



United States Department of the Interior

NATIONAL PARK SERVICE

1849 C Street, N.W.
Washington, D.C. 20240

IN REPLY REFER TO:

Director's Order #25: Land Protection

Approved: _____

Director, National Park Service

Effective Date: _____

1/19/01

Sunset Date: _____

JAN 19 2005

Table of Contents

1.0 Background and Purpose	9.0 Appraisals/Legislative Cost Estimates
2.0 Authority for this Director's Order	10.0 Property Acquisition/Relocation Assistance
3.0 Land Protection Methods	11.0 Acquisition Methods
4.0 Land Protection Plans	12.0 Closing Procedures
5.0 Roles and Responsibilities	13.0 Official Records/Files
6.0 Budget and Fiscal Management	14.0 Boundary Adjustments
7.0 Maps/Surveys	15.0 Dealing with Nonprofit Organizations
8.0 Environmental Site Assessments	

1.0 Background and Purpose

The purpose of this Director's Order is to articulate the framework for land protection, and the process for the acquisition of land and interests in land, within the authorized boundaries of units of the National Park System. This order summarizes NPS Management Policies and sets forth other requirements and responsibilities as they relate to the National Park Service's land protection program. For purposes of this Director's Order, the term "*land*" includes both non-submerged and submerged land.

The National Park Service is required by the Organic Act (16 USC 1-4) to protect and preserve unimpaired the resources and values of the National Park System, while providing for public use and enjoyment. The Service's land protection activities play a vital role in accomplishing these objectives. A number of park units have non-federally owned lands within their authorized boundaries. Where non-federal lands exist within park boundaries, acquisition of those lands and or interests in land is often necessary and appropriate to protect and manage park resources. When acquisition is not necessary or appropriate, the Service must consider and pursue cost-effective alternatives.

The boundaries of most park units are not based strictly on ecological, cultural, or other resource protection principles, and park units are increasingly subject to impairment from external sources.

Examples include air and water pollution, the loss of scenic vistas, the loss of natural quiet, the commercial salvage of historic shipwrecks and the loss of other cultural resources, and the loss of habitat important to wildlife. To fulfill NPS 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 arrangement; 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 the National Environmental Policy Act (NEPA), sections 106 and 110 of the National Historic Preservation Act (NHPA), and other applicable laws to minimize adverse impacts on park resources and values.

2.0 Authority for this Director's Order

Authority to issue this Director's Order is contained in the NPS Organic Act (16 USC 1 through 4), and the delegations of authority contained in Part 245 of the Department of the Interior Manual.

3.0 Land Protection Methods

3.1 The National Park Service will use all available authorities to protect lands and resources within NPS units, and will seek to acquire as promptly as possible non-federal lands and interests in land that have been identified for acquisition. Where lands within a unit's boundaries have not been acquired, the NPS will cooperate with Federal agencies, tribal, state, and local governments, nonprofit 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.

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

- 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 gateway planning efforts, 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.

3.3 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 interest (some of the rights associated with real property) require a Federal commitment to monitor and enforce the Park Service's interest in the affected property. Acquisition of less-than-fee interests may be appropriate in those instances where the Service needs only a specific interest in land, or needs to restrict uses of the land in order to protect resource values, but where full fee ownership is not required.

3.4 Acquisition of fee simple interest is a critically important and effective land protection method for lands within unit boundaries. The Service may employ, as appropriate, a broader strategy to protect land and resources, including innovative techniques, partnerships, and vigilance at the state and local levels of government, where non-Federal land use decisions are generally made.

3.5 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 NPS will acquire the lands and/or interests in land only by the method or methods authorized.

3.6 When non-federal land is identified for acquisition, the NPS will make every reasonable effort to reach an agreement with the owner on the purchase price. If an agreement can not be reached, the NPS will take further steps in accordance with authorities and congressional directions that apply to the unit in question. Condemnation is generally considered as a last resort. However, acquisition by condemnation is sometimes necessary to establish just compensation, to clear title, or to prevent imminent damage or unacceptable threats to park resources.

4.0 Land Protection Plans

4.1 Land acquisition priorities will be guided by a Land Protection Plan (LPP). Superintendents will review the land protection plans on a routine basis and will provide updates/revisions to the plan to reflect the current acquisition priorities. These plans can be updated at the park unit level, should be uncomplicated, and should identify lands intended for acquisition. Guidance is provided in Reference Manual 25.

4.2 A thorough review of a park or unit's authorizing statutes and legislative history should be conducted as part of the land protection planning process. LPPs will also identify the protection methods that will be sought or applied to protect resources and to provide for visitor use and park facility development. The plans will also identify the level of interest (e.g. scenic easement, right-of-way, fee or fee with reserved use) that needs to be acquired for park purposes, and establish general acquisition priorities. The acquisition of easements (less than fee interest) should be weighed with both current and future needs to assure that such an interest is in the best interest of the government.

4.3 When a park or unit contains lands and resources owned by a state, tribal, or local government, that state, tribal, or local government's land management statutes should be thoroughly reviewed as part of the land protection planning process. The plans will identify the potential for those land management programs to jeopardize park resources or values (e.g. incompatible land uses) and set forth alternatives for avoiding or mitigating potential adverse impacts (e.g. land acquisition, cooperative agreements).

5.0 Roles and Responsibilities

5.1 **Chief, Land Resources Division, WASO**. The Chief directs the overall land acquisition program and is supported by the Washington Office Land Resources Division and the Land Resources National Program Center, located in Washington, D.C. The Chief will identify the areas of responsibility and authority levels for each Realty Officer to react to the program goals and ever-changing funding.

5.2 **Realty Officer**. The authority to negotiate, accept and sign land contracts, deeds and other documents required for obtaining title to land and interests in land has been delegated to the Realty Officer who is responsible for the land acquisition program for specific park units. The Realty Officer will ensure that all NPS procedures for acquiring land are conducted efficiently and in accordance with applicable laws, regulations, and policies. The Realty Officer also (1) develops a viable land acquisition program (budget formulation) for the fiscal year for the regional director's consideration, (2) develops the annual land acquisition schedule for the current fiscal year, and (3) prepares the Financial Plan/Operating Programs (FP/OP).

5.3 **Regional Director.** The regional director is responsible for overall management of the land protection activities in the region, including the setting of regional priorities for land acquisition and budget requests. In the acquisition/planning process, the regional director's approval is required for the initial Land Protection Plan and "Letters of Intent" to nonprofit organizations. The regional director is delegated the authority to approve environmental site assessments (ESA) with a remediation cost up to \$250,000.

5.4 **Superintendent/Park Manager.** The authority to recommend the land and/or interests in land to be acquired within the authorized boundaries of a park unit is delegated to the park manager. The park manager is responsible for developing the Land Protection Plan in compliance with NPS policy. The park manager is responsible for assuring the Land Protection Plan is reviewed and updated to meet the changing needs of the unit and in establishing priorities as part of this process.

5.5 **Land Resources Offices.** Land resources offices are located in strategic locations throughout the country under the supervision of a Realty Officer. The staff of these offices perform and oversee the many technical functions required for the acquisition of lands and/or interests in land. The designation of the areas of responsibility for each office will be made by the Chief, Land Resources, WASO to meet program goals and Service-wide priorities.

6.0 Budget and Fiscal Management

6.1 The Land and Water Conservation Fund (LWCF) provides the primary source of funds for the land acquisition program. It is important to obligate appropriated funds quickly to ensure the funds are available for the intended park acquisitions. Realty Officers, regional directors, and park managers are required to meet their responsibility in a timely manner as outlined in this Director's Order.

6.2 Land acquisition funds cannot be used outside the boundaries of units of the National Park System or in units of the system that do not have land acquisition authority, unless specifically authorized by the Chief, Land Resources Division, WASO. Limited funding may be made available for pre-acquisition work on properties within proposed units where authorization of the unit is imminent.

6.3 The Land Acquisition Ranking System (LARS) is used to identify and analyze Service-wide acquisition priorities for funding. It is managed by the Chief, Land Resources Division. Analysis of the database by the Land Resources Division will provide for sound decision-making. Instructions and guidance will be incorporated into Reference Manual 25.

7.0 Maps/Surveys

7.1 **Maps.** Land status maps will be prepared to identify the ownership of the lands within the authorized boundaries of the park unit. These maps, showing ownership and acreage, are the "official record" of the acreage of Federal and non-federal lands within the park boundaries. While these maps are the official record of the lands and acreage within the unit's authorized boundaries, they are not of survey quality and not intended to be used for survey purposes.

7.2 **Surveys.** In the course of acquiring land for a park unit, the land resources office may elect to survey a particular parcel of land in order to obtain a legal description sufficient to acquire the property. Surveying of parcels will be done infrequently and only in cases where the information of record is not sufficient to obtain clear title to the property or determine an accurate legal description.

8.0 Environmental Site Assessments

8.1 Secretarial Order No. 3127, as revised by Departmental Manual 602 DM 2 (September 29, 1995), established a policy and procedure whereby all real property and interests acquired by the Department will be assessed prior to the acquisition to determine if contaminants are present on the real property. The cost of cleaning up or remediating the effects of contaminants must be factored into the decision-making process prior to the purchase of the property. The policy provides for three levels of inspection (Levels I, II, and III) to be conducted, depending on the extent of possible contaminants assessed during the initial (Level I) inspection. The findings may, in certain instances, be factored into the appraisal process if the market justifies such an approach.

8.2 The policy provides for thorough review and approvals if the park manager desires to complete the purchase. The policy also provides for different levels of review and professional assessments, depending on the data collected during the initial assessment. Realty Officers should work closely with the professionals in this field to make certain the appropriate steps are followed and that a complete and full assessment of the property is made before the acquisition is completed. In most instances, the responsibility for completing the initial assessment is under the direction of the park manager and approval is required from the regional director. When a Level II or Level III assessment is needed, approval authority is delegated to the regional directors for remediation amounts up to \$250,000. The Director retains authority for approval of remediation amounts from \$250,000 to \$500,000. Secretarial approval is required for remediation amounts exceeding \$500,000.

9.0 Appraisals/Legislative Cost Estimates

9.1 **Appraisals.** The National Park Service will follow the Uniform Relocation Assistance and Real Property Acquisition (Uniform Act) Regulations for Federal and Federally Assisted Programs. These regulations are published in the Federal Register, Vol.54, No. 40, March 2, 1989 [49 CFR Part 24]. As defined in the regulations, “the term *appraisal* means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.” The regulations provide that:

- All real property will be appraised and just compensation established before initiation of negotiations. The amount shall be no less than the approved appraisal of the fair market value of the property.
- A qualified reviewing appraiser will examine all appraisals to assure that they meet applicable appraisal requirements and shall, prior to acceptance, seek necessary corrections or revisions.
- Property owners, or their designated representative, are provided an opportunity to accompany the appraiser when the inspection of the property is undertaken.

9.2 **Legislative Cost Estimates.** The Land Resource National Program Center will assist in the preparation of legislative cost estimates for new NPS units, proposed unit boundary expansions, and the remainder of tracts to complete existing units or changes in estate within existing units. This estimate is prepared for Congress and used to document the expected costs associated with acquiring any interest in real property. Requests for the preparation of legislative cost estimates must be received in writing by the Realty Officer responsible from the unit, specifying the acquisition boundary, acreage, and real property estates to be acquired. Funding for the preparation of legislative cost estimates must come from the benefiting account and cannot be funded from the LWCF.

10.0 Property Acquisition/Relocation Assistance

10.1 When acquisition of lands and/or interests in land within a boundary is necessary, the Service will consider acquisition by purchase with appropriated or donated funds, exchange, donation, bargain sale, transfer, withdrawal from public domain, or condemnation.

10.2 As outlined in Department of the Interior policy [Federal Register Vol. 47, No. 89, May 7, 1982], the Federal portion of the LWCF will be used to acquire lands, waters, and interests therein necessary to achieve NPS natural, cultural, wildlife resource, and recreation management objectives. To implement this policy, the fund will be used in accordance with management objectives for each unit, based on the NPS mission and congressional mandates, and an analysis of long-range goals for resource protection, safe public access, and park management. As further required by Department policy, the NPS will, to the extent consistent with statutory authorities:

- Identify what lands or interests in land need to be in Federal ownership to achieve management unit purposes consistent with public objectives in the unit;
- Use to the maximum extent practical cost-effective alternatives to direct Federal purchase of privately owned lands and, when acquisition is necessary, acquire or retain only the minimum interests necessary to meet management objectives;
- Cooperate with landowners, other Federal agencies, 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 assure that sociocultural impacts are considered, and that the most outstanding areas are adequately managed.

10.3 The National Park Service must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the Uniform Act). Regulations for complying with this act are published in Federal Register, Vol. 54, No. 40, March 2, 1989 and found at 49 CFR Part 24. The process for land acquisition, the rights of landowners, and the range of additional benefits and entitlements that may be available to landowners and/or tenants are covered in Reference Manual 25. The following points summarize the more salient aspects of these regulations:

- Negotiations may not be initiated with a landowner until after an approved appraisal has been performed and just compensation established.
- A landowner will be offered no less than the approved appraisal of the fair market value for the interests to be acquired by the Federal Government.
- Fair market value will be established by an appraisal that conforms to the standards set forth in the *Uniform Appraisal Standards for Federal Land Acquisitions*.
- A landowner (or representative) will be given the opportunity to accompany the appraiser and to inform the appraiser of any factors that may influence the property's value.
- A displaced landowner (and/or tenant) will be offered relocation assistance, including all reasonable moving expenses.

- Most closing costs will be paid by the Federal Government.

In some cases, a supplemental payment may be made to help a displaced homeowner or tenant in order to obtain comparable replacement housing.

11.0 Acquisition Methods

11.1 General authorization for land acquisition is found in the LWCF. The Realty Officer will consider the appropriate method of acquiring the necessary land and interest in land (i.e., acquisition by purchase with appropriated or donated funds, exchange, donation, bargain sale, transfer, withdrawal from public domain, or condemnation). A determination of the most appropriate method will take into account the enabling legislation for the park unit, the entity holding title, and the cost-effectiveness of the method.

11.2 **Exchanges.** Given the diversity of the National Park System, no rigid rules can be established as to when or when not to attempt an exchange. In general, the proposed exchange should benefit the NPS unit, and the Federal lands to be exchanged must be deemed suitable for disposal or exchange. No exchange should be considered where there is no demonstrable benefit to the United States. Proposals for exchanges valued in excess of \$500,000 must be submitted to the House and Senate Committee on Appropriations, Subcommittee on Interior and Related Agencies, for a 30-day review. Guidance is provided in Reference Manual 25.

11.3 **Reservation of Use and Occupancy.** In certain instances, the NPS will allow a reservation of use and occupancy of property improved with a residence. This reservation will depend on the urgency of the park unit's need. A reservation for residential use only may be for a term of years (up to 25) or a life estate, on an area not exceeding 3 acres in size. Terms and conditions are standardized on a Service-wide basis. A reservation of use and occupancy will reduce the purchase cost to the government and may serve as a means to lessen the impact on the landowner. The Service will deduct 1 percent of the appraised value for each year reserved for a residential use reservation as defined above. For a life estate, the 1 percent of the appraised value per year deduction will be based on actuary tables. The owner is requested to waive certain relocation benefits, such as replacement housing benefits, if a reservation is accepted.

Reservations of use and occupancy are a deeded interest in the real estate and can not be extended beyond the expiration date. Park managers should exercise great care in planning for the prompt removal of structures at the end of the reservation period. *Special Use Permits are not to be used to allow continued occupancy at the end of the expiration date except in hardship instances.* (See also Director's Order #53: Special Park Uses).

11.4 **Condemnation.** In acquiring land, every reasonable effort will be made to reach an agreement with the owner. Acquisition by condemnation will sometimes be necessary to establish just compensation, to clear title, or to prevent imminent or unacceptable damage or threats to park resources.

12.0 Closing Procedures

Closing is the process whereby title to the land and or interest in land is vested in the United States. For improved property, the property owner under the Uniform Act will be allowed a minimum of 90 days to vacate the premises. There are important roles by different individuals involved with the closing:

- In most instances a private title escrow agent hired by the government will handle the closing, ensure the title, disburse the funds and record the government's deed.

- The Realty Officer will oversee the preparation of the deeds and closing documents and assure that clear title is vested in the United States.
- The unit staff will frequently be asked to perform a visual check of the property and to complete a Certificate of Inspection and Possession (CIP) to make certain there are no other parties of possession or existing rights that can be observed visually. For improved properties, it is important to make certain no changes have been made or damage has been done to the improvements prior to closing, as an adjustment would need to be made to the purchase price if damage has occurred.
- Earlier in the process, the park manager may be asked to sign an administrative waiver certifying that acquisition of the land or interests in land subject to certain outstanding rights will be acceptable to management. If not, the Realty Officer should be requested to acquire those rights as promptly as possible.

After closing is completed, the park manager will be provided a notification of closing. A deed file with pertinent documents will follow after a final title opinion is obtained from the solicitor and the file is officially retired.

13.0 Official Records/Files

13.1 The official record of the acreage, interest, and ownership for each acquisition will be maintained by the Land Resources National Program Center.

13.2 During the acquisition phase, the land records for each acquisition will be maintained at the responsible land resources office. These files will contain all the relevant information collected as part of the acquisition process, including deeds, title information, correspondence, negotiator's reports, maps, etc.

13.3 When a file is retired, important original documents will be collected from the file and will be duplicated for transmittal to the unit manager. The original tract/acquisition file will be retained at the Federal Records Center. It is very important to retain those files for future managers, in the event that earlier files have been sent to other locations.

13.4 Further guidance on the retention of land acquisition files is provided in Reference Manual 25. (See also Director's Order #19: Records Management)

14.0 Boundary Adjustments

The boundary of a park unit may be modified only as authorized by law. Where unit-specific authority is not available, the LWCF, as amended, provides for boundary adjustments that essentially fall into three distinct categories: (a) technical revisions; (b) minor revisions based upon statutorily defined criteria; and (c) revisions to include adjacent real property acquired by donation, purchase with donated funds, transfers from any other Federal agencies, or exchange. Adjacent real property is land located contiguous to, but outside the boundary of, a National Park System unit.

For boundary revisions, the park manager must identify early in the process the appropriate authority that exists, and work closely with the Realty Officer and/or Legislative Affairs Office on the appropriate procedure to follow. In many instances, legislation may be required to authorize the revision.

15.0 Dealing with Nonprofit Organizations

Nonprofit organizations help Federal agencies acquire land in certain circumstances. Guidance on acquiring land from nonprofit organizations is contained in the “Clarification to August 10, 1983, Guidelines for Transactions Between Nonprofit Organizations and Agencies of the Department of the Interior” memorandum, issued in August 1995. This guidance is very specific on the appropriate role of the bureau and the nonprofit and requires a nonprofit “letter of intent” when a nonprofit is involved, or if a unit seeks the involvement of a nonprofit organization. The letter of intent must be prepared early in the process and signed by the regional director. A park manager or staff member should make no formal or informal commitment with a nonprofit organization without the written concurrence of the regional director. Guidance is provided in Reference Manual 25.

References:

- Land Protection Plan Instructions (FR 48:21121)
- DOI Policy for the Federal Portion of the Land and Water Conservation Fund (FR 47:19874)
- Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 USC 4601 et seq.)
- Conservation Planning, Environmental Impact Analysis, and Decision-making (Director’s Order #12)
- Records Management (Director’s Order #19)
- National Historic Preservation Act (Director’s Order #28)
- Special Park Uses (Director’s Order #53)

---End of Director’s Order #25---