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Preservation Officer. Such determinations will be made after an investigation and an onsite inspection of the property in question.

### § 63.5 Federal Register publication of properties determined eligible.

In addition to written notice to the Federal agency and the State Historic Preservation Officer, public notice of properties determined eligible for the National Register will be published in the FEDERAL REGISTER at regular intervals and in a cumulative annual edition usually issued in February. Determinations in accord with § 63.3 will be identified with an asterisk.

### § 63.6 Review and nomination of properties determined eligible.

The Keeper of the National Register will conduct an annual review of the condition of properties determined eligible for the National Register. The Keeper of the National Register will obtain from the Advisory Council on Historic Preservation information on decisions made concerning eligible properties in accord with memorandum of agreement under the Council's "Procedures for the Protection of Historic and Cultural Properties" (36 CFR part 800). If there is no memorandum of agreement or if no provision has been made in a memorandum of agreement for nomination of an eligible property and if the property retains the characteristics that made it eligible for the National Register, the Keeper of the National Register will take the following steps:

(a) For a property owned by a Federal agency, or under the jurisdiction or control of the agency to the extent that the agency substantially exercises the attributes of ownership, the Keeper of the National Register will request the Federal agency to nominate the property to the National Register within six months.

(b) If the property is not under Federal jurisdiction or control, the Keeper of the National Register will request that the State Historic Preservation Office nominate the property to the National Register within six months.

(c) If the Keeper of the National Register determines that a property has lost the characteristics that made it el-

igible for the National Register, he will inform the State Historic Preservation Officer and the Federal agency and remove the property from the list of eligible properties.

## PART 64—GRANTS AND ALLOCATIONS FOR RECREATION AND CONSERVATION USE OF ABANDONED RAILROAD RIGHTS-OF-WAY

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AUTHORITY: Sec. 809(B)(2) and (3), 90 Stat. 145, Pub. L. 94-210; Sec. 2 of Reorganization Plan No. 3 of 1950 (34 Stat. 1262).

SOURCE: 42 FR 54806, Oct. 11, 1977, unless otherwise noted. Redesignated at 45 FR 780, Jan. 3, 1980, and further redesignated at 46 FR 34329, July 1, 1981.

### § 64.1 Purpose.

The purpose of these guidelines is to prescribe policies and procedures for administering the funding of projects involving the conversion of abandoned railroad rights-of-way to recreation and conservation uses. Because of the limited funding available, it is the Bureau of Outdoor Recreation's intent to select a few projects which effectively demonstrate the conversion of abandoned railroad rights-of-way for recreation and conservation purposes in a timely manner.

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### § 64.2 Definitions.

(a) *Abandoned Railroad Rights-of-Way.* An abandoned railroad right-of-way is the real property used for or formerly used for the operation of railroad trains by a common carrier railroad, upon which the railroad company has, or will cease operations and sell, or otherwise dispose of the company's interest in the real property.

(b) *Project Applicant.* Federal, State, or local governmental agencies.

### § 64.3 Applicability and authority.

The policies and procedures contained herein are applicable to the making of grants to State and local governments and to the making of allocations to Federal agencies under the provisions of title VIII, section 809(b) (2) and (3) of the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. 94–210) (90 Stat. 145). The Secretary of the Interior in consultation with the Secretary of Transportation is responsible for providing financial assistance in accordance with section 809(b) (2) and (3). The Secretary of the Interior's responsibility has been delegated to the Bureau of Outdoor Recreation.

### § 64.4 Scope.

(a) Funding assistance authorized by section 809(b)(2) shall be provided to State and local government entities to enable them to acquire and develop abandoned railroad rights-of-way for recreation and conservation purposes and to plan for such acquisition and development. As provided for by law, grants shall be made for not more than 90 percent of the cost of the particular project for which funds are sought.

(b) Allocations authorized by section 809(b)(3) shall be made to Federal agencies to enable them to acquire abandoned railroad rights-of-way. Such allocations shall be made for an amount up to the price paid to the owner of the real property proposed for acquisition plus expenses incidental to acquisition such as title work, surveys, appraisals and relocation.

### § 64.5 Eligible projects.

(a) Abandoned railroad projects will be for recreation and/or conservation

purposes including the acquisition of the rights-of-way involved and will be sponsored by a project applicant who has authority to carry out public recreation or conservation programs. Eligible project elements for State and local governmental entities may include:

(1) The acquisition of fee or less than fee interests including long term leases of not less than 25 years and easements which will secure for the project applicant the right to develop use the property for public recreation and/or conservation purposes.

(2) The development of facilities which are necessary for making rights-of-way usable for public recreation and conservation purposes.

(b) Allocations made to Federal agencies will be made for the acquisition of lands or interests in lands, including incidental acquisition expenses, located in existing areas where such acquisition is authorized by law and the land is usable for public recreation and conservation purposes.

(c) Abandoned railroad rights-of-way projects proposed by State and local governmental entities and Federal agencies shall be in accordance with the State comprehensive outdoor recreation plan for the State in which the project is located.

### § 64.6 Application procedures.

State and local units of government applying for grants under this program will comply with the regulations, policies, guidelines, and requirements of OMB Circular No. A–95 (Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects), Federal Management Circulars 74–4 (Cost Principles Applicable to Grants and Contracts with State and Local Governments) and OMB Circular No. A–102 (Uniform Administrative Requirements for Grants-in-Aid to State and local governments).

(a) *Preapplications.* A preapplication will be used to initially screen and select those projects for which a final application may be submitted for assistance. The preapplication will include:

(1) A Standard Form 424 (may be obtained from applicable Regional Offices of the Bureau of Outdoor Recreation).

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(2) A map showing the location of the property to be acquired and/or developed and its relation to surrounding land uses including other recreation/conservation resources.

(3) A program narrative statement.

(i) Where acquisition is involved the number of acres and real property interest to be acquired. Attach a copy of the abandonment notice.

(ii) The type of recreational/conservation use planned for the project site including the type of development to be included in the project (if a site plan is available it should be submitted).

(iii) A statement indicating separately the estimated acquisition and development costs.

(iv) A time schedule for completing the acquisition and development.

(v) A brief discussion of how the project embodies the selection criteria outlined in § 64.8.

(4) Indicate any known problems that will occur in obtaining clear title to the right-of-way.

(5) Because of the limited funds available applicants are encouraged to provide an alternative plan indicating a viable segment of the overall project which could possibly be funded at a lower amount in lieu of the complete project.

(b) *Applications.* For those State and local projects selected the applicant shall submit the standard application provided for in Attachment M of OMB Circular A-102. An application package developed for this program will be available from the Bureau of Outdoor Recreation Regional Offices. The following application requirements will apply (information submitted with the preapplication will not be required again):

(1) *A-95 Clearinghouse Review.* The applicant will obtain and include in the application, State and areawide clearinghouse comments in accordance with OMB Circular A-95.

(2) *National Environmental Policy Act of 1969 (Pub. L. 91-190).* The Bureau of Outdoor Recreation will review the environmental information developed by the Interstate Commerce Commission relative to the abandonment to determine if additional information is required to adequately assess the envi-

ronmental impact of the project and determine the need for an environmental impact statement. Where necessary the applicant will provide additional information from which the Bureau can assess the environmental impact. The format for such information will be provided by the Bureau.

(3) *National Historic Preservation Act of 1969 and Executive Order 11593.* The applicant shall provide the State's Historic Preservation Officer with a copy of the project proposal and allow him 30 days in which to comment on the effect of the proposed project. Such comments will indicate whether the project will have any effect on a site in, or eligible for nomination to the National Register of Historic Places. The comments of the SHPO will be included with the application.

(4) *Flood Disaster Protection Act of 1973 (Pub. L. 93-234).* Applicants will be required to purchase flood insurance for acquisition or development of insurable improvements located in a flood plain area identified by the Secretary of Housing and Urban Development as an area which has special flood hazards.

(5) *Corps of Engineers Permits Requirements.* For development projects requiring a Corps of Engineers permit under section 10 of the Rivers and Harbors Act of 1899 and/or section 404 of the Federal Water Pollution Control Act of 1972, applicants will include evidence in the application that action has been initiated to obtain such permit.

(6) *Section 7 of the Endangered Species Act of 1973.* The applicant, through the submission of environmental information, and in consultation with the Bureau of Outdoor Recreation Regional Office will indicate any known project conflict with section 7 of the Endangered Species Act of 1973.

(7) *Plans and Maps.* Each application will include copies of State, county, or city maps showing the geographic location of the project and its relation to surrounding land uses including other recreation/conservation resources. Where development is included in the project, a site plan of the proposed improvements will be provided along with a breakdown of the estimated development costs. For the acquisition, the application will include a schedule listing

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the parcels to be acquired, estimated linear mileage and acreage of each, the estimated value of each parcel and the estimated date of acquisition.

(8) In addition to the narrative required by part IV of the standard application, the following information will be provided:

(i) The type of recreation/conservation activity intended for the project site.

(ii) The time schedule for completing the project and plans for operation and maintenance; and

(iii) A brief discussion of how the project embodies the selection criteria outlined in § 64.8.

(c) *Content of the Proposal by Federal Agencies.* Each proposal should include the following minimum information (preapplication not required):

(1) Identification and description of the property proposed for acquisition.

(2) A statement indicating the recreational and/or conservation use planned for the acquired rights-of-way and the relationship of such use to land now administered by the Federal agency proposing acquisition.

(3) A map showing the location of the property in relation to land now administered by the Federal agency proposing acquisition.

(4) The real property interest proposed for acquisition.

(5) An environmental assessment of the acquisition and subsequent development, if proposed.

(6) A citation of the statutory or other authority under which the land would be acquired and a discussion of how the proposed acquisition is in accord with the authority for acquisition.

(7) The funds being requested for the project including a summary of the estimated cost of the land and costs incidental to acquisition.

(8) A discussion of how acquisition of the rights-of-way and subsequent development embodies the selection criteria outlined in § 64.8.

(d) *Preapplication.* (1) Projects sponsored by State, local, or Federal applicants shall be submitted to the appropriate Bureau of Outdoor Recreation Regional Office.

(2) Projects will be considered for funding on a quarterly basis until available funds have been obligated to

approved projects. The first project submission quarter will begin with the first of the fiscal year. Funds not utilized in one quarter will be available for the next. Once all funds have been obligated, projects will not be accepted until additional appropriations become available.

### § 64.7 Project selection and funding procedures.

(a) The Bureau of Outdoor Recreation Regional Office will review all preapplications and Federal proposals to insure application completeness and eligibility. A copy of eligible preapplications or Federal proposals and supporting information and data will be submitted to the Washington Office of BOR for final review and selection. An information copy of each project preapplication and proposal will be submitted to the State Liaison Officer designated to coordinate Land and Water Conservation Fund activities.

(b) The Washington Office of the Bureau of Outdoor Recreation will evaluate all projects submitted by the Regional Offices. Final selection of projects to be funded shall be by the Director of the Bureau of Outdoor Recreation.

(c) State and local projects selected for funding will be approved and funds obligated by the appropriate Regional Director. Funds will not be obligated until the Bureau has met with the applicant to discuss the terms, conditions, and procedures required by the grant.

(d) Federal agency sponsored projects will be funded by transfer of funds from the Bureau of Outdoor Recreation to the sponsoring agency up to the amount of the project cost as shown in the agency's approved application.

[42 FR 54806, Oct. 11, 1977. Redesignated at 45 FR 780, Jan. 3, 1980, and 46 FR 34329, July 1, 1981, as amended at 60 FR 55791, Nov. 3, 1995]

### § 64.8 Project selection criteria.

Those projects which best meet the following criteria will be selected to receive assistance:

(a) Projects which have cleared abandonment procedures and for which sufficient control and tenure of land can be assured, in order that the project

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can be accomplished shortly after project approval.

(b) Projects which are located or originate in Standard Metropolitan Statistical Areas.

(c) The degree to which the project results in a facility which demonstrates maximum beneficial public use of the property acquired. (For example, the diversity of recreation/conservation opportunities provided.)

(d) The ease of accessibility to large numbers of potential users.

(e) The effectiveness of the project in enhancing existing Federal, State, or local recreation/conservation resources. (For example, the ability of the project to tie together existing recreation/conservation resources.)

(f) Whether use of the right-of-way for recreation/conservation purposes has been identified in existing State, Federal, or local plans.

(g) The degree to which the project advances new ideas in recreation/conservation use and promotes non-motorized forms of transportation such as commuting by bicycle.

(h) The recreation/conservation potential of the environment traversed by the right-of-way.

(i) The energy conservation potential of using the right-of-way for recreation and/or commuting.

(j) The urgency of the acquisition as reflected by the plans of the owner of record to sell the property to persons other than the project sponsor.

(k) The degree to which Federal, State or local land use controls will protect the recreation and conservation values of the right-of-way from encroachment by conflicting uses of surrounding land.

(l) State and local projects involving the development of abandoned railroad rights-of-way which do not include the acquisition of the rights-of-way will be given lower funding priority than projects involving both acquisition and development.

### § 64.9 Project costs (State and local projects).

To be eligible, acquisition and development costs must be incurred after the date of project approval and during the project period. The project period will be indicated in the project applica-

tion. Waivers will be granted to proceed with the acquisition prior to project approval if the applicant can show there is a need for immediate action. Development costs are first incurred at the start of actual physical work on the project site. Acquisition costs are incurred on the date when the applicant makes full payment or accepts the deed or other appropriate conveyance. Project-related planning costs outlined in § 64.9(a)(3), may be incurred prior to project approval. The date from which they were incurred must be indicated in the project application.

(a) The types of project costs that are eligible for funding under this program are:

(1) Acquisition costs will be assisted on the basis of the price paid or the appraised fair market value, whichever is less. Costs incurred pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, appraisal costs and other reasonable incidental costs associated with the acquisition.

(2) Construction costs associated with developing the right-of-way for recreation use.

(3) Project-related planning required for the acquisition, development and use of the abandoned rights-of-way including master planning, the preparation of development plans and specifications and surveys.

(4) Legal costs, audit costs, inspection fees, and project administration costs.

(b) Cost overruns will not be eligible for reimbursement. This means that no additional funding will be extended once a project is approved. Any cost overrun incurred on a project must be funded by the grantee.

(c) Principles and standards for determining costs applicable to State and local grants are found in Federal Management Circular 74-4 and part 670 of the Bureau of Outdoor Recreation Manual.

### § 64.10 Matching share.

The State or local applicant's matching share may consist of cash, or in-kind contributions consistent with guidelines set forth in Attachment F of OMB Circular A-102.

**§ 64.11 Project performance.**

The State or local applicant shall be responsible for insuring the project is carried through to stages of completion acceptable to the Bureau of Outdoor Recreation with reasonable promptness. Financial assistance may be terminated upon determination by the Bureau of Outdoor Recreation that satisfactory progress has not been maintained.

(a) *Acquisition Procedures.* All acquisition must conform to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, as set forth in the Bureau of Outdoor recreation Manual, part 645. Real property must be appraised before the initiation of negotiations, and the property owner given a statement of just compensation for his property. In no event can the amount established as just compensation be less than the fair market value established by the approved appraisal.

(1) *Appraisals.* The State or local applicant should secure at least one appraisal of the appropriate type by a qualified professional appraiser for each parcel to be acquired. Standards for appraisals shall be consistent with the current Uniform Appraisal Standards for Federal Land Acquisition, published by the Land Acquisition Conference and as set forth in Bureau of Outdoor Recreation Manual, paragraph 675.2.5.

(2) *Appraisal Review.* The appraisal will be reviewed and approved by a qualified staff or fee appraiser prior to the initiation of negotiations. The Bureau reserves the right to review all appraisal documentation prior to or after the acquisition.

(3) *Record Retention.* All documentation supporting the acquisition of land and improvements, or interests therein, must be kept available for examination by duly authorized representatives of the Bureau, the Department of the Interior and the General Accounting Office. All such records shall be retained and be available for inspection for a period of three years after final payment by the Federal Government.

(b) *Development Procedures.* Development work may be accomplished by contract or by force account. Allowable construction costs cover all necessary

construction activities, from site preparation to completion of the facility.

(1) *Construction by Force Account.* Labor costs charged to a project for force account work will be based on payrolls documented and approved in accordance with generally accepted accounting practices of the State or local agency. Payrolls must be supported by time and attendance or equivalent records for individual employees. Salaries and wages of employee chargeable to more than one cost objective will be supported by appropriate time distribution records. The method used should produce an equitable distribution of time and effort. Costs for equipment owned by the participant may be charged against the project based on an equipment use rate developed by the participant in accordance with guidelines provided by the Bureau of Outdoor Recreation. Other costs such as material costs will be charged to a project as outlined in OMB Circular A-102 and the Bureau of Outdoor Recreation Manual, part 670.

(2) *Construction by Contract—(i) Bids and Awards.* Competitive open bidding shall be required for contracts in excess of \$10,000 in accordance with Attachment O of OMB Circular A-102.

(ii) *Equal Employment Opportunity.* All construction contracts awarded by recipients and their contractors, or subgrantees having a value of more than \$10,000 shall contain a provision requiring compliance with Executive Order No. 11246, entitled "Equal Employment Opportunity" as supplemented in Department of Labor Regulations (41 CFR part 60). Equal employment contract compliance requirements for "Hometown" or "Imposed" Plan areas will be followed.

(iii) The State or local applicant will comply with all other procurement standards set forth in Attachment O of OMB Circular A-102.

(3) *Construction Planning Services.* The applicant is responsible for:

(i) Providing all engineering services necessary for all design and construction of Fund-assisted projects.

(ii) Providing an internal technical review of all construction plans and specifications.

(iii) Insuring that construction plans and specifications meet applicable

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health and safety standards of the State.

(iv) The Bureau reserves the right to require the submission of plans and specifications for any development project prior to project approval.

(v) All construction plans, specifications, contracts, and change orders shall be retained by the participant for a period of three years after final payment on a project is made by the Bureau, or for a longer period of time if so requested by the Bureau.

(4) All facilities developed will be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and usable by the Physically Handicapped" Number A117.1-1961, as modified (41 CFR 101-17.703). The applicant will be responsible for conducting inspections to insure compliance with these specifications by the contractor.

[42 FR 54806, Oct. 11, 1977; 42 FR 57462, Nov. 3, 1977. Redesignated at 45 FR 780, Jan. 3, 1980, and 46 FR 34329, July 1, 1981]

### § 64.12 Standards for grantee financial management systems.

The grantees' Financial Management Systems shall meet the minimum standards set forth in OMB Circular A-102, Attachment G.

### § 64.13 Performance reports.

Performance reports shall be submitted quarterly for all active projects. The performance reports shall briefly present the following:

(a) The status of the work required under the project scope.

(b) Other pertinent information including, when appropriate, time schedule delays and other similar problems encountered and their expected impact on the project, etc.

### § 64.14 Project inspections.

All State and local projects will receive a final inspection by the Bureau. Final inspections will be conducted prior to final payment of Federal funds. Progress inspections will be conducted as deemed necessary by the Bureau. Preapproval inspections will also be conducted prior to project selection at the discretion of the appropriate Bureau Regional Office.

### § 64.15 Financial reporting requirements and reimbursements.

Payments to applicants will either be by reimbursement by Treasury check or advance by Treasury check.

(a) *Reimbursement by Treasury Check.* The Outlay Report and Request for Reimbursement (OMB Circular A-102, Attachment H) is the standard form to be used for requesting reimbursement for acquisition and development. Requests for reimbursement shall be submitted by "the grantee" not more frequently than monthly. The requests for reimbursement shall be submitted by the grantee in an original and three copies to the appropriate Regional Office. The Regions will forward to the Division of Budget and Finance in Washington, DC, the original and two copies.

(b) *Advance by Treasury Check.* The Request for Advance or Reimbursement (OMB Circular A-102, Attachment H) is the standard form for all requests for advance. An advance by Treasury check is a payment made by Treasury check to a grantee upon its request, or through the use of a predetermined payment schedule. Advances shall be limited to the minimum amounts needed and shall be timed to be in accord with only the actual cash requirements of the grantee in carrying out the purpose of the approved project. Advances shall be limited to one month's cash requirements. The request for advance shall be submitted by the grantee in an original and three copies to the appropriate Regional Office. The Region will forward to the Division of Budget and Finance in Washington, D.C., the original and two copies.

Grantees must submit an "Outlay Report and Request for Reimbursement for Construction Programs" monthly showing expenditures made the previous month from the funds advanced.

Upon Bureau acceptance of the expenditures involved, these reports shall be used as the basis for liquidating obligations, reducing the advance account, and making charges to the appropriate cost account.

(c) *Report of Federal Cash Transactions (OMB Circular A-102, Attachment H).* When funds are advanced with Treasury checks, the grantee shall submit a report to monitor the cash advance. Grantees shall submit the original and

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three copies no later than 15 working days following the end of each quarter.

### § 64.16 Retention and custodial requirements for records.

(a) Financial records, supporting documents, statistical records, and other records pertinent to a grant program shall be retained for a period of three years after final payment. The records shall be retained beyond the three-year period if audit findings have not been resolved.

(b) The Secretary of the Interior and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the State and local governments and their subgrantees which are pertinent to a specific project for the purpose of making audit, examinations, excerpts, and transcripts.

### § 64.17 Project termination and settlement procedures.

Project Termination and Settlement Procedures will be in accord with Bureau of Outdoor Recreation Manual, chapter 675.8.

### § 64.18 Retention and use.

Property acquired or developed by State and local governments with section 809(b) assistance will be available to the general public and retained for recreation/conservation use. The acquiring agency will cause to have placed in the legal title to the property a restriction which precludes its conversion to other than public recreation/conservation use without the consent of the Secretary of the Interior. The Secretary shall not permit conversion to any use that would preclude future reactivation of rail transportation on such right-of-way.

## PART 65—NATIONAL HISTORIC LANDMARKS PROGRAM

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- 65.1 Purpose and authority.
- 65.2 Effects of designation.
- 65.3 Definitions.
- 65.4 National Historic Landmark criteria.
- 65.5 Designation of National Historic Landmarks.
- 65.6 Recognition of National Historic Landmarks.

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65.7 Monitoring National Historic Landmarks.

65.8 Alteration of National Historic Landmark boundaries.

65.9 Withdrawal of National Historic Landmark designation.

65.10 Appeals for designation.

AUTHORITY: 16 U.S.C. 461 *et seq.*; 16 U.S.C. 470 *et seq.*

SOURCE: 48 FR 4655, Feb. 2, 1983, unless otherwise noted.

### § 65.1 Purpose and authority.

The purpose of the National Historic Landmarks Program is to identify and designate National Historic Landmarks, and encourage the long range preservation of nationally significant properties that illustrate or commemorate the history and prehistory of the United States. These regulations set forth the criteria for establishing national significance and the procedures used by the Department of the Interior for conducting the National Historic Landmarks Program.

(a) In the Historic Sites Act of 1935 (45 Stat. 666, 16 U.S.C. 461 *et seq.*) the Congress declared that it is a national policy to preserve for public use historic sites, buildings and objects of national significance for the inspiration and benefit of the people of the United States and

(b) To implement the policy, the Act authorizes the Secretary of the Interior to perform the following duties and functions, among others:

(1) To make a survey of historic and archeological sites, buildings and objects for the purpose of determining which possess exceptional value as commemorating or illustrating the history of the United States;

(2) To make necessary investigations and researches in the United States relating to particular sites, buildings or objects to obtain true and accurate historical and archeological facts and information concerning the same; and

(3) To erect and maintain tablets to mark or commemorate historic or prehistoric places and events of national historical or archeological significance.

(c) The National Park Service (NPS) administers the National Historic Landmarks Program on behalf of the Secretary.