objecting properties to allow sufficient representation of the significant natural features.

(g) *National Park System Advisory Board.* (1) The Director of the NPS reviews the documentation of each area that meets the criteria for national significance. When the Director determines that the requirements of this part were met and that enough non-objecting valid private property owners exist to encompass an adequate portion of the nationally significant features, the Director submits the information on the area (PNNL) to the National Park System Advisory Board. The board reviews the information and recommends whether or not the land with consenting owners

qualifies for national natural landmark designation.

(2) Notice of Advisory Board meetings to review national natural landmark nominations and meeting agendas are provided at least 60 days in advance of the meeting by publication in the **Federal Register**. The NPS also mails copies of the notice directly to consenting owners of areas that are to be considered at each meeting. Interested parties are encouraged to submit written comments and recommendations that will be presented to the board. Interested parties may also attend the board meeting and upon request may address the board concerning an area's national significance.

(h) *Submission to the Secretary.* The Director submits the recommendation of the Advisory Board and materials that the Director developed to the Secretary for consideration of the nominated area for national natural landmark designation.

(i) *Designation.* The Secretary reviews the materials that the Director submitted and any other documentation and makes a decision on national natural landmark designation. Areas that the Secretary designates as national natural landmarks are added to the National Registry of Natural Landmarks.

(j) *Third notification.* When the Secretary designates an area as a national natural landmark, the Secretary notifies in writing the landmark owner(s) of areas with fewer than 50 owners. A general notice of designated areas with 50 or more owners is published in one or more local newspapers of general circulation in the area. The Secretary also notifies the executive of the local governmental jurisdiction in which the landmark is located, Native American tribal governments and native villages and corporations in the area, the governor of the State, the congressional members who represent the district and State in which the landmark is located, and other interested authorities, organizations and individuals as deemed appropriate. The NPS prepares the notifications and is responsible for their distribution. Notices of new designations are also published in the **Federal Register**.

(k) *Presentation of plaque and certificate.* (1) After the Secretary designates an area as a national natural landmark, the NPS may provide each owner who so requests with a certificate signed by the Secretary of the Interior and the Director of the NPS at no cost to the owner(s). This certificate recognizes the owner's interest in protecting and managing the area in a manner that prevents the loss or

deterioration of the natural values on which landmark designation is based.

(2) If appropriate, NPS may also provide without charge a bronze plaque for display in or near the national natural landmark. Upon request, and to the extent NPS resources permit, the NPS may help arrange and participate in a presentation ceremony. In accepting a plaque or certificate, owners give up none of the rights and privileges of ownership or use of the landmark and the Department of the Interior does not acquire any interest in the designated property. After a presentation, the plaque remains the property of NPS. If the landmark designation is removed in accordance with the procedures in § 62.8, NPS may reclaim the plaque.

§ 62.5 Natural landmark criteria.

(a) *Introduction.* (1) *National significance* describes an area that is one of the best examples of a biological or geological feature known to be characteristic of a given natural region. Such features include terrestrial and aquatic ecosystems; geologic structures, exposures and landforms that record active geologic processes or portions of earth history; and fossil evidence of biological evolution. Because the general character of natural diversity is regionally distinct and correlated with broad patterns of physiography, many types of natural features are entirely inside one of the 33 physiographic provinces of the nation, as defined by Fenneman (Physiographic Divisions of the United States, 1928) and modified as needed by the NPS.

(2) Because no uniform, nationally applicable classification scheme for biological communities or geological features is accepted and used by the majority of organizations involved in natural-area inventories, a classification system for each inventory of a natural region was developed to identify the types of regionally characteristic natural features sought for representation on the National Registry of Natural Landmarks. Most types represent the scale of distinct biological communities or individual geological, paleontological, or physiographic features, most of which can be mapped at the Earth's surface at 1:24,000 scale or are traceable in the subsurface. In some cases, the NPS may further evaluate only a significant segment of a given natural feature, where the segment is biologically or geologically representative and where the entire feature is so large as to be impracticable for natural landmark consideration (e.g., a mountain range). Almost two-thirds of all national natural landmarks range from about 10 to 5,000 acres, but some

are larger or smaller because of the wide variety of natural features recognized by the National Natural Landmarks Program.

(b) *Criteria.* NPS uses the following criteria to evaluate the relative quality of areas as examples of regionally characteristic natural features:

(1) *Primary criteria.* Primary criteria for a specific type of natural feature are the main basis for selection and are described in the following table:

Criterion	Description	Example
Illustrative character	Area exhibits a combination of well-developed components that are recognized in the appropriate scientific literature as characteristic of a particular type of natural feature. Should be unusually illustrative, rather than merely statistically representative.	Alpine glacier with classic shape, unusual number of glaciological structures like crevasses, and well-developed bordering moraine sequences.
Present condition	Area has been less disturbed by humans than other areas	Large beech maple forest, only a small portion of which has been logged.

(2) *Secondary criteria.* Secondary criteria are provided for additional

consideration, if two or more similar area cannot be ranked using the primary

criteria. Secondary criteria are described in the following table:

Criterion	Description	Example
Diversity	In addition to its primary natural feature, area contains high quality examples of other biological and/or geological features or processes.	Composite volcano that also illustrates geothermal phenomena.
Rarity	In addition to its primary natural feature, area contains rare geological or paleontological feature or biological community or provides high quality habitat for one or more rare, threatened, or endangered species.	Badlands, including strata that contain rare fossils.
Value for Science and Education.	Area contains known or potential information as a result of its association with significant scientific discovery, concept, or exceptionally extensive and long term record of on-site research and therefore offers unusual opportunities for public interpretation of the natural history of the United States.	Dunes landscape where process of ecological succession was noted for first time.

§ 62.6 Natural landmark monitoring.

(a) *Owner contact.* The Field Offices of the NPS maintain periodic contacts with the owners of designated national natural landmarks to determine whether the landmarks retain the values that qualified them for landmark designation and to update administrative records on the areas.

(b) *Section 8 Report.* (1) The Secretary, through the NPS, prepares an annual report to the Congress on all designated national natural landmarks with known or anticipated damage or threats to one or more of the resources that made them nationally significant. This report is mandated by Section 8 of the National Park System General Authorities Act of 1970, as amended, (16 U.S.C. 1a-5).

(2) A landmark is included in this report if it has lost or is in imminent danger of losing all or part of its natural character to such a degree that one or more of the values that made it nationally significant are or will be irreversibly damaged or destroyed. In assessing the status of a landmark, NPS considers the condition of the landmark at the time of designation, including any changes that have occurred and any threats that could impact it in the future.

(3) Section 8 also requires the Secretary to make recommendations to the Congress on qualified areas for

consideration as additions to the National Park System. No legal mandate requires that the Congress take further action about national natural landmarks listed as damaged or threatened or about areas that are recommended for possible future additions to the National Park System.

(4) NPS Regional Offices are responsible for monitoring the condition of, and for completing status reports on, all designated national natural landmarks in their regions. In some cases, the NPS may arrange with outside individuals, agencies or organizations to monitor the status of selected national natural landmarks. NPS or its representative usually monitors national natural landmark condition and status during a visit.

(c) *Monitoring.* (1) The NPS or its representative notifies the owner(s) of a national natural landmark of his or her pending visit to the area to determine its status and condition, and informs the owner(s) of the purposes of monitoring and its relation to the Secretary's annual report on threatened or damaged landmarks.

(2) While monitoring conditions of designated national natural landmarks, neither NPS nor its representative will enter onto private property or onto public lands that are not otherwise open to the public without first obtaining permission from the owner(s) or

administrator(s). The NPS may monitor landmark condition without entering onto lands where required permission has not been granted by using other existing information, including telephone conversations with the owner(s) or manager(s) of the area, written materials provided by the owner or manager, or information previously developed by other Federal or State agencies or other scientific studies. The NPS provides owners with copies of monitoring reports on their property, which will include the name and affiliation of the individual(s) who completed the report.

(d) *Section 8 report preparation.* (1) After completion of landmark monitoring, the NPS Regional Offices forward their findings and recommendations to the NPS Washington Office. The NPS Washington Office reviews the Regional Office findings and recommendations and prepares a draft report listing only the national natural landmarks with significant known or anticipated damage or threats to the integrity of one or more of the resources that made the area nationally significant.

(2) Pertinent portions of this draft report, including any executive summary, are provided to the owner(s) or administrator(s) of national natural landmarks listed as is feasible, as well as to other interested authorities,

organizations and individuals. All individuals have 30 days to provide written comments to the NPS on the draft report. Comments may include additional information on the condition of landmarks or on the nature or imminence of reported damage or threats to these landmarks. Owners are also asked to indicate whether they would like to receive a copy of the final report, as described in paragraph (d)(3) of this section.

(3) The NPS reviews all comments on the draft report and prepares a final report, which the Director transmits to the Secretary for submission to the Congress. Upon release of the final report, the NPS will provide a copy of the report to the owner(s) of landmarks who are listed in the report and have requested copies and to other interested authorities, organizations and individuals.

(e) *Mining in the Parks Act.* If the NPS determines that an entire or partial national natural landmark may be irreparably lost or destroyed by surface mining activity, including exploration for or removal or production of minerals or materials, NPS notifies the person that is conducting the activity and prepares a report that identifies the basis for the finding that the activity may cause irreparable loss or destruction. The NPS also notifies the owner(s) of the national natural landmark in writing of its finding. The NPS submits to the Advisory Council on Historic Preservation the report and a request for advice about alternative measures that may be taken by the United States to mitigate or abate the activity. The authority for this action is contained in Section 9 of the Mining in the Parks Act of 1976 (16 U.S.C. 1908).

(f) *National Environmental Policy Act.* Federal agencies should consider the existence and location of designated national natural landmarks, and of areas found to meet the criteria for national significance, in assessing the effects of their activities on the environment under section 102(2)(c) of the National Environmental Policy Act (42 U.S.C. 4321). The NPS is responsible for providing requested information about the National Natural Landmarks Program for these assessments.

§ 62.7 Natural landmark modifications.

(a) *Determination of need for modifications.* After designation, the modification of the boundaries of a natural landmark, and/or revision of information about it, may be appropriate. For example, because of new information or changes in the condition of an NNL, the boundary may have to be reduced or expanded or

information about the NNL may have to be revised. Additional study may reveal that the area has nationally significant values that had not been previously documented. The NPS determines that landmark modifications are necessary through administration of the program. In addition, the NPS may receive suggestions for landmark modifications from other Federal agencies, State natural area programs, and other public and private organizations or individuals. The NPS determines the validity of these suggestions by applying the natural landmark criteria or by conducting additional study.

(b) *Boundary expansion.* (1) Three justifications exist for enlarging the boundary of a national natural landmark: better documentation of the extent of nationally significant features, professional error in the original designation, or additional landowners with nationally significant features on their property desiring the designation.

(2) If the NPS determines that an expansion of the boundary of the national natural landmark is appropriate, it will use the designation process outlined in § 62.4(b) through (j). If a boundary is expanded, only the owners in the newly considered but as yet not designated portion of the area are notified and asked if they object to designation.

(c) *Boundary reduction.* Two justifications exist for reducing the boundary of a national natural landmark: Loss of integrity of the natural features or professional error in the original designation. If the NPS determines that a reduction in the national natural landmark boundary is indicated, the designation removal process outlined in § 62.8 is used.

(d) *Change in description of values.* If the NPS determines that a change in the description of the national natural landmark's nationally significant values is warranted, the NPS prepares the recommended changes and the Director submits the changes and all supportive documentation to the National Park System Advisory Board. The Advisory Board reviews the information submitted by the Director and makes recommendations to the Secretary. The Secretary reviews the supportive documentation and the recommendations of the board, and may approve changes in the description of a landmark's nationally significant values.

(e) *Minor technical corrections.* Minor technical corrections to a national natural landmark boundary and other administrative changes in landmark documentation not covered under paragraphs (a) through (d) of this section may be approved by the Director

without a review by the Advisory Board or the approval by the Secretary. Minor technical boundary corrections are defined as those that involve a change in less than five percent of the total area of the national natural landmark. The NPS notifies owners of proposed minor technical boundary corrections or other administrative changes in documentation, as described in this paragraph (e). Based upon owner response to this notification, the NPS determines whether the proposed change is a minor technical correction to landmark documentation that can be made administratively or whether the procedures outlined in § 62.4(d) through (j) must be followed.

§ 62.8 Natural landmark designation removal.

(a) *Criteria for removal.* (1) Except as provided in paragraph (f) of this section, national natural landmark designation is removed from an area:

(i) When it can be shown that an error in professional judgment was made such that the site did not meet the criteria for national significance at the time of designation;

(ii) When the values which originally qualified it for designation have been lost or destroyed; or

(iii) When applicable designation procedures were not followed because of prejudicial failure.

(2) Any affected owner of a designated national natural landmark may initiate the removal by submitting to the Director a request for removal of designation, stating the grounds for this removal and specifying the error in professional judgment, loss of natural values or prejudicial procedural error. A prejudicial procedural error is one that reasonably may be considered to have affected the outcome of the designation process.

(3) Within 60 days of receiving a removal request, the NPS notifies the party submitting the request of whether the NPS considers the documentation sufficient to consider removal of the natural landmark designation.

(b) *Review of removal information.* The NPS reviews the information outlining the grounds for removal. When necessary, an on-site evaluation of the area may be made, as outlined in § 62.4(c). Based on all available information, the NPS determines whether the area no longer merits designation as a national natural landmark.

(c) *Notifications.* When NPS has determined that area no longer merits designation as a national natural landmark, the NPS notifies the owner(s) and other interested parties as specified

in § 62.4(d)(1)–(3). Notice of the proposed removal is also published in the **Federal Register**. The notified individuals may comment within 60 days of the date of the notice before a recommendation for removal is submitted to the Secretary. All comments received will be considered in the review and in the decision to remove the national natural landmark designation.

(d) *Removal from the registry.* (1) The Director reviews the information about a recommended removal from the Registry and determines whether the procedural requirements in this section have been met. If the Director confirms the findings, he or she submits a recommendation for removal to the National Park System Advisory Board. The Advisory Board reviews the submitted information and recommends the removal from or retention of the area in the registry.

(2) The recommendations of the Advisory Board and the Director are submitted by the Director to the Secretary for his or her consideration. If the Secretary concurs, he or she directs the removal of the landmark from the National Registry of Natural Landmarks. Any area from which designation is withdrawn solely because of procedural error as described in paragraph (a)(1)(iii) of this section continues to meet the criteria for national significance.

(e) *Notification of removal from the registry.* When the Secretary removes a landmark from the National Registry of Natural Landmarks, the Secretary will notify the national natural landmark owner(s), the executive of the local government jurisdiction in which the area is located, Native American tribal governments and native villages and corporations in the area, the governor of the State, Congressional members who represent the Congressional District and State in which the area is located, and other interested authorities, organizations, and individuals, as outlined in § 62.4(d)(1), (2) and (3). The NPS is responsible for preparing and distributing the written notices. The NPS periodically publishes notice(s) of

removal in the **Federal Register**. The NPS may reclaim the natural landmark plaque when a landmark is removed from the National Registry of Natural Landmarks.

(f) *Previously designated landmarks.* (1) NPS will notify owners of national natural landmarks designated before the effective date of these regulations to give them an opportunity within 90 days of the notice to request the removal of a national natural landmark designation from their property by writing to the Director. If owners do not respond within 90 days of the notification, the national natural landmark designations of their properties will be retained.

(2) When only some owners of a national natural landmark in multiple ownership request the removal of a national natural landmark designation from their portions, the NPS determines whether, after removal of these portions, a sufficient acreage of the national natural landmark remains to demonstrate the original nationally significant features without undue compromise. If so, the boundaries of the national natural landmark are adjusted to remove the properties of owners who object to the designation. If not, the entire national natural landmark designation is removed and the area is removed from the National Registry of Natural Landmarks.

(3) Any removals of existing national natural landmark designations and related recommended boundary adjustments, must be presented by the Director to the National Park System Advisory Board for review before being presented to the Secretary who formally removes a national natural landmark from the national registry or approves changes in the national natural landmark boundary. Areas from which the designation has been removed may be reconsidered for designation under these regulations if ownership or other circumstances change.

§ 62.9 General provisions.

(a) *Agreements.* The NPS may enter into contracts, memoranda of agreement, cooperative agreements, or

other types of agreements with other Federal agencies, States, counties, local communities, private organizations, owners, Native American tribal governments, or other interested individuals or groups to assist in administering the National Natural Landmarks Program. The agreements may include but are not limited to provisions about identification, evaluation, monitoring or protecting national natural landmarks.

(b) *Information dissemination.* The NPS may conduct educational and scientific activities to disseminate information on national natural landmarks, the National Natural Landmarks Program, and the benefits derived from systematic surveys of significant natural features to the general public and to interested local, State and Federal agencies and private groups. Dissemination of information on ecologically or geologically fragile or sensitive areas may be restricted when release of the information may endanger or harm the sensitive resources.

(c) *Procedural requirements.* Any individual, agency, or organization acting as a representative of the NPS in the identification, evaluation, monitoring or protection of national natural landmarks is required to follow this part.

(d) *Additional program information.* Further guidance on the operation of the National Natural Landmarks Program, as based on this part, may be found in other program documents that are available from the NPS.

(e) *Administrative recourse.* Any person has the right to insist that NPS take into account all the provisions in this part for national natural landmark designation or removal.

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William Leary,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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