

Environmentalists have also sought other statutory designations to prevent economic development. In 1968, the Wild and Scenic Rivers Act was passed which could prevent logging, dams, mineral development, and watershed management on an indefinitely expandable number of river basins. The "Bottomless Pit Theory" has also been extended to our National Park System.

In the 1950s, the first private lands were condemned by the federal government to create new units for parkland, and in 1968, Congress confiscated the first large tracts of private timberlands for use as a public park with the establishment of Redwood National Park in California. This trend to “purchase” private lands for National Park use through government condemnations and “takings” has created a virtually limitless supply of new parks—by law, no private property is safe from eminent domain or Congressional taking, and an environmentalist publicity campaign has been all the trigger needed to carve new parks from the homes and farms of unwilling sellers in dozens of places, such as Cuyahoga National Recreation Area in Ohio, Mount Rogers National Recreation Area in Virginia, Buffalo National River in Arkansas, and to mount efforts to “protect” places like California’s Big Sur country and Oregon’s Columbia Gorge from the people who live there. This trend to condemn massive areas of private property for new parks spurred the 1978 formation of a group to fight it: the National Inholders Association, an “inholder” being anyone who owns property or equity interest in land within a government-managed area or land that is regulated by a government agency.

cost \$1.6 billion to set right. In minerals he had seen Department personnel demoralized by years of suppression and neglect. These were realities. Watt's early claims of restoring balance may have been perceived as a mere sop for the public or rhetorical window dressing to hide rapacious intent, but in this chapter we will examine the record of imbalances and abuses that had damaged the civil rights of many citizens and the economic stability of the nation.

## The National Parks

Much of the news coverage featuring Secretary Watt's early National Park policy was superficial and raised nearly nonsensical issues. For example, the May 11, 1981, issue of *Time* magazine noted: "Watt has declared a moratorium on the acquisition of more national parkland, despite the fact that parks are now being used by more people than ever. In 1970 more than 172 million visited the country's national recreation areas; last year at least 300 million toured places like Yosemite, Yellowstone and Glacier."

A little reflection will reveal how superficial this argument is: How many places are there like Yosemite, Yellowstone, and Glacier? There is no substitute for a unique resource, no more of these crown jewels to be added; all were long ago given protected status. And where are the visitors thronging? According to the Park Service's Denver Service Center Statistical Office, of the top ten attractions in 1980, four were city parks, two were roads (National Parkways), three offered beaches or water recreation, and exactly one was a scenic National Park (Great Smoky Mountain). Ranked by visitors, they were (1) Golden Gate National Recreation Area in San Francisco (18.4 million visits); (2) Natchez Trace Parkway in Mississippi, Alabama and Tennessee (10.6 million); (3) Gateway NRA in New York City (9 million); (4) Great Smoky Mountain National Park in Tennessee (8.4 million); (5) Colonial National Historical Park, Jamestown Island, Virginia (6.3 million); (6) George Washington Memorial Parkway, Virginia and Maryland (6.2 million); (7) Lake Mead NRA, Arizona-Nevada (4.9 million); (8) Cape Cod National Seashore, Massachusetts (4.7 million); (9) John F. Kennedy Center for the Performing Arts, Washington D.C. (4.2 million); (10) National Capitol Parks, Washington, D.C. (4.0 million). The Lincoln Memorial had more visitors (3.3 million) than Yosemite (2.4 million), Yellowstone (2.0 million), or Glacier (1.4 million). The *Time* report was grossly misleading; the moratorium was not intended to exclude outstanding scenic or ecological treasures, since a substantial cross-section of each representative type is already preserved in the system.

In fact, the moratorium issue has little if anything to do with letting

great natural areas slip through our fingers; it is more nearly a question of how many more city parks we put in the federal system. A more legitimate concern is whether National Park Rangers with degrees in environmental science ought to be directing traffic, baby-sitting on swing sets, arresting drug pushers, and picking up trash on the street.

A few critics of Watt's National Park policy dug deeper. Writer Elizabeth Drew noted in the May 4, 1981 *New Yorker* that many dispassionate observers, "who include conservation-minded Democrats, maintain that Congress has got in the habit in recent years of authorizing the purchase of parks that could not be described as 'national jewels'—that a bit of pork barreling was going on."

A useful understanding of the National Parks issue can only come from an historical perspective. When Congress created the National Park Service in 1916, it gave the new agency a conflicting set of rules: protection and preservation on the one hand, and provision for appropriate use and public enjoyment on the other. The resulting tensions have never been successfully resolved. Preservation advocates assert that wilderness is at the heart of the National Park concept, while use-oriented partisans claim just as loudly that public enjoyment is the core of the idea. The law is silent on this point; as far as the legislation is concerned there are two cores, protection and appropriate use, preservation and public enjoyment. Resolving the dichotomy is left to the National Park Service.

By the time the National Park Service was established in 1916, some of the parks had been going concerns for nearly half a century, one of them much longer. Hot Springs Reservation in Arkansas had been set aside April 20, 1832, but was not dedicated to public use as a park until June 16, 1880. The Yo-Semite Valley Act of 1864 granted Yosemite to the State of California for use as a park, thus setting a precedent for scenic reserves, but Yellowstone in Wyoming was the first and largest National Park, established March 1, 1872, "dedicated and set apart as a public park or pleasuring-ground for the benefit and enjoyment of the people," and "for the preservation, from injury or spoliation, of all timber, mineral deposits, natural curiosities, or wonders . . . and their retention in their natural condition." Although the two purposes of public use and natural preservation are clearly spelled out in this excerpt from Yellowstone's enabling act, a preservationist faction in the modern National Park Service attempted to modify that legislative mandate without the consent of Congress in writing the Master Plan for Yellowstone: "the original purpose must be translated in terms of contemporary connotations; as such it should read:

To perpetuate the natural ecosystems within the park *in as near pristine conditions as possible for their inspirational, educational, cultural, and scientific values for this and future generations* [emphasis in the original].

The 1960s and '70s saw increasing amounts of such administrative tampering with Congressional intent; one at a time, imbalances stacked up in favor of preservation and against public use and enjoyment.

Other National Parks that had already been established when the National Park Service was created in 1916 include Sequoia (1890), Yosemite (1890), Mount Rainier (1899), Crater Lake (1902), Wind Cave (1903), Mesa Verde (1906), and Rocky Mountain (1915). They were soon joined by Lassen Volcanic (1916), Hawaii (later redesignated as Haleakala and Hawaii Volcanoes) (1916), Mount McKinley (renamed Denali) (1917), Zion (1919), Acadia (1919) and Grand Canyon (1919). Grand Canyon had been designated a Forest Reserve in 1893, a National Monument in 1908, and was administered by the Forest Service, U.S. Department of Agriculture, until transferred to Interior August 15, 1919.

These early parks had two things in common: first, they were carved from the vast public domain lands in the West which were for the most part considered worthless for economic pursuits; and second, they had within their boundaries tracts of land that had already been homesteaded or were otherwise withdrawn for private uses such as mines, visitor accommodations, and so forth.

These embedded private tracts, known as "inholdings," have aroused terrible conflict from the very beginning of the National Park Service. Secretary of the Interior Franklin K. Lane wrote to Stephen Mather, first Director of the National Park Service, on May 13, 1918:

There are many private holdings in the national parks and many of these seriously hamper administration of these reservations. All of them should be eliminated as far as practicable. This should be accomplished in the course of time either through Congressional appropriations or by acceptance of donations of these lands. Isolated tracts in important scenic areas should be given first consideration, of course, in the pursuit of private property.

As Secretary Lane's bounty hunters set out in "pursuit of private property," they were quickly ambushed by howls of protest from inholders who took the Fifth Amendment's Constitutional private property protection clause seriously. Secretary Lane's intentions were partially thwarted; condemnation proceedings were slow. Only a few strategically located sites were acquired to prevent private development. Funds were short, and as current Park Service Director Russell Dickenson says, "the uses being made of the private tracts remained for the most part harmless to the natural and other values of the areas of the system."

The National Park system grew rapidly: Bryce Canyon was added in 1924, followed by Shenandoah (1926), Great Smoky Mountains (1926), Mammoth Cave (1926), Grand Teton (1929), Carlsbad Caverns (1930), Isle Royal (1931), Everglades (1934), Big Bend (1935) and Olympic (1938). The Eastern Parks were assembled largely through the efforts of philanthropists and state governments.

A reorganization in 1933 brought battlefields and historic places into the system. Virtually all of these areas had private property within their boundaries, yet its distribution did not unduly disturb operation and management of the affected units. But a dramatic shift in national policy came with the authorization of Minuteman National Historic Park in 1959 and Cape Cod National Seashore in 1961. Both of these areas had to be assembled from predominantly private lands before they could be made available to the public. Congress followed this lead by the quick authorization of three National Seashores: Padre Island (1962), Point Reyes (1962), and Assateague Island (1965), plus a host of preserves in other categories, all comprised of predominantly private property. In 1968, Redwood became the first National Park to be made up primarily of appropriated real estate.

The Land and Water Conservation Fund was approved by Congress in 1964, providing monies for federal and state acquisition of private lands for preservation uses, and sealed the new trend in National Park policy: no longer would the nation's "public pleasuring grounds" be hewn from the public domain with small private inholdings, but henceforth were to be taken primarily from private citizens, with or without small parcels of public land included. Whether one regards this new trend as an abuse, an imbalance or a sound direction, it definitely marks a drastic change in historical U.S. land policy.

A substantial amount of the United States is administered by the National Park Service, and National Parks are not the only thing you will find in the system. There are more than 20 different kinds of Park Service areas, and this multitude of classifications is divided into three major categories, Natural Areas, Historical Areas, and Recreational Areas. Although the National Park system is best known for its great scenic parks, and justly so, more than half the areas in the system preserve places and commemorate persons, events, or activities important in America's history.

Natural Areas include National Parks, National Monuments, Wilderness Areas (most, however, are administered by the Department of Agriculture's Forest Service), National Environmental Education Landmarks, National Preserves, and Registered Natural Landmarks. A National Park is usually large in area and contains a variety of resources; a National Monument is normally smaller than a National Park, lacks its diversity, but preserves at

least one nationally significant resource, such as Devils Tower in Wyoming, the first National Monument, established September 24, 1906, and made famous in the 1977 science-fiction movie *Close Encounters of the Third Kind*, which brought hordes of visitors the following summer.

Historical Areas include National Historic Sites, National Historical Parks, National Memorials, National Military Parks, National Battlefields, National Battlefield Parks, National Battlefield Sites, National Cemeteries and National Historic Landmarks. This bewildering array of titles includes vastly different things; the home of Abraham Lincoln in Springfield, Illinois, is a National Historic Site, but the Lincoln Memorial in Washington is a National Memorial. The obvious military titles preserve diverse areas important in American history, although other areas such as National Monuments may also include forts and other items of military interest.

Recreation Areas include National Parkways, National Recreation Areas, National Seashores, National Lakeshores, National Scenic Trails, National Scenic Riverways and National Wild and Scenic Rivers. The Parkways are mere ribbons of land flanking low-speed roadways with 35- to 45-mile-per-hour speed limits for leisurely driving through scenic areas, such as Blue Ridge. National Recreation Areas were originally units surrounding the reservoirs impounded by federal dams, but now include both natural and urban areas—some NRAs are administered by the Forest Service or by the U.S. Army Corps of Engineers. Wild and Scenic Rivers preserve ribbons of land bordering free-flowing streams which have not been dammed or channelized, or otherwise man-altered, and are used primarily for canoeing, hiking, or hunting.

By 1980 there were 323 separate areas authorized in the National Park system, 319 of them fully established: 132 Natural Areas (41%), 131 Historical Areas (41%), and 56 Recreational Areas (18%); covering 77.0 million acres, or 117,000 square miles, an area nearly twice the size of the six New England States or larger than Arizona, sixth largest state in the Union.

The growth of the National Park system during the preservationist decades between 1960 and 1980 gives us a useful perspective: The number of units in the system was 185 in 1960 compared to 319 in 1980 (72% increase); acreage grew from 25.1 million in 1960 to 77.0 million in 1980 (207% increase); the staff of the National Park Service increased from 4,036 in 1960 to 15,349 in 1980 (280% growth); and visitation rose from 73.6 million to 300.3 million (a gain of 310%). But Congressional funding tells the story Secretary Watt was talking about when he described the deteriorated condition of the parks after years of expansion: in 1960, the land acquisition fund was a mere \$5.28 million compared to 1980's \$152.9 million (dollar figures are adjusted by the Consumer Price Index to compensate for the effects

of inflation). On the other hand, construction funds in 1960 amounted to \$127.04 million but had shrunk in 1980 to \$108 million inflation-adjusted dollars, or \$127.7 1980 dollars. These figures were provided by Ric Davidge, Special Assistant to G. Ray Arnett, Assistant Secretary for Fish and Wildlife and Parks, and were gathered for an Interior Department in-house (unpublished) document, *Trends in National Park System Management*. Davidge, a recognized expert on federal land acquisition and the application of eminent domain law, feels that these numbers and others substantiate claims that land-grabbing had seriously overbalanced caring for what the system already owned during the preservationist years. Davidge is chairman of Interior's Lands Policy Work Group, which was established by Secretary Watt to develop a clear and positive national policy outlining the proper federal role in open-space conservation.

The land acquisition policy of the Park Service during the preservationist era between 1960 and 1980 was centered around obtaining title in what real estate people call "fee simple" ownership. Fee simple is absolute and unqualified ownership, the highest and most ample estate of ownership known to law, out of which all other kinds of title are taken or "carved." The government's right of eminent domain has long provided for confiscation of fee simple ownerships of private property for public use. The particular method of asserting eminent domain used in most National Park land acquisition during this time was either Congressional Taking by which the federal legislature exerts its Fifth Amendment right to take anything it wants from any citizen so long as it pays for what is taken, or the Declaration of Taking issued by the Park Service. The Declaration of Taking is a particularly harsh step: title changes immediately to the United States government. The landowner need not be notified in advance. The landowner must sue the new owner to get his land back. The government can give you 90 days to get off the property; 90 percent of the "approved appraised value," set by the government, becomes immediately available to the dispossessed owner. It is a frightening thing to have happen to you.

In 1978, disgruntled inholders got together and formed the National Inholders Association, which describes itself as "a public interest non-profit group formed to protect the rights of Americans on lands owned or regulated by government." This inholder group was invited to testify in Washington at a "Workshop on Public Land Acquisition and Alternatives" held by the Subcommittee of Public Lands and Reserved Water of the Senate Energy and Natural Resources Committee in October 1981. National Inholders Executive Director Charles S. Cushman described many of the problems his constituents had with the Park Service, beginning with the problem of agreeing on a price for condemned inholdings: "There seems to be a good case that the Park

Service has been less than candid with the Congress in setting values for certain projects.”

Cushman cited a specific instance: “The *Los Angeles Times* released a Park Service memo which indicated that it would take \$667 million to complete the Santa Monica Mountains National Recreation Area if all the money were obtained in 1982 and Declarations of Taking were used to freeze values. Experts familiar with the situation feel the ultimate price will be at least \$1 billion and probably much more. The authorized price was \$155 million and that didn’t inflate to over \$1 billion in two years. That increase, it appears, is not due so much to inflation as to faulty value setting motivated by political considerations in order to get the legislation passed.” However, a House Committee, not the Park Service, set the original \$155 million price tag.

A very real example of politically motivated low estimates came from the expansion of Redwood National Park in 1977: Sierra Club projections for taking 48,000 acres of timberlands were in the \$200 million range. Congress authorized \$335 million, which has already been spent to pay for *one-third* of the land; the ultimate price tag will obviously exceed \$1 billion, and for one of the least-visited Parks in the system, which consists of more than 38,000 acres of land that had been cutover and replanted in young seedlings by its former commercial timber firm owners in decades past—hardly the image of the magnificent National Park.

Because of such deliberately low estimates, the \$3 billion backlog of incomplete projects acknowledged by the Park Service will probably exceed \$10 billion in cost overruns.

Low valuation problems have another aspect: Cushman testified that the Park Service has gone “appraisal shopping” to find the lowest figure available in settling property claims. One Inholders Association member, Cushman says, caught the Park Service flatfooted when a “shopped” appraisal was adopted and the landowner’s was judged to be faulty. Cushman says, “The only reason the landowner became aware of the different appraisals was that he didn’t recognize the name on the appraisal he saw. He was never given an opportunity to accompany the appraiser as is required under Public Law 91-646.” Here are further points brought up in Cushman’s testimony:

An Inholders member in Florida suffered another injustice: coercion. A Park Service agent told this family they would receive more money for relocation benefits if they would agree to a lower settlement price for their house. A California member had been denied access to a roadway that had been promised him and was told he might not get back 53 acres of his property that had been seized but was later found to lie outside the Park

Service boundary unless he agreed to a lower price for the property within the boundary.

An Arkansas farmer who was dispossessed waited so long for payment that he could no longer find another farm for the amount he received—a victim of inflation and delays. In a Minnesota case involving the U.S. Forest Service, a landowner wanted to widen a road over government land so that an oil truck could deliver heating oil and the family could remain in their home during wintertime. Cushman testified that “The official of the agency said within hearing distance of witnesses he was not aware of that ‘things happen—the agency has been known to burn down houses.’ This house was on fee title land. This family has never escaped the fear of that statement.” Three years later, the family still did not have winter access and were slipping into bankruptcy from the cost of finding winter accommodations.

Cushman pointed up the magnitude of the problem: 70,000 parcels of land have been acquired by the Park Service in the last 14 years, he says, and in 1979 alone, 21,000 condemnations were in process, nearly half of them by the National Park Service. It must be remembered that Mr. Cushman is an advocate, and may tend to overstate his case as much as environmentalist advocates. In checking his numbers with Willis Kriz, Chief of the Land Resources Division of the National Park Service, the total number of private tracts acquired from 1965 to 1980, inclusive, was 87,155; 45,200 of those resulted from the addition of Big Cypress National Preserve in Florida, mostly subdivision lots, which is why the number is so large. Thus, without Big Cypress, the Park Service has condemned 44,955 private properties since 1965. Many of these sales were by willing sellers, but without doubt, many more were accompanied by hardships, emergencies, severe economic dislocation, culture shock, and emotional trauma. The Park Service, you see, classifies anyone as a “willing seller” who sells prior to a judge rendering a decision, even those who do so under threat of condemnation.

Totally aside from the individual suffering, Cushman warned against overzealous administration of these takings and attitudes that fly in the teeth of our ideals, of proper forms of government, of individual liberties. His prime exhibit was the Environmental Impact Statement for Fire Island National Seashore, stated in the Park Service’s own words:

#### Impacts on the Socioeconomic Environment

Opportunities for additional development in the development district of the Seashore would become progressively more limited as the federal government acquired more land within the communities and held it in reserve as undeveloped open space. The density of development would slowly decrease, resulting in a general decline in the population that the communities

could support. As the population declined, commercial establishments providing goods and services to residents would realize progressively lower profits, and the number of closings would increase. Development within the commercial districts would slowly be acquired by the federal government and the land converted to open space. Ferry service from the Long Island mainland would become less profitable and more limited as population declined. With access progressively more restricted, goods and services more difficult to secure, and the land progressively more fragmented into a mosaic of developed and undeveloped parcels, the communities would become less desirable places for some residents to live; these residents would sell their properties to the federal government. Eventually, a small cadre of residents would remain. These would be self-sufficient people willing to endure the considerable inconvenience of living in isolated enclaves with a matrix of federal land.

When I read this EIS it sounded hauntingly familiar. I then realized it was virtually a synopsis of events in Ayn Rand's novel, *Atlas Shrugged*, without a John Galt, and with the federal government serving as the man who "stopped the motor of the world." It also brought to mind a vision of America's future prophesied in many environmentalist writings from Ernest Callenbach's *Ecotopia* to E.F. Schumacher's *Small Is Beautiful*, from Gerald Barney's *The Unfinished Agenda* to William Ophuls' *Ecology and the Politics of Scarcity*, which asserted that modern civilization has outlived its usefulness and that we must be "governed by implacable ecological imperatives." Then the really chilling realization set in: the same mentality that had written the Fire Island EIS had been ensconced in hundreds of jobs in the Carter Administration, what Llewellyn King of the *Energy Daily* dubbed "the termite infestation." And how coolly that mentality had laid out the destruction of commerce and communities on Fire Island!

The General Accounting Office of the legislative branch in the federal government issued a number of reports on Interior Department land acquisition practices that point to abuses and injustice. A GAO report issued May 8, 1981, bore the title *The National Park Service Should Improve Its Land Acquisition And Management At The Fire Island National Seashore*. The summary on the cover of this report said: "The National Park Service's zoning standards at Fire Island National Seashore are too restrictive and permit land to be acquired that is not needed to achieve the purposes of the Fire Island National Seashore Act. The National Park Service should revise its zoning standards, establish criteria for acquiring properties, and sell back to private citizens land it acquired but does not need." In the body of this report, GAO officials took the Park Service to task for their extreme interpretation of zoning powers in a neatly understated remark: "Zoning should be an alternative to, not a means of, fee simple acquisition." The environmentalist formula

for putting the lights out on Fire Island has been overturned by new 1980 standards of resource protection for the area, under which no new condemnations have been executed.

Another important General Accounting Office study was requested by none other than Democratic Representative Phillip Burton of San Francisco. Burton is second-ranking majority member of the powerful House Interior and Insular Affairs Committee which rides herd on Interior and these days on Jim Watt. Congressman Burton was one of those who has forged the sawtooth edge of national land acquisition policy. In the summer of 1979, Congressman Burton and Interior Secretary Cecil Andrus, and a few others, determined to dispossess all 36,000 inholders from the National Parks within four years, to do in one Presidency what had not been accomplished since 1916. Recalling that the General Accounting Office is normally friendly to its legislative clients, Congressman Burton, as the Chairman of the Subcommittee on National Parks and Insular Affairs, asked them to look into the matter of federal land acquisition, hoping their report would bolster his position against the fledgling National Inholders Association. GAO complied with the request.

On December 14, 1979, Congressman Burton received "A Report by the Comptroller General of the United States." But the title of the report dismayed him: *The Federal Drive to Acquire Private Lands Should be Reassessed*. A banner headline in the *San Francisco Chronicle* announced: "Burton Stung by GAO Study Made at His Request." A paragraph on the cover of the GAO report said:

"The National Park, Forest, and Fish and Wildlife Services had been following a general practice of acquiring as much private land as possible regardless of need, alternative land control methods, and impacts on private landowners." Congressman Burton may have been appalled at this lack of support, but GAO's recommendations were a worse blow to his intentions for the inholders:

GAO recommends that the Secretaries of Agriculture and Interior: (1) jointly establish a policy on when lands should be purchased or when other protection alternatives, such as easements, zoning, and Federal controls, should be used; (2) critically evaluate the need to purchase additional lands in existing projects; and (3) prepare plans identifying lands needed to achieve project purposes and objectives at every new project before acquiring land.

Among the many abuses this GAO report cited were a number that had appeared on the National Inholders Association's list: "Agencies have regularly exceeded original cost estimates for purchasing land. The cost of many projects has doubled, tripled, even quadrupled from original estimates

and authorizations. Also, agencies have bought land without adequate consideration of the impact on communities and private owners.”

The report cited a specific example of insensitivity:

When a 52-mile section of the Lower St. Croix River was made a component of the Wild and Scenic River System, local zoning ordinances were changed to provide protection. The Park Service, however, viewed this as only a temporary measure until it could purchase titles and restrictive easements to all the lands in the Park Service's 27-mile section. Costs have increased from the initial legislated ceiling of \$7.3 million to the current ceiling of \$19 million. This attitude toward zoning has antagonized local communities and landowners.

Congressman Burton was not really surprised by GAO's response to his request: he knew that on May 22, 1978, GAO had released a report entitled *Federal Protection And Preservation Of Wild And Scenic Rivers Is Slow And Costly*. GAO reported that Congress had passed the Wild and Scenic Rivers Act in 1968, designating 8 rivers as components of the system. By 1977, 11 rivers had been added to the system and 58 more had been identified as potential additions—the bottomless pit aspect of such laws was rearing its ugly head. However, states had been reluctant to nominate rivers “because national designation contributes to increased river use, with attendant problems of deterioration of scenic values and increased administrative costs.” The report also complained that “Acquisition of lands and easements as a preservation strategy has proven controversial, time consuming and increasingly costly.”

On January 22, 1981, the very day Jim Watt was confirmed as Secretary of the Interior, the GAO published a report called *Lands in the Lake Chelan National Recreation Area Should Be Returned to Private Ownership*, which asserted that Congress had intended that land acquisition costs in this Washington State scenic area “be minimal, the private community of Stehekin in the recreation area continue to exist, existing commercial development not be eliminated, and additional compatible development be permitted to accommodate increased visitor use.” GAO not only complained that the Park Service had violated the intent of Congress in its management of the area, but also that it had wrongfully dispossessed landowners and should sell back certain areas to private individuals.

The pressure for the National Park Service to continually acquire new lands comes from two main sources: large national environmental groups such as the National Parks and Conservation Association who feel a proprietary interest in enlarging the public domain, and local environmental groups and governments who pressure Congressmen to obtain federal funding for what are essentially community uses. Underhanded tactics have been used in numerous

cases to deprive landowners of their rights to use private property being considered for federal classification. A most notorious case involves the local government effort to include a private tract known as Wolfback Ridge in the Golden Gate National Recreation Area in the San Francisco Bay region.

This horror story was brought to my attention by Joseph Gughemetti, co-author of *The Taking*, who had come across it while researching his book. Then, among the many files provided for my inspection by Ric Davidge of the National Park Service, I discovered a folder of correspondence about Wolfback Ridge that tells a story of collusion and unconscionable government intrusion into the life of private citizens.

Golden Gate National Recreation Area was one of two "experiments" in federal urban park formation—the other was New York harbor's Gateway NRA—both of which were established October 27, 1981. Golden Gate NRA was conceived as a long playground stretching north and south of San Francisco and including a long strip of waterfront real estate in Congressman Phillip Burton's district. The northern extension was to include parts of the city of Sausalito, where three families, FitzSimmons, Lynch, and Melchoir, owned a 160-acre parcel on a mountain crest known as Wolfback Ridge, commanding some of most magnificent views in the Bay Area. The owners were unaware of it, but on May 10, 1972, City of Sausalito Mayor Mrs. Robin R. Sweeny wrote a letter to Congressman William S. Mailliard concerning their property.

Mayor Sweeny was concerned about a large 1,800-acre tract known as the Marincello property, near Wolfback Ridge that was slated for addition to Golden Gate NRA (GGNRA). It seems that a good price could be negotiated with its owners because there was no recent comparable sale for an appraiser to use in setting a higher price. But Mr. FitzSimmons had just thrown a monkey-wrench into the deal by submitting plans to subdivide the jointly owned Wolfback Ridge property and sell it, which would give any appraiser a very exact idea of what the Marincello property was really worth, and that posed a great difficulty. As Mrs. Sweeny wrote to the Congressman, "Since the U.S. Government is required by law to pay the appraised fair market value for any lands it acquires, the sale of the FitzSimmons property into residential lots would create high, recent and very comparable sales which no appraiser could ignore when valuing the Marincello lands for sale to the United States." That could not be allowed. It would threaten inclusion of the Marincello property in GGNRA. The answer was obvious: all you had to do to prevent the Wolfback Ridge sale was to add it to GGNRA too.

As Mayor Sweeny put it, "For this much additional cost due to the FitzSimmons subdivision, it would certainly make more sense to the United States to acquire the FitzSimmons property for inclusion in the Golden Gate

NRA." The owners were not notified of this letter, which strongly suggests that the ensuing entanglement had nothing to do with the desirability of the Wolfback Ridge property for a National Recreation Area on its own merits, but was merely to prevent any unacceptable increase in price on the Marincello tract.

In the autumn of 1972, Congress authorized Golden Gate NRA, but did not include Wolfback Ridge. The Marincello price tag could still go up if FitzSimmons sold the land, and the game was still on. Democratic Senator Alan Cranston wrote Mayor Sweeny on October 13, 1972, to apologize in advance that "Unfortunately, the Wolfback Ridge area was not included in the bill," but offered, "If there's any other way in which I can help with the preservation of the Wolfback Ridge area, please don't hesitate to let me know."

By now FitzSimmons had made several applications to subdivide the land and had been put off each time. Mayor Sweeny began to panic; she knew that there was no basis in law for denying FitzSimmons' request. She contacted Washington, D.C., governmental affairs consultant Jonas V. Morris for advice, and in a letter dated October 17, 1972, Morris wrote,

I suggest that right away, preferably before the election, you get Maillaird, Cranston, Tunney and if possible Burton to agree to introduce in January legislation amending the GGNRA by including the Wolfback Ridge property. Get the commitment in writing, if at all possible. . . . If you lay the ground work, I think you have a very good chance of getting Wolfback included in the NRA in another year or so. I hope you can hold off FitzSimmons that long.

But Ed FitzSimmons kept at it, trying to get the subdivision approved, and a number of local government agents were becoming increasingly nervous over his persistence. The chances that he would discover their collusion and begin legal proceedings grew with every passing day. On February 12, 1974, Acting Superintendent of Golden Gate NRA Jack Wheat responded to a request from Lari Sheehan of the Local Agency Formation Commission in the Bay Area asking that the Park Service act to stop FitzSimmons from subdividing his land. To his everlasting credit, Wheat wrote, "Until such time as this property is authorized for acquisition by the National Park Service, we can in no way restrain Mr. FitzSimmons from pursuing his legal rights."

The federal government approached the Wolfback Ridge owners to see if a price could be negotiated. The owners made it clear they would not accept less than \$25,000 per acre, or about \$4 million for the entire tract. Nevertheless, environmentalists interested in the Wolfback Ridge acquisition told the federal government that the fair market value was in the range of \$260,000

which was less than half of what the Marin County Assessor had valued it for in 1971!

By mid-1974, the Sausalito city council had denied development rights for the sixth time for a 311-home subdivision on 156 acres of Wolfback Ridge. By the end of the year, however, Congress came through and finally added Wolfback Ridge as an authorized acquisition target for the Golden Gate NRA. Yet the owners still had the property and continued to demand their rights. In May of 1975, the City of Sausalito slapped an outright moratorium on any development on Wolfback Ridge.

As Gughemetti and Wheeler note in their study, *The Taking*, "In September 1975 the federal government offered the Wolfback Ridge owners \$1 million for their property." Then on July 12, 1976, "the United States filed a condemnation action to acquire the Wolfback Ridge property. Despite the fact that the government had already offered the owners \$1 million for their property, the government's testimony as to the value of that property was reduced to \$300,000. . . ." This was an outrageous offer for prime-view residential property and the owners sued; in June 1977 they prevailed in federal court, obtaining a jury award of \$3.8 million. The federal government appealed this award, but after a year and a half of further delays and haggling, dropped their appeal and finally paid the owners their "just compensation" in December of 1978. It came too late for owner Frank Lynch: he died of cancer while waiting for the government.

But that is not the end of the story. The fact that several members of the federal government, Congressman Phillip Burton for one and Senator Alan Cranston for another, acted with full knowledge of the City of Sausalito's intent to prevent the Wolfback Ridge owners from exercising their property rights may very well constitute a conspiracy to deprive citizens of their civil rights under an obscure law known as the Civil Rights Act of 1871. This law provides "That if two or more persons within any State or Territory of the United States shall conspire together . . . and if any one or more persons engaged in any such conspiracy shall do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby any person shall be injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the person so injured or deprived" has the right to obtain damages in court.

The concept that property rights are civil rights has struggled to the fore in recent years, against such environmentalist views as those expressed by the Wilderness Society's William Turnage: "I don't see that there is anything sacred about private property. I think human rights are more important than property rights." One exponent of property rights as civil rights, Dr. Frank Schnidman, visiting scholar in residence at Harvard Law School, discussed the

issue with me at length. He feels that in the future, questions of federal land use policy will be increasingly shaped by concerns of developers and landowners over their civil rights. He points out that the courts have repeatedly stated since the 1971 case *Lynch v. Household Finance Corporation*, "that there is no real dichotomy between personal liberties and property rights, and that rights in property are basic civil rights." Schnidman also notes that "The civil rights law provides a federal judicial forum to examine the actions of local government, and a civil rights case can be made against the government officials holding them personally liable for damages, as well as holding the municipality liable." The Wolfback Ridge owners have not to my knowledge sought damages from the City of Sausalito and Mayor Sweeny, but they evidently could. Schnidman's words should stand as a caution to Turnage and other post-materialist environmentalists. Interesting consequences may ultimately flow from their unreasonable and uncompassionate views of private property and the working people who cherish ownership as a moral ideal.