

[Cover page summary statement.] The National Park Service will use all available authorities to protect lands and resources within units of the national park system, and will seek to acquire as promptly as possible non-federal lands and interests in land that have been identified for acquisition. For lands not in federal ownership, both those that have been identified for acquisition and other non-federally owned lands within a park unit's authorized boundaries, the Service will cooperate with federal agencies; tribal, state, and local governments; non-profit organizations; and property owners to provide appropriate protection measures. Cooperation with these entities will also be pursued and other available land protection tools will be employed when threats to resources originate outside boundaries.

Chapter 3: Land Protection

3.1 General

The National Park Service is required by the 1916 Organic Act to protect and preserve unimpaired the resources and values of the national park system while providing for public use and enjoyment. A number of park units have non-federally owned lands within their authorized boundaries. When non-federal lands exist within park boundaries, acquisition of those lands and/or interests in those lands may be the best way to protect and manage natural and cultural resources or provide for visitor enjoyment. When acquisition is necessary and appropriate, the Park Service will acquire those lands and/or interests as promptly as possible consistent with Departmental land transaction and appraisal policies. Practical, cost-effective alternatives will be considered and pursued by the Service to advance protection and management goals.

The boundaries of most park units are not based strictly on ecological processes or other resource protection principles, and park units are increasingly subject to impacts from external sources. Examples include air and water pollution, and the loss of scenic vistas, natural quiet, and wildlife habitat. To fulfill National Park Service protection responsibilities, strategies and actions beyond park boundaries may be employed. External threats may be addressed by using available tools such as gateway community planning and partnership arrangements; NPS educational programs; and participation in the planning processes of federal agencies and tribal, state, and local governments. Strong fulfillment of Service responsibilities is required by NEPA, NHPA, and other applicable laws to minimize impacts on park resources and values.

3.2 Land Protection Methods

The Park Service may employ a variety of different methods, as appropriate, for protecting park resources. These methods will be considered in the land protection planning process for each unit. Examples include:

- Acquisition of fee simple real property interest, possibly with arrangements for some rights to be reserved;
- Acquisition of less-than-fee real property interests, such as easements or rights-of-way; and
- Cooperative approaches, such as cooperative agreements, participation in regional consortiums, local planning and zoning processes, or other measures that do not involve federal acquisition of any interest in real property.

Federal fee simple ownership (all of the rights associated with real property) provides the Service with the greatest ability to protect and manage resources and provide for public use and enjoyment. Less-than-fee interests (some of the rights associated with real property) require a federal commitment to monitor and enforce the Service's interest in the affected property. Acquisition of less-than-fee interests may be appropriate in instances in which the Service needs only a specific interest in land, or in which it needs to modify uses of the land in order to protect resources or values but full fee ownership is not required or possible.

Acquisition of fee simple interests is a critically important and effective land protection method for lands within unit boundaries. The Service may employ, as appropriate, a broad strategy to protect land and resources, including innovative techniques; partnerships; participation in the planning and decision-making processes of other federal agencies; and vigilance at the regional and local levels of government, at which non-federal land use decisions are generally made.

Some park units created by Congress have been specifically authorized to continue historical or traditional activities such as farming, ranching, or low-density residential uses. Congress may also restrict the method of acquisition or prohibit acquisition without owner consent. In all cases, the Park Service will acquire the lands and/or interests in land only by the method or methods authorized.

When non-federal land is identified for acquisition, the Service will make every reasonable effort to reach an agreement with the owner on the purchase price, in accordance with the uniform appraisal standards for Departmental land transaction policies. If an agreement cannot be reached, the Service will take further steps in accordance with authorities and congressional directions that apply to the unit in question. Service policy is to acquire lands and interests in lands from willing sellers, and condemnation is generally considered only as a last resort. However, acquisition by condemnation is sometimes necessary to establish just compensation, to clear a title, or to prevent imminent damage or unacceptable threats to park resources and values.

(See Condemnation 3.8)

3.3 Land Protection Plans

Planning for the protection of park lands will be integrated into the planning process for park management. Land protection plans (LPPs) should be prepared to determine and publicly document what lands or interests in land need to be in public ownership, and what means of protection are available to achieve the purposes for which the unit was created. These plans will be prepared for each unit of the national park system containing non-federal land or interests in land within its authorized boundary. A thorough review of a park's authorizing statutes and complete legislative history will be conducted as part of the land protection planning process.

Land acquisition priorities will be guided by a park unit's land protection plan. Superintendents will ensure that LPPs are developed, and periodically reviewed and updated as necessary, to identify what land or interests in land would facilitate achieving park purposes. These purposes and the desired conditions for resources and visitor experiences are normally defined in the park's general management plan. Strategic plans define what results can be accomplished in the

foreseeable future—usually a five-year period. LPPs will be coordinated with general management plans, strategic plans, and other plans for resource management and visitor use. Decisions about acquisition within park boundaries will consider the relationship between the park and its adjacent lands. Superintendents have the responsibility to be aware of uses or activities that are planned for lands around the park that may have impacts on park resources and opportunities for visitor enjoyment.

An LPP should be simple and concise, and document: (1) what lands or interests in land would advance park purposes through public ownership; (2) what means of protection are available to achieve park purposes as established by Congress; (3) the protection methods and funds that will be sought or applied to protect resources and to provide for visitor use and park facility development; and (4) acquisition priorities. Historic structures and objects on the land under consideration within the LPP will be evaluated for their relevance to the park mission and the scope of the park museum collection. The LPP will specify those structures and objects that benefit the public through public ownership, and identify the appropriate source of funding. Personal property not identified for acquisition should be removed by the property owner. For acquisition of water rights, see chapter 4, section 4.6.2.

When appropriate, the LPP may serve as a vehicle for addressing land protection issues external to a park's boundaries. When external impacts or opportunities are addressed, plans will clearly distinguish between the authorities related to land acquisition and the authorities for the Service to cooperate with other entities beyond the park boundary.

3.4 Cooperative Conservation

Superintendents will be aware of and monitor state government programs for managing state-owned submerged lands and resources within NPS units. When there is potential for such programs to adversely impact park resources or values, superintendents will make their concerns known to appropriate state government officials, and encourage compatible land uses that avoid or mitigate potential adverse impacts. When federal acquisition of state-owned submerged lands and resources within NPS units is not feasible, the NPS will seek to enter into cooperative agreements with state governments to ensure the adequate protection of park resources and values.

External threats may originate with proposed uses outside a park that may adversely impact park resources or values. Superintendents will therefore be aware of and monitor land use proposals and changes to adjacent lands, and their potential impacts. They will also seek to encourage compatible adjacent land uses to avoid or to mitigate potential adverse effects. Superintendents will make their concerns known, and, when appropriate, actively participate in the planning and regulatory processes of neighboring jurisdictions, including other federal agencies and tribal, state, and local governments.

In working cooperatively with surrounding landowners and managers a superintendent might, for example, comment on potential zoning changes for proposed development projects, or brief the public and officials about park resources and related studies that are relevant to proposed zoning or other changes. Superintendents should, whenever possible, work cooperatively and

communicate their concerns as early as possible in the process in such a manner as will minimize potential conflict. Superintendents should seek advice from the appropriate NPS program managers and the Solicitor's Office when dealing with complicated external land protection issues and threats, especially those with potential for Service-wide controversy or consequences.

In some cases—such as air or water pollution—the source of a significant threat may be far removed from the park's boundaries. In such cases, the Park Service will coordinate at the regional or national level in making its concerns known, and in seeking a remedy to the problem. Threats to parks from external sources should be identified and addressed in the general management plan or in other planning documents. The result will be enhanced public awareness of the far reaching impacts of these threats, and an increased likelihood of remedial actions by those who are responsible.

(See Cooperative Conservation Beyond Park Boundaries 1.6; Evaluating Environmental Impacts 4.1.3; Partnerships 4.1.4; Biological Resource Management 4.4; Removal of Exotic Species Already Present 4.4.4.2; Water Resource Management 4.6; Air Resource Management 4.7; Geologic Resource Management 4.8; Soundscape Management 4.9; Lightscape Management 4.10; Stewardship 5.3. Also see Director's Order #25: Land Protection, and Reference Manual 25); Director's Order #75A: Civic Engagement and Public Involvement)

3.5 Boundary Adjustments

The boundary of a national park may be modified only as authorized by law. For many parks, such statutory authority is included in the enabling legislation or subsequent legislation specifically authorizing a boundary revision. Where park specific authority is not available, the Land and Water Conservation Fund (LWCF) Act of 1965, as amended, provides an additional, but limited, authority to adjust boundaries.

The act provides for boundary adjustments that essentially fall into three distinct categories: (1) technical revisions; (2) minor revisions based upon statutorily defined criteria; and (3) revisions to include adjacent real property acquired by donation, purchased with donated funds, transferred from any other federal agency, or obtained by exchange. Adjacent real property is considered to be land located contiguous to but outside the boundary of a national park system unit.

As part of the planning process, the NPS will identify and evaluate boundary adjustments that may be necessary or desirable in order to carry out the purposes of the park unit. Boundary adjustments may be recommended to:

- Protect significant resources and values, or to enhance opportunities for public enjoyment related to park purposes;
- Address operational and management issues, such as the need for access or the need for boundaries to correspond to logical boundary delineations such as topographic or other natural features or roads; or
- Otherwise protect park resources that are critical to fulfilling park purposes.

If the acquisition will be made using appropriated funds, and is not merely a technical boundary revision, the criteria set forth by Congress at 16 USC 460l- 9(c) (2) must be met. All recommendations for boundary changes must meet the following two criteria:

- The added lands will be feasible to administer, considering their size, configuration, and ownership, costs, the views of and impacts on local communities and surrounding jurisdictions, and other factors such as the presence of hazardous substances or exotic species; and
- Other alternatives for management and resource protection are not adequate.

These criteria apply conversely to recommendations for the deletion of lands from the authorized boundaries of a park unit. For example, before recommending the deletion of land from a park boundary, a finding would have to be made that the land did not include a significant resource, value, or opportunity for public enjoyment related to the purposes of the park. Full consideration should be given to present and future park needs before a recommendation is made to delete lands from the authorized boundaries of a park unit. Actions consisting solely of deletions of land from existing park boundaries require an act of Congress.

3.6 Land Acquisition Authority

The National Park Service acquires lands or interests in land within parks when authorized to do so by an act of Congress or by Presidential proclamation. Although acquisition outside authorized boundaries is generally prohibited, certain statutes provide limited system-wide authority for minor boundary changes and the acceptance of donated lands adjacent to a park's boundaries. There is no single statute authorizing land acquisition. There are, however, several laws that provide limited acquisition authority that is applicable system-wide. For most parks, acquisition authority is provided by statutes specific to the park. The Park Service land acquisition process and land protection planning process will comply with all applicable legislation, congressional guidelines, Executive orders, and Department of the Interior policies. For delegations of authority for land acquisition, see Director's Order #25: Land Protection.

3.7 Land Acquisition Funding

When the acquisition of lands and/or interests in land within a park boundary is necessary, the NPS will consider acquisition by

- purchase with appropriated or donated funds,
- exchange,
- donation,
- bargain sale,
- transfer or withdrawal from public domain, or,
- as a last resort, condemnation.

Funding for land acquisition within the national park system is derived primarily from the LWCF. LWCF monies are restricted to uses associated with the acquisition of land and/or interests in land within the authorized boundaries of NPS units. As outlined in Department of the Interior policy, the federal portion of the LWCF will be used to acquire the lands, waters, and

interests therein necessary to achieve the Service's natural, cultural, wildlife, and recreation management objectives. To implement this policy, the fund will be used in accordance with management objectives for each park unit based on the NPS mission and congressional mandates, and with an analysis of long-range goals for resource protection, safe public access, and park management. As further required by departmental policy, the Service will, to the extent consistent with statutory authorities:

- Prioritize acquisition of lands or interests in land within unit boundaries to achieve park purposes consistent with management objectives;
- Use to the maximum extent practical, cost-effective alternatives to the direct federal purchase of privately owned lands, and, when acquisition is necessary, acquire or retain only the minimum interests determined by park officials to be necessary to meet management objectives;
- Cooperate with landowners, other federal agencies, tribal, state, and local governments, and the private sector to manage land for public use or protect it for resource conservation; and
- Formulate, or revise as necessary, plans for land acquisition and resource use or protection to ensure that sociocultural impacts are considered, and that the most outstanding areas are adequately managed.

3.8 Condemnation

As a general policy and in accordance with congressional direction, condemnation is the acquisition method of last resort for the NPS when acquiring lands or interests in lands.

It is the Service's goal to acquire lands or interests in lands through a cooperative negotiation process with a willing seller. Under certain circumstances, however, condemnation may be necessary. Friendly condemnations with willing sellers may be appropriate to ensure that the United States acquires clear title to the property in question, or to enable a court to determine the fair market value to be paid for the property. If there is no willing seller, the Service may pursue condemnation proceedings if

- it is first determined that other acquisition means will not be successful,
- the acquisition would be consistent with any restrictions applicable to that park unit,
- approval has been obtained from the Director and any other required sources (e.g., by the Department of the Interior or Congress)

In Alaska, consideration of a land exchange is required prior to acquisition through condemnation.

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