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STATEMENT OF

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BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER

COMMITTEE ON ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

DURING ITS WORKSHOP ON

PUBLIC LAND ACQUISITION AND ALTERNATIVES

REGARDING

ADJACENT LANDS AND INTERMINGLED OWNERSHIP PROBLEMS

JULY 9 AND 10, 1981

I am pleased to participate in the committee's workshop on public land acquisition and alternatives. We have issued a number of reports to the Congress in recent years dealing with the subject. These reports contain many recommendations to the Congress and to Federal land acquisition and management agencies which, if implemented, will improve their land acquisition and management practices.

The subject of this particular panel is of adjacent lands and intermingled ownership problems. We have not addressed the problems of adjacent land ownership.

We have, however, addressed the issue of the acquisition of private lands in six reports (see encl. I). Our reports have identified problems that private land owners in national areas have had with Federal land management agencies.

BACKGROUND

The number of private land holdings within Federal areas is not precisely known. The National Inholders Association estimated that there are between 50,000 and 60,000 private land owners in national areas. The number has undoubtedly increased over the years as the Congress has authorized new or expansions to existing national parks, forests, wildlife refuges, wild and scenic rivers, and the like. For example, the National Park Service's purchases of land and the addition of 46 new areas with many private landowners, in the last decade doubled the acreage of the Park Service system to nearly 72 million and increased the number of areas managed by the Service to 323.

Generally, enabling legislation permits a Federal agency to acquire an interest, in fee simple or otherwise, in land in a

national area. This gives the Federal agency considerable leeway in determining how much and what land to acquire and the kind of interest it wants--fee simple, scenic easements, zoning restrictions, etc.--to achieve the objectives of the national area.

Although Federal land acquisition agencies are acquiring in fee simple more land than necessary to achieve national area objectives, we have noted some attempts to correct this situation.

For example, on April 26, 1979, the National Park Service issued its "Revised Land Acquisition Policy." The purpose of the policy was to provide guidance on how to critically evaluate the need to purchase land. The Service's policy states that each park area's land acquisition plan must identify the reasons for fee simple acquisition versus alternative land protection and management strategies such as acquiring easements, relying on zoning, making cooperative management agreements with State and local governments and communities, and acquiring right-of-way through private property. The Park Service's policy before this was to acquire all lands in fee simple within park area boundaries.

Even though the Park Service revised its land acquisition policy to stress less than fee simple acquisition, little improvement has been made. For example, during the period September 30, 1979, to December 31, 1980, the Service acquired an interest in 160,530 acres of land of which only 3 percent was acquired in other than fee simple. Before the policy change, the Park Service had acquired less than 1 percent in other than fee simple.

At the present time funds can only be used for land acquisition and not for restoration purposes. A new development, however, was the recent change in Administration. In his economic recovery plan, the President stated that the Nation's parks are not now being properly protected for the people's use and that the Government must learn to manage what it owns before it seeks to acquire more land. To bring the budget under control and make additional funds available for restoration and improvement of the National Park System, the President proposed a moratorium on Federal land acquisition and requested the use of $105 million from the Land and Water Conservation Fund for improving existing park areas in fiscal year 1982.

In response to the President's economic recovery plan, the Secretary of the Interior, on February 17, 1981, sent a memorandum to the heads of agencies receiving land acquisition funds. The Secretary stated that all Federal land purchases are suspended until further notice. On March 3, 1981, the Office of Management and Budget requested that $104 million of funds available for Federal land acquisition be rescinded in fiscal year 1981. On June 3, 1981, the Congress rescinded $35 million of this amount.

INTERMINGLED LAND OWNERSHIP--IS THERE A PROBLEM?

What are the problems with intermingled land ownership? Obviously, problems result if a private landowner in a national area attempts to use his or her land or to conduct certain activities which are incompatible with the Federal agency land management objectives. It has been our experience, however, that the problems which exist result not necessarily from private landowners'

activities which are incompatible with the Federal management objectives but from the Federal agency land acquisition practices.

One of the problems we noted was that Federal agencies had not defined what constitutes a land use incompatible with the purposes of a national area. Is a use incompatible if it obstructs or damages a scenic view when the Federal land management objective is to protect and preserve scenic views? Is a use incompatible if it threatens a wildlife or fish or plant habitat when the preservation of such habitats is the Federal land management objective? Is a use incompatible if it threatens the recreation potential of the land when providing recreational opportunities is the Federal land management objective? Obviously, the answer is yes.

However, is the mere existence of privately owned land within a Federal land enclave incompatible with the Federal land management objectives? We have taken the position that a Federal role is necessary to assure that nationally significant areas are protected and preserved but the role does not have to be one of blanket ownership in all areas administered by the land management agencies.

Our experience with Federal land acquisition and management agencies is that these agencies believed that the existence of privately owned land within a Federal enclave is incompatible with Federal land management objectives. Before the present Administration, the general position of Federal agencies seemed to be that unless the Congress specifically prohibited them, their mandate was to acquire all privately owned land within the Federal

enclave--usually by fee simple acquisition. (Alternatives to fee simple acquisition is the subject of another panel in this workshop.) Although Federal land acquisition agencies generally have policies requiring less than full-fee acquisition, many agency officials argue that acquiring partial interests, such as development rights or scenic easements, often costs nearly as much as full acquisition, and restrictions on the use of private land are ineffective and a heavy administrative burden. However, obstacles to the use of alternatives are primarily perceived rather than demonstrated. When pressed for examples, Federal officials admitted that they knew of few specific instances where problems had occurred.

Therefore the answer to the question of whether the existence of privately owned land within a Federal land enclave is incompatible with Federal objectives depends on who you ask. Many private land owners in national areas believe that their presence is compatible with the purposes of the area whereas Federal agencies have taken a position that their presence is incompatible.

Therein lies the problem--private landowners want to keep and enjoy the use of their property and Federal land acquisition and management agencies want to acquire the land because they believe it is the surest way to achieve their land management objectives. The private land owner worries that the Federal agency will take his or her land sooner or later and the Federal agency often is frustrated because it lacks the money to take it sooner.

REDUCING TENSION BETWEEN PRIVATE LAND OWNERS AND FEDERAL AGENCIES

What can be done to reduce the tension which exists between private landowners in national areas and Federal agencies? We believe the solution requires Federal agencies to determine which properties are compatible with the purposes of national areas and not subject to acquisition and include this information in land acquisition plans.

The tension existing between private landowners and Federal agencies is well illustrated in our report on the Lake Chelan National Recreation Area ("Lands in the Lake Chelan National Recreation Area Should Be Returned to Private Ownership," CED-81-110, Jan. 22, 1981). In that report, we stated that the National Park Service spent over $506,000 to acquire 42 tracts of land, each less than 2 acres. Seven of the tracts did not have to be acquired because they had modest homes--small, single-family dwellings--identified by the Service as compatible with the recreation area. Others were too small to be subdivided under the existing zoning ordinance or developed in a way which would make them incompatible with the recreation area. We also pointed out that the Service planned to acquire most of the remaining privately owned land in the recreation area. Interior contends that it was the intent of the Congress that eventually all privately owned land in the recreation area was to be brought into Federal ownership by means of an opportunity (willing seller--willing buyer) purchase program.

The Service may have encouraged sales by (1) continuing to project the potential of condemnation for any development action

taken by a private landowner, (2) apparently suggesting to owners of commercial facilities that they could be deprived of a reasonable return on investment, and (3) not informing private landowners concerning recreational development plans for the area.

Further, the Service never offered private landowners the alternative of owning their land in perpetuity with scenic easements even though the former Service Director assured the Congress that this alternative land protection strategy would be used.

We also reported that the Service had not defined compatibility, resulting in periods of increased private development.

We concluded that many National Park Service land acquisitions in the Lake Chelan National Recreation Area are contrary to the Congress' intent to preserve a private community in the area and to permit additional compatible development to accommodate increased visitor use. Further, by acquiring the lands in fee simple, the Service had unnecessarily increased Federal land acquisition costs.

We recommended that the Service develop a land acquisition plan for the Lake Chelan National Recreation Area. The plan should define compatible and incompatible uses based on the legislative history; clarify the criteria for condemnation; identify the reasons for acquisition versus alternative land protection and management strategies, such as scenic easements and zoning; address recreational development plans for the area; and establish acquisition priorities. The plan should apply to both private and Service actions.

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

In our report on the Fire Island National Seashore ("The Park Service Should Improve Its Land Acquisition and Management at the Fire Island National Seashore," CED-81-78, May 8, 1981), we discussed similar problems. In that report, we pointed out that the draft land acquisition plan for Fire Island was inconsistent with the Park Service's Land Acquisition Policy of April 26, 1979. The draft plan should, but does not, identify which properties will be acquired or specify why they should be acquired. The plan should list the reasons for purchase or condemnation, such as public need, incompatible use, or resource management. The plan simply cites variances or exceptions to local zoning ordinances as acquisition criteria. As a result, property owners are uncertain and confused about the kinds of uses which will subject their homes to possible acquisition.

We also reported that the Park Service issued zoning standards for Fire Island in September 1980 that were to be followed by local communities. The act protects property owners in existing developed communities from the threat of condemnation and undue intervention by the Federal Government. However, we believe that parts of the standards are more restrictive than

necessary to meet the requirements of the Fire Island National Seashore Act.

We recommended that the National Park Service revise the Fire Island zoning standards so that homes reconstructed or improved in accordance with locally approved variances to local zoning ordinances will not be condemned unless the variances adversely affect Fire Island's natural resources; stop routinely objecting to variances, unless the Park Service specifically justifies why the variances would harm Fire Island's natural resources, and revise the zoning standards accordingly; specify in its requests to the Senate Committee on Energy and Natural Resources how variances would adversely affect Fire Island's natural resources; and revise the Fire Island land acquisition plan to state more specifically the circumstances under which properties will be acquired. (The Department of the Interior is considering these recommendations while it is developing an open space land conservation policy.)

CONCLUSIONS

One of the biggest problems with intermingled land ownership is the conflict between private land owners who want to keep their property and the desire of Federal land acquisition and management agencies who want to acquire it because it is in a national area. Alternatives to full-title acquisition are feasible and need to be used by Federal agencies, where appropriate. We recognize that some lands must be purchased, but we find no plausible reason why everything must be owned. Land uses which are incompatible with Federal land management objectives need to be clearly defined. Interpretation of congressional intent

regarding Federal land acquisition needs to be resolved in favor of not acquiring land unless the Congress specifically directs otherwise. The Federal agencies need to recognize that their primary objective is to protect, preserve, and maintain the land--not necessarily to acquire and accumulate land.

LIST OF

GENERAL ACCOUNTING OFFICE REPORTS ON

FEDERAL LAND ACQUISITIONS

Report title	Date
Federal Protection and Preservation of Wild and Scenic Rivers is Slow and Costly (CED-78-96)	May 22, 1978
Review of the National Park Service's Urban National Recreation Area Program (CED-79-98)	June 19, 1979
The Federal Drive to Acquire Private Lands Should be Reassessed (CED-80-14)	December 19, 1979
Federal Land Acquisitions by Condemnation--Opportunities to Reduce Delays and Costs (CED-80-54)	May 14, 1980
Lands in the Lake Chelan National Recreation Area Should be Returned to Private Ownership (CED-81-10)	January 22, 1981
The National Park Service Should Improve its Land Acquisition and Management at the Fire Island National Seashore (CED-81-78)	May 8, 1981