

**Forest Reserve**

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**Wednesday  
May 11, 1983**

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**Department of the  
Interior**

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**National Park Service**

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**Land Protection Plans**

**DEPARTMENT OF THE INTERIOR****National Park Service****36 CFR Ch. I****Land Protection Plans****AGENCY:** National Park Service, Interior.**ACTION:** Final interpretive rule.

**SUMMARY:** The National Park Service has developed instructions for the preparation of land protection plans and is providing the list of National Park System units expected to begin preparing these plans during Fiscal Year 1983. These plans are being prepared in response to the Department of the Interior's policy for the Federal Portion of the Land and Water Conservation Fund (47 FR 19784). The public is invited to participate in the planning process for individual areas.

**DATE:** This interpretive rule will become effective on May 11, 1983.

**ADDRESS:** Correspondence concerning this rule should be addressed to Director, National Park Service (Attn: 763), Department of the Interior, Washington, D.C. 20240.

**FOR FURTHER INFORMATION CONTACT:** Donald Humphrey or Warren Brown, Division of Park Planning and Special Studies, National Park Service, Washington, D.C. 20240 (202) 343-9377.

**SUPPLEMENTARY INFORMATION:** On May 7, 1982 the Department of the Interior published a new final policy statement on Use of the Federal Portion of the Land and Water Conservation Fund (47 FR 19784). In response to this policy, the National Park Service has, by notice in the *Federal Register* on January 3, 1983 (48 FR 85), withdrawn its 1979 land acquisition policy and guideline (44 FR 24790), and is beginning the preparation of land protection plans consistent with the instructions printed below.

These plans will be prepared for each unit in the National Park System containing non-Federal land within its authorized boundary. Priority is being given to those areas with current appropriations. Approximately one-third of all plans are scheduled for completion by September 30, 1983, one-third by September 30, 1984, and the remaining plans will be completed by September 30, 1985.

Each individual plan will be prepared in compliance with the National Environmental Policy Act and other applicable legislation, regulations, executive orders, and Departmental and Service directives. In some cases compliance requirements will already

have been met in previous planning documents. The planning process will include consultation with the Fish and Wildlife Service where proposed actions may have an impact on endangered species, and the Advisory Council on Historic Preservation where actions may impact historic resources.

1. *Environmental Effects:* The action being taken in adopting these instructions will establish a general format and approach for completing these plans. Each plan will consider various alternatives for carrying out the purposes of the area as authorized by Congress and will, as necessary, consider environmental implications associated with implementation of the plan. The preparation of individual plans will guide future actions to protect unit resources. The development of instructions for land protection planning will have no significant effect on the human environment and is categorically excluded from the procedural requirements of the National Environmental Policy Act. Further environmental compliance will occur as necessary at the individual land protection plan level.

2. *Statement of Effects:* The Department of the Interior has determined that these interpretive instructions are not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act. National Park Service land protection is carried out under authorizing legislation for each area and annual appropriations acts. These instructions and individual land protection plans will provide landowners with more current information about National Park Service (NPS) intentions for buying land or protecting it through other methods.

3. *Paperwork Reduction Act:* These interpretive instructions do not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

4. *Authorship Statement:* This document has been prepared by the National Park Service within the Department of the Interior. Principal authors are Donald Humphrey and Warren Brown.

5. *Public Participation and Comments:* The public was invited to comment on the proposed Departmental policy statement that was published in the *Federal Register* of March 18, 1982 (47 FR 11777). The final departmental policy statement was published on May 7, 1982 (47 FR 19784). These instructions implement that policy.

These instructions were published on pages 6676-6683 of the *Federal Register* on February 14, 1983 inviting public comment for 30 days. Comments were received from 21 sources including organizations and individuals. Ten comments offered general support for the instructions and the policy that they implement. One response expressed opposition to Federal acquisition of private lands. The remaining responses included a variety of suggestions and views.

Two responses were critical of the emphasis on alternatives to fee acquisition of private land. These reviewers suggested that zoning and regulations were inadequate, while several other reviewers supported the consideration of these methods as very useful approaches to protection of land. The discussion of fee acquisition has been modified to eliminate some adjectives that one reviewer suggested were unnecessarily restrictive as applied to this method of protection. The instructions as proposed direct that all reasonable methods of protection should be considered in the plans, with attention to cost-effectiveness and ability to achieve unit purposes as established by Congress.

Some comments questioned the legal authority of the National Park Service to use regulatory methods of protecting resources. The text is clear that the section on regulations refers primarily to authorities of other Federal agencies and State or local governments. Additional emphasis has been placed on the advisory role of the National Park Service in cooperating with States, local governments, or other Federal agencies on such protection methods. However, the text also notes that there are circumstances where direct regulatory authority may be exercised by the National Park Service. One revision has been made to explain that regulations are generally to be considered as one part of a protection program, appropriate to prevent harm to public interests and property rather than a substitute for acquisition necessary to provide for National Park Service management or public use.

Several reviewers encouraged public participation in the planning process for individual areas. Public involvement is clearly emphasized in the instructions as proposed, and planning teams will continue to be encouraged to involve interested parties as soon as possible. Individuals and organizations interested in being involved in the planning process for any specific unit should contact the Regional Director or the Superintendent at the addresses given in Appendix A. In response to

recommendations in House Report 97-978 on Interior Appropriations for fiscal year 1983, the planning process is being initiated as quickly as possible, and contacts with individual units should be made promptly. Further notices and opportunities for public involvement will be handled at the regional and local levels.

Several reviewers expressed concerns about funding, the acquisition process, use of condemnation, and other aspects of plan implementation. These comments will be considered as the plans are approved, but were not considered relevant to these instructions on how the plans should be prepared.

One comment questioned the need for detailed information on acquisition history, including tracts and improvements, requested in section III (e) under Format. This section has been revised to indicate that an overview with estimates is to be provided instead of individual listings and comprehensive historical data. Costly or time consuming data collection is not required or encouraged.

References to the coordinating procedures with the Advisory Council on Historic Preservation have been revised to allow for more flexibility under the terms of the Programmatic Memorandum of Agreement.

The proposed instructions indicated that plans would be prepared for each unit containing non-Federal land or interests in land. In response to questions about the scope of "non-Federal interests", the instructions have been revised to clarify that plans will be prepared only for those areas containing non-Federal lands within the authorized boundary. This includes approximately 195 units of the national park system. However, the plans for these units will consider protection requirements for all land or interests in land within the boundary, considering cooperative arrangements with other Federal agencies as well as privately owned interests in land.

The proposed instructions indicated that external conditions having a direct impact on land protection within the unit boundary should be assessed in the plan. This remains in the final instructions, which require a careful evaluation of external conditions and activities that have a direct bearing on the protection of land within unit boundaries and an assessment of their impact on protection efforts. The primary focus of the current planning effort is necessarily on lands within the authorized unit boundary. However,

conditions outside of the boundary will be considered, and future updates to these land protection plans and other planning efforts may address a broader range of issues related to impacts on park resources from external activities.

Additional editorial changes have been made in the text to clarify several points where questions have been raised by field staff working on the draft plans. The recommended format has been revised to avoid repetition of information about acquisition history and protection alternatives in various sections. None of these changes will have a significant impact on the scope or content of the plans.

Pending completion of a land protection plan, discretionary acquisition actions in any individual unit of the National Park System are being reviewed on a case-by-case basis. These reviews are to assure that: (1) Acquisition proceeds in an orderly and timely manner as intended by Congress (2) appropriated funds are used to protect high priority tracts and address hardships, emergencies and sites needed for administrative use, and (3) the interests to be acquired are those necessary to achieve unit purposes as established in authorizing legislation. Case-by-case reviews will be conducted in a timely manner to avoid unnecessary delays in the obligation of appropriated funds. When a land protection plan has been approved, acquisitions will proceed consistent with priorities identified in the plan, subject to the availability of funds.

#### **Land Protection Plan Instructions**

##### *Background*

Under a policy and guideline adopted in 1979 (44 FR 24790) the National Park Service prepared land acquisition plans for approximately 120 areas. A new policy statement on land protection was adopted by the Department of the Interior on May 7, 1982 (47 FR 19784). Under this new policy, land acquisition plans will be revised or replaced by land protection plans by September 30, 1985.

##### *Requirements*

A Land Protection Plan will be prepared by the appropriate Superintendent for each unit in the National Park System that contains private or other non-Federal land within its authorized boundary. Priorities for preparing plans will be established considering available or possible funding for acquisition, the amount of non-Federal land within the authorized

boundary, and the potential for impacts on unit resources. The scope of the planning effort generally should be commensurate with the potential impacts to resources, complexity of the problems, and the amount of land requiring protection.

##### *Purposes of the Plan*

The guiding principle of each land protection plan must be to ensure the protection of that unit of the National Park System consistent with the stated purposes for which it was created and administered. Each Superintendent has a duty to know the resources in question and to seek their protection consistent with those purposes. These instructions are designed to assist in meeting those objectives.

Land protection plans are prepared to:

1. Determine what land or interests in land need to be in public ownership, and what means of protection other than acquisition are available to achieve unit purposes as established by Congress.
2. Inform landowners about NPS intentions for buying or protecting land through other means within the unit.
3. Help managers identify priorities for making budget requests and allocating available funds to protect land and unit resources.
4. Find opportunities to help protect the unit by cooperating with state or local governments, landowners, and the private sector.

*Coordination:* Land protection plans are prepared as part of the unit's overall general management planning process and should be fully coordinated with other plans. The protection plan should be developed after a statement for management or general management plan has been prepared. If an approved GMP has not been completed, the land protection plan may be prepared concurrently with the general management planning effort.

Where the land protection plan is prepared as a separate document, it becomes an action element of the general management plan when approved. Land protection plans should focus on clearly defined issues and recommendations. Unnecessary repetition of details contained in other planning documents should be avoided.

*Public Involvement:* The land protection plan will be prepared with public involvement. Property owners, State and local governments, and interested parties must be provided notice (individual notice should be provided if feasible) that the planning effort is underway and given an opportunity to comment on the

alternatives under consideration. The format for public involvement should include a general notice when planning is initiated, participation when the plan is being prepared, and public review of the draft after policy clearance by the Washington Office. Details will be specified in the task directive that is approved by the Regional Director.

**Environmental Compliance:** Land Protection plans will be prepared in compliance with applicable requirements of the National Environmental Policy Act (NEPA) and other laws or administrative directives. Specific compliance requirements for each area will depend upon the potential significance of environmental consequences. Some plans are expected to be categorically excluded from the NEPA process, others will require an environmental assessment, and some may require an environmental impact statement. Determinations about compliance requirements will usually be made at the regional level, in consultation with the Washington Office and Regional or Field Solicitor as necessary. Compliance documentation should include the extent of proposed changes in land use and potential impacts on unit resources or the surrounding community from the alternatives recommended by the land protection plan.

Compliance requirements for land protection plans being prepared as part of a General Management Plan effort should be covered in the GMP compliance. Where NEPA compliance is required for a land protection plan, an environmental assessment will be prepared as a separate, but attached document. The environmental assessment may reference the alternatives and proposal in the land protection plan, making it possible for the document to be essentially an analysis of environmental consequences and a list of persons consulted. National Park Service guidelines for environmental compliance are found in NPS-12 (National Park Service NEPA Compliance Guideline).

**Endangered Species:** The Regional Office should contact the U.S. Fish and Wildlife Service regional endangered species staff when planning begins for a specific area and arrange for any necessary consultation early in the planning process to determine if there are any potential effects on any endangered species. If a biological assessment is necessary, it will be incorporated into the environmental document released with the plan for

public review and arrangements will be made with the Fish and Wildlife Service for the preparation of a biological opinion.

**Notification of Advisory Council on Historic Preservation and the State Historic Preservation Officer (SHPO):** The Regional Director will be responsible for coordinating plan preparation with the Advisory Council and the SHPO in accordance with the Programmatic Memorandum of Agreement, as amended. That agreement establishes procedures for notice and coordination throughout the planning process.

**Responsibilities:** The Superintendent is responsible for the preparation and recommendation of the unit's land protection plan in accordance with these instructions. The Regional Director is responsible for scheduling and monitoring the preparation of land protection plans by interdisciplinary teams including planners and realty specialists, and for approving them. The Regional or Field Solicitor should be consulted as necessary throughout the planning process and should review the proposed plans for legal sufficiency.

Plans will be reviewed concurrently by the unit, region, and Washington Office. The memorandum from the Regional Director transmitting the draft plans should report on the status of review by the Regional Solicitor and others. Comments compiled during the Washington Office review will be forwarded to the Regional Director for consideration prior to his or her approval of a plan. The time allocated for WASO review will be 30 days from the date of receipt in the Division of Park Planning and Special Studies.

**Task Directive:** The scope of the planning effort should be defined as soon as possible in a task directive. This very brief internal working document should list major issues to be discussed, outlined alternatives to be considered, establish schedules for interim and final products allowing time for reviews, and assign responsibilities for completing the tasks.

The task directive also should identify the type of public involvement, environmental compliance, special expertise requirements, coordination with other plans, and any additional guidance needed from the Regional Director or Washington Office for the planning effort. The task directive will be prepared by the Superintendent and planning team and approved by the Regional Director.

**Updates:** The Superintendent will review the plan on a biennial basis, and

revise it as necessary to reflect changes in conditions. Once approved, land protection plans may be amended or revised, generally following the processes for General Management Plans as outlined in NPS-2 (Planning Process Guideline)\* \* \*. If the plan is to be amended, the extent of review and public participation may be adjusted to reflect the scope of the amendment. The Superintendent is responsible for determining if an update is required and for recommending the scheduling of necessary revisions.

**Format:** Formats for land protection plans may be adjusted to fit special circumstances, but should follow this outline as closely as possible and must address the following points:

### *I. Introduction*

(a) Brief summary of Departmental and NPS policies for land protection and relevant legal authorities.

(b) Explanation of why the plan is being prepared and major issues to be addressed.

(c) Statement that the plan does not constitute an offer to purchase land or interests in land, that it will generally guide subsequent activities subject to availability of funds and other constraints, and that it does not diminish the rights of non-Federal landowners.

### *II. Purpose of the Unit and Resources To Be Protected*

(a) A brief statement of the purpose of the unit as contained in the authorizing legislation, General Management Plan (GMP), or statement for management.

(b) A brief description of the significance of the area and the resources to be protected.

(c) Special legislative, administrative, or congressional directives or constraints on acquisition, appropriations ceiling, mandated acquisition periods, etc., and a history of the unit's growth including boundary changes, ceiling increases, other factors relevant to the protection of the unit's resources.

(d) A brief description of planned resource management and visitor use objectives and activities directly related to land protection requirements, by zone or subzone, as contained in the General Management Plan, resources management plan, etc.

### *III. Land Ownership and Uses*

(a) Description of ownership and use of land and interests within unit boundaries, including total unit acreage, ownership broken down by appropriate

categories such as type of owner (Federal, State, private) and type of resource (undeveloped or developed land, relationship to waterbodies, roads, communities; forested or open; wetlands, steep terrain etc.) Type of interests (fee, easements, mineral rights etc.) also should be described. This information should focus on land not under NPS jurisdiction and may be included on maps in the appendix showing regional location, relationship of the unit to adjacent lands and uses, tracts, acreage and ownership in the unit. If there is a large number of tracts, the maps and discussion may aggregate tracts by groups such as type of ownership or level of development.

(b) Description of existing and potential uses of non-Federal lands that would be compatible or incompatible with planned management actions.

(c) External conditions and activities that have a direct bearing on the protection of land within unit boundaries and an assessment of their impact on protection efforts.

(d) A brief overview of the history of protection including estimates of acreages and methods of acquisition, numbers of improvements acquired, types and terms of interests reserved by sellers (based on readily available data).

(e) Status of protection program including the current acquisition ceiling, expenditures and appropriations to date, appropriations available for expenditure, and status of pending condemnation actions.

(f) A general discussion of the relationship of landowners to social and cultural resources of the unit and of social, cultural, economic, and institutional relationships with nearby communities and political subdivisions; important folkways or activities that contribute to the creation, maintenance or protection of the unit's cultural resources; whether landowners are, for instance, corporations or individuals, long-term or short-term owners and known plans for changes in land use, if any.

#### IV. Protection Alternatives

(a) Identification and assessment of Federal, State, and local laws or authorities that currently provide some resource protection and allow for management or visitor use.

(b) Description of reasonable alternative methods for protecting land to carry out the purpose of the unit. (See "Protection Alternatives" below).

(c) Explanation of the circumstances, conditions and requirements affecting

the application of each alternative.

(d) Analysis of the effectiveness of each alternative to protect unit resources.

(e) Assessment of the social and cultural impacts of each alternative on non-Federal landowners as well as social and economic impacts on community life (environmental impacts will be assessed in a separate but attached document).

#### V. Recommendations

(a) Describe the rationale and list priorities for protection by tract or other reasonable aggregated areas or categories, considering the importance of resource protection, visitor use, administrative purposes, etc.

(b) Identify categories of land and rationale for protection:

—By means other than acquisition.

—By acquisition of less-than-fee interests.

—By acquisition of fee.

(c) Discuss proposed methods of acquisition including donation, exchange, transfer, withdrawal, purchase, or condemnation.

(d) Identify land adequately protected under existing ownership (State, county, conservation organization etc.) and not requiring any NPS protection efforts at this time.

#### VI. Appendices

(a) Maps and black and white photographs should be used wherever necessary to improve understanding of the contents of the land protection plan. These may be included in the text (see III(a) above) or the Appendices. Maps should include a State map showing location of the unit, a regional map showing relationship to adjacent land uses, and a unit map showing tracts, acreages, and important facilities such as visitor centers, campgrounds, and outstanding physical features. Special photo or map portfolios (for review purposes only) may be provided at the unit, the Regional Office and other official review sites.

(b) Listing by priority ranking or grouping, where possible or feasible, of individual tracts showing tract number, name of owner, acreage, proposed protection method (cooperative agreement, zoning, fee or less-than-fee acquisition etc.) and specific reason for protection (i.e., an easement to "protect the historic scene and permit continued farm use" in an historical area).

(c) Copies of authorizing legislation and other Congressional directions such as excerpts from committee reports directly related to land protection requirements.

(d) Sample documents (Easement provisions, agreements, notices to local governments etc.)

(e) One page statistical summary of plan (acres, methods of protection, highlights of III(e) and V).

Although all plans should follow these analytical steps, some may be very brief and all should place primary emphasis on sections IV and V rather than repeating information already contained in the GMP or other plans.

#### Policy and Legislative Changes

The analysis of alternatives and recommendations should be developed on the basis of current authorities and policies. However, the land protection plan may reveal the need for changes in unit boundaries, protection authorities, or NPS management policies. The plan must recognize that changes in legislation or policy can only be accomplished through Service planning processes and Departmental or Congressional channels.

The analysis of alternatives may include various contingencies for what will be done if such new policies or authorities become available, but suggestions for major changes should be included in the Superintendent's memorandum to the Region and in the Regional Director's memorandum transmitting the plan to Washington and processed through amendment or revision to the General Management Plan or other appropriate procedures.

Land Protection Plans should be developed with special attention to the following issues relating to private ownership within unit boundaries and analysis of alternative methods for protecting land.

#### Private Ownership Within Unit Boundaries

Boundaries for units of the National Park System are not always drawn exclusively on the basis of natural or cultural features or clear determinations of resource significance. Consequently, not all of the land within a unit boundary may require the same type or level of protection to achieve the purpose of the unit, and land outside of the boundary may have a direct bearing on the well-being of the unit. Plans proposing the NPS assume management responsibility for lands currently in private or other ownership should be able to document that these lands are needed for resource protection and visitor use purposes that cannot be accomplished without Federal acquisition of these lands or interests in these lands. (See Format, Parts II, IV, V, and VI).

### Short and Long Term Needs

In considering protection options, the plan should recognize the difference between needs for interim protection and long term objectives for the unit. Some areas have a long term objective of restoring natural systems to their condition prior to human settlement. However, with appropriate controls, it may be possible and, in fact, desirable to allow continued compatible private uses of the land for a specific period of time without adverse impacts on the long term mission of the unit.

In many areas, private uses of the land may contribute to the purposes of the unit by providing visitor services, reducing requirements for maintenance, reducing costs for management or continuing traditional activities that are part of the resource to be protected, particularly in areas of cultural value. The land protection plan should indicate what private uses need to be continued, controlled, or eliminated to meet long range goals of the unit. Interim private use may be provided by deferral of acquisition, right of first refusal, acquisition subject to reservation of use and occupancy, or by purchase followed by leaseback, or sellback with deed restrictions.

### Protection Alternatives

Direct NPS acquisition and management of land may not be the only effective or desirable method of protecting unit resources in all cases. Land protection plans must document that other approaches have been fully considered. The plan must identify specific protection methods and assess the ability of various alternatives to achieve management objectives. This includes attention to the following types of methods:

#### Agreements

Agreements are legal instruments defining administrative arrangements between two or more parties. They can provide for exchange of services or other benefits. Within unit boundaries, agreements are most likely to be useful for land owned by:

- State or local governments
- Private non-profit organizations (scout troops, churches, land trusts or conservation groups)
- Other federal agencies
- Individuals or corporations who are supportive of unit purposes, in areas where such agreements are specifically authorized by law
- The terms of an agreement can

include provisions for:

- Limited NPS access to manage natural or cultural resources
- Shared responsibility for maintenance of structures or facilities
- Public access for recreation or interpretation
- Conditions for management of wildlife or other resources
- Law enforcement

For example, land administered by the Coast Guard and Navy in Channel Islands National Park can be managed for unit purposes under an agreement that grants NPS access yet continues the defense and coastal security uses of the islands.

NPS directives and the Federal Grants and Cooperative Agreement Act of 1977 (Pub. L. 95-224) establish some important distinctions among contracts, cooperative agreements, and memoranda of understanding. The land protection plan should outline the specific requirements to meet NPS management needs and other types of provisions to be included in an agreement so that the appropriate legal instrument can be drawn up at a later date.

### Zoning

Zoning is based on the power of State and local governments to protect public health, safety, and the welfare by regulating the use of land. Within a unit of the National Park System, local zoning regulations can be used to limit the density, type, location, and character of private development. Some authorizing legislation specifically provides for cooperation between NPS and local governments in developing zoning regulations. In other areas, zoning should be considered when:

- Local government has a zoning ordinance in place or appears to be willing to adopt one.
- There is evidence of State and local support for the protection objectives of the unit.

—Some reasonable private use of the land is consistent with unit purposes.

—Private land use needs to be controlled and managed rather than prohibited to meet unit objectives.

The land protection plan should be clear about what types of protection could be exercised through a zoning ordinance administered by the local government. This may include:

- Restrictions on the type of use; residential, commercial, industrial, agricultural, etc.
- Limits on the intensity of use; size of lots, height of buildings, number of units per acre.

Standards for design; requirements for setbacks from property lines, number of parking spaces per unit, portion of lot to remain in open space.

The plan should take special care to consider what uses of land may be allowed under current zoning classifications which appear to meet NPS objectives as well as those which seem to conflict. For example, the zoning category of "recreation use" may allow for trailer parks, resort motels, and other development unlikely to be compatible with purposes of the unit. Land zoned for low density residential use may be more adequately protected in terms of unit objectives than land zoned for agricultural use where feed lots, timber operations, and other intense activities may be allowed automatically.

A few zoning ordinances allow for transfers of density or development rights from one tract to another. This tool is especially useful in jurisdictions where development can be concentrated in areas already served by public utilities while undeveloped land is retained in low density uses. The land protection plan should consider if development should be prohibited, controlled, or concentrated in other locations. Where the location of new development is of primary concern, zoning and related TDR (transferable development right) programs are likely to be worthy of consideration in the protection plan.

Cooperation with state or local governments may be necessary to revise or prepare zoning regulations. The land protection plan should advise local governments about the types of zoning provisions that would be consistent with unit objectives as well as local interests and concerns. At the same time, the plan should recognize that zoning changes are often controversial and the NPS role should be defined with sensitivity to the potential for criticism of federal involvement in local land use regulation. Special expertise may be required to advise unit managers on complex zoning questions.

Local zoning has been criticized as a long term protection tool because of the potential for changes in local governing bodies, political pressures on decisions, and problems in enforcement of regulations. Land protection plans may suggest what steps could be taken to overcome some of these problems or what contingency actions may be taken if zoning fails. Suggestions for NPS involvement in State or local zoning and other land use regulatory activities should be developed in close consultation with the Office of the

Solicitor. In discussing zoning, the plan should give special attention to maintaining cooperative relationships with local governments rather than creating confrontations. In the absence of special legislative provisions for the particular unit, the National Park Service role in local zoning matters is advisory.

In limited instances where the state has ceded exclusive jurisdiction to the Federal Government within the boundaries of a National Park, or where otherwise authorized by law, the National Park Service may be able to exercise direct regulatory authority over private lands. In such cases, NPS would be acting like the local governing body in establishing limits on the type, density, and character of land use. This approach is most appropriate for developed areas within older established National Parks rather than a method of protecting new areas or undeveloped land.

#### *Regulations*

In addition to zoning, Federal agencies and state and local governments administer a variety of other laws that can help protect unit resources. The land protection plan will consider what regulatory authorities are available to control:

- Air and water pollution
- Dredging or filling of wetlands
- Hunting and fishing
- Tree cutting and forestry practices
- Resource extraction and excavation
- Construction in navigable waters
- Subdivision of land
- Development in flood hazard areas

Regulations cannot usually provide for public use, but they can prevent harm to natural or cultural resources. For example, Federal, state, and local regulations often impose strict limits on dredging or filling of wetlands that would destroy wildlife habitat or degrade water quality. Local subdivision and environmental regulations may restrict residential development that is not adequately served by roads, water, and sewage treatment facilities.

It is much more difficult for regulations to absolutely prohibit an activity than to simply limit the type, amount, or intensity of the activity. In units where the impact of development is already evident regulations are more likely to be effective in reducing adverse effects of major projects. In relatively pristine areas, regulations may be of little use in efforts to preserve natural systems from any intrusions of development. Regulations also are more likely to be effective where there is a good base of information about the

impacts of certain activities on unit resources. For example, documentation (supported by adequate data) that water pollution is destroying specific fish and wildlife populations will be helpful in efforts to enforce state or local regulations on the source of the pollutants.

A land protection plan should discuss the role NPS can play in assuring that regulations are effectively implemented. This could include cooperation with local efforts to identify and prosecute violators as well as technical assistance or review of permit applications. Although regulations should not be considered as a substitute for acquisition of land or interests needed for resource management and public use, they can be an important element in the general plan for protecting the unit.

#### *Easement Acquisitions*

Property ownership should be envisioned as a bundle of rights. These include the right to farm, cut trees, build houses, or extract resources and exclude others from it. Easements convey only some of the rights in property from one person to another. They may be positive: giving a right of access, or negative: restricting specific activities on the land. Easements are most likely to be useful where:

- Some, but not all private uses are compatible with unit purposes.

- Current owners desire to continue current types of use and occupancy of the land under terms set by NPS.

- Scenic values need protection, or access by the public or NPS is needed only over a portion of the land.

Easements are extremely flexible and can be drafted to fit the specific characteristics of the land as well as concerns of the owner. The protection plan should identify the types of conditions imposed by or uses that will be limited by an easement. These could include restrictions on:

- Tree cutting
- Excavation or grading
- Resource extraction
- Hunting or fishing
- Residential development
- Farming practices that erode the soil
- Grazing
- Commercial or industrial activities

Restrictions may specify changes in use that will be allowed by the unit manager subject to clearly defined conditions on the timing, intensity, or amount of the use.

The easement also could include positive provisions for:

- Public access along a river or trail
- NPS access to manage natural or cultural resources
- Utility rights of way

Negative easements are often likely to be appropriate on developed properties where single family residential uses can continue without adverse impacts on public use of the unit. Negative easements also are useful in protecting scenic values of agricultural or forest land. The type of restrictions to be imposed can be as general or specific as necessary to meet protection needs. For example, an easement on a farm along a parkway or historic area could specify that no trees will be cut or structures be built in a legally defined area unless consistent with clear standards in the easement. An easement on an historic building might specify that it will be maintained and painted only a certain color to match the character of the neighborhood, or preserve historic values.

Positive easements are likely to be most useful where the planned use by NPS or the public will not substantially interfere with other private uses of the land. Public access through land managed for farming or timber production is one example of a likely application for a positive easement. While some landowners may be receptive to selling less than their entire interest in land, others may prefer to sell in fee. The plan should indicate what factors will be considered in making the choice between fee and easement. These may include: owner preference, relative costs, character of the site or the resource, and plans for public use or other management requirements. In general, plans should give special attention to defining what interests in land are required to achieve unit purposes rather than leave the choice between fee and easement entirely to the property owner. The plan also should identify what special efforts might be necessary to inform landowners about possible advantages of owner imposed deed restrictions, easement sales and requirements for monitoring and enforcement of easement conditions. Plans proposing substantial use of easements should discuss any special staff, funding, or training needs to assure that easement conditions can be adequately managed and enforced.

There is no rule of thumb for determining whether easements are "too expensive" in relation to fee acquisition. Costs for purchasing easements will vary widely depending on how much potential uses of the land are limited and the local trends in development. Proposed easement programs must be evaluated on a case-by-case basis. In discussing costs of an easement program, the plan should balance all relevant factors:

**Easements:** limited management control, purchase price, enforcement costs, benefits of continued private use, opportunities for public use, impact on local tax base.

**Fee ownership:** full control over management, purchase price, maintenance expenses, payments in lieu of taxes, NPS liability for damages, patrol and enforcement expenses, opportunities for public use, development costs.

#### *Fee Acquisition*

When all of the interests in land are acquired, it is owned in fee-simple. Fee acquisition may be recommended when other methods of protection have been found to be inadequate, inefficient, or ineffective to meet management needs. Before recommending a protection strategy that relies entirely on fee purchases, the plan should explain why other approaches are not adequate and why problems with these other approaches cannot be solved. Fee acquisition is most often appropriate where the land:

—Is Needed for development of unit facilities or public use.

—Must be maintained in a natural condition that precludes reasonable private use.

—Requires active NPS management to preserve historic and archeological resources, eliminate exotic species, or conduct other activities that substantially conflict with private use.

—Is owned by individuals who do not wish to sell less-than-fee interests (sellback and lease back should be considered).

—Cannot be protected in accord with unit purposes by other methods, or alternatives would not be cost-effective.

#### *Methods of Acquisition*

NPS can acquire fee and less-than-fee interests through several different methods. These include:

Purchase with donated or appropriated funds

Withdrawal from the public domain

Transfer from other federal agencies

Donation

Bargain sale

Exchange

Condemnation

Plans for direct purchase should recognize the uncertainties about the level of annual appropriations by Congress. Transfers and withdrawals also usually require specific direction from Congress. Donations and exchanges depend upon a variety of factors not usually within the direct control of NPS. Consequently, the plan should discuss specific means of

acquisition (i.e., donation, purchase or exchange) in general terms without attempting to define which individual tracts will be acquired by specific methods, unless some agreement has already been reached or the methods are specified in the authorizing legislation.

Landowners who have substantial taxable incomes would most likely be interested in a full donation. A bargain sale (partial donation) may be attractive to individuals or corporations who need some cash and some deductions from taxable income. The plan provides an opportunity to determine what special assistance may be necessary to inform landowners about the tax advantages of donations. The plan should not, however, attempt to offer tax advice, but may indicate what steps can be taken to encourage landowners to consult with their attorneys and accountants.

Exchanges should be considered where:

NPS has identified potential trade lands under its own control (land outside of the current boundary acquired to avoid severance damages, for example).

Land is located in the same state under other Federal agency jurisdiction.

In cases, where the landowner wishes to sell fee but NPS needs a less-than-fee interest, a purchase and sell or lease-back arrangement should be considered. The land protection plan should identify those tracts where fee acquisition could be used initially to meet landowner objectives, and then the land could be leased, or resold with restrictions in the deed to meet NPS objectives. A discussion of timing for lease back or sell back and any necessary restrictions should be included in the plan.

Authorizing legislation for many areas provides that land also may be acquired subject to reservations or a right of use and occupancy. Reservations may be for a term of years or the life of the owner and must include restrictions to assure protection of unit resources. Rights to salvage structures or materials also may be reserved. The plan should specify what land or structures may be acquired subject to reservations as well as land that cannot be acquired with reservations, in accord with the area's legislation.

The plan should explain what circumstances may require the use of condemnation to acquire fee or less-than-fee interests in private property. These include simply resolving disagreements over fair market value and solving title problems, as well as preventing uses that would harm unit resources. The plan should note any specific legislative directions on condemnation, recognize

the distinction between inholding areas authorized prior to 1959 and recently authorized areas, and explain to landowners that condemnation is a judicial process to assure them of just compensation when private land is taken for public purposes.

The land protection plan should identify any special concerns about the actual process of acquisition that should be taken into consideration to minimize adverse impacts on landowners.

#### *Emergencies and Hardships*

It is not possible to predict in advance when landowners may be subject to hardships that require them to dispose of land or improvements in land, or to know when action by landowners may cause significant or irreparable damage to unit resources. Accordingly, both emergencies and hardships will be reviewed on a case-by-case basis as they arise and will not affect the overall setting of priorities in the preparation of land protection plans. Where authorizing legislation provides for special consideration to be given to hardships, appropriate reference to the legislation should be included in the plan.

#### **Appendix A**

Areas where planning is scheduled to be underway by October 1, 1983. This list includes areas where plans are scheduled for completion during Fiscal Year 1983 and 1984.

*Alaska Region:* Roger Contor, Regional Director, National Park Service, 540 West 5th Avenue, Room 202, Anchorage, Alaska 99501 (907-271-4196)

Glacier Bay NP

P.O. Box 1089

Juneau, AK 99802

Kenai Fjords NP

P.O. Box 1727

Seward, AK 99664

Lake Clark NP

701 C Street

Anchorage, AK 99513

Sitka NHP

P.O. Box 738

Sitka, AK 99835

Wrangell-St. Elias NP

P.O. Box 29

Glennallen, AK 99588

Yukon Charley Rivers NP

P.O. Box 64

Eagle, AK 99738

*Appalachian Trail:* David Richie, Project Manager, Appalachian Trail Project Office, National Park Service, Harpers Ferry, West Virginia 25425 (304-535-2346)

*Mid-Atlantic Region:* James W. Coleman, Jr., Regional Director,

- National Park Service, 143 South Third Street, Philadelphia, Pennsylvania 19106 (215-597-7013)
- Allegheny Portage RR NHS  
National Park Service  
P.O. Box 247  
Cresson, PA 16630
- Appomattox Court House NHP  
P.O. Box 218  
Appomattox, VA 24522
- Assateague Island NS  
Route 2, Box 294  
Berlin, MD 21811
- Colonial NHP  
P.O. Box 210  
Yorktown, VA 23690
- Delaware Water Gap NRA  
Bushkill, PA 18324
- Eisenhower NHS  
c/o Gettysburg NMP  
Gettysburg, PA 17325
- Fort Necessity NB  
The National Pike  
Farmington, PA 15437
- Fredericksburg & Spotsylvania NMP  
P.O. Box 679  
Fredericksburg, VA 22401
- Friendship Hill NHS  
c/o Fort Necessity Nat'l Battlefield  
The National Pike  
Farmington, PA 15437
- Gettysburg NMP  
Gettysburg, PA 17325
- Hampton NHS  
525 Hampton Lane  
Towson, MD 21204
- Independence NHP  
313 Walnut Street  
Philadelphia, PA 19106
- Johnstown Flood NM  
P.O. Box 247  
Cresson, PA 16630
- Maggie L. Walker NHS  
c/o Richmond Nat'l Battlefield Park  
3215 East Broad Street  
Richmond, VA 23223
- New River Gorge NR  
P.O. Box Drawer V  
Oak, Hill, WV 25901
- Petersburg NB  
P.O. Box 549  
Petersburg, VA 23803
- Richmond NBP  
3215 E. Broad Street  
Richmond, VA 23223
- Upper Delaware SRR  
P.O. Box C  
Narrowsburg, NY 12764
- Valley Forge NHP  
Valley Forge, PA 19481
- Mid-West Region:* Jim L. Dunning,  
Regional Director, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102 (402-221-3431)
- Apostle Islands NL  
P.O. Box 729  
Bayfield, WI 54814
- Cuyahoga Valley NRA  
P.O. Box 158  
Peninsula, OH 44264
- Herbert Hoover NHS  
P.O. Box 607  
West Branch, IA 52358
- Indiana Dunes NL  
1100 N. Mineral Springs  
Porter, IN 46304
- Lincoln Boyhood NM  
Lincoln City, IN 47552
- Lincoln Home NHS  
526 South 7th Street  
Springfield, IL 62703
- Lower Saint Croix NSR  
P.O. Box 708,  
Saint Croix Falls, WI 54024
- Mound City Group NM  
16062 State Rt. 104  
Chillicothe, OH 45601
- Pictured Rocks NL  
P.O. Box 40  
Munising, MI 49862
- Saint Croix NSR  
P.O. Box 708  
Saint Croix Falls, WI 54024
- Scotts Bluff NM  
P.O. Box 427,  
Gering, NE 69341
- Sleeping Bear Dunes NL  
400 ½ Maint Street,  
Frankfort, MI 49635
- Voyageurs NP  
P.O. Box Drawer 50,  
International Falls, MN 56649
- William H. Taft NHS  
2038 Auburn Avenue  
Cincinnati, OH 45219
- Wilsons Creek NB  
Postal Drawer C  
Republic, MO 65738
- National Capital Region:* Manus J. Fish,  
Jr., Regional Director, National Park Service, 1100 Ohio Drive, S.W., Washington, D.C. 20242 (202-426-5720)
- Antietam NB  
P.O. Box 158  
Sharpsburg, MD 21782
- C & O Canal NHP  
P.O. Box 4  
Sharpsburg, MD 21782
- Harpers Ferry NHP  
P.O. Box 65  
Harpers Ferry, WV 25425
- Manassas NBP  
P.O. Box 1830  
Manassas, VA 22110
- Monocacy NB  
c/o C & O Canal NHP  
P.O. Box 158  
Sharpsburg, MD 21782
- Piscataway Park  
c/o National Capital Region-East  
5210 Indian Head Highway  
Oxon Hill, MD 20021
- Prince William Forest Park  
P.O. Box 208  
Triangle, VA 22172
- North Atlantic Region:* Herbert S. Cables, Jr., Regional Director,  
National Park Service, 15 State Street,  
Boston, Massachusetts 02119 (617-223-3769)
- Adams NHS  
P.O. Box 531  
Quincy, MA 02269
- Boston African American NHS  
c/o Boston NHP  
Charleston Navy Yard  
Boston, MA 02129
- Cape Cod NS  
South Wellfleet, MA 02663
- Fire Island NS  
120 Laurel Street  
Patchogue, NY 11772
- Gateway NRA  
Floyd Bennett Field, Bldg. 69  
Brooklyn, NY 11234
- Home of FDR NHS  
Hyde Park, NY 12538
- Lowell NHP  
171 Merrimack Street  
P.O. Box 1098  
Lowell, MA 01853
- Martin Van Buren NHS  
P.O. Box 545  
Kinderhook, NY 12106
- Minute Man NHP  
P.O. Box 160  
Concord, MA 01742
- Morristown NHP  
National Park Service  
Washington Place  
Morristown, NJ 07960
- Saint Croix Island NM  
c/o Acadia National Park  
Route 1, Box 1  
Bar Harbor, ME 04609
- Salem Maritime NHS  
Custom House, Derby Street  
Salem, MA 01970
- Saratoga NHP  
R.D. #1, Box 113-C  
Stillwater, NY 12170
- Springfield Armory NHS  
One Armory Square  
Springfield, MA 01105
- Pacific Northwest Region:* Daniel J. Tobin, Jr., Regional Director, National Park Service, 2001 6th Avenue, Seattle, Washington 98121 (202-442-5565)
- Ebey's Landing NHR  
c/o Pacific Northwest Regional Office  
Westin Building, Room 1920  
2001 6th Avenue  
Seattle, WA 98121
- Fort Vancouver NHS  
Vancouver, WA 98661
- John Day Fossil Beds NM  
420 West Main Street  
John Day, OR 97845
- Lake Chelan NRA  
Chelan, WA 98816
- Mount Rainier NP  
Tahoma Woods, Star Route  
Ashford, WA 98304
- Nez Perce NHP  
P.O. Box 93

- Spalding, ID 83551  
North Cascades NP  
800 State Street  
Sedro Woolley, WA 98284  
Olympic NP  
600 East Park Avenue  
Port Angeles, WA 98362  
Ross Lake NRA  
c/o North Cascades NP  
800 State Street  
Sedro Woolley, WA 98284  
*Rocky Mountain Region:* L. Lorraine  
Mintzmyer, Regional Director,  
National Park Service, P.O. Box 25287,  
Denver, Colorado 80225 (303-234-  
2500)  
Arches NP  
c/o Canyonlands National Park  
446 S. Main Street  
Moab, UT 84532  
Badlands NP  
P.O. Box 6  
Interior, SD 57750  
Bent's Old Fort NHS  
P.O. Box 581  
La Junta, CO 81050  
Bighorn Canyon NRA  
P.O. Box 458  
Fort Smith, MT 59035  
Black Canyon of the Gunnison NM  
P.O. Box 1648  
Montrose, CO 81401  
Bryce Canyon NP  
Bryce Canyon, UT 84717  
Capitol Reef NP  
Torrey, UT 84775  
Dinosaur NM  
P.O. Box 210  
Dinosaur, CO 81610  
Fort Laramie NHS  
Fort Laramie, WY 82212  
Fort Union Trading Post NHS  
Buford Route  
Williston, ND 58801  
Glacier NP  
West Glacier, MT 59936  
Golden Spike NHS  
P.O. Box 394  
Brigham City, UT 84302  
Grand Teton NP  
P.O. Drawer 170  
Moose, WY 83012  
Grant-Kohrs Ranch NHS  
P.O. Box 790  
Deer Lodge, MT 59722  
Great Sand Dunes NM  
P.O. Box 60  
Alamosa, CO 81101  
Rocky Mountain NP  
Estes Park, CO 80517  
Zion NP  
Springdale, UT 84767  
*Southeast Region:* Robert M. Baker,  
Regional Director, National Park  
Service, Richard B. Russell Federal  
Bldg. & U.S. Courthouse, 75 Spring  
Street, S.W., Atlanta, Georgia 30303  
(404-221-5185)  
Andersonville NHS  
Andersonville, GA 31711  
Big Cypress NP  
S.R. Box 110-Satinwood Drive  
Ochopee, FL 33943  
Biscayne NP  
P.O. Box 1369  
Homestead, FL 33030  
Canaveral NS  
P.O. Box 2583  
Titusville, FL 32780  
Cape Hatteras NS  
Route 1, Box 675  
Manteo, NC 27954  
Cape Lookout NS  
P.O. Box 690  
Beaufort, NC 28516  
Castillo de San Marcos NM  
1 Castillo Drive  
St. Augustine, FL 32084  
Chattahoochee River NRA  
1905 Powers Ferry Rd-Suite 150  
Marietta, GA 30067  
Chickamauga & Chattanooga NMP  
P.O. Box 2128  
Ft. Oglethorpe, GA 30742  
Cumberland Gap NHP  
P.O. Box 840  
Middlesboro, KY 40965  
Cumberland Island NS  
P.O. Box 806  
Saint Marys, GA 31558  
De Soto N Memorial  
National Park Service  
75th Street, N.W.  
Bradenton, FL 33529  
Everglades NP  
P.O. Box 279  
Homestead, FL 33030  
Fort Caroline NM  
12713 Ft. Caroline Road  
Jacksonville, FL 32225  
Fort Donelson NMP  
P.O. Box F  
Dover, TN 37058  
Fort Frederica NM  
Route 4, Box 286-C  
St. Simons Island, GA 31522  
Fort Pulaski NM  
P.O. Box 98  
Tybee Island, GA 31328  
Fort Raleigh NHS  
c/o Cape Hatteras National Seashore  
Route 1, Box 675  
Manteo, NC 27954  
Fort Sumter NM  
1214 Middle Street  
Sullivan's Island, SC 29482  
Great Smoky Mountains NP  
Gatlinburg, TN 37738  
Gulf Islands NS  
P.O. Box 100  
Gulf Breeze, FL 32561  
Mammoth Cave NP  
Mammoth Cave, KY 42259  
Martin Luther King, Jr., NHS  
c/o Southeast Regional Office  
National Park Service  
75 Springs Street, S.W.  
Atlanta, GA 30303  
Moores Creek NB  
P.O. Box 69  
Currie, NC 28435  
Natchez Trace Parkway  
Rural Route 1, NT-143  
Tupelo, MS 39901  
Obed WSR  
P.O. Drawer 630  
Oneida, TN 37841  
Shiloh NMP  
Shiloh, TN 38376  
Tuskegee Institute NHS  
399 Old Montgomery Road  
Tuskegee, AL 36083  
Vicksburg NMP  
P.O. Box 349  
Vicksburg, MS 39180  
Virgin Islands NP  
P.O. Box 7789, Charlotte Amalie  
St. Thomas, VI 00801  
*Southwest Region:* Robert I. Kerr,  
Regional Director, National Park  
Service, Old Santa Fe Trail, P.O. Box  
728, Santa Fe, New Mexico 87501  
(505-988-6388)  
Bandelier NM  
Los Alamos, NM 87544  
Big Bend NP  
Big Bend Nat'l Park, TX 79834  
Big Thicket NP  
P.O. Box 7408  
Beaumont, TX 77706  
Buffalo NR  
P.O. Box 1173  
Harrison, AR 72601  
Chaco Culture NHP  
Star Route 4, Box 6500  
Bloomfield, NM 87413  
Chicksaw NRA  
P.O. Box 201  
Ft. Oglethorpe, GA 30742  
El Morro NM  
Ramah, NM 87321  
Fort Smith NHS  
P.O. Box 1406  
Fort Smith, AR 72902  
Georgia O'Keeffe NHS  
c/o Southwest Regional Office  
National Park Service  
P.O. Box 728  
Santa Fe, NM 87501  
Hot Springs NP  
P.O. Box 1860  
Hot Springs, AR 71901  
Jean Lafitte NHP  
c/o Municipal Auditorium  
1201 St. Peter Street  
New Orleans, LA 70116  
Lyndon B. Johnson NHS  
P.O. Box 329  
Johnson City, TX 78636  
Padre Island NS  
9405 South Padre Island Drive  
Corpus Christi, TX 78418  
Palo Alto Battlefield NHS  
c/o Padre Island NS  
9405 South Padre Island Drive  
Corpus Christi, TX 78418

**Salinas NM**

P.O. Box 496  
Mountainair, NM 87036

**San Antonio Missions NHS**

727 E. Durango-Rm. A612  
San Antonio, TX 78206

*Western Region: Howard Chapman,*

Regional Director, National Park  
Service, 450 Golden Gate Avenue, Box  
36063, San Francisco, California 94102  
(415-556-4196)

**Channel Islands NP**

1901 Spinnaker Drive  
Ventura, CA 93001

**Chiricahua NM**

Dos Cabezas Route Box 6500  
Willcox, AZ 85643

**Coronado NM**

Rural Route 1, Box 126  
Hereford, AZ 85615

**Golden Gate NRA**

Building 201, Fort Mason  
San Francisco, CA 94124

**Grand Canyon NP**

P.O. Box 129  
Grand Canyon, AZ 86023

**Kaloko Honokohau NHP**

c/o Pacific Area Director  
300 Ala Moana Blvd.  
Honolulu, HI 96850

**Kings Canyon NP**

c/o Sequoia and Kings Canyon Nat'l  
Parks

Three Rivers, CA 93271

**Lake Mead NRA**

601 Nevada Highway  
Boulder City, NV 89005

**Lassen Volcanic NP**

Mineral, CA 96063  
Montezuma Castle NM

P.O. Box 219

Camp Verde, AZ 86322

**Point Reyes NS**

Point Reyes, CA 94956

**Saguaro NM**

Route 8, Box 695

Tucson, AZ 85730

**Santa Monica Mountains NRA**

22900 Ventura Blvd., Suite 140  
Woodland Hills, CA 91364

**Sequoia NP**

c/o Sequoia & Kings Canyon Nat'l  
Parks

Three Rivers, CA 93271

**Tuzigoot NM**

c/o Montezuma Castle NM  
P.O. Box 219

Camp Verde, AZ 86322

**War in the Pacific NHP**

P.O. Box FA  
Agana, Guam 96910

**Yosemite NP**

P.O. Box 577

Yosemite National Park, CA 95389

**Russell E. Dickenson,**

*Director.*

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