

## 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 parks. A new policy statement on land protection was adopted by the Department of the Interior on May 7, 1982. A revised NPS policy on land protection is being developed to reflect the Departmental policy. Under this new policy, land acquisition plans will be revised or replaced by land protection plans by April 30, 1985. The following instructions for land protection plans will supercede directions in the 1979 policy statement on how to prepare land acquisition plans. Until a revised land protection plan has been approved, NPS protection activities in each unit will be guided by the land acquisition plan prepared under the 1979 policy.

### Requirements

A Land Protection Plan will be prepared for each unit in the National Park System which 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 threat of adverse impacts to park resources. The scope of the planning effort generally should be commensurate with the potential threat to park resources, complexity of the problems, and the amount of land requiring protection.

### Purposes of the Plan

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 park purposes as established by Congress.
2. Inform landowners about NPS intentions for buying or protecting land through other means within the park unit.
3. Help park managers identify priorities for making budget requests to protect land and park resources.
4. Find opportunities to help protect the park 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 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.

Public Involvement: The land protection plan will be prepared with public involvement. Property owners, State and local governments, and interested citizens must be notified when the planning effort is initiated and given an opportunity to comment on the alternatives under consideration. The format for public involvement will be determined by the Regional Director in consultation with the park manager and the planning team.

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 WASO as necessary. Considerations relating to compliance requirements should include the extent of proposed changes in land use and potential impacts on park 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. Complete National Park Service guidelines for environmental compliance are found in NPS-12.

Responsibilities: The Regional Director is responsible for scheduling the land protection plan, directing its preparation by an interdisciplinary team including planners and realty specialists, and approving it. The plan will be reviewed concurrently by the park, region, and Washington Office. Comments compiled during the Washington Office review will be forwarded to the Regional Director for consideration prior to his or her approval of the plan. The time allocated for WASO review will be at least 21 and not more than 45 days from the date of receipt in the Office of Park Planning and Environmental Quality. The regional or field solicitor should be consulted as necessary throughout the planning process and should review the proposed plan for legal sufficiency.

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, outline 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 planning team and approved by the Regional Director.

Updates: Plans should be reviewed on a biennial basis, and revised 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. 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 Regional Director is responsible for determining if an update is required and scheduling necessary revisions.

#### Format

Formats for land protection plans may be adjusted to fit special circumstances, but 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.

#### II. Purpose of the Park and Resources to be Protected

- a) A brief statement of the purpose of the park summarizing primary resource protection and visitor use objectives based on the GMP or statement for management and other plans.
- b) Special legislative, administrative, or congressional directives or constraints on acquisition, appropriations ceiling, mandated acquisition periods, etc.

#### III. Management Plans and Considerations

- a) Brief description of planned resource management and visitor use activities by zone or subzone.
- b) Description of private ownership and uses which would be compatible or incompatible with planned management activities.

c) Identification of Federal, State, and local laws or authorities which currently provide some resource protection or allow for planned management activities.

#### IV. Land Ownership Patterns

a) Maps showing tracts, acreage, and ownerships (If there are a large number of tracts, maps may show units or zones rather than individual lots.)

b) Status of current acquisition/protection program including acres and interests acquired, authorized ceiling, and appropriations to date.

c) Social/cultural characteristics of the community (corporations or individuals; land in same families for generations or just bought for subdivision etc.)

#### V. Protection Alternatives

a) Description of various methods for protecting land to carry out the purpose of the park (see list and discussion below).

b) Criteria for evaluating alternatives and setting priorities (quality of resource protection, level of visitor use and services, severity of threats, impacts on MPS operations, relative costs, etc.)

c) Analysis of various alternatives considering impacts on park resources, visitor use, relative cost, MPS operations, landowners, and other social, economic, cultural, and environmental factors. Alternatives here may be strategies which combine several different methods described in V(a).

#### VI. Recommendations

a) List priorities for protection by tract or other reasonable unit, considering importance of resources and threat of destruction.

b) Identify Lands which can be protected:  
-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 and not requiring any MPS protection efforts.

## VII. Appendices (as necessary)

- a) boundary and tract maps
- b) priority listing of individual tracts or groups of tracts
- c) copies of authorizing legislation
- d) sample documents (Easement provisions, agreements, notices to local governments etc.)

Although all plans should follow these analytical steps, some may be very brief and all should place primary emphasis on sections V and VI 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 park boundaries, protection authorities, or 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 processed through amendment or revision to the General Management Plan or other appropriate procedures.

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

### Private Ownership within Park Boundaries

The land protection plan should recognize that park boundaries are not always drawn exclusively on the basis of natural features or clear determinations of resource significance. Consequently, not all of the land within a park boundary may require the same type of protection to achieve the basic mission of the unit. Plans which call for NPS to assume management responsibility for additional lands currently in private or other ownership should be able to document that the resource protection and visitor use purposes of the park cannot be carried out on land that NPS already owns.

### 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 before human settlement. However, with appropriate controls, it may be possible and desirable to allow continued private uses of the land for a specific period of time without adverse impacts on the long term mission of the park.

In many areas, private uses of the land also may contribute to park purposes by providing visitor services, reducing requirements for maintenance, or continuing traditional activities which are part of the resource to be protected. The land protection plan should indicate what private uses need to be continued, controlled, or eliminated to meet long range goals of the park. Interim private use may be provided by deferral of acquisition, acquisition subject to reservation of use and occupancy, or by purchase followed by leaseback, sellback, or special use permits.

### Protection Alternatives

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

#### Agreements

Agreements may be formal contracts or administrative arrangements between two or more parties. They can provide for exchange of services or other benefits. Within park boundaries, cooperative 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 park 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 park purposes under an agreement which grants NPS access yet continues the defense and coastal security uses of the islands.

Although agreements are flexible and can be developed to fit special circumstances, they are subject to being changed on relatively short notice and do not usually provide absolute assurances of long term protection. NPS directives and the Federal Grants and Cooperative Agreement Act of 1977 (P.L. 95-224) establish some important distinctions among contracts, cooperative agreements, and memoranda of understanding. The land protection plan should outline the specific requirements of NPS 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 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 requires 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 park
- Some reasonable private use of the land is consistent with park purposes
- Private land use needs to be controlled and managed rather than prohibited to meet park objectives.

The land protection plan should be specific 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

specific standards for design: requirements for set backs 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 park. Land zoned for low density residential use may be more adequately protected in terms of park 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 which would be consistent with park objectives. At the same time, the plan should recognize that zoning changes are often highly 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 also may be required to advise on complex zoning questions.

Local zoning has been criticized as a long term park protection tool because of the potential for changes in local governing bodies, political pressures on decisions, and problems in enforcement of regulations. Protection plans may suggest what steps could be taken to overcome some of these problems.

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. Legal issues to consider include possible charges that NPS is attempting to lower property values to reduce acquisition costs rather than carrying out its responsibilities as a land manager to protect park resources. In discussing zoning, the plan should give special attention to maintaining cooperative relationships with local governments rather than creating political confrontations.

Where the state has ceded exclusive jurisdiction to the Federal Government within the boundaries of a park, NPS may be able to exercise direct regulatory authority similar to zoning over private lands. In such cases, NPS will 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 parks rather than a method of protecting new parks or undeveloped land.



### Regulations

In addition to zoning, Federal agencies and state and local governments administer a variety of other laws which can help protect park resources. The land protection plan should 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
- mining 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 which 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 park resources. For example, documentation 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 cooperative efforts to identify and prosecute violators as well as technical assistance or review of permit applications.

### Easement Acquisitions

Property ownership can be envisioned as a bundle of rights. These include the right to farm, cut trees, build houses, or mine the land 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 park purposes

- current owners desire to continue 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 which will be limited by an easement. These could include restrictions on:

- tree cutting
- excavation or grading
- mining
- hunting or fishing
- residential development
- farming practices that erode the soil
- grazing
- commercial or industrial activities

Restrictions need not be absolute; they may specify that the activity will be allowed 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 park. Negative easements also are useful in protecting scenic values of agricultural or forest land when market pressures for intense development are not terribly strong. 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 park could specify that no trees will be cut or structures 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 park 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 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 park facilities or heavy public use

must be maintained in pristine natural condition which precludes reasonable private use

requires intense NPS management to preserve historic resources, eliminate exotic species, or conduct other activities which 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 park 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 methods of acquisition in general terms without attempting to define which individual tracts will be acquired by specific methods, unless some agreement has already been reached.

Landowners who have substantial taxable incomes are most likely to be interested in a full donation. A bargain sale (partial donation) may be attractive to individuals or corporations which 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 in the same state under other agency jurisdictions is likely to be excess or surplus and available for trade.

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.

Authorizing legislation for many areas provides that land also may be acquired subject to reservations of 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 park 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 which 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 which would harm park resources. The plan should note any specific legislative directions on condemnation and explain to landowners that condemnation is a judicial process to assure them of just compensation when private land is taken for public purposes.

Acquisition of fee and less than fee interests in land is carried out in accord with NPS Land Protection Policy and Guidelines. These guidelines address in more detail issues concerning condemnation, appraisals, relocation benefits, specific terms of reservations and appeals. The land protection plan should identify any special concerns about the actual process of acquisition which should be taken into consideration to minimize adverse impacts on landowners.

#### Emergencies and Hardships

The plan should specify what circumstances will constitute an emergency or hardship, and under what conditions emergencies and hardships will receive priority consideration for acquisition. General guidelines for defining emergencies and hardships are included in the NPS Land Protection Policy Implementation Guidelines.