ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 8672

1897 SRES SB 36

1897

The Alaska Chapter of the Wildlife Society believes that current management of Federal lands in southeast Alaska is in conflict with the following laws of the United States and policies of the U.S. Forest Service:

Multiple-Use Sustained Yield Act of June 12, 1960 (74 Stat. 215);
Sikes Act (P.L. 93452), amended October 1974, Section 205(6);
Federal Land Policy and Management Act of 1976 (P.L. 94579), Section 302(b);
Forest Service Manual, Title 2600-Wildlife Management, Sections 2602, 2603, 2610.3, and 2611.01b.

Specifically, the Alaska Chapter believes that Federal constitutional, legislative, and departmental regulatory mandates to the U.S. Forest Service are violated in the process of committing National Forest lands to the production of timber at the expense of the production of fish and wildlife without full concurrence from the Alaska Department of Fish and Game. The Chapter believes that it was inappropriate and in violation of Federal law for the U.S. Forest Service to enter the Government into long-term contractual obligations to provide timber to private individuals or corporations without such concurrence. The Chapter further believes that the State of Alaska violates its Constitutional mandates by failing to specifically require that fish and wildlife habitat on National Forest lands be maintained to the extent and in the condition that will best serve the long-term interests of all Alaskans.

The Alaska Chapter of the Wildlife Society recommends the following:

1. The State of Alaska should advise the Federal Government that long-term management plans for the Tongass National Forest may be in violation of laws and policies pertaining to fish and wildlife and their habitats.

2. The State of Alaska should, through the Department of Fish and Game with assistance from the Department of Law, immediately initiate negotiations with the U.S. Forest Service to develop a mutually agreed upon policy insuring adequate protection for fish and wildlife habitat capable of supporting the diversity and abundance of native populations representative of the Forest and region.

3. The U.S. Forest Service should cooperate fully with the Alaska Department of Fish and Game and the U.S. Fish and Wildlife Service in providing that forest management satisfactorily meets the objectives and responsibilities of those two agencies.

4. The U.S. Forest Service should fully consider economic factors in making forest management decisions. Long-term loss of economic benefits derived from wildlife-related guiding, hunting, and tourism as a result of habitat alteration related to clearcutting should be considered along with the direct, short-term economic benefits of logging. Economic analyses should consider the net financial return to U.S. citizens after deductions for Federal and State costs of maintaining the timber industry. Timber regrowth rates in southeast

Alaska as compared to other areas should also be part of an economic analysis.

5. Where substantive data on wildlife ecology are lacking or incompleted, the U.S. Forest Service should defer land use decisions with the potential of causing irreversible adverse impacts on wildlife populations and their habitat until more adequate data on wildlife-timber relationships become available. To fill in these data gaps, the U.S. Forest Service, U.S. Fish and Wildlife Service, and Alaska Department of Fish and Game should immediately enter into cooperative research agreements to provide information on the ecological relationships of wildlife to old-growth forests and of the effects of clearcutting on wildlife.

6. To provide for maintenance of optimal deer winter habitat, and to ensure survival of deer during severe winters, substantial portions of high-volume commercial forest land should never be clearcut.

7. Cutting of high-volume timber sites, which have historically been harvested in greater proportion than their occurrence within the Forest, should not exceed the proportion of their occurrence in order to provide a balance and diversity of habitat.

8. U.S. Forest Service timber managers must obtain more accurate and complete information on dates and acreages of past timber harvests and locations and volumes of existing timber resources, and insure that excessive use of these resources does not occur.

9. If the amount of timber allocated for cutting under present management is not compatible with the long-term maintenance of diversity and abundance of native fish and wildlife, consideration should be given to phasing out short-term timber sales and buying back timber committed to long-term contracts.

10. Finally, the Alaskan and U.S. public must be fully informed about the long-term and, from a practical standpoint, permanent and irreversible consequences for fish and wildlife of current forest practices in southeast Alaska. Of critical importance is the concept that the coastal climax forest of southeast Alaska is, under existing forest management policy, a nonrenewable resource.

JOINT RESOLUTION BY BOARDS OF FISHERIES AND GAME

PROPOSED AND ADOPTED ON 12/7/80

WHEREAS, the Alaska Boards of Fisheries and Game are statutorily charged with the conservation and development of fish and game resources of the State and the Alaska Constitution mandates maintenance of fish and game populations on a sustained yield basis, and

WHEREAS, the U.S. Forest Service is committed to multiple use management through various federal acts and its own regulations, and

WHEREAS, the present forest management practice of clearcut logging throughout Southeast Alaska on a 90-125 year rotation is permanently converting diverse old growth stands with high fish and wildlife values to less diverse second growth stands of much less value to fish and wildlife, and

WHEREAS, the U.S. Congress has mandated a 4.5 billion board foot timber harvest over the next decade from the Tongass Forest, and a timber harvest up to 400 million board feet per year may be harvested from State and private lands, and

WHEREAS, past and projected timber harvest is concentrated in the higher volume stands of limited occurrance and current research has shown these stands to be highly important Sitka black-tailed deer winter habitat, and

WHEREAS, current scientific knowledge of other fish and wildlife species needs in relation to old growth forest is limited, yet indicates goats, marten, Vancouver Canada geese, bald eagles, salmonids and other species of fish and wildlife may be old growth dependent during some periods of the year, and

WHEREAS, the salmon commercial fisheries are one of the most valuable industries in Southeast Alaska and both subsistence and recreational use of fish and wildlife is highly important from both an economic and social standpoint, and

WHEREAS, the State Forest Practices Act, which regulates forest management activities on State and private lands, does not adequately address wildlife concerns,

Now therefore be it resolved by the Joint Boards of Fisheries and Game that:

1. The public be fully informed by the Department of Fish and Game and the U.S. Forest Service of the long term known and potential impacts of clearcut logging on fish and wildlife habitat and subsequent population levels.

2. The Tongass Land Management Plan be revised by the Forest Service to provide more protection for valuable fish and wildlife habitat and reflect recent research findings.

3. If information is not adequate to ensure the protection of fish and wildlife resources, then targeted timber outputs should be reduced by the Forest Service rather than risk permanent damage to these resources.

4. Research be expanded by both the Department of Fish and Game and the U.S. Forest Service to determine the effects of timber harvest on fish and wildlife habitat requirements, and as new information becomes available, results be incorporated in the Forest Service planning process.

5. In all future timber harvests by the State and U.S. Forest Service, timber stands of more than 50,000 board feet per acre not be cut and other volume classes be cut only in proportion to their occurrance.

6. Multiple use management of all resources be maintained by the U.S. Forest Service on the remaining lands not withdrawn for wilderness management nor selected by Native Corporations.

7. Any assessment of resource values by the U.S. Forest Service include a full economic analysis of fish and wildlife resources and their human use.

8. Selective cutting with techniques such as balloon and helicopter logging be considered by the U.S. Forest Service as an alternative to clearcutting.

9. The State Forest Practices Act be amended to adequately address wildlife concerns.

10. Major islands or management units as proposed for the Forest Service Regional Plan, whichever are smaller, should be used by the U.S. Forest Service as the basis for individual forest management planning units.

Alaska State Legislature

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Senate

Committee on Resources

MEMORANDUM

TO: SENATE RESOURCES COMMITTEE MEMBERS

FROM: SENATE RESOURCES COMMITTEE STAFF

RE: MATERIALS ON SSSB 36

DATE: FEBRUARY 13, 1981

Attached are materials relevant to Monday's hearing and possible markup of SSSB 36.

The materials include:

(1) A memorandum on SSSB 36 prepared by Senators Fahrenkamp and Bennett.

(2) A memorandum prepared by Jim Palmer supplying a sectional analysis of SSSB 36.

(3) A fiscal note on SSSB 36

(4) Pages 2466-2470 of PL 96-487 "The Alaska National Interest Lands Conservation Act" which establishes the Alaska Land Use Council.

(5) Xerox copies of SSSB 36.

(6) Two pieces of information that the Chairman thought the Committee should have. These pieces are a memorandum from the Associate Solicitor, Conservation and Wildlife to the Director of the National Park Service and selected pages from the final environmental impact statement on Voyageurs National Park.

Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN
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Senate

Committee on Resources

MEMORANDUM

TO: SENATE RESOURCES COMMITTEE MEMBERS

FROM: JIM PALMER
RESOURCES COMMITTEE STAFF

RE: SSSB 36 A SECTION BY SECTION ANALYSIS

DATE: FEBRUARY 13, 1981

SSSB 36 is legislation that establishes a Citizen's Advisory Commission on federal management areas in Alaska. Senators Fahrenkamp and Bennett are the sponsors of this bill.

SECTION 1

Sec. 41.37.010 establish the Citizen's Advisory Commission on federal areas in Alaska. The Commission is a temporary advisory agency of the executive branch. It is charged with considering the views of the citizens of the state in its deliberations.

Sec. 41.37.020 deals with the membership and officers of the Commission. The Commission shall be comprised of 16 members. Eight shall be appointed by the Governor, four by the Speaker of the House of Representatives (2 legislators and two citizens) and four by the President of the Senate (2 legislators and 2 citizens). The Commission will elect its own officers.

Sec. 41.37.030 states that the members of the Commission shall broadly represent the land users of the state. The purpose of this section is to insure that all the land users of the state have a voice on the Commission and to avoid the Commission becoming a spokesperson for any one particular interest.

Sec. 41.37.040 establishes the length of the terms of service for the Commissioners. Commissioners appointed by the Governor will serve for four years. Commissioners appointed by the Legislature will serve for two ye Legislators appointed to the Commission will serve for the length of their legislative terms.

Sec. 41.37.050 provides that a Commissioner can be removed from office for cause or for missing three consecutive Commission meetings.

Sec. 41.37.060 states that a Commissioner will receive compensation at the rate of $50 per day for time spent working on Commission business. A legislator or other member employed by state or municipal government will not receive compensation. This section also provides for per diem and travel expenses to be paid.

Sec. 41.37.070 allows the Commission to hire staff and contract for outside services.

Sec. 41.37.080 establishes the duties of the Commission. These duties include the consideration of public policy concerns of the state, municipalities and citizens of the state as they relate to or result from federal management of land in Alaska. The Commission can make recommendations to an agency of the state or federal government after it considers public policy. These recommendations must be made available to the Legislative Reference Library and all public libraries in the state. This section also requires the Commission to submit an annual report to the Governor and Legislature.

Sec. 41.37.090 allows the Commission to establish advisory groups. The membership of each advisory group must broadly represent the individuals affected by the management of federal lands.

Sec. 41.37.100 gives the Commission the authority to request the Attorney General to file suit if the Commission determines that the federal land manager is acting in violation of the law, intent of the law or the best interests of the state. The Attorney General will decide on whether to initiate the suit in accordance with AS Sec. 44.23.020.

Sec. 41.37.150 defines the word Commission.

SECTION 2

Section 2 defines the length of the terms of services for the first Commission members.

SECTIONS 3 AND 4

These sections mandate that the Commission terminate on June 30, 1988 unless the Legislature amends this legislation to allow the Commission to function past this date.

Alaska State Legislature

SENATOR BETTYE FAHRENKAMP
CHAIRMAN, RESOURCES COMMITTEE

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Senate

M E M O R A N D U M

To: Resource Committee Members

FROM: Senator Bettye Fahrenkamp
Senator Don Bennett

RE: Background Information on:
SB 36, "An Act establishing the Citizens' Advisory Commission on Federal Management Areas in Alaska; and providing for an effective date."

DATE: February 12, 1981

The purpose of this legislation is to create a citizens' advisory commission which will stand between the state, its citizens, and federal land management agencies in order to prevent some of the abuses which have occurred in other areas when federal and state interests have conflicted.

The problem has been identified through GAO investigation and through congressional reports. From a report by the Committee on Appropriations relating to the budget of the Department of Interior, October 10, 1979:

> The Federal Government already owns well more than one-third of the Nation's land, and the Committee believes the current drive to acquire still more should be reassessed. Too often, it seems, Federal land acquisition is seized upon as a quick fix for recreation, resource conservation, preservation, and environmental protection proposals. Meanwhile, the rush to bring more and more acreage into Federal ownership has at times trampled upon individual property rights, vastly inflated land values and, in some cases, fostered profiteering and corruption. Preliminary findings from a current General Accounting Office investigation have suggested widespread problems in this area and seriously questioned the real need for many land acquisition proposals and practices.

The purpose of the commission is to conduct research and meetings on all matters related to the establishment and operation of federal interest lands in Alaska, and to make recommendations to the National Park Service and other state and federal agencies as the commission deems advisable. It may also recommend to the Attorney General that suit be filed when congressional intent is ignored or if the best interests of the state are not served.

In Minnesota, similar legislation was passed in 1975, five years after Voyager's National Park was created. Management plans for the area were already far along, and in those management plans, use of the park through traditional means of access such as snowmachines, powerboats and float planes was denied. During the years which intervened between the establishment of the Park and the establishment of the Voyager's Park Citizen's Advisory Committee, ill feelings were bred between park users and park managers. However, since 1975, the committee has been able to establish lines of communication with the federal management agencies, to help the Minnesota citizens become more knowledgeable about the operations and potential uses for the park, and to impact some NPS decisions. The committee has been able to defuse some bitter rivalries and hostile actions.

Although the citizen's committee on Voyager's National Park does not have any official status as far as Washington, D.C. is concerned, it has managed to earn the respect of people on both sides of the management issue. The stated objectives of the Voyager's Park Citizen's Committee are:

1. Research and discuss matters related to the management and operations of the park and make recommendations to the National Park Service and other agencies to ensure the proper balance between resource protection and visitor use and enjoyment.

2. Research and discuss matters related to planning, zoning, and development in the peripheral area of the park, and make recommendations to state and local agencies in order to ensure proper consideration of the relationship between management of the park and development of the area adjacent to it.

3. Research and discuss matters related to the economic development of the park area and make recommendations to appropriate agencies for promotion and advertising plans in order to ensure an appropriate level and type of visitation to the area.

4. Research and discuss matters related to transportation in and around the park and make recommendations to the appropriate agencies in order to provide for the travelling needs of the visiting public.

The commission may be one way that the state will be able to prevent some of the problems which occurred elsewhere. Lake Chelan National Recreation Area, in Washington State, is a prime example. The area was created to allow for flexible management which included subsistence hunting, limited timber cutting and continued development in the community of Stehekin. (There are 1600 acres of private

land in Stehekin and the Park Service was instructed, by federal statute, to allow development of small compatible eating and sleeping accomodations and to provide a base camp for management of the surrounding wilderness areas). The Park Service ignored the congressional directive, threatened condemnation on over 1,000 acres of the 1,600 and purchased over 1,000 acres, most of the existing developed facilities that served the public. They even closed some. The Assistant Regional Director of the park was asked why he ignored Congressional direction, and stated, "We felt it was a bad law." This situation must be prevented from occurring in Alaska.

The Alaska Lands Legislation, primarily dealing with the d-2 issue, does establish the "Alaska Land Use Council." The federal Co-Chairman of the Council will be appointed by the President of the United States and the other Co-Chairman will be the Governor of Alaska. Members of the Council shall include: the head of the Alaska offices of each of the following federal agencies:--National Park Service, United States Fish and Wildlife Service, United States Forest Service, Bureau of Land Management, Heritage Conservation and Recreation Service (whatever that is), National Oceanic and Atmospheric Administration, and the Department of Transportation; the Commissioners of the Alaska Departments of Natural Resources, Fish and Game, Environmental Conservation, and Transportation and Public Facilities; and, two representatives selected by the Alaska Native Regional Corporations (in consultation with their respective Village Corporations) which represent the twelve geographic regions described in section 7(a) of the Alaska Native Claims Settlement Act. The council is mandated to have a public participation program which shall include a committee of land-use advisors, and a system for the identification of persons or communities which may be affected by the Council's recommendations, and the guidelines for participation by such persons. A Federal Coordination Committee is also established, (no Alaskan member) to coordinate those programs and functions of their respective agencies which could affect the administration of lands and resources in Alaska.

The Citizens' Advisory Commission, recommended by this legislation, is composed of users of the parks, people who are directly affected by federal legislation or regulation. While the federal Alaska Lands Council is represented by five Alaskan members, the Council is certainly loaded with eight federal votes.

In his recent overview of the Alaska lands legislation before the Senate Resource Committee, John Katz stated that d-2 allowed an absolute guarantee to inholdings, subject to reasonable regulation and that there is an absolute guarantee to traditional means of access. If there is little or no representation of traditional user groups on the Council and that Council is supposed to be looking out for the state's interests, it seems that the situation is a little like the fox watching the henhouse, especially in light of prior relationships with federal agencies.

One additional comment. It is difficult, if not impossible, for the individual to keep up with federal regulations, proposed regulations, and interim regulations for one area. The citizens' commission would at least allow 12 members of the public, the staff and resources to become involved in the entire land management process without investing all of one's financial resources in the effort.

Alaska State Legislature

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Senate

Committee on Resources

MEMORANDUM

TO: MEMBERS OF THE SENATE

FROM: SENATOR BETTYE FAHRENKAMP
CHAIRMAN, SENATE RESOURCES COMMITTEE

RE: CSSB 36 "AN ACT ESTABLISHING THE CITIZENS' ADVISORY COMMISSION ON FEDERAL MANAGEMENT AREAS IN ALASKA."

DATE: APRIL 6, 1981

CSSB 36 is intended to aid the citizens of Alaska who are impacted by the management of federal land in the state by creating a Citizens' Advisory Commission. The Commission will thoroughly review any regulations, management plans or policy statements which will affect the use of federal land in Alaska and make comments to the appropriate federal agency. It is hoped that the Commission, while having no official standing in federal law, will be considered by the agencies it works with as a body which gives due consideration and deliberation to each side of the issues it addresses. (In fact, federal agencies have indicated an interest in working with such a Commission. It will also work with the Alaska Land Use Council which was established under the Alaska Lands Act.)

The need for the Commission is evident. On many occasions, federal land management agencies (including the National Park Service, National Forest Service, Bureau of Land Management and Fish and Wildlife Service) have overstepped their legislative mandate and by doing so, have imposed great hardships on persons living in areas which they manage. Some of the areas of Alaska which already feel they have received short shrift in some instances are Skagway, Glacier Bay and Glenallen.

In the aura of cooperation which exists now with Secretary Watt and the Department of the Interior, the timing is critical for getting the Commission started. President Reagan has placed a moratorium on all regulations which were pending when he took office. However, that action does not remove the potential for implementing the 70-odd pages of interim regulations dealing with Alaskan lands that were placed in the Federal Register on January 19. The effectiveness of the Commission will depend not only on the selection of the Commission, but also will depend on the manner in which it conducts itself. However, that it <u>can</u> be effective is evidenced by a similar committee created in Minnesota.

In Minnesota, similar legislation was passed in 1975, five years after Voyager's National Park was created. Management plans for the area were already far along, and in those management plans, use of the park by snowmachines, powerboats and float planes for access was denied. During the years which intervened between the establishment of the Park and the establishment of the Voyager's Park Citizens' Advisory Committee, ill feelings arose between park users and park managers. However, since 1975, the committee has been able to establish lines of communication with the federal management agencies, help the Minnesota citizens become more knowledgeable about the operations and potential uses of the park and impact some National Park Service decisions. The committee has been able to defuse some bitter feelings and hostile actions. The committee has earned the respect of both the users and managers of the park.

SECTIONAL ANALYSIS

Section 1.

Sec. 41.37.010 establishes the Citizens' Advisory Commission on federal areas in Alaska. The Commission is a temporary advisory agency of the executive branch. It is charged with considering the views of the citizens of the state in its deliberations.

Sec. 41.37.020 deals with the membership and officers of the Commission. The Commission shall be comprised of 16 members. Eight shall be appointed by the Governor, four by the Speaker of the House of Representatives (2 legislators and 2 citizens). The Commission will elect its own officers.

Sec. 41.37.030 states that the members of the Commission shall be selected from each judicial district of the state. The purpose of this section is to help insure that all of the land users of the state have a voice on the Commission and to avoid the Commission becoming a spokesperson for any one particular interest or geographic area.

Sec. 41.37.040 establishes the length of the terms of service for the commissioners. Commissioners appointed by the Governor will serve for four years. Commissioners appointed by the Legislature will serve for two years. Legislators appointed to the Commission will serve for the length of their legislative terms.

Sec. 41.37.050 provides that a commissioner can be removed from office for cause or for missing three consecutive Commission meetings.

Sec. 41.37.060 states that a legislator or employee of the state or municipality who serve as commissioner shall not suffer loss of compensation. This section also provides for per diem and travel expenses to be paid.

Sec. 41.37.070 allows the Commission to hire staff and contract for outside services.

Sec. 41.37.080 establishes the duties of the Commission. These duties include the consideration of public policy concerns of the state, municipalities and citizens of the state as they relate to or result from federal management of land in Alaska. The Commission can make recommendations to an agency of the state or federal government after it considers public policy. This section also requires the Commission to submit an annual report to the Governor and Legislature.

Sec. 41.37.090 allows the Commission to establish advisory groups. The membership of each advisory group must broadly represent the individuals affected by the management of federal lands.

Sec. 41.37.100 gives the Commission the authority to request the Attorney General to file suit if the Commission determines that the federal land manager is acting in violation of the law, intent of the law or the best interests of the state. The Attorney General will decide on whether to initiate the suit in accordance with AS 44.23.020.

Section 2

Section 2 defines the length of the terms of service for the first Commission members.

Sections 3 and 4

These sections mandate that the Commission terminate on June 30, 1988 unless the Legislature amends this legislation to allow the Commission to function past this date.

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 36

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act establishing the Citizens' Advisory Commission on Federal Management Areas in Alaska; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 41 is amended by adding a new chapter to read:

CHAPTER 37. CITZENS' ADVISORY COMMISSION ON FEDERAL AREAS IN ALASKA.

Sec. 41.37.010. CITIZENS' ADVISORY COMMISSION ON FEDERAL AREAS IN ALASKA. (a) The Citizens' Advisory Commission on Federal Areas in Alaska is established.

(b) The commission is a temporary advisory agency of the executive branch of the state but is not allocated to a principal department of the executive branch. In the exercise of its responsibilities, the commission shall consider the views of citizens of the state and officials of the state.

Sec. 41.37.020. MEMBERSHIP AND OFFICERS. (a) The commission is composed of 16 members appointed in accordance with this section.

(b) The governor shall appoint eight members of the commission.

(c) The speaker of the house of representatives shall appoint two members of the commission from the membership of the state house of representatives and two members who are residents of the state.

(d) The president of the senate shall appoint two members of the commission from the membership of the state senate and two members who are residents of the state.

(e) The commission shall select a presiding officer of the commission from its membership. The commission may elect other officers.

Sec. 41.37.030. QUALIFICATIONS OF MEMBERS. The members of the commission appointed by the governor under AS 41.37.020(b) and members appointed under AS 41.37.020(c) and (d) who are not members of the legislature shall be broadly representative of land users in the state.

Sec. 41.37.040. TERM OF MEMBERS OF THE COMMISSION. (a) A member of the commission appointed by the governor serves for a term of four years and until his successor is appointed and qualifies.

(b) A member of the commission appointed from the legislature serves for his term of office as a legislator.

(c) A member of the commission appointed by a member of the legislature serves for two years and until his successor is appointed and qualifies.

Sec. 41.37.050. REMOVAL OF A MEMBER. (a) A member of the commission may be removed by the appointing authority for cause after notice and hearing or after missing three consecutive meetings of the commission. The presiding officer of the commission shall inform the appointing authority if a member misses three consecutive meetings.

(b) After a member of the commission misses two consecutive meetings and before the third meeting, the secretary of the commission shall notify the member in writing that failure to attend the next meeting may result in the removal of the member. The failure of the secretary of the commission to notify a member under this subsection does not prevent the appointing authority from removing a member under (a) of this section.

Sec. 41.37.060. COMPENSATION, EXPENSES, AND PER DIEM. (a) A member of the commission is entitled to compensation at the rate of $50 a day for time spent on activities of the commission. A member of the

commission who is a legislator or a full-time employee of the state or of a municipality of the state may not receive compensation under this subsection but shall suffer no loss of compensation from the state or a municipality of the state as a result of service to the commission.

(b) A member of the commission is entitled to travel expenses and per diem prescribed for state boards and commissions.

Sec. 41.37.070. STAFF OF THE COMMISSION. The commission may employ staff and contract for services relating to matters within its authority. Staff employed under this section are responsible to the commission.

Sec. 41.37.080. DUTIES OF THE COMMISSION. (a) The commission shall consider the public policy concerns of the state, of a municipality of the state, and of the people of the state relating to or resulting from proposals for the establishment or the management of or additions to federal land in the state as the commission considers appropriate.

(b) If the commission, after consideration of the public policy concerns under (a) of this section, makes a recommendation to an agency of the state or to the agency of the United States which manages federal land in the state, a copy of the recommendation shall be filed with the legislative reference library and with public libraries in the state.

(c) The commission shall establish internal procedures for the management of the responsibilities granted to it under this chapter.

(d) The commission shall report annually to the governor and the legislature within the first 10 days of a regular legislative session.

Sec. 41.37.090. ADVISORY GROUPS OF THE COMMISSION. (a) The commission may establish advisory groups in the state.

(b) The commission shall invite nominations for the membership on the advisory groups and shall consider the nominations in making its

appointments to the groups.

(c) The membership of each advisory group shall be broadly representative of individuals involved in activities affected by the establishment or management of units of federal land within the state.

Sec. 41.37.100. SUIT. The commission may request the attorney general to file suit against a federal official or agency if the commission determines that the federal official or agency is acting in violation of an Act of Congress, congressional intent, or the best interests of the State of Alaska.

Sec. 41.37.150. DEFINITION. In this chapter, "commission" means the Citizens' Advisory Commission on Federal Management Areas in Alaska.

* Sec. 2. The terms of the first members of the Citizens' Advisory Commission on Federal Management Areas in Alaska appointed by the governor under AS 41.37.020 as enacted in sec. 1 of this Act are as follows: two members shall be appointed for four-year terms, two members shall be appointed for three-year terms, two members shall be appointed for two-year terms, and two members shall be appointed for one-year terms. The governor shall specify the term of office of each member appointed under this section.

* Sec. 3. AS 41.37 is repealed.

* Sec. 4. Section 3 of this Act takes effect June 30, 1988.

* Sec. 5. Sections 1 and 2 of this Act take effect immediately in accordance with AS 01.10.070(c).

December 18, 1978

Mr. J. Thomas Ritter
Superintendent, Voyageurs National Park
P.O. Box 50
International Falls, MN 56649

Dear Mr. Ritter:

My remarks at the public hearing in Duluth were quite critical of the Draft Environmental Impact Statement that accompanied the Master Plan for Voyageurs National Park. I felt it was only fair to follow up these remarks with more detailed comments, and therefore, am enclosing a copy of my comments for your review.

I have become familiar with the Environmental Impact Statement process through my previous work, and through graduate study at George Washington University in Washington, D.C. I therefore feel that I have the necessary background to provide meaningful comment on the Environmental Impact Statement for Voyageurs.

The comments are meant to be constructive, and I hope they will be of use to the National Park Service in developing future documents and also in arriving at a final determination with respect to Management proposals for Voyageurs National Park.

The comments reflect my personal point of view and do not necessarily represent the opinion of the Citizens' Committee.

Please let me know if any of the comments need clarification.

Sincerely,

Donald. D. Parmeter

Enclosure

LDP/tss

Comments on the Draft Environmental Statement

for Voyageurs National Park

General Comments

I believe the Draft Environmental Impact Statement is really at the heart of much of the misunderstanding and controversy that surfaced at the public meetings on the Draft Master Plan for Voyageurs National Park. I therefore feel it is essential to provide a comprehensive analysis of the DEIS as it relates to certain management proposals and to the NEPA process in general.

There is no question that the DEIS for Voyageurs satsifies the procedural requirements of the National Environmental Policy Act of 1969. It is with the substance of the document that I have a most serious problem. The Environmental Impact Statement can and should be an important tool used in the planning and decision-making process. However, to be useful and meaningful, it is essential that the document satisfy two fundamental criteria: (1) Accuracy, and (2) Objectivity. I believe the DEIS for Voyageurs National Park fails on both counts. As a result, many of the proposals contained in the Master Plan have an extremely weak basis for support. Unfortunately, many of those who testified at the hearings either in support or in opposition of certain proposals, treated information in the DEIS as being both accurate and objective. The credibility of such testimony is therefore open to serious question. More importantly, the credibility of the National Park Service, the originator of the document, has been jeapordized in the process.

It appears to me that the NEPA process has worked in reverse in the case of Voyageurs National Park. Rather than having produced a document which will provide the necessary background and technical information on which to base sound and reasonable management proposals, it is obvious that the DEIS was produced largely to support pre-determined proposals. Instead of an objective research document in this case, the DEIS is merely a self-serving publication with little credibility or technical validity.

Detailed Comments

p. 1: No mention is made of the purpose of a Draft Environmental Impact Statement. A short explanation could provide a better understanding of the process to those not familiar with NEPA. } 92

p. 7: Data related to private land acquisition is not consistent with reports issued by the local Land Acquisition Office. } 93

p. 10-16: The discussion of land classification is confusing at best. What is the basis for classifying lands? What is the relationship of land classification to geology and/or to planned use? } 94

The four major lakes and the center section of the Peninsula are given the same classification, but certain uses are allowed in one area and not in the other. Classification, therefore, appears to be rather arbitrary. Yet, there were some who testified at the hearings that certain uses should not be allowed because areas were classified primitive or natural. I would like to see a detailed explanation of the entire process as applied to Voyageurs National Park.

p. 16: How much coordination has been and will be done with the U.S. Forest Service in the adjacent B.W.C.A? Do management policies of that area have any impact on how Voyageurs is managed? 95

p. 17: It is stated that low altitude flights will be prohibited, but no attempt is made to define "low-level flight." For anyone to comment intelligently on this statement, they should be given further explanation. 96

It is stated that approximately 90 percent of water within park boundaries would be accessible to aircraft. This statement is almost completely irrelevant and grossly misleading. It is a self-serving statement that to the casual reader appears to justify the National Park Service proposal with regard to seaplane use. The fact is, there would be very little reason to land on the vast majority of this water surface, and wave conditions would often prevent landings even if there were a practical reason to land. Furthermore, the practical benefit of a seaplane is to provide access to lakes that are not accessible by motorboat. The Park Service proposal puts seaplanes in direct competition with motorboats, which, for several reasons, is no contest. 97

In conclusion, what appears on the surface to be a somewhat liberal policy for the use of seaplanes, is nothing more than lip service to a use that was intended to be an integral part of Voyageurs National Park since its inception.

p. 18: It is stated that one of the major goals of the park is to recreate a setting that existed during the time of the Voyageurs To avoid misunderstanding, perhaps it would be wise to discuss the practical, policy, and legislative constraints 98

that will largely prevent the National Park Service from achieving that goal.

How was the figure of 400 campsites arrived at? It seems awfully high. I would like to see an environmental assessment done on such a project. 99

p. 23: The dual purpose trail concept is fine, but there are constraints other than trail width to consider. The Rainy Lake ski trail, for instance, is generally too swampy for hiking in summer. The Lost Bay hiking trails, on the other hand, are too steep in places for safe skiing.

The discussion of snowmobile use in the park is very misleading to those not familiar with the sport or with the area. From reading page 23, one would get the impression that there are no safety problems associated with the Park Service proposal, since crossings are proposed to avoid areas of dangerous ice or flowing waters. The fact is that ice conditions vary, not only annually, but daily and weekly. There are many more areas of dangerous ice than can be avoided by the proposed crossings, which deal only with those areas that are traditionally dangerous throughout the season. Secondly, a person not extremely familiar with the area could not reasonably be expected to even find those crossing trails, as navigation on these waters is extremely difficult.

It is further stated that aerial and land observation data tabulated by the Park Service during the past three years indicate most snowmobile activity in the park today is associated with the major lakes. This is another misrepresentation of fact that is misleading to the general public. The sole purpose of this statement appears to be to justify the Park Service proposal as being fair and reasonable. The fact is that there has been no trail maintenance on land in the past three years, signs have been removed by the National Park Service, and there has been considerable uncertainty about snowmobiling in the park, since it is technically illegal until trails are designated. Also, does the Park Service generally plan uses based on present use? The Master Plan states that future visitors will generally have urban backgrounds. In light of this, how meaningful would present use statistics be, even if they were accurate and objective? 100

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I would like to comment on the Park Service concept of the snowmobile as a "winter motorboat" in Voyageurs. There are three major safety reasons why this concept is fallacious. (1) Snowmobiles don't float! (2) Navigation during the winter season is more difficult. During the summer, boaters have the benefit of buoys and channel markers. The majority of boaters also have the benefit of a "navigator" to guide their travel. (3) Being lost or stranded in this area in winter is a much more serious proposition than in summer or fall.

As in the case of seaplane use, what appears to be a somewhat liberal policy on snowmobile use, is nothing more than token consideration to a use that was meant to be an important part of winter activity in Voyageurs National Park from the beginning.

p. 24: It doesn't seem necessary for 2-way snowmobile trails to be 16 feet in width. I discussed this matter with Derrick Crandall of ISIA, and he said 10 to 12 feet would be adequate. 101

p. 25: The on-land snowmobile trail as depicted on the Access and Circulation Map would be over 1000 feet wide. Although I realize these maps are not meant to be drawn to scale, a more accurate depiction of the trail would be in order. As drawn, the trail appears to more closely resemble an interstate highway than a forest trail. 102

p. 27: With regard to the information center on Hwy 53, it stated that such a center could be cooperatively operated by local, state, and federal agencies. Could it also be cooperatively funded, or would funds have to come strictly from state or local governments? 103

The Park Service should be careful not to overstate its ability to control air and water pollution in the park, since pollution generated within park boundaries is relatively minor. For an effective pollution abatement program to be implemented, the utmost cooperation of local, regional, state, and Canadian officials will be required. 104

The statement regarding the necessary clean-up campaign is a bit unfair. The statement gives the impression that residents and past visitors have generally not been respectful of the land and the environment. I believe just the opposite is true.

One of the main fears of many local residents, is that future visitors will not be as respectful of the land. As stated in the Master Plan, future visitors are likely to have urban backgrounds, and be generally unfamiliar with outdoor life. I am hopeful that the Park Service will have the necessary manpower to remove the rubbish that is likely to be discarded by these future visitors. 105

p. 29-33: There is a substantial difference between projected visitors at the three primary development sites (75,000 annual visitors are projected for Black Bay and Crane Lake and 200,000 for Sullivan Bay). Is the reason for this difference purely geographic, or do other factors have an influence? 106

p. 42: It is stated that the National Park Service is working with the IJC, the U.S. Corps of Engineers, and the DNR to assure the best feasible regulation of water levels and uses to enhance recreational fishing. What has the National Park Service actually done to achieve this end? Have any recommendations actually been made? 107

p. 43: It is stated that from the national accessibility viewpoint, Voyageurs National Park is remotely located with respect to major metropolitan populations. This appears to be in direct conflict with analyses that have been done indicating that a relatively large number of metropolitan areas were within a relatively small radius of Voyageurs. 108

p. 79-82: This disucssion is based on 1969 and 1970 data. Surely, more recent data is readily available. 109

p. 85: Paragraph 4 states that 2 acres of surface per mile will be disturbed with snowmobile trail development. This is misleading, since proposed trails almost exclusively follow existing winter roads. Many of those who testified at the public hearings thought we were proposing trail construction. In fact, a news release issued by the Voyageurs National Park Coalition stated that the Citizens' Committee was proposing the construction of an on-land snowmobile trail. 110

p. 87: Paragraph 4 - Is intensive unregulated use of snowmobiles on steep slopes likely? Is the discussion on snow compaction limited to snowmobile use? Don't skiers cause compaction? What is the difference in pressure generated by these uses? 111

p. 90-91: The discussion on air quality is completely erroneous and without technical basis. The analysis completely ignores the fundamental relationship between emissions and ambient air quality. 112

p. 93: Paragraphs 4 and 5 - Doesn't skiing cause similar effects? 113

p. 95: Bottom paragraph - it should be mentioned that severe physical limitations will prevent this from becoming a serious problem. 114

p. 96: Paragraph 2 - Although no mention is made of it, cross-country ski trails will cause a similar result. 115

p. 97: Is there data available to support the contention that the no-cut timber policy will have a long-term positive effect on the eastern timber wolf population? 116

p. 98: The statement that snowmobile noise will intrude on other park users is irresponsible and without technical basis. Statistics on noise emissions in this report are based on older machines, completely ignoring emission reduction requirements of recent years. Furthermore, this situation will improve even more with time as the vehicle mix changes.

A statement is made that if a full complement of snowmobile trails are developed, no point within Voyageurs National Park would be more than 1.3 miles from possible snowmobile operations. No explanation is made of what a "full complement" means. This statement is not true with respect to the proposal made by the Citizens' Committee. Furthermore, the relevancy of the statement is questionable in light of the lack of validity of the noise analysis. 117

With respect to the contention that motorized use represents a disruption and intrusion to park users seeking a wilderness experience, it seems a bit premature to make such a strong statement in the absence of factual background or a large number of complaints from such visitors.

Can Voyageurs National Park qualify for "pure" wilderness in light of its size and legislative requirements? Does the National Park Service feel it is not possible for someone to travel by sea-plane or snowmobile into the interior and have a wilderness experience? 118

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p. 102: In discussing new tax revenues, it is stated that in the 8-year period following establishment of Grand Teton National Park, valuation of real and personal properties in Teton County, Wyoming rose from $4.6 to $8.1 million. This appears to be a substantial increase, but actually only represents an annual increase of slightly more than 7%. How does this compare with the increase in land values nationwide over the same period? 119

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p. 112: Upgrading waste-water treatment facilities within park boundaries will not necessarily eliminate existing water pollution problems or minimize potential future problems. A much greater danger to park waters exists from present and future activities outside park boundaries. The same is true for potential air pollution problems. 120

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p. 113: Paragraph 3 - The impact of Park Service activities within park boundaries with respect to pollution in general is overstated. 121

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p. 116: Many people contend that landowners, in general, are not being justly compensated for their land.

p. 120: It is my opinion that cooperation with local communities and the state of Minnesota toward achieving a unified approach to regional planning is largely a function of final decisions made with regard to the Master Plan.

p. 122: Paragraph 3 - As mentioned before, it would seem that a similar impact would occur with cross-country ski/hiking trails. 122

p. 134: Gold Shores property values are grossly underestimated. Undeveloped lots are selling for as much as $30,000. The minimum price for such lots is more than $10,000. 123

p. 137: The analysis in paragraph C.1. is erroneous. Less difficult management problems, less confusion on the part of hunters, and minimum use conflicts would result from the proposed action.

Mention should be made of the potential benefit to the Park Service of receiving lands in exchange for the Gold Portage area. 124

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It would be worth while to mention the relationship of the proposed action to local attitudes concerning the park.

p. 141: The statement that "the opportunity for solitude would be all but eliminated" is false and grossly irresponsible. In addition the possibility of becoming lost on a snowmobile is virtually non-existent with respect to this proposal.

p. 145-147: The impacts of these proposals as discussed are similarly false or misleading.

p. 149: The analysis of this proposal is even more irresponsible than those discussed above. The following statements made on this page are false or misleading and represent a gross distortion of fact:

* Countless user conflicts would occur and visitor safety would be greatly decreased.
* Vegetation would be disturbed or destroyed and wildlife severly harassed.
* The natural character of the park would be in serious jeapordy, as the snowpack would be widely disturbed and uniformly covered with snowmobile trails.
* Unavoidable adverse effect . . . would be observed over the entire park.
* Widespread disturbance, destruction, and extirpation of wildlife species would result from noise, alternation of snow conditions, destruction of vegetation, and presence of man.
* Safety of users would be reduced below acceptable standards, and most uses other than snowmobiling would be eliminated through excessive conflict.

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These statements, and the overall analysis of snowmobile alternatives leads one to question whether those responsible for producing this document are remotely familiar with the park and its environs or the operating characteristics of a snowmobile.

The phrase "man and his machines" is used in the DEIS on a number of occasions. The use of such an emotional phrase in a technical research document is inappropriate. It should be sufficient to limit discussion to the specific impacts cause by "man and/or his machines." The phrase only serves to

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substantiate claims that the report is biased.

Conclusions and Recommendations

The manner in which the DEIS was written leaves serious doubt as to the viability of the document and to its usefulness as an effective management tool. If the DEIS for Voyageurs is typical of other impact statements regarding national parks, the National Park Service should seriously re-examine its research and reporting methods, with the goal of complying with the intent of the National Environmental Policy Act.

Premature judgements based on an inadequate technical document can only be considered highly speculative at best. I therefore believe that in the absence of adequate supporting data or information, it would be highly inappropriate and unfair to implement the National Park Service proposals with respect to the use of snowmobiles and seaplanes in Voyageurs National Park. 125

Since the Master Plan is subject to periodic review, very little would be lost, and a great deal would be gained by implementing the proposals of the Citizens' Committee. If there proves to be serious problems with regard to these proposals, they can be addressed at the appropriate time. I think it is significant that preservation of Voyageurs National Park will not be threatened by implementing these proposals since no irreversible environmental impact is associated with the proposals. I personally believe that snowmobiles and seaplanes can be accomodated while allowing ample opportunity for those interested in seeking a "wilderness" or "backcountry" experience. To preempt uses because of falsely perceived impacts would be irresponsible and unacceptable to the general public.

With respect to Black Bay, in view of all the land that has been donated by the state of Minnesota (35,000 acres) and in view of all the land being sold by private owners (75,000 acres), I believe that the National Park Service can part with 550 acres without serious consequence. The land-exchange concept, which was originally suggested by a high-level Interior Department Official, is a fair and reasonable approach to this issue. The fact that the National Park Service has a definite need for certain lands should be a strorg consideration in any final decision.

Finally, the National Park Service must recognize the prevailing need to establish a strong, positive, relationship with the state of Minnesota and local communities. It is my opinion that without implementation of the Citizens' Committee proposals in the three areas discussed above, development of a sound, cooperative relationship with state and local units of government, and with citizens, will be difficult, if not impossible. Without such a relationship, it will be difficult to achieve many of the positive goals sought by the state of Minnesota and the National Park Service regarding Voyageurs National Park. It is within this context that final determinations with respect to the Master Plan must be made. 126

92. While we agree in principle, we believe that the purpose of an EIS is well known to the majority of those who review them. We recommend that any persons who are unfamiliar with the NEPA process familiarize themselves with the National Environmental Policy Act (P.L. 91-190) and guidelines published by the Council on Environmental Quality (Federal Register, November 29, 1978) for implementing this act.

93. Revised data is presented in the final statement.

94. Land classification is primarily a management tool. Discussion has been supplemented in the FES.

95. The National Park Service is in frequent contact with the U.S. Forest Service concerning areas of mutual interest. Management policies for the BWCA are not expected to have substantive impact on the management of Voyageurs National Park.

96. The statement that low altitude flights will be limited has been deleted. The feasibility of establishing airspace restrictions over the park will be investigated with the Federal Aviation Administration, the agency with the jurisdiction to establish such a regulation.

97. The discussion of floatplane access has been rewritten to reflect the fact that floatplanes will continue to have unlimited access to park waters. Floatplane guidelines and associated impacts will be developed and treated following completion of the Wilderness study for Voyageurs National Park.

98. The National Park Service recognizes that existing water projects, existing uses such as motorboats and aircraft and recreational activities are not compatible with an absolute re-creation of the voyageurs scene. However, establishment of original flora and fauna is possible and desirable, and will create a natural scene consistent with the voyageurs period. The specific issues and impacts associated with establishment of original flora and fauna will be treated in the forthcoming Resource Management Plan.

99. The figure of 400 campsites was a preliminary estimate which considered existing campsite use and park visitation trends. The current park policy on campsite development is to consider each campsite or proposed campsite on its own merits. The discussion on page 21 has been rewritten to reflect the proposed new policies.

100. The National Park Service is aware of the hazards related to snowmobile use on lakes within the park. The current policy, as stated in the final master plan, will be one of neither encouraging nor discouraging snowmobile use of the park. It is true that lack of maintenance of existing overland routes will bias use data, and additional portages or detours may be required to avoid unsafe ice conditions during part of the year. Those portages indicated are the areas of traditionally unsafe ice conditions, and are therefore mapped and marked. The safety problems associated with severe winter weather conditions are also understood. These factors will be considered during the evaluation of snowmobile use occuring as part of the wilderness study.

101. Please refer to response 81 in the foregoing.

102. Conceptual graphics are developed to highlight the important information to be conveyed; in this case the alignment of the trail in question is emphasized, not the scale of the trail.

103. Through the establishment of cooperative agreements, which do require the approval of the National Park Service, cooperative funding may be possible . A specific answer will not be possible until such time as a specific proposal is tendered.

104. Acknowledged. The National Park Service will continue to work closely with local, state, federal, and Canadian officials to ensure that an effective pollution abatement program is implemented to protect park resources.

105. The National Park Service recognizes that residents and past visitors have been exceptionally respectful of the environment. The statement regarding clean-up has been deleted from page 26.

106. As currently envisioned, Sullivan Bay will be the major entry point due to its location when approached from the south. Sullivan Bay is the first opportunity to enter the park, and will therefore attract the greatest number of visitors.

107. The National Park Service has cooperated with the DNR in monitoring the success of fish spawning, and the effects that water levels have on these success rates. The National Park Service is also studying the effects of water level on waterfowl nesting success, and the effects that water levels have on terrestrial fauna. Though development of detailed baseline data concerning the effects of water level fluctuations on the fauna of the area, realistic control proposals can be developed. All involved agencies are aware of the concerns; however, any eventual regulations will require the cooperation of all affected groups.

108. This statement has been deleted from page 39.

109. The socioeconomic data has been updated whenever possible. Some data, however, is tied to the national census and an accurate update will not be available until after the 1980 census.

110. The figure of two acres per mile has been revised to 1.6 acres/mile in connection with the reduction in trail width (see response 79). This figure is accurate when applied to the development and/or maintenance of snowmobile trails. The text on p. 73 has been reworded to clarify this point. The construction and/or maintenance of snowmobile trails is no longer proposed. Snowmobile guidelines and associated impacts will be developed and treated following completion of the wilderness study for Voyageurs National Park.

111. Use of snowmobiles on steep slopes appeals to certain individuals; while these users are a small minority of all snowmobilers, they do undeniably exist. All sections concerned with snow compaction have been revised to include other forms of winter use, such as skiing.

112. Acknowledged. The air quality impacts section on page 77 has been revised.

113. Please see response 111.

114. The statement concerning the unrestricted use of snowmobiles throughout the park, has been deleted.

115. Please see response 113 above.

116. The no-cut timber policy will help restore habitat favored by wolves, and will have a positive effect if coupled with management designed to restore original prey species, such as woodland caribou.

117. The research done to date on perception of noise indicates that any noise of unnatural origin is generally perceived as an intrusion by backcountry users (Dailey and Redman, 1975). Ski tourers in Minnesota are also more likely to be urban in origin, and value the silence as a major part of their experience (Knopp and Tyger, 1973). These conclusions are reinforced by National Park Service experience in other park areas. It is recognized that, as a group those skiers who have snowmobiled are more tolerant of snowmobile noise; therefore, the views of local users will differ from the national visitor. The noise reductions which have occurred in the snowmobile industry are recognized; however, even the quieter

models could be heard at distances up to two miles or more on a calm day, and at distances greater than one mile with a light wind (Dailey and Redman, 1975). Please see response 76 for further discussion.

118. Wilderness suitability will be evaluated using the guidelines of the National Park Service and Department of Interior related to the Wilderness Act of 1969 (P.L. 88-577). The concepts of "pure" wilderness and wilderness experience are defined by the wilderness user, not the National Park Service.

119. The seven percent per year increase was significantly higher than the national average at the time.

120. Acknowleged. Please refer to response 104.

121. The word "significant" has been deleted from this discussion.

122. Please refer to response 111.

123. The Gold Shores property values have been updated.

124. Please refer to responses 73 and 74 in the foregoing.

125. Please refer to responses 75 and 76.

126. The phrase "man and his machines" has been deleted from the document.

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR

JAN 3 1980

MEMORANDUM

TO: Director, National Park Service

FROM: Acting Associate Solicitor, Conservation and Wildlife

SUBJECT: NPS Participation in Zoning

It is anticipated that NPS participation in local zoning proceedings will increase in the next decade, as NPS officials become more involved in areas where land development pressures may conflict with park management objectives. NPS officials may desire to participate in local zoning proceedings in their official capacity to protect park resources in the following situations:

1. to ensure that land uses adjacent to National Park System components do not threaten existing area values, or at least to make surrounding land uses more consistent with National Park System objectives,
2. to prevent inconsistent land uses of lands within the boundaries of an existing area of the System, regardless of whether the Service has the authority to acquire the property, and
3. to prevent inconsistent land uses of lands proposed for inclusion into the National Park System.

We believe that NPS participation in local zoning proceedings in the above circumstances is legitimate, helpful in terms of intergovernmental relations, and sometimes necessary for the conservation of park-related values. See 16 U.S.C. 1a-1.

However, such zoning participation may entail consequences which you and your staff should be aware of, in the following areas:

1. Relations with local citizenry- Unless NPS motives for participating in zoning proceedings are carefully laid out, local citizens may be suspicious that NPS's

only goal is to lower property values for subsequent land acquisition; thus reducing NPS's effectiveness in suggesting appropriate land uses.
2. Possible inverse condemnation liability- Landowners affected by the zoning action may sue NPS alleging that the land use restrictions are so onerous as to constitute a taking requiring compensation, and that NPS is the party responsible for such compensation.
3. Effect of NPS zoning participation upon subsequent land acquisition (purchase or condemnation)- Landowners may allege that NPS cannot take advantage of lowered property values caused by NPS-desired zoning in determining compensation for subsequent land acquisition.

This informational memorandum outlines the current law on this subject for your distribution to NPS park superintendents, land acquisition specialists, those involved in planning new parks, and other key personnel who should be aware of the legal and policy ramifications of participating in local zoning proceedings. The memorandum gives concrete answers where the case law is settled and gives fact patterns relevant to resolving the competing legal considerations where the case law is unsettled. Since this memorandum is primarily designed to give an overview to key NPS personnel without an extensive legal background, the text of the memorandum merely summarizes our legal conclusions and policy recommendations in outline form, with an extensive supporting legal analysis as an Appendix for those who desire more in-depth treatment.

I. Summary of Legal Conclusions

A. The Effect of NPS Zoning Participation Upon Subsequent Inverse Condemnation Actions

1. Description of situation - NPS testifies on or approves a zoning ordinance adopted by a local zoning commission. A landowner affected by the ordinance sues NPS alleging that his property value has been decreased by the zoning to the extent of being a "taking" requiring compensation. The

allegation that NPS has involuntarily acquired the property (e.g. no formal condemnation action has been started by NPS) is called an inverse condemnation action.
2. Usual Legal Result - NPS wins. It is the local zoning commission which is responsible for the zoning decision and any "taking" that might result from the ordinance. NPS, like any other landowner, may seek zoning advantageous to its interests, without creating monetary liability. Therefore, NPS may take part in zoning proceedings without fear of monetary liability from alleged inverse condemnation takings.
3. Exception - In certain unusual circumstances where NPS goes beyond mere zoning participation and takes affirmative actions itself which reduce property values (e.g. acquiring adjacent tracts to cut off access, allowing the public to use private lands as public lands), NPS runs the risk of a successful inverse condemnation action. In such rare situations, the totality of egregious governmental behavior and zoning participation may offend a court's notion of fair play, resulting in a decision that NPS has involuntarily acquired the property.

B. The Effect of NPS Zoning Participation Upon Subsequent Land Acquisition (Purchase and Condemnation)

1. The normal rules for land valuation in the absence of NPS zoning participation-

a. NPS pays fair market value at the time of purchase or declaration of taking.

b. The concept of fair market value includes elements of value for the development potential of the land, to the extent such development is allowed under existing zoning or zoning which could reasonably be contemplated because of land use patterns. Thus, the zoning existing at the time of land acquisition usually puts a cap on development potential and usually is incorporated into fair market value determinations in appraisals unless one could reasonably contemplate the local government granting rezoning if requested.

2. Exceptions to the normal rules for land valuation where NPS has participated in zoning-

a. Statement of the "scope of the project" rule- The judicially evolved rule holds that, once the government is committed to a project (e.g. creating a park), federal land acquisition within the probable project boundaries should be based on the fair market value exclusive of the government's special need for the project lands. Therefore, any enhancement or diminution of property values attributable to the project should be ignored in determining fair market value.

b. In certain situations described below, NPS participation in zoning may be viewed as within the scope of the same project as NPS land acquisition efforts (e.g. both are designed to conserve park values). Therefore, the zoning may tainted and may not be used in appraisals to determine fair market value.

3. Description of Situation 1 - An act creates a park and authorizes land acquisition inside park boundaries, NPS subsequently participates in favor of "down-zoning" (e.g. allowing less intensive development) property to more park compatible land uses, and later acquires the "down-zoned" property within the park.

a. Usual legal result - NPS must disregard the effect of "down-zoning" on the fair market value for land acquisition. The zoning and land acquisition actions would be viewed as being within the scope of the same park protection project.

b. Direction to Appraisers - The land valuation should be prepared under the assumption that the zoning in effect prior to the creation of the park is still in existence, to the extent zoning is relevant to the highest and best use of the property. In other words, the "down-zoning" must be ignored in preparing appraisals.

c. Implications for NPS participation in zoning-Such participation may raise the cost of subsequent land acquisition over the cost that would have resulted it the "down-zoning" was accomplished by local initiative alone. This is not to say that NPS should not participate in zoning in this situation, since it may be necessary to fulfill statutory mandates or to protect park values, and successful zoning may decrease the need for outright land acquisition.

4. Description of Situation 2 - An act creates a park and authorizes land acquisition inside park boundaries, NPS subsequently participates against "up-zoning" property for more intensive development, and later acquires the "up-zoned" property within the park.

a. Usual legal result - There is no usual legal result, and we are prepared to litigate this area to clarify the law. The answer will normally be one of the following, depending on the fact patterns and motives of the landowners and NPS.

(1) If the landowners are seeking increased development rights either due to park-induced development pressures (e.g. the desirability of tourist facilities inside a park) or to secure greater compensation upon land acquisition, it is likely that the property is appropriately valued utilizing the zoning existing prior to the "up-zoning". We believe that this result is correct because the landowner is seeking to reap the benefits from the government's special need for the property, in violation of the "scope of the project" rule which prohibits property value enhancement attributable to the project from being counted in determining proper land valuation. This result is bolstered if NPS has presented legitimate land use concerns to the local zoning commission (e.g. the property is not suited for the proposed "up-zoned" purpose and comparable properties outside the park are not being "up-zoned").

(2) If the landowners are seeking "up-zoning" due to development pressures unrelated to the creation of the park or if NPS's sole motive in opposing "up-zoning" is to depress property values for later land acquisition, it is likely that the property should be appraised under the assumption that the "up-zoning" is in effect. We believe that this result is correct because the enhancement of property values is not related to the park project, while NPS's efforts to restrict development are related to the park protection project.

b. Direction to Appraisers - Consult with the Solicitor's Office to determine which of the above fact patterns is applicable to the property, and thus, which zoning assumptions should be made for the appraisal. In many cases where the fact pattern is unclear, it should be recognized that alternative appraisals may be required (e.g. one assuming the "up-zoning" has occurred and one assuming the "pre-up-zoning" land use regulations are in effect) to cover litigation contingencies. We are prepared to litigate for the lower appraised value in appropriate cases to clarify the law in this area.

c. Implications for NPS participation in zoning- In this situation, it is difficult to say whether NPS participation in zoning may raise the cost of subsequent land acquisition over the cost that would have resulted if NPS steered clear of the "up-zoning" proceeding.

5. Decription of Situation 3 - An area is being studied for inclusion into the National Park System (e.g. ongoing NPS studies, legislation introduced for a new park or park expansion), NPS participates in zoning (either against "up-zoning" or for "down-zoning") during the study period, and the area is subsequently established and NPS seeks to acquire the property.

a. Usual legal result - There is no usual legal result. The case law is very unsettled in this area, and we are prepared to litigate to clarify the law. There are three competing schools of legal thought on whether NPS participation in pre-park creation zoning actions has any effect on utilzing the resulting zoning for appraisal purposes.

(1) Under one school of thought, the scope of the project rule is applicable only after the government is committed to a project by the legislative creation of a park. Therefore, NPS zoning participation before the creation of a park is appropriate and the resulting zoning may be used in appraisals for determining fair market value.

(2) Under the second school of thought, the scope of the project rule is read more expansively as applying from the time initial park planning is underway. Therefore, NPS zoning participation may be part of the park protection project and successful "down-zoning" or prevention of "up-zoning" must be ignored in appraisals. Thus, the "pre-down-zoning" or "up-zoning" respectively would be utilized in appraisals.

(3) Under the third school of thought, the scope of the project rule is also read as applying from the time initial park planning is underway. Successful "down-zoning" which resulted from NPS zoning participation would be ignored in appraisals under this school of thought; the appraisals would be prepared assuming the "pre-down-zoning" land use regulations are in effect. However, proposed "up-zoning" would be suspect as being motivated by speculation over government-induced value (e.g. tourism or housing needs for expected park visitors); therefore any successful "up-zoning" should be ignored in determining appraised fair market value.

b. Direction to Appraisers - Consult with the Solicitor's Office to determine which zoning assumptions should be made. As a general interim rule, NPS involvement in pre-park creation zoning should not invalidate using the resulting zoning for fair market value appraisal purposes. This office generally follows the first school of thought and will litigate this position in appropriate cases.
c. Implications for NPS participation in zoning - In this situation, it is difficult to say whether NPS participation in zoning may raise the cost of subsequent land acquisition over the cost that would have resulted if NPS steered clear of pre-park creation zoning proceedings.

II. Recommended Policies for NPS Participation in Local Zoning

[As has been mentioned previously, we believe that NPS involvement in local zoning will increase in the next decade and that such involvement is often appropriate to protect park values from outside threats. We recommend the following policy guidelines for NPS participation in zoning proceedings, for your consideration.]

A. NPS zoning participation should be authorized where reasonably necessary to ensure that surrounding land uses will not degrade park values.

Discussion: NPS officials should participate in local zoning proceedings when there are sound, legitimate land use concerns connected with proper park management. Such concerns may be present when proposed zoning would allow development which would be inconsistent with existing or proposed park values. NPS officials should be prepared to document such land use threats to park values.

B. As part of a "good neighbor" policy, NPS officials should be candid about their reasons for zoning participation and the likely results of zoning

participation upon subsequent land acquisition.

Discussion: NPS testimony before local zoning boards may be received with some degree of economic skepticism by local residents. To counteract this tendency, to increase the appearance of NPS as a "good neighbor", and to allow a more forceful presentation of substantive NPS land use concerns, we recommend the following approach. NPS officials should stress the common land use concerns of NPS and local parties (e.g. planned development that would be compatible with NPS objectives to conserve nationally important resources). The unsuitability of the land for specific zoning proposals should be highlighted.

In situation 1 cases (discussed above), NPS officials should state that they are not testifying to lower property values for subsequent land acquisition and that appropriate zoning may decrease the need for land acquisition. They should further state that, in any subsequent land acquisition by NPS, the appraisals will disregard any lowering of property values that results from the zoning proceeding. Once local property owners recognize that they will not be economically harmed in any subsequent NPS land acquisition, they may be more receptive to NPS zoning suggestions.

In situation 2 or 3 cases (discussed above), if factually supported, NPS officials should stress the unsuitability of lands for proposed development and their perception that the requested zoning changes are motivated by government interest in the area (e.g. private motives either to increase compensation in government land acquisition or to reap benefits of a park and related tourism in the area). Such statements can build a record for appropriate land valuation if land acquisition is conducted at a later time.

David A. Watts

cc: Dir., HCRS (w/Appendix)
All Regional and Field Sol., (w/Appendix)

Appendix

I. Inverse Condemnation-NPS Participation in Zoning Usually Does Not Result in a Taking Requiring Compensation from NPS

A. The Normal Rule

"Inverse condemnation" is the name given to the category of cases where a landowner sues a governmental body alleging that its regulatory activities (e.g. zoning) are so onerous as to constitute a taking of the property requiring compensation. This category of cases is known as "inverse condemnation" because the landowner in effect alleges that the government has involuntarily condemned the property, and no formal notice of a taking has been filed by the government. The typical inverse condemnation petition alleges that NPS participation in local zoning proceedings (e.g. NPS testimony to prevent an "up-zoning" to more valuable land use or NPS testimony in favor of "down-zoning" to a less valuable land use) was done for the purpose of lowering property values for later land acquisition and that, as a result of lowered property value expectations from the zoning action, NPS is financially responsible for the involuntary taking of property.

The normal rule in this situation is that NPS is not financially liable to the landowner for alleged inverse condemnation taking. Lynch v. United States, (Ct. Cl. No. 491-77, Order of November 30, 1979); NBH Land Co v. United States, 576 F.2d 317 (Ct. Cl. 1978); De-Tom Enterprises v. United States, 552 F.2d 337 (Ct. Cl. 1977). NPS, like any other influential landowner, may seek zoning advantageous to its interests without financial liability for zoning impacts on property values. Id. It is the local zoning body which is liable for any inverse condemnation taking, since it is the body ultimately responsible for the zoning decision. Lynch, supra; De-Tom Enterprises, supra; Robertson v. City of Salem, 191 F. Supp. 604 (D. Ore. 1961). Thus, NPS may ordinarily participate in local zoning proceedings without the fear of immediate liability in inverse condemnation actions.

B. Exception Where Zoning Coupled With Egregious Governmental Action

The only exception to this normal rule is where NPS goes beyond mere zoning participation and also takes affirmative, egregious steps to lower property values. NPS has been held liable in certain inverse condemnation actions of this type.

Perhaps the leading case illustrating this exception is Drakes Bay Land Co v. United States, 424 F.2d 574 (Ct. Cl. 1970). In Drakes Bay Land Co., the court found the total picture of NPS direction to acquire Point Reyes National Seashore inholdings expeditiously, ignoring some acquisition or exchange avenues, acquisition of an adjacent tract cutting off access needed for development, and pressure on local officials to deny land use changes required for development, as unacceptable and much egregious governmental behavior; thus, justifying a holding of an inverse condemnation taking against NPS.

The general teaching that Drakes Bay Land Co. and related cases provide is that, while NPS participation in local zoning proceedings alone is not enough to create inverse condemnation liability, when such participation is coupled with affirmative NPS actions that offend a sense of fair play NPS may be responsible for an inverse condemnation taking. However, this exception has rarely been applied successfully against NPS. In general, NPS officials should have no fear of incurring inverse condemnation taking liability by participating in local zoning proceedings. Finally, we view the language of the Court of Claims in the Drakes Bay Land Co. case as overly broad, and would urge Justice to litigate aggressively any activities based on the rationale of that opinion.

II. The Impact of NPS Participation in Local Zoning Proceedings Upon Land Valuation in Subsequent Land Acquisition

A. The General Rules for Land Valuation in Government Land Acquisition

1. The Compensation Paid is the Fair Market Value of the Property at the Time of Acquisition or Condemnation Taking, Fair Market Value is Based on the Adaptability of the Property to the Highest and Best Use Allowed Under Existing Law

When acquiring lands for park purposes, the general rule is that NPS must pay the fair market value of the land at the time of acquisition or condemnation taking. Olson v. United States, 292 U.S. 246 (1934); see Uniform Appraisal Standards for Federal Land Acquisitions 3-6 (1973). The concept of fair market value embraces a willing buyer-seller arrangement, including both values attributable to existing property use and the adaptability of the property to the highest and best use of land allowed under current zoning or similar land use constraint. Olson, supra; Uniform Appraisal Standards, supra at pp. 6-7; United States v. Meadow Brook Club, 259 F.2d 41 (2nd Cir. 1958) cert. denied 358 U.S. 921. The probability of securing reasonable zoning changes at the time of a acquisition is also taken into account, since that probability may influence what a willing buyer would pay as fair market value. Id. Thus, the impact of existing zoning or similar land use restrictions upon market value is ordinarily taken into account in determining acquisition costs.

However, this general benchmark for land acquisition practice does not apply in certain instances covered by the scope of the project rule, discussed below.

2. The Scope of the Project Rule - The Compensation Paid should not Include any Enhancement or Diminution of Property Values Attributable to the Government Project, Once the Government is Committed to the Project and Once it is Known that the Property Will Probably be Acquired as Part of the Project

In a series of cases, the Supreme Court has adopted the so-called "scope of the project" rule to add an element of equity into the concept of fair market value. The concept of fair market value means what a willing buyer would pay for the property in the absence of the specific project necessitating the property acquisition. Consequently, the government is not required to pay for the special enhancement or diminution of property values attributable to the government project. United States v. Reynolds, 397 U.S. 14 (1970); United States v. VEPCO, 365 U.S. 624 (1961); United States v. Miller, 317 U.S. 369 (1943); United States v. Cors, 337 U.S. 325 (1949); Shoemaker v. United States, 147 U.S. 282 (1893); United States v. 320 Acres of Land, More or Less, __F.2d__ (Civil No. 76-2775, 5th Cir. Opinion of October 31, 1979); Uniform Appraisal Standards, supra at 17.

The scope of the project rule has been summarized in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as follows:

> Any decrease or increase in the fair market value of real property caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement,. . . will be disregarded in determining the compensation for the property. 42 U.S.C. 4651(3).

The courts have established a set of rough working rules on the geographical and temporal extent of the project, for the "no government-created enhancement or diminution" valuation.

1. The first situation is where an Act establishes park boundaries and authorizes land acquisition within the boundaries. In this situation, generally no element of value accuring after the effective date of the Act is admissable in condemnation proceedings for property within the boundaries due

to the likelihood that subsequent changes in land values were caused by the government project. Shoemaker, supra; but see United States v. 320 Acres of Land, More or Less, supra (18 years between Act establishing Everglades National Park and condemnation proceedings is too long a time period to refuse to recognize increments in land values).

2. A second situation is where an Act establishes park boundaries and authorizes land acquisition within the boundaries, followed by an intervening time period before a subsequent Act enlarging park boundaries. In this situation, the landowner is normally entitled to the increase in land value attributable to the property's proximity to the unenlarged park, but no element of value accuring after the effective date of the Act incorporating the property within park boundaries is admissable in court. Shoemaker, supra; Miller, supra; United States v. 2353.28 Acres of Land, 414 F.2d 965 (5th Cir. 1969); United States v. 172.80 Acres of Land, 350 F.2d 957 (3rd Cir. 1965).

3. A third situation is where an Act authorizes the establishment of a park, with the Secretary authorized to establish boundaries. In this situation, land value elements accuring after there was general public knowledge (e.g. through published plans) that the property was probably in the boundaries are excluded from consideration in the compensation for that property. Reynolds, supra (post-Act planning showed property "would probably be needed for the public use"); United States v. 320 Acres of Land, More or Less, supra; United States v. 62.17 Acres of Land, More or Less, In Jasper County, Texas, 538 F.2d 670 (5th Cir. 1976)(Collecting cases on public knowledge of properties being inside or outside boundaries).

4. The fourth situation, and the cutting edge of the law, is where there is active planning (e.g. legislation introduced, NPS planning teams investigating for a new park area known to local residents), which planning induces speculation in market value before the park Act is ultimately enacted. One set of cases would admit this evidence of land value, under a theory that the government is committed to a project only after its final authorization. See Reynolds, supra; Shoemaker, supra. Another set of cases would apparently exclude this evidence of value, under a theory that it is government-induced value

merely perfected by the authorizing Act. Reynolds, supra; United States v. Cors, 337 U.S. 325 (1949); United States v. 222.0 Acres of Land More or Less, in the County of Worcester, State of Maryland ("Assateague Island Condemnation Cases Opinion No. 3"), 324 F. Supp. 1170 (D. Md. 1971). Thus, at this time, we can offer no definitive legal guidance to NPS in this situation. However, we would urge the Service to appraise on the basis of excluding sales data that is generated through project related land speculation.

B. The Impact of NPS Participation in Local Zoning Proceedings on Subsequent Land Acquisition and Land Valuation

NPS participation in local zoning proceedings can change the above-stated normal rule that the zoning existing at the time of land acquisition is the relevant cap on determining the highest and best use of land. This normally occurs when NPS participation in zoning and land acquisition are viewed as part of a concerted effort (e.g. within the scope of the same project) to protect park values. The results reached by the courts, as to whether the existing zoning should be admissable on the issue of fair market value of land, depends on 3 factors:

1. the timing of NPS zoning participation in relationship to the legislative creation of a park,
2. whether NPS testified in favor of "down-zoning" (changing zoning to less intensive land uses, such as agricultural or 3 acre zoning) or against "up-zoning" (maintaining zoning status quo against efforts for more intensive land development), and
3. the perceived motives of NPS and landowners in seeking zoning changes.

The interplay of these factors is discussed below, in the following situations.

1. Situation 1 - NPS Zoning Participation to "down-zone" Property After a Park Act is Enacted Authorizing Land Acquisition

The situation posits that a National Park System component has been created or authorized by Act of Congress, that land acquisition is contemplated within the park boundaries, and that NPS subsequently participates in local zoning proceedings dealing with lands inside the park boundaries to "down-zone" the property to ensure that proposed private land uses are compatible with park purposes.

If NPS subsequently acquires the property, it appears that NPS must pay the market value of the land based on the zoning that would have existed without NPS participation. Certain Lands in Truro, Barnstable County, Commonwealth of Massachusetts, Civil NOs. 68-208-C etc. (U.S.D.C. Mass., Slip Op. of September 27, 1979). The Truro case involved land acquisition at Cape Cod National Seashore where:

> 1. at the time of the seashore's establishment in 1961, Truro had 1/2 acre zoning,
> 2. the Secretary had approval powers over local zoning under a "sword of Damocles" provisions restricting condemnation if local zoning compatible with seashore purposes was enacted (see 16 U.S.C. §§ 459b-3, 459b-4),
> 3. the Secretary "pressured" Truro to enact 3 acre lot size zoning to preserve the area in its natural state, and
> 4. surrounding areas in Truro outside the seashore had been changed from 1/2 acre to 3/4 acre zoning.

The Truro court held that NPS's zoning and land acquisition activities at the seashore had such a close "nexus" that they were both "an integral part of the federal scheme which had as one of its main goals to preserve the Cape Cod way of life." Consequently, both the zoning and land acquisition activities were within the scope of the same project to preserve the seashore, and under the scope of the project rule, the United States "should not be allowed to profit from the decreased property values" resulting from NPS-induced down zoning in subsequent land acquisition. Thus, the Truro court concluded that the property appraisal should be based on land values

assuming 3/4 acre zoning, since that was the zoning in effect in the Truro area outside the Seashore (and zoning NPS did not participate in) at the time of the taking.

In summary, the teaching of the Truro case is as follows. If NPS officials participate in local zoning proceedings after a Park System unit is established, in order to promote land use practices compatible with Park System objectives, NPS will not be allowed to take advantage of lowered property values resulting from the down-zoning action in subsequent land acquisiton. Note that this result is consistent with Shoemaker, supra, which did not allow evidence of value after the creation of a park to be admitted into evidence, on the grounds that subsequent changes in land values are likely attributable to the government project. Moreover, the result is consistent with the Justice Department's conclusions on appraisal standards for the Lower St. Croix Scenic River, which involved post-Act down-zoning. Memorandum of December 13, 1977 from Acting Chief Land Acquisition Section to Assistant Attorney General for Land and Natural Resources Division on "Question Presented by the National Park Service and the Office of the Solicitor, Department of the Interior, regarding the appraisal of property being acquired for the Lower St. Croix Scenic Riverway Project, in the States of Minnesota and Wisconsin".

2. Situation 2 - NPS Zoning Participation to Maintain Status Quo After a Park Act is Enacted Authorizing Land Acquisition

This situation posits the following facts:

1. A National Park System component has been established or authorized by an Act of Congress, with authority for land acquisition within the park boundaries,
2. Local landowners, believing that their properties may be acquired, seek to "up-zone" their properties to a more valuable land use, in order to get more compensation from the federal government upon land

acquisition or seek such "up-zoning" to garner the benefits of government project-induced values (e.g. the desirability of housing and tourist facitlities inside a park),
3. NPS testifies before the zoning commission to maintain the zoning status quo, stating that existing zoning provides for more sound land use,
4. The existing zoning status quo is maintained and NPS subsequently acquires the property.

In this situation, the general rule appears to be that NPS may acquire the property based on land values under the zoning status quo. United States v. Meadow Brook Club, 250 F.2d 41 (2nd Cir. 1958), cert. denied 358 U.S. 921.

In Meadow Brook Club, it appeared that the defendant had knowledge of the Air Force's probable need for acquiring the property near the Air Force base and that defendant then sought to up zone the property to a more valuable use. The Air Force successfully opposed the proposed zoning change on the grounds that it would be incompatible with surrounding land uses (e.g. intensive development would create flight hazards). The Meadow Brook Club court held that, as long as the government's sole motive was not to depress property values for later acquisition and as long as the government had legitimate land use objectives, the property could be valued at the zoning status quo. Implicitly, the court appeared to be saying that the landowner had an improper motive in seeking up-zoning, to drive up property values in light of the government's acquisiton need, which would be an unlawful value enhancement under the scope of the project rule.

This result is also consistent with Shoemaker, supra, which denied the admissability of land values after the date of the park's creation, on the grounds that value changes are likely attributable to the government project.

However, if the government's zoning efforts are perceived to be for the sole motive of lowering property values and if the up-zoning was motivated by economic factors not connected with

the park project, some authorities would base the compensation on the up-zoned land values. See Assateague Condemnation Cases, Opinion No. 3, supra; 4 Nichols on Eminent Domain, § 12.322, pp. 12-627 through 628 (1978). The theory here appears to be that where land values increase for reasons not directly attributable to a government project, it is impermissable for the government to attempt to constrain such value increases through zoning participation and then take advantage of depressed property values in subsequent land acquisition.

3. Situation 3 - NPS Zoning Participation During Study of NPS Area or Consideration of A Park Bill

This situation posits the following facts:

1. NPS is considering an area for a National Park System component or park expansion, or a park bill has been introduced in Congress,
2. NPS successfully participates in local zoning to prevent development of the area (e.g. NPS testifies for "down-zoning" or against "up-zoning") and
3. the park bill is enacted authorizing land acquisition.

The cases in this area are inconclusive on whether NPS must pay for the market value resulting from NPS-induced zoning restrictions or whether NPS must pay for the market value including some reasonable development potential. There appear to be three schools of thought on this issue.

The first school of thought is that NPS cannot be held responsible for any zoning participation prior to the creation of a park. It relies on a strict reading of the scope of the project rule; that the rule against enhancement or diminution of value comes into effect only when the government becomes committed to the project through a definite park authorization. See Reynolds, Miller, Shoemaker, supra. Therefore, since there is no concrete project before the park authorization, NPS zoning participation as an interested party beforehand is fair game; it is a non-compensable incident of

ownership if land values are affected by such zoning. See De-Tom Enterprises, NBH Land Co., supra.

The second school of thought is that the scope of the project rule begins when initial government park planning is known to the public. See Assateague Island Condemnation Cases, Opinion No. 3, supra; 4 Nichols on Eminent Domain, § 12.322 pp. 627 through 628 (1978). NPS participation in zoning past that point is tainted, since it is part of a proposed park project to conserve resource values. Therefore, even if NPS has been successful in obtaining down zoning or in preventing up zoning, these authorities would hold that NPS must pay the "pre-down-zoned" or "up-zoned market value", respectively.

The third school of the though acknowledges that the scope of the project rule begins when initial government park planning is known to the public, but concludes that pre-park act up-zoning is suspect because it is likely based on speculation of increased land values from being within or adjacent to a park project. See Cors, supra; United States v. 62.17 Acres of Land, supra, 42 U.S.C. 4651(3). Therefore, this school would not allow NPS to take advantage of down-zoning, but would allow NPS to take advantage of preventing up-zoning, in subsequent acquisition land valuation.

Unfortunately, the resolution of these competing schools of thought must await subsequent case development. We will advise you as to which legal principles are applicable on a case by case basis.

In conclusion, we would welcome the opportunity to discuss these matters further with your land acquisition staff, in order that the Service may have a complete understanding of which cases this office is willing to litigate.

impose restrictions and impose tolls, notwithstanding any provision of Federal law.

(b) RELEASE.—The removal of restrictions shall not be conditioned upon repayment by the State of Alaska to the Treasurer of the United States of any Federal-aid highway funds paid on account of the section of highway described in subsection (c), and the obligation of the State of Alaska to repay these amounts is hereby released so long as the road remains closed as set forth in subsection (a).

(c) APPLICATION OF SECTION.—The provisions of this section shall apply to that section of the North Slope Haul Road, which extends from the southern terminus of the Yukon River Bridge to the northern terminus of the Road at Prudhoe Bay.

STIKINE RIVER REGION

Consultation with Canadian Government and report to Contress. 16 USC 3173.

SEC. 1113. Congress finds that there is a need to study the effect of this Act upon the ability of the Government of Canada to obtain access in the Stikine River region of southeast Alaska. Accordingly, within five years from the date of enactment of this Act, the President shall consult with the Government of Canada and shall submit a report to the Congress containing his findings and recommendations concerning the need, if any, to provide for such access. Such report shall include, among other things, an analysis of the need for access and the social, environmental and economic impacts which may result from various forms of access including, but not limited to, a road along the Stikine and Iskut Rivers, or other alternative routes, should such access be permitted.

TITLE XII—FEDERAL-STATE COOPERATION

ALASKA LAND USE COUNCIL

16 USC 3181.

SEC. 1201. (a) ESTABLISHMENT.—There is hereby established the Alaska Land Use Council (hereinafter in this title referred to as the "Council").

Presidential appointment.

(b) COCHAIRMEN.—The Council shall have Cochairmen. The Federal Cochairman shall be appointed by the President of the United States with the advice and consent of the Senate. The State Cochairman shall be the Governor of Alaska.

(c) MEMBERS.—In addition to the Cochairmen, the Council shall consist of the following members:

(1) the head of the Alaska offices of each of the following Federal agencies: National Park Service, United States Fish and Wildlife Service, United States Forest Service, Bureau of Land Management, Heritage Conservation and Recreation Service, National Oceanic and Atmospheric Administration, and Department of Transportation;

(2) the Commissioners of the Alaska Departments of Natural Resources, Fish and Game, Environmental Conservation, and Transportation; and

(3) two representatives selected by the Alaska Native Regional Corporations (in consultation with their respective Village Corporations) which represent the twelve geographic regions described in section 7(a) of the Alaska Native Claims Settlement Act.

Any vacancy on the Council shall be filled in the same manner in which the original appointment was made.

(d) STATE DECISION NOT TO PARTICIPATE.—If the State elects not to participate on the Council or elects to end its participation prior to termination of the Council, the Council shall be composed of the Federal Cochairman, the agencies referred to in subsection (c)(1) and the representatives of the Alaska Native Regional Corporations referred to in subsection (c)(3). The Council, so composed, shall carry out the administrative functions required by this title and shall make recommendations to Federal officials with respect to the matters referred to in subsections (i) and (j). In addition, the Council may make recommendations from time to time to State officials and private landowners concerning such matters.

(e) COMPENSATION AND EXPENSES.—

(1) The Federal Cochairman shall be compensated at a rate to be determined by the President but not in excess of that provided for level IV of the Executive Schedule contained in title V, United States Code. 5 USC 5315.

(2) The other members of the Council who are Federal employees shall receive no additional compensation for service on the Council.

(3) While away from their homes or regular places of business in the performance of services for the Council, members of the Council who are Federal employees, or members of the Council referred to in subsection (c)(3), shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code.

(4) The State Cochairman and other State members of the Council have been compensated in accordance with applicable State law.

(f) ADMINISTRATIVE AUTHORITY.—

(1) The Cochairmen, acting jointly, shall have the authority to create and abolish employments and positions, including temporary and intermittent employments, to fix and provide for the qualification, appointment, removal, compensation, pension, and retirement rights of Council employees; and to procure needed office space, supplies, and equipment.

(2) The office of the Council shall be located in the State of Alaska.

(3) Except as provided in subsection (d), within any one fiscal year, the Federal Government shall pay only 50 per centum of the costs and other expenses other than salaries, benefits, et cetera of members, incurred by the Council in carrying out its duties under this Act. Federal costs and expenses.

(4) The Council is authorized to use, with their consent, the services, equipment, personnel, and facilities of Federal and other agencies with or without reimbursement. Each department and agency of the Federal Government is authorized and directed to cooperate fully in making its services, equipment, personnel, and facilities available to the Council. Personnel detailed to the Council in accordance with the provisions of this subsection shall be under the direction of the Cochairman during any period such staff is so detailed.

(5) The Council is authorized to accept donations, gifts, and other contributions and to utilize such donations, gifts, and contributions in carrying out its functions under this Act.

(6) The Council shall keep and maintain complete accounts and records of its activities and transactions, and such accounts and records shall be available for public inspection.

(g) MEETINGS; AUTHORITIES; REPORTS.—The Council shall meet at the call of the Cochairmen, but not less than four times each year. In addition, the Council may, for the purpose of carrying out the provisions of this section, hold such hearings, take such testimony, receive such evidence and print or otherwise reproduce and distribute reports concerning so much of its proceedings as the Council deems advisable. No later than February 1 of each calendar year following the calendar year in which the Council is established, the Cochairmen shall submit to the President, the Congress, the Governor of Alaska, and the Alaska Legislature, in writing, a report on the activities of the Council during the previous year, together with their recommendations, if any, for legislative or other action in furtherance of the purposes of this section.

Publication in Federal Register.

(h) RULES.—The Council shall adopt such internal rules of procedure as it deems necessary. All Council meetings shall be open to the public, and at least fifteen days prior to the date when any meeting of the Council is to take place the Cochairman shall publish public notice of such meeting in the Federal Register and in newspapers of general circulation in various areas throughout Alaska.

(i) FUNCTIONS OF THE COUNCIL.—

(1) The Council shall conduct studies and advise the Secretary, the Secretary of Agriculture, other Federal agencies, the State, local governments, and Native Corporations with respect to ongoing, planned, and proposed land and resources uses in Alaska, including transportation planning, land use designation, fish and wildlife management, tourism, agricultural development, coastal zone management, preservation of cultural and historical resources, and such other matters as may be submitted for advice by the members.

(2) It shall be the function of the Council—

(A) to make recommendations to appropriate officials of the United States and the State of Alaska with respect to—

(i) proposed regulations promulgated by the United States to carry out its responsibilities under this Act;

(ii) management plans and studies required by this Act including, but not limited to, plans and studies for conservation system units, wild and scenic rivers, and wilderness areas;

(iii) proposed regulations promulgated by the State of Alaska to carry out its responsibilities under this Act and other State and Federal laws;

(B) to make recommendations to appropriate officials of the governments of the United States and the State of Alaska with respect to ways to improve coordination and consultation between said governments in wildlife management, transportation planning, wilderness review, and other governmental activities which appear to require regional or statewide coordination;

(C) to make recommendations to appropriate officials of the governments of the United States and the State of Alaska with respect to ways to insure that economic development is orderly and planned and is compatible with State and national economic, social, and environmental objectives;

(D) to make recommendations to appropriate officials of the governments of the United States and the State of Alaska with respect to those changes in laws, policies, and programs relating to publicly owned lands and resources which the Council deems necessary;

(E) to make recommendations to appropriate officials of the governments of the United States and the State of Alaska with respect to the inventory, planning, classification, management, and use of Federal and State lands, respectively, and to provide such assistance to Native Corporations upon their request;

(F) to make recommendations to appropriate officials of the governments of the United States and the State of Alaska with respect to needed modifications in existing withdrawals of Federal and State lands; and

(G) to make recommendations to appropriate officials of the governments of the United States and the State of Alaska with respect to the programs and budgets of Federal and State agencies responsible for the administration of Federal and State lands; and

(H) to make recommendations to appropriate officials of the governments of the United States, the State of Alaska, and Native Corporations for land exchanges between or among them.

(j) COOPERATIVE PLANNING.—

(1) The Council shall recommend cooperative planning zones, consisting of areas of the State in which the management of lands or resources by one member materially affects the management of lands or resources of another member or members including, but not limited to, such areas as the Northwest Arctic, the North Slope, and Bristol Bay. Federal members of the Council are authorized and encouraged to enter into cooperative agreements with Federal agencies, with State and local agencies, and with Native Corporations providing for mutual consultation, review, and coordination of resource management plans and programs within such zones.

Cooperative agreements.

(2) With respect to lands, waters, and interests therein which are subject to a cooperative agreement in accordance with this subsection, the Secretary, in addition to any requirement of applicable law, may provide technical and other assistance to the landowner with respect to fire control, trespass control, law enforcement, resource use, and planning. Such assistance may be provided without reimbursement if the Secretary determines that to do so would further the purposes of the cooperative agreement and would be in the public interest.

(3) Cooperative agreements established pursuant to this section shall include a plan for public participation consistent with the guidelines established by the Council pursuant to subsection (m).

(k) NONACCEPTANCE OF COUNCIL RECOMMENDATIONS.—If any Federal or State agency does not accept a recommendation made by the Council pursuant to subsection (i) or (j), such agency, within thirty days of receipt of the recommendation, shall inform the Council, in writing, of its reason for such action.

(l) TERMINATION.—Unless extended by the Congress, the Council shall terminate ten years after the date of enactment of this Act. No later than one year prior to its termination date, the Cochairmen shall submit in writing to the Congress a report on the accomplishments of the Council together with their recommendations as to whether the Council should be extended or any other recommenda-

Report to Congress.

tions for legislation or other action which they determine should be taken following termination of the Council to continue carrying out the purposes for which the Council was established.

(m) PUBLIC PARTICIPATION.—The Council shall establish and implement a public participation program to assist the Council to carry out its responsibilities and functions under this section. Such program shall include, but is not limited to—

(1) A committee of land-use advisors appointed by the Cochairmen made up of representatives of commercial and industrial land users in Alaska, recreational land users, wilderness users, environmental groups, Native Corporations, and other public and private organizations. To the maximum extent practicable, the membership of the committee shall provide a balanced mixture of national, State, and local perspective and expertise on land and resource use issues; and

(2) A system for (A) the identification of persons and communities, in rural and urban Alaska, who or which may be directly or significantly affected by studies conducted, or advice and recommendations given by the Council pursuant to this section, and (B) guidelines for, and implementation of, a system for effective public participation by such persons or communities in the development of such studies, advice and recommendations by the Council.

FEDERAL COORDINATION COMMITTEE

Establishment. 16 USC 3182.

SEC. 1202. There is hereby established a Federal Coordination Committee composed of the Secretaries (or their designees) of Agriculture, Energy, the Interior, and Transportation; the Administrators of the Environmental Protection Agency, and the National Oceanic and Atmospheric Administration; and the Federal and State Cochairmen of the Council. Such Committee shall meet at least once every four months in order to coordinate those programs and functions of their respective agencies which could affect the administration of lands and resources in Alaska. The Federal Cochairman shall be the Chairman of the Committee. He shall be responsible for formulating an agenda for each meeting, after consultation with the other agency heads referred to herein, for providing any necessary staff support, and for preparing a brief summary of the disposition of matters discussed at each meeting. Such summary shall be published in the Federal Register.

Publication in Federal Register.

BRISTOL BAY COOPERATIVE REGION

16 USC 3183.

SEC. 1203. (a) DEFINITIONS.—For purposes of this section—

(1) The term "Governor" means the Governor of the State of Alaska.

(2) The term "region" means the land (other than any land within the National Park System) within the Bristol Bay Cooperative Region as generally depicted on the map entitled "Bristol Bay-Alaska Peninsula", dated October 1979.

Cooperative management plan.

(b) PURPOSE.—The purpose of this section is to provide for the preparation and implementation of a comprehensive and systematic cooperative management plan (hereinafter in this section referred to as the "plan"), agreed to by the United States and the State—

(1) to conserve the fish and wildlife and other significant natural and cultural resources within the region;

(2) to provide for the rational and orderly development of economic resources within the region in an environmentally sound manner;

(3) to provide for such exchanges of land among the Federal Government, the State, and other public or private owners as will facilitate the carrying out of paragraphs (1) and (2);

(4) to identify any further lands within the region which are appropriate for selections by the State under section 6 of the Alaska Statehood Act and this Act; and

(5) to identify any further lands within the region which may be appropriate for congressional designation as national conservation system units.

(c) FEDERAL-STATE COOPERATION IN PREPARATION OF PLANS.—(1) If within three months after the date of enactment of this Act, the Governor notifies the Secretary that the State wishes to participate in the preparation of the plan, and that the Governor will, to the extent of his authority, manage State lands within the region to conserve fish and wildlife during such preparation, the Secretary and the Governor shall undertake to prepare the plan which shall contain such provisions as are necessary and appropriate to achieve the purposes set forth in subsection (b), including but not limited to—

(A) the identification of the significant resources of the region;

(B) the identification of present and potential uses of land within the region;

(C) the identification of areas within the region according to their significant resources and the present or potential uses within each such area;

(D) the identification of land (other than any land within the National Park System) which should be exchanged in order to facilitate the conserving of fish and wildlife and the management and development of other resources within the region; and

(E) the specification of the uses which may be permitted in each area identified under paragraph (C) and the manner in which these uses shall be regulated by the Secretary or the State, as appropriate, if such plan is approved.

(2) The plan shall also—

(A) specify those elements of the plan, and its implementation, which the Secretary or the Governor:

(i) may modify without prior approval of both parties to the plan; and

(ii) may not modify without such prior approval; and

(B) include a description of the procedures which will be used to make modifications to which paragraph (A)(i) applies.

(d) ACTION BY SECRETARY IF STATE DOES NOT PARTICIPATE IN PLAN.—If—

(1) the Secretary does not receive notification under subsection (c) that the State will participate in the preparation of the plan; or

(2) after the State agrees to so participate, the Governor submits to the Secretary written notification that the State is terminating its participation;

the Secretary shall prepare a plan containing the provisions referred to in subsection (c)(1) (and containing a specification of those elements in the plan which the Secretary may modify without prior approval of Congress), and submit copies of such plan to the Congress, as provided in subsection (e)(2), within three years after the date of the enactment of this Act.

Cooperative management plan, submittal to Congress.

(e) TAKING EFFECT OF PLAN.—

Lands bill puts NPS director on the hot seat

Occasionally, bureaucracy turns up an individual who refuses to be shackled by the confines of protocol and red tape. One such was Bob Howe, former superintendent of Glacier Bay National Monument.

Bob was a charismatic, informal leader, who brought a human dimension to his management which made Glacier Bay one of the happiest posts in the entire national park system, and one of the best run.

Opinion

Another official who shows a capacity for independence and cutting through the shackles of encrusted tradition is the present National Park Service Alaska director, John Cook. Director Cook doesn't shy away from controversy. When a tough problem surfaces, he uses direct and forceful tactics.

Shortly after the unpopular national monument proclamation in 1978, Cook had to negotiate with miners holding

Celia Hunter

claims within the new park borders. Cook waded in, invited leaders of the mining fraternity to sit down with him in a conference room, and stayed there with them until they had worked out an agreement the miners felt they could live with.

The National Park Service faces a formidable task in Alaska following the signing of the Alaska lands bill Dec. 2, 1980. The act more than doubled the total acreage of the national park system, with over two thirds of that acreage in Alaska.

With an austerity administration taking office, the NPS can expect little additional funding to manage its new properties. Optimistically, the Alaska office requested 30 new positions. Some hiring has been done: superintendents for new units are in place, and the NPS will open field offices in Eagle, Nome, Glennallen, Kotzebue, Seward and Fairbanks.

While certain elements of the Alaskan public continue to take a hostile attitude toward all federal agency actions, Cook and his staff are attempting to find ways to defuse potentially troublesome situations. He agrees that he'll never bat one thousand, but he intends to keep trying. He'll be meeting with citizen groups throughout the state, seeking comment on NPS plans, interim regulations, or to hear complaints about NPS decisions.

The kibitzers are getting in position, all the way from the Alaska congressional delegation, to the Alaska Legislature, where Bettye Fahrenkamp introduced legislation to create a 16-person "D-2 Monitoring Committee," to citizen organizations, both conservationist and development-oriented, as well as native and rural residents.

Americans make a lot of demands on their national park system. Cook, who will preside over this domain, is in the hot seat, and he recognizes it. His main concern is to give Alaskans and the U.S. a quality park system. NPS personnel will be working to provide maximum protection of the unique values of each outstanding area, while providing a satisfying experience to park visitors. Sometimes the two halves of the National Park Service mission are hard to fit together, but Cook pledges his best efforts to both preserve park values and provide for public use and enjoyment.

COMPTROLLER GENERAL'S REPORT
TO THE RANKING MINORITY MEMBER
SUBCOMMITTEE ON INTERIOR
COMMITTEE ON APPROPRIATIONS
UNITED STATES SENATE

PRIVATE LANDS ACQUIRED IN THE LAKE CHELAN NATIONAL RECREATION AREA SHOULD BE RETURNED TO PRIVATE OWNERSHIP

D I G E S T

Public Law 90-544, enacted on October 2, 1968, established the Lake Chelan National Recreation Area in the State of Washington. The Congress intended that land acquisition costs should be minimal, the private community of Stehekin in the recreation area should continue to exist, existing commercial development should not be eliminated, and additional compatible development should be permitted to accommodate increased visitor use.

During the intervening 12 years, the Service has spent about $2.4 million to acquire over half of the 1,730 acres of privately owned land in the recreation area. Many of these acquisitions appear to be inconsistent with congressional intent. The Service has:

--Encouraged sales to the Service by (1) imposing restrictions on businesses which are so prohibitive that a reasonable return on investment could not be realized and (2) making promises to private landowners concerning the Service's development plans for the area which were not fulfilled. (See p. 8.)

--Never offered private landowners the alternative of scenic easements even though the former Service Director stated that acquisition would be used only when a private landowner planned to develop a property in a manner incompatible with the purposes of the enabling legislation or when the cost of a scenic easement would be prohibitive. (See p. 9)

--Spent over $506,000 to acquire 42 tracts of land each less than 2 acres in size. Many of these tracts did not have to be acquired because they had modest homes--small single family dwellings--identified by the former Service Director as compatible with the purposes of the enabling

legislation and/or they were so small that they could not have been subdivided under the existing zoning ordinance or developed in a way which would make them incompatible with the recreation area. (See p. 10.)

--Spent about $357,000 to acquire the three private lodges and the only restaurant in the recreation area also identified by the former Service Director as compatible with the act. Lodging accommodations have increased by about 50 percent but the Service has prohibited new private development needed to maintain the level of services in existence when the recreation area was established. (See p. 11.)

Moreover, the Service plans to acquire most of the remaining privately owned land in the recreation area. The Service's Acting Pacific Northwest Regional Director has requested another $3 million to acquire about 369 acres or almost 57 percent of the remaining 648 acres of privately owned land without first clearly defining uses incompatible with the enabling legislation. His request is based on the premise that the Service must acquire the major areas subject to subdivision to prevent a prospective building boom of recreational homesites.

Subdivision of the tracts to be acquired is highly unlikely. Six of the 11 tracts have modest homes which GAO believes could be adequately protected by scenic easements or zoning and still be compatible under the act. Another tract is less than an acre in size and cannot be developed under the existing zoning ordinance, while the owner of another is planning to build a modest home. The owners of two other tracts are considering building lodges needed to bring accomodations in the recreation area up to their pre-act level. The owner of the remaining tract has no development plans. Therefore, GAO sees no plausible reason for the Service to acquire these lands, even if the owners are willing to sell. (See p. 13.)

GAO believes that the statutory ceiling for land acquisitions in the Lake Chelan National Recreation Area should not be raised another $2 million to $7.5 million. If the Service defines incompatible uses based on the legislative history and studies, those lands previously acquired that are compatible with the purposes of the recreation area could be sold back to the highest bidder, including the previous owners or other private individuals. The proceeds would be credited to the Land and Water Conservation Fund in the Treasury. Funds obtained in this manner would then be available for future acquisitions if an incompatible use is identified, subject to the $4.5 million appropriation ceiling on total acquisitions under Public Law 90-544.

If the Service sells back lands, the last owner or owners should be offered first opportunity to reacquire the property. The Land and Water Conservation Fund Act of 1965, as amended, limits this right of first refusal to 2 years after the property to be conveyed is acquired by the Service. Since the lands in the recreation area were acquired between 1969 and 1974, we believe that the Congress should exempt land acquired pursuant to Public Law 90-544 from the 2-year limitation to assure that those private landowners adversely affected by Service acquisitions have first opportunity to reacquire the property.

RECOMMENDATIONS TO THE SECRETARY OF THE INTERIOR

GAO recommends that the Secretary of the Interior direct the Director of the National Park Service to:

--Develop a land acquisition plan for the Lake Chelan National Recreation Area. The plan should define incompatible uses based on the legislative history and studies; clarify the criteria for condemnation;

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identify the reasons for fee simple acquisition verses alternative land protection and management strategies such as scenic easements and zoning; address commitments to be made to landowners in acquiring their property; and establish acquisition priorities. The plan should be applicable to both private and Service actions.

--Sell back to the highest bidder, including previous owners or other private individuals, all lands compatible with the purposes of the recreation area. This would include the modest homes, lodges, and restaurant. The Service could attach scenic or developmental restrictions on the deeds before the properties are resold to assure that their use will be consistent with the purposes of the enabling legislation.

RECOMMENDATIONS TO THE CONGRESS

GAO recommends that the Congress:

--Not increase the statutory land acquisition appropriation ceiling under Public Law 90-544 above the $4.5 million already approved.

--Exempt land acquired pursuant to Public Law 90-544 from the 2-year limitation in the Land and Water Conservation Fund Act of 1965, as amended, on offering the last owner or owners first opportunity to reacquire property sold to the National Park Service.

Contents

CHAPTER 1

INTRODUCTION

Public Law 90-544, enacted on October 2, 1968, established in the State of Washington the North Cascade National Park and the Ross Lake and Lake Chelan National Recreation Areas. The complex, administered by the Department of the Interior's National Park Service, comprises about 674,000 acres of spectacular pinnacles, high jagged peaks, and ridges flanked by glaciers, icefalls, and snowfields which feed waterfalls, lakes, and streams in alpine meadows and virgin forests below. The Lake Chelan National Recreation Area encompasses about 62,000 acres, adjoining the southern unit of the North Cascades National Park.

The Ranking Minority Member of the Subcommittee on Interior, Senate Committee on Appropriations, requested us to examine the land acquisition and management practices of the Department of the Interior and the Forest Service, Department of Agriculture. Specifically, he asked that a comparative study of the laws governing specific areas, the regulations promulgated by the Federal agencies, the management practices of the area managers, and congressional intent be included in our study. This interim report addresses land acquisition and management practices at the Lake Chelan National Recreation Area.

LEGISLATIVE HISTORY

Under S. 1321 as originally proposed, the lower Stehekin River Valley and the upper Lake Chelan area would have been part of the North Cascades National Park. The Senate Committee on Interior and Insular Affairs amended the bill to designate these areas instead as the Lake Chelan National Recreation Area. The Committee, in Senate Report No. 700, 90th Congress, October 31, 1967, explained its change as follows:

> "* * * Many of the yearlong residents of the Stehekin Valley are decendents of the original homesteaders. Some 1,700 acres, mostly on the valley floor, are in private ownership, and in the past several decades a number of summer homes have been build. The only access to the community is by foot, horseback, boat, or plane, even though there is in existence a road of some 25 miles extending from the village up the valley. The lake, likened by most to the spectacular fjords of Norway, will serve as the primary access for

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> park and recreation area visitors approaching from the southeast. The village and the lower valley, therefore, will have considerable use, and development to accommodate these visitors will be necessary. The Stehekin Valley, the Rainbow Creek Valley, and Rainbow Ridge traditionally have been used by high country big game hunters. The Washington State Department of Game, in cooperation with the Chelan Public Utility District, plans to engage in spawning channel improvement on Stehekin River and Company Creek in order to improve the fishing in 1,500-foot deep Lake Chelan. All these factors were important in the committee's decision to create a 62,000-acre recreation area here, instead of giving the area national park status." (Emphasis added.)

The House Committee on Interior and Insular Affairs agreed. (House Report No. 1870, 90th Congress, September 9, 1968.) Thus, the law as enacted converted the southernmost portion of the originally proposed national park into a national recreation area.

The enabling legislation provides specific guidelines for land acquisition in and management of the recreation areas. The Service may not acquire any interests within the recreation areas without the consent of the owner, so long as the lands are devoted to uses compatible with public outdoor recreation use and the conservation of the scenic, scientific, historic, and other values contributing to public enjoyment. The Service is further required to administer the areas in a manner which will best provide for "the continuation of such existing uses and developments as will promote or are compatible with, or do not significantly impair, public recreation and conservation of the scenic, scientific, historic or other values contributing to public enjoyment."

The Service's land acquisition plan for the Stehekin Valley and uses compatible with the purposes of the act were identified by the Service's former Director at Senate and House hearings. In May 19, 1967, testimony before the Subcommittee on Parks and Recreation, Senate Committee on Interior and Insular Affairs, the former Director stated that the Service

> "will not seek to acquire private inholdings within the Stehekin Valley of the proposed North Cascades National Park without the consent of the owner, so long as the lands continue to be devoted to present compatible uses

> now being made of them-such as for modest home sites, ranches, limited eating establishments, lodges, etc. This applies to the present owners and to any future owners of the property. The present owners are at liberty to dispose of their property just as a private landowner anywhere else can do. Subsequent owners may be assured that the National Park Service will take no action with regard to acquiring the property without their consent so long as the properties continue to be used for these same compatible purposes as at the time of the authorization of the park." (Emphasis added.)

This statement was clarified at July 26, 1968, hearings before the Subcommittee on National Parks and Recreation, House Committee on Interior and Insular Affairs. The former Director agreed that the Service would not acquire fee simple interest in private land within the recreation area "simply because the owner wishes to sell." The Service would acquire land only when a property was to be used for an incompatible purpose or when the cost of a scenic easement would be prohibitive. (See app. I.) The former Director stated that "our proposal would be to rely on the existing commercial establishment at Stehekin to take care of the users in Stehekin."

FUNDING

House Report No. 1870 states that when the North Cascades complex was established, more than 99 percent of the land was already publicly owned and that "land acquisition costs should be minimal." Only about 1,730 acres or less than 3 percent of the 62,000 acres within the Lake Chelan National Recreation Area were in private ownership.

Public Law 90-544 authorized the appropriation of not more than $3.5 million for the acquisition of privately owned lands, including existing mineral patents. By 1974, the Service had expended all of the $3.5 million including about $2.4 million to acquire about 987 acres of privately owned land in the Lake Chelan National Recreation Area.

Public Law 94-578, enacted on October 21, 1976, raised the statutory authorization ceiling by $1 million which was subsequently appropriated. Of this amount, about $800,000 had been spent for final acquisitions involving patented mining claims within the North Cascades National Park. Service officials expect the remaining $200,000 to be outstanding at the end of fiscal year 1980.

In May 1980, the Service's Acting Pacific Northwest Regional Director requested that the statutory ceiling be raised by another $3 million to $7.5 million in omnibus legislation. The funds are to be used to acquire additional tracts of land within the Lake Chelan National Recreation Area. He stated that although the Service had drastically reduced the scale of the "prospective building boom of recreational homesites" by selective acquisition of larger tracts of land that had been offered for sale, the Service does not have sufficient funds to handle the acquisition of the major areas in the recreation area still subject to subdivision.

NATIONAL PARK SERVICE LAND ACQUISITION POLICY

In 1969, the National Park Service revised its land acquisition policy and began a national campaign to acquire all lands within park boundaries except where satisfactory zoning on land uses were in effect. This policy was continually revised and refined. On April 26, 1979, the Service published a land acquisition policy that states that it will acquire land and water in fee simple or less-than-fee interest, consistent with the enabling legislation, to protect resources and provide for visitor use. Each park area with an active land acquisition program must have a land acquisition plan which establishes acquisition priorities; defines compatible and incompatible uses; clarifies the criteria for condemnation; and identifies the reasons for fee simple acquisition versus alternative land protection and management strategies such as easements, zoning, cooperative planning and management, access limitations, and rights-of-way.

The purpose of a park area land acquisition plan is to inform the park staff, land acquisition personnel, affected landowners, and the general public of the Service's land acquisition program for the area. The plan, developed by the park area superintendent or manager and approved by the appropriate regional director, should be clearly understandable and developed with public participation. The plans were to be completed by April 26, 1980.

OBJECTIVES, SCOPE, AND METHODOLOGY

This interim report presents the results of our examination of land acquisition and management policies and practices by Interior's National Park Service at the Lake Chelan National Recreation Area in the State of Washington. As part of our examination, we reviewed the enabling legislation;

legislative history; and area plans, priorities, funding, and objectives. We determined if land acquisitions and management appeared consistent with congressional intent and/or legislative directives and evaluated their impact on Federal land acquisition costs as well as private landowners and the community of Stehekin.

We held a public meeting in Stehekin to explain the scope and nature of our work. We then met with all existing and former landowners and residents who expressed an interest in discussing the chronology and their involvement in the Service's land acquisition actions. We also met with area, regional, and headquarters Service officials; the Chelan County Board of Commissioners; and representatives of national and local conservation and environmental groups. We have also discussed our work with the Program Audit Manager for Fish, Wildlife, and Parks in Interior's Office of Inspector General.

PRIOR GAO REPORT

On December 14, 1979, we issued a report entitled "The Federal Drive To Acquire Private Lands Should Be Reassessed" (CED-80-14) which focused on the activities of three Federal agencies with major land management and acquisition programs--the Forest Service, Department of Agriculture, and the Fish and Wildlife Service and the National Park Service, Department of the Interior. The report stated that the three agencies had been following a general practice of acquiring as much private land as possible regardless of need, alternative land control methods, and impacts on private landowners. We recommended that the Secretaries of Agriculture and the Interior

--jointly establish a policy on when lands should be purchased or when other protection alternatives, such as easements, zoning, and Federal controls should be used;

--critically evaluate the need to purchase additional lands in existing projects; and

--prepare plans identifying lands needed to achieve project purposes and objectives at every new project before acquiring land.

We also recommended that the Congress oversee the implementation of these recommendations.

The Departments of Agriculture and the Interior took several actions on our recommendations. Land managing agencies' policies and guidelines concerning acquisition and alternative protection strategies are now reviewed by an interagency policy group. Also, a proposed joint policy statement to consider a full-range of alternatives to fee simple acquisition for new areas and for major additions to existing areas was published in the Federal Register in December 1979.

CHAPTER 2

ACQUISITIONS OF PRIVATE LANDS APPEAR INCONSISTENT WITH CONGRESSIONAL INTENT

The intent of the Congress, as reflected in the Senate and House reports and the enabling legislation was that "land acquisition costs should be minimal," the private community of Stehekin should continue to exist, existing commercial development should not be eliminated, and additional compatible development should be permitted to accommodate increased visitor use. However, by 1974, the Service had spent about $2.4 million to acquire in fee simple about 987 acres or 57 percent of the 1,730 acres of privately owned land in the Lake Chelan National Recreation Area. Moreover, the Service plans to acquire most of the remaining 648 privately owned acres in the valley. 1/

As with other Service areas interpretation of the enabling legislation has become the point of contention and a basis for arguments for and against Service land acquisitions. Usually either the landowners or national environmental and conservation organizations express concern over whether the land acquisition practices being followed by the Service at a particular park area are consistent with congressional intent. At the Lake Chelan National Recreation Area, however, the Service has never defined its land acquisition plan. This has served to alienate both landowners and environmentalists against the Service and has prevented the Service from presenting a defensible stand on the consistency of its land acquisition practices with the enabling legislation.

A major part of the problem is the Service's failure to clearly define "incompatibility." While Service officials recognize that congressional intent was that the private community of and commercial development in Stehekin continue to exist and that additional compatible development be permitted, they believe that the statutory guidelines are so broad as to prohibit the Service from clearly defining uses considered incompatible with the purposes of the recreation area. In the interim, the Service has taken actions which we believe to be contrary to congressional intent.

1/The Chelan County Public Utility District No. 1 (PUD) owns 95 acres.

By not developing a land acquisition plan which defines actions incompatible with the purposes of the recreation area, the Service has failed to consider the optimum mix of fee simple acquisitions with alternative land protection and management strategies to best meet the purposes of the enabling legislation. This could further increase Federal land acquisition costs by $3 million and eventually lead to the elimination of the small community of Stehekin recognized by the Congress as adding a key dimension to the atmosphere and character of the recreation area.

INCOMPATIBILITY NOT DEFINED

The Service's land acquisition policy requires each park area with an active land acquisition program to identify uses incompatible with the purposes of the enabling legislation. The legislative history for the recreation area shows that the Congress had no intention of eliminating uses that existed at the time the legislation was enacted. However, the extent to which additional compatible development would be permitted to accommodate increased visitor use was left to the Service. In the almost 12 years that have transpired, the Service has yet to identify what is incompatible with the purposes of the recreation area. Almost without exception existing landowners and residents as well as environmental and conservation organizations criticized the Service for failing to define incompatibility and were upset at the confusion and misunderstandings that had resulted. Many former landowners stated that the potential for condemnation and the uncertainty of not knowing what uses would be considered incompatible by the Service was a primary reason for selling their land.

In 1979, the Chelan County Planning Department drafted a comprehensive plan for the lower Stehekin Valley. The plan stated that Federal acquisition of private land is not necessarily the only way to conserve the values that make Stehekin unique. A goal of the plan was to fulfill the expressed intentions of the original legislation establishing the recreation area. The plan strove to achieve a balance between public use and enjoyment and valid existing rights associated with private property in the area. The purpose of the plan was to identify with Service approval, private land uses and developments regarded as compatible with the enabling legislation and therefore not subject to condemnation by the Service now or at any time in the future.

In an October 6, 1979, statement before the Chelan County Planning Commission, the Service's Pacific Northwest Regional Director rejected this plan stating that it did not provide adequate zoning and land use controls.

He stated that the Service opposes any further subdivision in the valley as well as development on all of the remaining undeveloped tracts. However, the Service's April 25, 1980, draft land acquisition plan for the recreation area, developed to comply with the Service's April 26, 1979, revised land acquisition policy, did not identify either private developments regarded as incompatible or the Service's intention to oppose any further subdivision in the valley. The plan stated only that (1) potential subdivisions and development of the subdivided tracts along with development of all existing tracts would result in an unacceptable imbalance between demand for and protection of the area and (2) compatibility and incompatibility had not been established pending a joint Service and county planning effort pertaining to zoning and private land use. (See app. II.)

By rejecting the county's interpretation of the enabling legislation and by not identifying incompatible uses in its draft land acquisition plan, the Service continues to project the potential of condemnation for any development action taken by a private landowner. Defining incompatible uses based on the legislative history, thereby clarifying the criteria for condemnation, is a necessary first step in enacting zoning ordinances and in developing a defensible land acquisition plan for the recreation area.

SERVICE ACTIONS HAVE ENCOURAGED SALES

According to Service officials, all acquisitions within the recreation area have been from willing sellers. However, the Service appears to have encouraged sales to the Service by (1) imposing restrictions on businesses which are so prohibitive that a reasonable return on investment could not be realized and (2) making promises to private landowners concerning the Service's development plans for the area which were not fulfilled. For example, when the recreation area was established there were three private horse packers in Stehekin who were equipped to take care of public saddle trips and day trail rides. When necessary they would combine their efforts to handle larger groups such as 75 Sierra Club members. However, the Service has restricted groups to 15 horses and 12 people to reduce their impact on the backcountry.

Since the Service imposed restrictions on the number of horses and people per group, two of the three private horse packers have gone out of business. According to the remaining packer, the Service imposed restrictions deprived them

of a reasonable return on investment and they subsequently sold their lands to the Service. He stated that he has been forced to find additional sources of income just to break even.

According to the North Cascades complex superintendent, the Service has never conducted a study to determine the impact of various group sizes on the backcountry. The Service has relied instead on observations by its backcountry personnel to make determinations on when an area is reaching its limits. Incompatibility, in this instance, although defined by the Service, was not based on a study.

Other former landowners informed us that they sold to the Service based on promises made by Service officials. For example, family members of a deceased man who sold a 110-acre tract to the Service informed us that he did so only after the Service's regional land acquisition officer verbally promised that, if possible, the Service would complete the final four fairways of a golf course he had been developing. The land acquisition officer agreed that he had promised to complete the golf course but could provide no documentation to show that an effort was made to obtain funds to complete the fairways. Instead, the Service has ruined three of the nearly completed fairways with four trailers used to house seasonal employees, two bunkhouses and a utility building for Young Adult Conservation Corps (YACC) workers, a large building to house a garbage compactor, a maintenance shop, a storage yard for building materials and gasoline, and a topsoil pit. Service officials explained that they had to have someplace to put their facilities.

As evidenced above, arbitrarily defining incompatibility may adversely affect private landowners. Incompatible use determinations should be based on studies before being incorporated into a land acquisition plan. Also included in the plans should be any commitments to be made to landowners in acquiring their property.

SCENIC EASEMENTS NEVER CONSIDERED A VIABLE LAND PROTECTION STRATEGY

In his July 26, 1968, House testimony the former Service Director stated that "If we have a compatible, private development that is there and we have enough control through scenic easement to see that it continues, we are through with land acquisition." (See app. I.) All lands acquired to date, including tracts with modest homes--small individual single dwelling units--as well as the lands to be acquired if the statutory ceiling is raised by $3 million have been or are to be in fee simple.

Former landowners interviewed by us stated that fee simple acquisition was the only alternative presented by Service officials. The option of owning their land in perpetuity with a scenic easement was never identified or discussed. The Service's regional land acquisition officer agreed stating that he is opposed to any alternative land protection strategy in the recreation area other than fee simple acquisition. He stated that acquiring partial interests such as scenic easements often costs nearly as much as fee simple acquisition and restrictions on the use of private land are ineffective and a heavy administrative burden.

We have found that obstacles to the use of alternative land protection and management strategies are primarily perceived rather than demonstrated. When pressed for examples, Service officials said that they knew of few specific instances where problems had occurred.

While the price of these alternatives could be high--sometimes approaching that of fee simple--and enforcement could be difficult, substantial benefits could result and resistance to Federal acquisition should be reduced. The land will remain in private ownership and on the tax rolls, although perhaps at lower assessed values. Since residents will retain their homes, relocation costs are not incurred. Finally, the Federal Government could be saved the cost of administering an area such as the boat landing in Stehekin.

The Service's April 26, 1979, revised land acquisition policy states that each park area land acquisition plan must identify the reasons for fee simple acquisition versus alternative land protection and management strategies. The Service's April 25, 1980, draft land acquisition plan for the recreation area did not even address scenic easements much less explain why they had not been used. (See App. II.) Moreover, the Service's Acting Pacific Northwest Regional Director's request to raise the statutory ceiling by $3 million is based on fee simple acquisition of 11 tracts of land of which 6 have modest homes. We believe these 6 tracts could be adequately protected by scenic easements or zoning and still be compatible under the act.

COMPATIBLE PROPERTIES ACQUIRED SIMPLY BECAUSE THE OWNERS WISHED TO SELL

In his July 26, 1968, House testimony the former Service Director stated that the Service would not acquire private land within the recreation area simply because the owner wished to sell. (See App. I.) By 1974, the Service had spent over $506,000 to acquire 42 tracts of land each

less than 2 acres in size. Many of the tracts were already improved with modest homes identified by the former Service Director in his May 29, 1967, Senate testimony as compatible with the purposes of the act. Service officials informed us that these tracts were acquired simply because the owners wished to sell.

The general use zoning ordinance in existence since the recreation area was established required either a 1 acre minimum tract with septic tank, sewage disposal, and water supply or a 12,500 square foot minimum tract if a community water supply and septic system is available. Using these limitations, few of the 42 tracts acquired could have been subdivided and many of the smaller undeveloped tracts could not have been improved.

Service officials stated that the Service has always been committed to the "willing seller--willing buyer" concept. However, congressional intent was that the private community of Stehekin should continue to exist and the Service should have explored alternatives to acquiring private lands from willing sellers. Further, the statutory ceiling may not have to be raised if modest homes acquired by the Service as well as undeveloped tracts not subject to subdivision are returned to private ownership.

ALL PRIVATE LODGES AND THE RESTAURANT HAVE BEEN ACQUIRED

In his May 29, 1967, Senate testimony the former Service Director stated that existing limited eating establishments and lodges were compatible with the purposes of the act. In his July 26, 1968, House testimony he stated that the Service would "rely on the existing commercial establishment at Stehekin to take care of the users in Stehekin." By May 1971, the Service had expended about $357,000 to acquire the three private lodges and the only restaurant in Stehekin.

The Service's Pacific Northwest Regional Director informed us that he had no idea why the three lodge owners desired to sell, but noted that two of the owners took advantage of the use and occupancy provisions of the act to operate their lodges for a period of years. Conversely, a signed statement by one of the former lodge owners sets forth a chronology in which he believes the Service coerced him into selling. The Service publicized plans to build a new lodge with overnight facilities including cabins, shelters, and campsites away from the existing landing and have the passenger boat dock there. The lodge owner was led to believe that he would be deprived of a reasonable return on investment due to the

competition created by the proposed lodge. This statement was supported by several other landowners. After the three lodges were acquired, the Service changed its plans and the proposed new lodge is not to be built.

According to Service officials the lodges and restaurant as well as other tracts of land at the boat landing had to be acquired because "public use" in the valley would be concentrated there. They believe that the Service was fully justified in acquiring the private property for public use and enjoyment and effective administration.

After acquisition, the Service closed the largest lodge rather than bring it up to fire and health safety standards. This reduced lodging accommodations in Stehekin by about 50 percent even though the Congress had indicated that additional development was necessary to accommodate increased visitor use. The results of a Service questionnaire distributed to recreational visitors during the summer of 1978 showed that while most were visiting for the day only, "an overwhelming majority indicated a desire to stay overnight on their next visit." Yet the Service does not plan to return lodging accommodations to their pre-act level. In his October 6, 1979, statement before the Chelan County Planning Commission, the Service's Pacific Northwest Regional Director stated that the Service does not plan to construct, or allow others to initiate any major new developments which would increase visitor use, believing them to be incompatible with the purposes of the area envisioned by the Congress.

A former Stehekin resident has proposed to replace the lodge closed by the Service with a private recreational development tentatively called Stehekin Village. As proposed the village does not appear to us to be incompatible with either the act or its legislative history. However, in his May 1980 request that the statutory ceiling be raised by $3 million in omnibus legislation, the Service's Acting Pacific Northwest Regional Director stated that this development would be an unacceptable visual intrusion on the scenic integrity of the lake and that facilities of this magnitude would have to be considered incompatible. This statement is not in accord with the congressional intent that additional development be permitted to accommodate increased visitor use and is contrary to congressional and Service assurances that existing commercial development in the valley would not be eliminated. Returning the lodges and the restaurant to private ownership could increase lodging accommodations to their pre-act level.

THE SERVICE PLANS TO ACQUIRE MOST OF THE REMAINING PRIVATELY OWNED LAND

The Service's land acquisition policy requires that each park area land acquisition plan inform all concerned parties of the Service's land acquisition program for the area. However, the April 25, 1980, draft plan for the Lake Chelan National Recreation Area does not reflect the Service's plans to acquire most, of the privately owned lands in the Stehekin Valley. (See app. II.)

In his October 6, 1979, statement before the Chelan County Planning Commission, the Service's Pacific Northwest Regional Director stated that the recent trend of expedited sales and development was incompatible with the purposes of the area as envisioned by the Congress and concluded that the Service will continue to acquire privately owned land in the recreation area, including a 157-acre tract which extends on both sides of the river in the lower valley. The April 25, 1980, draft plan makes no mention of this statement referring only to current zoning efforts by the county. (See app. II.)

Service and county records show that as of April 1980, 40 new residences had been constructed since the recreation area was established. During that same period, the Service had acquired 31 existing residences. According to Service officials, those not needed to house Service personnel, seasonal employees, concession and YACC workers, or the Stehekin schoolteacher, have been or will be demolished.

Of the 203 individual tracts that comprise the remaining 648 acres of privately owned land in the recreation area, only 14 exceed 10 acres in size. The Service's Acting Pacific Northwest Regional Director's May 1980 request to raise the statutory ceiling by $3 million identified 11 tracts totaling about 369 acres to be acquired, including 8 tracts of 10 acres or more. Six of the 11 tracts have modest homes which we believe could be adequately protected by scenic easement or zoning and still be compatible under the act. Another tract is less than an acre in size and cannot be developed under the existing zoning ordinance, while the owner of another is planning to build a modest home. The owners of the two largest tracts (157 and 40 acres) are considering building lodges to bring accommodations up to their pre-act level. The owner of the remaining tract has no development plans. Therefore, we see no plausible reason for the Service to acquire these lands even if the owners are willing to sell.

We believe that the statutory ceiling for land acquisitions in the Lake Chelan National Recreation Area should not be raised another $3 million. The Land and Water Conservation

Fund Act of 1965, as amended, provides that

> "With respect to any property acquired by the Secretary of the Interior within a unit of the national park system or miscellaneous area, except property within national parks, or within national monuments of scientific significance, the Secretary may convey a freehold or leasehold interest therein, subject to such terms and conditions as will assure the use of the property in a manner which is, in the judgment of the Secretary, consistent with the purpose for which the area was authorized by the Congress. In any case in which the Secretary exercises his discretion to convey such interest, he shall do so to the highest bidder, in accordance with such regulations as the Secretary may prescribe, but such conveyance shall be at not less than the fair market value of the interest, as determined by the Secretary; except that if any such conveyance is proposed within two years after the property to be conveyed is acquired by the Secretary, he shall allow the last owner or owners of record of such property thirty days following the date on which they are notified by the Secretary in writing that such property is to be conveyed within which to acquire such interest. Upon receiving such timely request, the Secretary shall convey such interest to such person or persons, in accordance with such regulations as the Secretary may prescribe, upon payment or agreement to pay an amount equal to the highest bid price. [16 U.S.C. 460l-22(a)]
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> "The proceeds received from any conveyance under this section shall be credited to the land and water conservation fund in the Treasury of the United States." [16 U.S.C. 460l-22(c)]

If the Service defines incompatible uses based on the legislative history and definitive studies, those lands previously acquired that are compatible with the purposes of the recreation area could be sold back to the highest bidder, including previous owners or other private individuals. This would include the modest homes, lodges, and restaurant. The Service could attach scenic or developmental restrictions on the deeds before the properties are resold to assure that their use will be consistent with the purposes of the enabling legislation. The proceeds would be credited to the Land and

Water Conservation Fund in the Treasury of the United States. Funds obtained in this manner would then be available for future acquisitions if an incompatible use is identified, subject to the $4.5 million appropriation ceiling on total acquisitions under Public Law 90-544.

If the Service sells back lands, the last owner or owners should be offered first opportunity to reacquire the property. The Land and Water Conservation Fund Act of 1965, as amended, limits this right of first refusal to 2 years after the property to be conveyed is acquired by the Service. Since the lands in the recreation area were acquired between 1969 and 1974, we believe that the Congress should exempt land acquired pursuant to Public Law 90-544 from the 2-year limitation to assure that these private landowners adversely affected by Service acquisitions have first opportunity to reacquire the property.

CONCLUSIONS

National Park Service land acquisitions in the Lake Chelan National Recreation Area appear to be inconsistent with congressional intent to preserve the private community of Stehekin and to permit additional compatible development to accomodate increased visitor use. Service actions at the recreation area have not only unnecessarily increased Federal land acquisition costs, but have adversely impacted on private landowners and the community of Stehekin.

We believe much of the land already acquired by the Service was compatible with the purposes of the recreation area and did not have to be acquired and that the public interest could have been adequately protected by alternative land acquisition strategies including scenic easements or zoning. These lands should be returned to private ownership and the proceeds from the sales credited to the Land and Water Conservation Fund in the Treasury. Funds obtained in this manner would then be available for future acquisitions if an incompatible use is identified, subject to the $4.5 million appropriation ceiling on total acquisitions under Public Law 90-544. Further, the appropriation ceiling should not be increased until the Park Service has defined incompatible development, prepared a land acquisition plan justifying the need to acquire land from private owners, and spent the funds obtained from selling back land to private individuals.

RECOMMENDATIONS TO THE SECRETARY OF THE INTERIOR

We recommend that the Secretary of the Interior direct the Director of the National Park Service to:

--Develop a land acquisition plan for the Lake Chelan National Recreation Area consistent with the Service's April 26, 1979, land acquisition policy. The plan should define incompatible uses based on the legislative history and studies; clarify the criteria for condemnation; identify the reasons for fee simple acquisition verses alternative land protection and management strategies such as scenic easements and zoning; address commitments to be made to landowners in acquiring their property; and establish acquisition priorities. The plan should be applicable to both private and Service actions.

--Sell back to the highest bidder, including previous owners or other private individuals, all lands compatible with the purposes of the recreation area. This would include the modest homes, lodges, and restaurant. The Service could attach scenic or developmental restrictions on the deeds before the properties are resold to assure that their use will be consistent with the purposes of the enabling legislation. The The proceeds would be credited to the Land and Water Conservation Fund in the Treasury. Funds obtained in this manner would then be available for future acquisitions if an incompatible use is identified, subject to the $4.5 million appropriation ceiling on total acquisitions under Public Law 90-544.

RECOMMENDATIONS TO THE CONGRESS

We recommend that the Congress:

--Not increase the statutory land acquisition appropriation ceiling for the North Cascades National Park and the Ross Lake and Lake Chelan National Recreation Areas above the $4.5 million already approved.

--Exempt land acquired pursuant to Public Law 90-544 from the 2-year limitation in 16 U.S.C. 4601-22(a) on offering the last owner or owners first opportunity to reacquire property sold to the National Park Service.

EXCERPTS FROM THE JULY 26, 1968, HEARINGS BEFORE THE SUBCOMMITTEE ON NATIONAL PARKS AND RECREATION OF THE HOUSE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

Congressman James A. McClure. "Mr. Hartzog, I appreciate the information you provided me in regard to the evolution of the national recreation area and the scenic easements that are being acquired. This is a matter which you and I have discussed and on which we share concern as to the direction which may eventually evolve. . . . . .

"You made a statement a moment ago, however, which startled me a little with respect to the acquisition of inholdings. If I recall your statement correctly, it was along the order that within the recreation areas there would be no plan to acquire in-holdings until the owners wish to sell.

Mr. George Hartzog, Director, National Park Service. "As long as their use was compatible with the overall recreational environment of the area.

"Mr. McClure. It hadn't been my understanding that within national recreation areas it was the intention of the National Government to acquire fee to any of the land, necessarily.

"Mr. Hartzog. Well, we do have to have the fee for the areas that we are going to develop, the areas that we are going to make available for public use.

"Mr. McClure. Surely.

"Mr. Hartzog. Then if an owner insists on developing an area that is not needed for one of these two categories, adversely [sic] the recreational environment, sometimes we simply have to acquire the fee in order to prevent it, and the Congress, recognizing this in the amendments to the Land and Water Conservation Fund Act, gave the Secretary authority in the circumstances to buy the land in fee and then either lease back or sell back a compatible development right. (Emphasis added.)

"Mr. McClure. That is an alternative, if you want to acquire a scenic easement but it is overpriced.

"Mr. Hartzog. That is correct.

"Mr. McClure. But only in that event.

"Mr. Hartzog. That is right.

"Mr. McClure. And not simply because the owner wishes to sell. (Emphasis added.)

"Mr. Hartzog. No; that is right, but if he wishes to devote it to an adverse use. You see, this is where you come into the conflict. Assume he is running there now a dude ranch and the property becomes valuable for subdivision purposes, this is its highest and best use, in his judgement, and this is what he wants to make of it. You can't resolve the thing any other way than to pay him 90 percent or more of the fee, and in some cases this is what has been done. Our view is that the Federal Government should go ahead and buy the fee and then lease it back for operation as a dude ranch. (Emphasis added.)

"I would be very pleased to furnish you as part of the record the land acquisition policies that we do follow in national parks and in national recreation areas.

"Mr. McClure. I am not sure that there is any disagreement between us but I want to make sure for the record what that policy is.

"Mr. Hartzog. Right.

"Mr. McClure. Assume that you have acquired a scenic easement which is satisfactory, then there is no continuing problems as far as adverse use in concerned and there would then be no further acquisition of fee to that particular piece of property even though the owner might be willing to sell?

"Mr. Hartzog. That is correct, sir.

"Mr. McClure. I think this is important not only for our purposes but for the understanding of the people in the local governments that are affected, that it is not the purpose of the Federal Government to acquire title except in the limited case that you are speaking of, of a developmental site or in the case where it is cheaper, more efficient to buy it rather than to buy the scenic easement?

"Mr. Hartzog. That is right.

"Mr. McClure. I think your statement could have been construed the other way, that even though you have a scenic easement, even though there is no incompatible use, that there might be a further acquisition of fee by the Federal Government, which I think a good many people that I represent would find incompatible with their understanding of the policies of the Department.

"Mr. Hartzog. I deeply appreciate the clarification of it because I certainly don't want any confusion on that point. If we have a compatible, private development that is there and we have enough control through scenic easement to see that it continues, we are through with land acquisition. (Emphasis added.)

"Mr. McClure. Thank you very much."

DRAFT

THE NATIONAL PARK SERVICE'S APRIL 25, 1980, DRAFT LAND ACQUISITION PLAN FOR THE LAKE CHELAN NATIONAL RECREATION AREA

"The land acquisition program for newly authorized areas, established since July 1959, is carried out in accordance with the policies prescribed by Congress in the authorizing legislation. The legislative history contained in Senate Report No. 700 of the 90th Congress, First Session, states in part:

> 'The important consideration in the land acquisition program for national recreation areas is that adequate lands be acquired by the Federal Government for public use and enjoyment and effective administration, accompanied by adequate control of the remaining lands to insure that the natural endowment of the areas are preserved and that private uses are not maintained or developed in a manner that would impair the primary purposes of the area to provide a continuing resource for quality outdoor recreation.'

"The Committee Report further state under the amendment section contained on page 3 of the above referenced report as follows:

> 'This amendment gives statutory character to the announced policy of the National Park Service that it will not seek to acquire the inholdings in Stehekin Valley and other portions of the national recreation areas established by this Act so long as the existing compatible uses of the private lands are not altered to the detriment of the purposes for which the areas are established.'

"At the hearing conducted in Wenatchee, Washington, on May 29, 1967, the announced policy of the National Park Service was described by Director Hartzog as follows:

> 'The National Park Service will not seek to acquire private holdings within the Stehekin Valley * * * without the consent of the owners, so long as the lands continue to be devoted to

present compatible uses now being made of them--such as: For modest homesites, ranches, limited eating establishments, lodges, etc. This applies to the present owners and to any future owners of the property. The present owners are at liberty to dispose of their property just as any private landowner anywhere else can do. Subsequent owners may be assured that the National Park Service will take no action with regard to acquiring the property without their consent so long as the properties continue to be used for the same compatible purposes as at the time of the authorization of the park.'

"Under Title IV--Administrative Provisions-Congress gave the Secretary of the Interior authority to 'acquire lands and waters and interests therein, by donation, purchase with donated or appropriated funds, or exchange except that we may not acquire any such interest within the recreation area without the consent of the owner, so long as the lands are devoted to uses compatible with the purposes of this Act.'

"The legislative record shows that there was no intent to eliminate uses that existed when the legislation passed. In existence were modest homesites, ranches, limited food services and lodges. There also were parcels with no development.

"It appears that Congress intended that the community that existed at the time of legislation would continue to exist, but that conservation of the scenic, scientific, historic and other values of the area must be provided for.

"The land records reflect that, at the time of enactment of the North Cascades National Park Complex, the Lake Chelan National Recreation Area contained 1841.34 a/ acres of private lands. Since enactment of the legislation, the Service has acquired 980.79 a/ acres of this total. Of the remaining 761.52 a/ acres in private ownership, the County Assessor's records indicate there are 205 a/ individual lots. There are currently 127 residences in the National Recreation Area--31 of these residences are in government ownership.

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a/These figures do not coincide with the data we developed during our review. (See pp. 3,6 and 13.) Service records do not support these figures, the source of which is unknown.

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Doing the impossible

Congress last fall adopted a far-reaching Alaska National Interest Lands Law which set aside more than 100 million federal acres in Alaska in various conservation units managed by various federal agencies.

Relatively speaking, Congress has taken care of the easy part. After an eight-year battle, it set down basic policies for managing those areas, which are spread across every region of the state.

Now comes the hard part, writing regulations which are true to the intent of the law and at the same time do not unnecessarily infringe upon the rights of people who visit or who live in the areas. In most cases, the individuals charged with developing those regulations will have to be miracle workers to come up with regulations that make everyone happy.

To do that, needless to say, the managers will need all the help they can get.

Currently before the Senate Resources Committee is a bill sponsored by Fairbanks Sens. Bettye Fahrenkamp and Don Bennett that we believe will give the federal agencies valuable aid in doing their jobs. The bill, SB 36, calls for the establishment of a 16-member citizens' advisory council on those new, federally managed areas in Alaska. The council — 12 members would be appointed by the governor, and two each would come from the state Senate and House — would work with all sides of the issue, using professional staff, to provide coherent, usable information to land managers as they write and update regulations for managing the areas.

The system has worked with success in northern Minnesota, where the controversial Voyagers National Park was established in 1971. The park was controversial largely because of the new regulations written to accompany its national park designation. Motorized access, including motor boats and snow machines, was subject to limitations many users found unrealistic.

To solve the problems, the Minnesota legislature established a citizens advisory council to work with the National Park Service in developing regulations which both protected the park's magnificent resources and met the needs of the recreationists.

There are several potential shortfalls in a bill such as this, the most important being that the membership be balanced. If the council were "stacked" to include only one perspective, the entire group would be just another special interest group. On the other hand, if the group were to represent a well-balanced point-of-view based on fact, it would maintain its credibility and be useful as a sounding board for managers as they write their regulations.

Anyone can build a case for or against anything. But to build a set of regulations that takes in account all sides of the complex and often controversial issues involved in managing the federal wilderness areas, national parks and other designations in Alaska is almost a mission impossible.

We believe an advisory council such as that proposed in SB 36 is a good starting point for doing the impossible.