Federal Designation as a Preservation Tool: Benefits and Challenges

DENISE RYAN

Among the many potential tools available to help protect and revitalize historic resources, one of the most important—but sometimes misunderstood—is obtaining federal designation for a site.

There are a variety of federal designations to consider—each one with its own set of benefits and challenges. This article provides an overview of some of these designations and notes how they can be used to bring attention, funding, and management oversight to save the historic sites and landscapes that matter to preservationists across the country.

There are two paths to a federal designation: through the action of Congress or through the executive branch. Some of these designations require Congress to take action and pass a bill, but some designations can be made by the president or by an administrative decision of the National Park Service. Below are a few of the more popular designations to consider.

THE NATIONAL REGISTER OF HISTORIC PLACES AND THE NATIONAL HISTORIC LANDMARKS PROGRAM

The National Park Service administers both the National Register of Historic Places and the National Historic Landmarks Program, programs established by the National Historic Preservation Act. Both of these designations can be granted to a property regardless of the owner’s approval. National Register properties are places deemed worthy of preservation that tell the stories that are important to local communities, the state or the nation. The National Historic Landmark (NHL) designation is reserved for properties of importance at a national level. All NHL properties are included in the National Register of Historic Places. To determine eligibility for the National Register or for an NHL designation, the property will
be evaluated for its age (it ordinarily needs to be at least 50 years old to be considered historic), integrity and significance.

Both types of designation encourage preservation by documenting and providing official recognition of a place’s historical significance. Owners and stewards of designated places may also be eligible to make use of preservation incentives for the protection and historically appropriate rehabilitation of the properties, such as federal preservation grants, federal rehabilitation tax credits, and preservation easements. Unfortunately, the designation does not mean the property is protected or preserved forever; in fact, there are no prohibitions against damaging or even destroying the property. However, designation can trigger the involvement of the Advisory Council on Historic Preservation in a Section 106 review when there is a federal undertaking or project that may affect the property.

NATIONAL HERITAGE AREA
National Heritage Area is a federal designation granted by Congress to foster community stewardship of our nation’s heritage where natural, cultural and historical resources are intertwined to form a nationally important landscape. A National Heritage Area is not a National Park; however, the National Park Service provides technical assistance to NHAs and manages the distribution of matching federal funds from Congress that are earmarked for NHA entities. There is no imposition of land controls within the boundary of an NHA and there are no federal ownership rights, although there may be some federal lands or federally protected lands that lie within the boundary of an NHA. One such example is the Journey through Hallowed Ground National Heritage Area which includes parts of Pennsylvania, Maryland, Virginia and West Virginia. This NHA has a
number of National Park sites within the boundary including Gettysburg National Military Park, the Chesapeake and Ohio National Historical Park, Manassas Battlefield Park, Antietam National Battlefield, Harpers Ferry National Historical Park and Monocacy National Battlefield. The congressional designation imposes no land controls on either private, state or public properties, and provides no extra measures of protection for the historical, cultural or natural resources within an NHA.

On the plus side though, establishing an NHA brings government, business, and nonprofit groups together to work toward building greater appreciation of and protection for the historical, cultural and natural heritage of an area or region. Often the goal is to promote tourism, which can lead to widespread economic benefits for the area. An example of a recent National Trust Treasure is the Mississippi Delta National Heritage Area.

Each NHA has been individually authorized by Congress, and there is no overarching statutory authority for the program. There have been attempts in multiple sessions of Congress to pass such a bill, but none has been successful.

The National Park Service has taken the position of supporting a statutory framework for an NHA program, requesting that Congress pass legislation that establishes criteria to evaluate potentially qualified NHAs and establish a process for the designation, funding and administration of those areas before designating more NHAs.
The National Park Service is also working on standardizing time-frames and funding for designated areas. Today there are 49 NHAs, and these are competing for diminishing grant funding intended to help both operate existing NHAs and develop new ones.

NATIONAL PARK (NATIONAL HISTORICAL PARK, NATIONAL BATTLEFIELD, NATIONAL SEASHORE AND OTHERS)

Without a doubt this is the best-known federal designation for protecting historic and cultural sites in the United States and probably the most beloved. Places such as Gettysburg, the Statue of Liberty and Yellowstone are iconic sites and landscapes that are vital to telling the American story. The National Park system has 401 separate units which are designated to conserve the scenery and the natural and historic objects (sites, buildings and artifacts) and to provide for the enjoyment of them by such means that will leave them unimpaired for the enjoyment of future generations. Only Congress can designate a National Park.

It is important to note that not all of the units in the National Park System are National Parks. The National Park Service has a set of nomenclature for the units of the system, and the names are as diverse as the sites they protect. These include National Battlefield, National Military Park, National Historic Site, National Lakeshore, National Seashore, National Monument and more. But all of the units of the National Park System are managed in the same way regardless of what they are called.

With the one exception of National Monument (discussed below), all of the other designations can only be made by Congress. The traditional path to designating a National Park unit starts with Congress passing a bill to initiate a Special Resources Study, which will evaluate the site’s suitability, integrity and other factors. But once the study has been authorized, it joins the queue of other studies waiting to be funded. The average study costs about $500,000, and there isn’t enough funding allocated per year to pay for all of the studies authorized by Congress.

When the study is done, the National Park Service will issue a report of the study which analyzes the site’s history, present conditions, current management and suitability for inclusion in the
National Park System. If the National Park Service decides it wants the site to be added to the system, then Congress must introduce another bill to designate the site as a National Park unit, which includes defining the purposes of the designation and the site’s boundaries. This additional step can move forward smoothly or get caught in congressional gridlock.

Getting a historic place designated as a National Park unit is seen by some as the highest and most prized federal recognition. Some may assume that this will solve all of their preservation woes, but it is important to be realistic about the immediate aftermath of the designation. A National Historical Park designation will not transform the site into what we have come to recognize as a beloved National Park unit like Independence Hall right away. In fact, it can take more than a decade to ramp up the staffing and plan the management of new National Park units. Right after any kind of designation is made, one National Park Service staff member may be officially designated as the superintendent or first employee for the site, but don’t expect an army of National Park Service rangers showing up at the park. In the past, it has taken many years to plan the management of a park and to get funding for staffing, more-detailed management plans and even basic signage. In the last few federal budget cycles, the National Park Service and many other federal land management agencies have had a hard time holding on to level funding, even at a time when the backlog for deferred maintenance for the National Park System is more than $11 billion and growing.

In spite of the National Park Service challenges, nothing compares to the recognition and national affection for the National Park Service or a designation as one of its units.
National Monument designation is one of the most flexible designations that can be granted by Congress or the president. Not all National Monuments are managed by the National Park Service; in fact, many different agencies have responsibility for these federally designated sites including the Forest Service, the Bureau of Land Management, the U.S. Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, the War Department (later renamed the Department of Defense) and the Armed Forces Retirement Home.

Congress can designate a National Monument through legislation; 40 have been established this way so far. In addition, the president can designate federally owned or controlled lands as a National Monument under the authority of the Antiquities Act, which allows the president to protect historic landmarks, historic and prehistoric structures, or other objects of historic or scientific interest. This law has been used more than 130 times by presidents of both parties.

Given the wide variety of potential management agencies and two different ways to create a national monument, this is by far the most flexible way to protect nationally significant sites. In the case of National Monuments that are not part of the National Park System, the existing use of the land, such as for livestock grazing or hunting,
can usually continue, but new uses will be regulated. Notably, new claims cannot be made on these lands for mining, oil and gas extraction, or other resource development. National Monument designation doesn’t guarantee more funding for a historic place, but it does protect specific resources from damage through better management.

The downside of a National Monument designation is that, for some, it does not carry the prestige of a National Park designation. However, National Monuments are managed in the same fashion as all other units within the National Park System (whether they are called a Park, Battlefield, Seashore, Historic Site, Monument or other associated National Park System title). For that reason, this is a great option to consider.

Learn more about why the National Trust for Historic Preservation supports the Antiquities Act for National Monuments here.

**NATIONAL CONSERVATION AREA AND OUTSTANDING NATURAL AREA**

The designations of National Conservation Area (NCA) and Outstanding Natural Area (ONA) have been reserved primarily for the Bureau of Land Management, the nation’s largest land manager with responsibility for 245 million acres of land, mostly in the western United States. Only Congress can designate NCAs and ONAs, and each designation is custom tailored to the land to be managed. NCAs and ONAs range in size from under 100 acres to more than 1 million acres. These designations, and others like them with similar names, preserve a variety of resources including historical, cultural, natural, geological and paleontological.

Most of these designations withdraw the land from future mining, oil and gas extraction or other mineral claims, but allow continued hunting, angling and livestock grazing.

Like other designations, there is a statutory requirement to manage the NCA or ONA in a way that will protect the special resources for which it was created; this usually results in modest to significant increases in federal funding and attention for the designated site or landscape. But unlike a National Park, this designation is more flexible, and the visitor should expect a much less structured visit to the site which will rely on self-discovery with primitive
infrastructure and contact stations located in gateway communities instead of at the site. A contact station could be as simple as an unstaffed information kiosk along the side of the road or a trailhead or it could be a staffed office that issues permits for recreation such as back country camping. Each one depends on the resources and needs of the site.

**FEDERAL DESIGNATIONS ARE NOT A CURE-ALL FOR PRESERVATION**

There are limits to federal designation, however. It is not always the guaranteed path to financial security that many people think it is. The current financial climate means that the Congress continues to focus on cutting government spending. The number of resources available to take care of federal sites is dropping, and additional staff members are not being hired to shoulder the responsibility for managing newly designated sites. In fact, some National Park superintendents are overseeing multiple park units as other staff retire. According to the National Park Service Budget Justifications for FY 2015, at the end of FY 2013 the deferred maintenance budget for the National Park Service was more than $11.3 billion. That deferred maintenance budget includes several billion dollars for work on structures eligible for or already listed in the National Register of Historic Places. An example of where such a shortfall is significantly affecting treasured resources is at the **Ellis Island Hospital Complex** in New York, which is managed by the National Park Service but has remained in disrepair and off limits to visitors for decades.
Seeking federal designation for a historic site in order to qualify for federal funding is not a guaranteed solution. But it is a good strategy if a site is of national significance and underrepresented in the federal portfolio of historic sites that help to tell our diverse American stories. In this case, federal designation might provide a good way to attract wider interest in and support for the site. Also, if the site is already federally owned but needs more protection or is threatened with damage or demolition, then federal designation may be an effective way to bring national attention to such concerns.

In summary, federal designations are a very important tool in a preservationist’s tool box, but like any tool, they must be used correctly with the understanding that they are not a “magic wand” solution. All of these federal designations involve interaction with the executive branch and/or the legislative branches of government and will demand significant time, ongoing attention and a strong will to work within the federal bureaucracy. Many of these designations are not easy to obtain, but the rewards for the site are usually worth it and will benefit the generations to follow. FJ

DENISE RYAN is the director of Public Lands Policy at the National Trust for Historic Preservation.

TAKEAWAY
Click here for a one-page “cheat sheet” that summarizes federal designations.