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TITLE 36--PARKS, FORESTS, AND PUBLIC PROPERTY

DEPARTMENT OF THE INTERIOR

PART 62--NATIONAL NATURAL LANDMARKS PROGRAM--Table of Contents

Sec. 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

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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

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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.

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Sec. 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 Sec. 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 Sec. 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 Sec. 62.4(d) through (j) must be followed.

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Sec. 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

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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 Sec. 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 Sec. 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 Sec. 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

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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.

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Sec. 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.

Appendix B

U.S. Army Corps of Engineers

Regulatory Program

Headquarters

Section 10 of the Rivers and Harbors Act of 1899

33 U.S.C. 403

That the creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is hereby prohibited; and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of War; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port, roadstead, haven, harbor, canal, lake, harbor of refuge, or inclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of War prior to beginning the same.



Appendix C

SECTION 404 OF THE CLEAN WATER ACT

A.

The Secretary may issue permits, after notice and opportunity for public hearings for the discharge of dredged or fill material into the navigable waters at specified disposal sites. Not later than the fifteenth day after the date an applicant submits all the information required to complete an application for a permit under this subsection, the Secretary shall publish the notice required by this subsection.

B.

Subject to subsection (c) of this section, each such disposal site shall be specified for each such permit by the Secretary

1.

through the application of guidelines developed by the Administrator, in conjunction with the Secretary, which guidelines shall be based upon criteria comparable to the criteria applicable to the territorial seas, the contiguous zone, and the ocean under section 403(c), and

2.

in any case where such guidelines under clause (1) alone would prohibit the specification of a site, through the application additionally of the economic impact of the site on navigation and anchorage.

C.

The Administrator is authorized to prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, and he is authorized to deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. Before making such determination, the Administrator shall consult with the Secretary. The Administrator shall set forth in writing and make public his findings and his reasons for making any determination under this subsection.

D.

The term "Secretary" as used in this section means the Secretary of the Army, acting through the Chief of Engineers.

E.

1.

In carrying out his functions relating to the discharge of dredged or fill material under this section, the Secretary may, after notice of opportunity for public hearing, issue general permits on a State, regional, or nationwide basis for any category of activities involving discharges of dredged or fill material if the Secretary determines that the activities in such category are similar in nature, will cause only minimal adverse environmental effects

when performed separately, and will have only minimal cumulative adverse effects on the environment. Any general permit issued under this subsection shall

- a. be based on the guidelines described in subsection (b)(1) of this section, and
 - b. set forth the requirements and standards which shall apply to any activity authorized by such general permit.
2. No general permit issued under this subsection shall be for a period of more than five years after the date of its issuance and such general permit may be revoked or modified by the Secretary if, after opportunity for public hearing, the Secretary determines that the activities authorized by such general permit have an adverse impact on the environment or such activities are more appropriately authorized by individual permits.

F.

1. Except as provided in paragraph (2) of this subsection, the discharge of dredge or fill material -
 - a. from normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices;
 - b. for the purpose of maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures;
 - c. for the purpose of construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches;
 - d. for the purpose of construction of temporary sedimentation basins on a construction site which does not include placement of fill material into the navigable waters;
 - e. for the purpose of construction or maintenance of farm roads or forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained, in accordance with best management practices, to assure that flow and circulation patterns and chemical and biological characteristics of the navigable waters are not impaired, that the reach of the navigable waters is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized;
 - f. resulting from any activity with respect to which a State has an approved program, under section 208(b)(4) which meets the requirements of subparagraphs (B) and (C) of such section, is not prohibited by or otherwise subject to regulation under this section or section 301(a) or 402 of this Act (except for effluent standards or prohibitions under section 307).
- 2.