

TRENDS IN FEDERAL LAND ACQUISITION,
PROTECTION STRATEGIES, AND PLANNING

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INTRODUCTION

In the past, Federal land acquisition has been one of the most popular ways to protect outstanding natural resources and provide recreational opportunities. Federal purchase, maintenance, and operation can help take pressure off the State or local budget. Federal involvement also can provide a way for local officials to avoid making some tough decisions about regulating private development. However, several trends are raising obstacles to proposals for establishing new Federal management units in the years ahead.

First, and most obvious is the budget crunch. Appropriations for Federal land acquisition have been reduced substantially, in spite of increasing numbers of new projects and proposals. Second, financial constraints and changing public attitudes about Federal land management have encouraged a trend toward finding and using alternatives to fee-simple purchase. These factors have led to some new directions in policies and planning procedures which will be discussed as a third trend in recreation programs.

Financial Constraints

The Land and Water Conservation Fund provides the primary source of support for Federal land acquisition. The Fund was established in 1965 with the broad purpose to:
"assist in preserving, developing, and assuring accessibility . . . to such quality and quantity of outdoor recreation resources as may be available and are necessary and desirable . . . to strengthen the health and vitality of the

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citizens of the United States ..."²

The LWCF Act emphasized the lead role of the States in providing recreational opportunities and established the 50/50 matching grant program of Federal assistance for land acquisition and development. The Act also recognized the important role played directly by the Federal government in acquiring land for National Parks, Wildlife Refuges, Forests, and Recreation Areas.³

The LWCF originally was authorized at \$100 million each year through 1989 with at least 40% available for Federal purposes. This level of funding may have seemed adequate in 1965, but new acquisition projects and rising land prices have continued at rates never before anticipated.

In 1970 the authorized level of the LWCF was increased to \$300 million each year. By 1980 the level had been increased to \$900 million annually. However, claims against the Federal side have increased to \$2.9 billion.

Receipts from Outer Continental Shelf oil and gas leases now provide most of the income to support the Fund. Nevertheless, price escalation is eroding the purchasing power of the funds which are available. In 1963, the average cost per acre for Federal purchases was estimated to be \$75. During the first 14 years of the LWCF program the average price per acre paid by Federal

² Land and Water Conservation Fund Act of 1965, Sec. 1 (b).

³ Bureau of Outdoor Recreation, "The Land and Water Conservation Fund: Intent and Accomplishments", National Urban Recreation Study Technical Report No. 9; July 1977.

Agencies was \$691.⁴ In 1965 - 66 the value of farm real estate was increasing at a rate of 3% each year.

In 1978 - 79 the price of farmland went up 16% on average around the nation with rates above 20% in many western states.⁵

These data show some simple trends which should come as no surprise. Prices are going up rapidly and new demands are being placed on the funds which are available. Appropriations for the Federal land acquisition program have not been able to keep up with rising prices. Assuming a modest 14% rate of land price escalation, even if Congress appropriates the full \$360 million authorized for the Federal side of the LWCF each year through 1989, there will be enough money to buy less than one half of the land already identified for purchase.

In spite of the shortage of money, there is no shortage of additional areas deserving protection or the willingness of Congress to establish new acquisition projects.

Alternatives to Fee

Money is not the only obstacle to the Federal land acquisition program. State and local governments frequently oppose Federal purchases which remove land from the tax rolls and economic base. Landowners frequently don't want to sell and are becoming well organized to voice their interests. Although the "Sagebrush Rebellion" has focused on State control over current BLM lands, it is another sign of the growing opposition to the Federal land managing presence

The General Accounting Office recently released a report entitled "The Federal Drive to Acquire Private Lands Should be Reassessed."⁶ GAO's image of the Federal "drive" and its criticism of agencies' land acquisition programs are somewhat exaggerated. For example, since 1965 Federal agencies under the LWCF program have purchased about 2.6 million acres - only about one-tenth of one percent of the nation's land. Nevertheless, the GAO report has become one of several factors

⁴Data from HCRS, Div. of Fed. Lands Planning Files.

⁵U.S. Dept. of Ag., Economics, Statistics, and Cooperatives Services, "Farm Real Estate Market Developments", March 1980. See also, Bureau of Outdoor Recreation, Recreation Land Price Escalation, Jan. 1967.

⁶U.S. General Accounting Office, The Federal Drive to Acquire Private Lands Should be Reassessed, Report CED-80-14; Dec. 14, 1979.

simulating a review of the Federal land acquisition program, encouraging more attention to alternatives to direct purchase and management.

"Alternatives" in land acquisition have usually been limited to the question, "to buy or not to buy." Different boundaries also have been considered as the only real "alternatives" for the extent of purchase. In the years ahead we can expect more serious consideration to a wide range of techniques which do not necessarily involve direct Federal acquisition or management. These alternatives include many different approaches, some well tested and others quite new, which fall into several categories.

At one end of the spectrum, there is the educational and awareness approach which attempts to promote public and landowner stewardship. State Heritage programs and the National Landmarks Program administered by HCRS provide examples of how private recognition, may be persuaded to voluntarily protect their land. Although these programs are primarily oriented toward protecting natural areas, they can help conserve a landscape, geological formation, or other resources with important recreational values as well.

Coordination and consistency requirements can provide a useful complement to programs of education and recognition. The Coastal Zone Management program provides one example of an effort to assure that Federal financial assistance and licensing activities are consistent with a comprehensive plan which includes at least some attention to recreational values. The Statewide Comprehensive Outdoor Recreation Plan may be so general that "consistency" is difficult to enforce, but in many instances improved coordination in Federal programs through the SCORP can help protect areas of special recreational value. By targeting a variety of other Federal programs of financial and technical assistance it may be possible to avoid the need for direct Federal purchase and management.

Several types of administrative arrangements or techniques are available to help implement voluntary and cooperative methods of protecting recreational resources. A Memorandum of Understanding or Agreement can provide additional support for less formal arrangements for coordination and consistency in actions by Federal or State agencies. For example, HCRS has a Memo of Understanding with the Environmental Protection Agency to help assure that recreational factors will be considered in planning for wastewater treatment.

Contracts and service agreements also provide administrative approaches to providing recreational opportunities. The cooperative

management program conducted by HCRS is one example of how an administrative agreement can open for public use some Federal lands owned by the military or other agencies not primarily concerned with recreation. At the State and local level, an agreement to pick up trash or provide minor maintenance services may be all that is needed to make an area available for public recreation.

Regulatory tools are another category of methods for achieving recreational objectives. Zoning, and building or public health codes can control development to protect open spaces and conserve natural resources. Innumerable combinations of zoning and subdivision controls are available to meet the challenges posed by most rapidly-developing areas. Creative use of clustering, planned unit development, and site plan approvals can help guide growth in a way that keeps important open spaces available for public use. By establishing mandatory dedications, set-backs, reservations, and other contributions toward public services, local governments can assure that new developments make a positive contribution toward providing recreational opportunities.

Air and water quality regulations at the Federal, State, and local levels also can in some cases provide viable alternatives to acquisition. The Corps of Engineers Section 404 Permit program provides an example of how regulatory techniques can protect wetlands which are critical to recreational values as well as important natural processes.

Regulatory, administrative, and educational techniques have their place, but in some cases the recreational objectives require a degree of control or public access that can be achieved only through acquisition. Where purchase is necessary, it may be possible to buy something less than the full fee.

Looking at property ownership as a "bundle of rights", it is possible to acquire only those interests in land necessary to achieve certain objectives. Development, timber, water, mineral, grazing, or other rights may be all that the public needs to own in order to protect important natural areas or recreational and scenic values. These rights may be obtained by purchasing an easement that restricts the owner's activities. However, easements also may be positive, for example by establishing a public right to access.

In England and Wales a network of more than 140,000 miles of footpaths and bridleways provides for public access and recreational use across private lands. These public right-of-way go back to the earliest periods of common law and history, but they have been kept open by citizen activism and

dedication.⁷ In the United States, affirmative easements have been used to provide public access for hunting and fishing, nature study, and other recreational uses on a limited scale.

Partial interests in land also can be retained when it is sold. Reserved interests in the form of life tenancy for the previous owner are not unusual when the Federal government buys land. Purchases with subsequent re-sale subject to deed restrictions provides another way to get only that interest in the property which is absolutely necessary. Purchase and lease-back arrangements also are available to most Federal agencies, but these methods have not yet been used extensively as an alternative to fee-simple purchase.

If acquisition of fee or less than fee interest is desirable, there are many ways to go about it. Because of tax benefits available, many people can be encouraged to donate all or part of their land or to sell at a bargain price. Public spirit and the tax benefits can also encourage donations of conservation easements. Land exchanges provide another way for public agencies to obtain land they want without giving up cash.

Choosing the Best Technique

In brief, there are a tremendous number of alternatives to acquisition. The problem facing the resource planner or manager is, which one should I use? Indeed, the challenge of the years ahead is to develop and enhance "craftsmanship" in formulating land protection strategies. There is no simple formula to say that easements are "better" than full fee or that regulatory approaches work when educational efforts fail. Each case must be evaluated on its own merits considering several basic factors:

First, the character of the resource must be considered. An area suitable for intense public use will require different strategies from a fragile ecosystem where recreation is a secondary and relatively minor value. Location, accessibility, and natural characteristics must be reviewed on a case by case basis.

Second, management objectives must be clearly defined with precision. The type of activity planned will usually determine what interests in land need to be acquired or protected. A scenic vista may be protected by zoning for agricultural use, at the expense of

⁷ See remarks of Robert L. Herbst, Assistant Secretary for Fish and Wildlife and Parks, U.S. Dept. of the Interior, at the Sierra Club Board of Directors Meeting, Nov. 11, 1978. San Francisco, California.

more opportunities for public access which could be available with easements or other types of development controls. Although intense public access usually requires public ownership, it may be possible to limit purchase or controls to a few trails or corridors to provide recreational opportunities.

Landowner interests and market conditions also are important in selecting appropriate tools. Where development pressure is weak, it may not be difficult for educational approaches to work. Where rising taxes and growth potential are strong, landowners are less likely to voluntarily give up any rights to the land they hope to develop.

Finally, political realities are an important consideration too often overlooked or misinterpreted in selecting an appropriate technique. Many of the most appealing ways of controlling impacts on recreational resources are simply not feasible politically. Zoning which is well accepted in many metropolitan areas may still seem to be an unthinkable intrusion on private property rights in some rural counties.

Sensitivity to political reality is important, but we cannot be too shy about proposing innovative approaches for fear of adverse reactions. Where opposition is expected to arise, it may be possible to generate the necessary popular support before a protection strategy is dropped as politically impractical. Although many alternatives to acquisition may generate political controversy, there may be even more opposition to Federal or state acquisition of private land. Sometimes politically sensitive regulatory approaches may prove to be a popular substitute for direct acquisition and displacement of current owners.

Policies and Planning Procedures

In response to the financial and political constraints on direct Federal land acquisition new trends in policies and planning procedures are developing. In the past, each Federal agency has followed its own policies and procedures in planning for new national areas and determining what protection techniques will be used. Following recommendations of the Third Nationwide Outdoor Recreation Plan, some important steps have been taken in recent months to improve the new area study process and help assure that agencies using the Land and Water Conservation Fund consider a full range of alternatives to fee-simple acquisition.

First, a Memorandum of Understanding has been adopted by the Directors of the Bureau of Land Management, Fish and Wildlife Service, Heritage Conservation and Recreation Service,

National Park Service, and the Chief of the Forest Service outlining the responsibilities of the Land and Water Conservation Fund Policy Group (LPG). The LPG recommends on how the Federal side of the fund is to be allocated each year and coordinates the studies of potential new areas. The group is composed of the agency Directors and is chaired by the Deputy Assistant Secretary for Fish and Wildlife and Parks.

The LPG has been operating in a different form since 1974 primarily to formulate budget requests. Under its new mandate, the LPG will play a more active role in recommending what areas will be studied, who will conduct the studies, and what areas should be recommended for acquisition or other types of Federal protection.

The LPG has adopted a planning and decision-making process to carry out its responsibilities concerning studies of potential new national areas or major expansions in existing areas which might draw on the LWCF. The planning process begins with an emphasis on systematic inventories to examine the entire range of valuable resources and identify the most outstanding examples of natural, cultural, and recreational areas. The process establishes two levels of study for specific sites. First, a Reconnaissance Survey is conducted to collect basis information about characteristics and resources. This data is reviewed by the LPG to determine if the area merits Federal attention. If it does appear to meet the standards, which consider resource quality, integrity, threats of adverse impacts, and other factors, a more detailed study of protection and management alternatives will be conducted.

The analysis of alternatives will consider how existing Federal, State or local planning and regulatory authorities could be used to protect the area. Zoning, permit requirements, and other police power techniques discussed above will be explored. Alternatives to acquisition of full fee including purchase of easements, and timber, mineral, water, or other rights will be considered. The study also will examine some creative acquisition methods including the use of tax incentives to encourage donations, exchanges, or bargain sales. The findings of the study will provide the basis for recommendations on appropriate Federal, State, or local assignments of responsibility for management and, if necessary, new legislative authority from Congress.

The LPG also has adopted a policy statement to guide the new area study process. The policy emphasizes identifying important resources and assuring their protection through means other than direct Federal acquisition. The policy provides general direction on what type of areas will be studied, how priorities

will be established, and what alternative protection techniques will be considered. It also addresses schedules for implementing adopted protection strategies in newly authorized areas.

The policies and planning procedures adopted by the LPG will help meet the recreation and conservation challenges of the 1980's. In the past the Federal acquisition program generally emphasized large relatively pristine areas with outstanding natural values. Looking to the future, more attention will be directed to areas closer to population concentrations. Many of the areas currently under consideration possess a variety of natural, cultural, and recreational resources on land with important economic values. For these complex landscapes, direct Federal land acquisition and management may be inappropriate as well as financially impractical.

The Area of National Concern (ANC) concept is one new approach to combining a variety of alternatives to fee-simple acquisition in an effort to protect natural resources and provide recreational opportunities. Greenline Parks, Preserves, Reserves, the "Cape Cod Formula", and other terms have been used previously to describe variations on the ANC concept. Although titles vary, the basic idea is to build a partnership where the Federal government provides a limited amount of financial and technical assistance to support State and local leadership in planning and managing an area of importance to the nation as a whole. Within the boundaries of the ANC some land would be acquired by Federal or State agencies but most of the area would be protected by a combination of zoning, easements, regulatory authorities, and other alternatives to fee simple purchase. Private ownership and compatible economic activities such as farming would continue. Grant programs, purchase lease-back or sell-back arrangements, and other incentives could encourage current residents to provide tourist facilities and other recreational services.

Several existing national areas incorporate some elements of the ANC concept. For example, the Sawtooth and Whiskytown-Shasta-Trinity NRA's have used easements and zoning to reduce the need for outright purchase. The Wild and Scenic River System emphasizes limited purchase of access points and reliance on easements or zoning along the shoreline to protect the most important recreational values of the river. Cape Cod, Fire Island, and Sleeping Bear Dunes provide additional examples of national areas with continued private ownership subject to zoning protection. At the State level, New York's Adirondack Park provides one model of how public and private ownership can be managed within a single boundary.

The most complete example of the ANC concept at work is now unfolding in the New Jersey Pinelands. In 1978 Congress authorized the Pinelands National Reserve encompassing one million acres in the Northeast's most industrialized state. The Pinelands offer a unique combination of fascinating plants, important wildlife habitats, valuable supplies of pure water, numerous recreational opportunities, and a significant local economy based largely on compatible agricultural uses.

The Pinelands ecosystem is being threatened by encroaching residential development fueled in part by growth around Atlantic City. The protection strategy calls for a comprehensive management plan to be developed by a 15 member commission including Federal, State and local representation.

The Plan must be completed within 18 months and forwarded to the Secretary of the Interior for approval. While the plan is being developed the Act provides for "emergency" acquisition of lands with critical ecological values which are in immediate danger of being destroyed. Once the plan is approved, the Act authorizes grants for land acquisition by the State. However, the plan must require that State and local police powers be used to the maximum extent practicable to regulate the use of land and water resources. Only \$23 million of Federal money is authorized for land acquisition in the 1 million acres, supporting the point that State and local regulations will be the most important implementing tools.

The ANC approach cannot replace the Federal land acquisition program, but it can provide a workable alternative in many new areas proposed for study. Lowell, Massachusetts, the Santa Monica Mountains in California, and Jean Lafitte in Louisiana are the most recent examples of the ANC concept already being applied around a core of land to be managed as a national park, recreational area, or historical preserve.

In the years ahead, we can expect more ANC's to be established where private ownership and public interests in natural, cultural and recreational values can be managed effectively without exclusive reliance on Federal acquisition. HCRS and other members of the LPG will be continuing to support this trend toward finding more creative solutions to conservation and recreation challenges.