

PROTECTION ALTERNATIVES

The following alternatives would offer some degree of protection to the park's nonfederal lands. Each alternative is analyzed with respect to its application, sociocultural impacts, and potential effectiveness in land protection. The alternatives considered include regulations, cooperative agreements, the Alaska Land Bank, coordination with other agencies, zoning, less-than-fee acquisitions (easements), and fee simple acquisition. Any of these alternatives could be used singly or in combination.

REGULATIONS

The following federal and state laws and authorities provide some protection for park resources.

Mining operations within the park are addressed by the Mining in the Parks Act of 1976 (16 USC 21-54) and its implementing regulations (35 CFR 9A). The regulations intend to minimize resource impacts by requiring operations to adhere to an approved plan of operations. Operations are monitored by NPS staff for compliance.

All private resource development activities on private, state, and federal lands must meet applicable state and federal environmental protection standards. These standards are cooperatively enforced by the Alaska Departments of Environmental Conservation and Natural Resources, the Environmental Protection Agency, and the National Park Service. Air quality must meet the standards for a class I area as established in the Clean Air Act amendments (42 USC 7401 et seq.) In Alaska the state's water quality standards are more restrictive than the EPA standards, and they are enforced by the Alaska Department of Environmental Conservation.

Section 1104 of ANILCA specifies the procedure for reviewing requests for rights-of-way for any transportation or utility system across public lands, and it establishes the criteria for approving or disapproving such requests. The access provision of section 1110 of ANILCA assures private landowners that they will be given "such rights as may be necessary to assure adequate and feasible access for economic and other purposes to the concerned lands," subject to reasonable regulations to protect park values.

Under the Alaska Anadromous Fish Act (Stat. 16.05.870), the commissioner of the Alaska Department of Fish and Game provides protection to specific rivers, lakes, and streams or parts of them that are important for the spawning, rearing or migration of anadromous fish. Bear-Paw River and its tributaries are on the list of specific rivers that are protected by this act. The act requires that any person or governmental agency desiring to construct a hydraulic project, to use, divert, obstruct, pollute, or change the

natural flow or bed of a specified river, lake, or stream, or to use wheeled, tracked, or excavating equipment or log-dragging equipment in the bed of a specified river, lake, or stream must notify the commissioner of this intention before beginning the construction or use.

Application. Regulations cannot usually provide for public use, but they can prevent harm to natural or cultural resources. For example, federal, state, and local regulations often impose strict limits on dredging or filling of wetlands that would destroy wildlife habitat or degrade water quality. It is much more difficult for regulations to absolutely prohibit an activity than to simply limit the type, amount, or intensity of the activity.

Sociocultural Impacts. Regulations may prevent individual landowners from using their land in some manner, but this restriction on individual freedom is imposed for the benefit of the community as a whole. The impact can be regarded as beneficial to the public at large.

Effectiveness. In parks 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.

COOPERATIVE AGREEMENTS

Application. Agreements are written descriptions of how two or more parties will take certain actions. Agreements can provide for the exchange or transfer of services, funds, or benefits. Some of the elements that could be addressed in an agreement for land protection include

access for resource management activities interpretive services
routine maintenance or restoration of structures law enforcement joint
review of permit applications enforcement of environmental protection
laws

Advantages of agreements include their flexibility, relative low cost, and ability to establish cooperative management arrangements. Disadvantages include the ability of one party to terminate on short notice and lack of permanent protection.

Sociocultural Impacts. Specific impacts are defined by the terms of the agreement. Since agreements allow current uses to continue and all parties have to agree to the terms, negative or adverse impacts are unlikely.

Effectiveness. Agreements are likely to be most effective for land owned by entities other than individuals. These include state or local governments, private nonprofit organizations, federal agencies, and corporations. Agreements are more likely to be workable with these groups than with individuals because organizations often have the necessary resources (staff, equipment, money) to make an agreement worth considering in the first place and to carry out the terms of the agreement over a long period of time.

Cooperative agreements are appropriate when both parties have similar or compatible management objectives. They can be used as interim protective measures when long-term goals cannot be immediately achieved. The expenditure of federal funds to provide permanent facilities is not generally allowed under short-term cooperative agreements.

ALASKA LAND BANK

ANILCA (section 907) established an Alaska Land Bank program to provide legal and economic benefits to native landowners and to provide for the maintenance of land in its natural condition, particularly where these nonfederal lands relate to conservation system units. Land bank agreements may contain provisions such as the landowner's responsibility to manage land in a manner compatible with the planned management of the park. The superintendent's responsibility is also defined. It may include technical and other assistance such as fire management, trespass control, resource and land use planning, and other services, with or without reimbursement as agreed upon by the parties involved. Native corporation lands (but not native allotments or small patented tracts) are immune from adverse possession, real property taxes, and assessments when included in the land bank. They are also immune from judgment in any action of law or equity to recover sums owed or penalties incurred by any native corporation or group or any officer, director, or stockholder of the corporation or group. Land bank agreements are particularly important in cooperating with native corporations that own large tracts of land in and adjacent to the preserve. Sociocultural impacts and effectiveness are essentially the same as cooperative agreements.

COORDINATION WITH OTHER AGENCIES

Actions by federal and local agencies to permit, license, or provide financial assistance for a project might have significant impacts on park resources. Under provisions of the National Environmental Policy Act, major federal actions are subject to public review processes to ensure adequate consideration of possible impacts on the environment. As a concerned land manager and neighbor, the park superintendent can ensure that other agencies are fully aware of any impacts proposed actions might have on park resources. Participation in public hearings and review processes is one means of expressing park concerns. Coordination also might be improved by memoranda of understanding or advance requests to agencies that the park be notified when certain

actions are being considered. Participation by the park staff in project or permit review processes encourages compatible designs, locations, and operating requirements for new construction.

ZONING

The Matanuska-Susitna Borough encompasses lands in the southern portion of the park and preserve. No zoning regulations have been applied, but they may be in the future, based on the area's proximity to Anchorage and Fairbanks and its potential for residential and commercial growth.

EASEMENTS

Landownership may be envisioned as a package of rights. Easements convey only some of those rights from one owner to another, while the other rights of ownership remain unchanged. Easements can be positive (such as conveying a right of access) or negative (such as limiting specific uses of the land).

Application. Easements are most likely to be useful under the following conditions:

Some, but not all, existing or potential private uses are compatible with park purposes.

Current owners desire to continue current types of use and occupancy of the land under conditions conveyed to the National Park Service.

Protection of scenic values or provision of access for the public or the Park Service is needed only over a portion of the land.

Specific easement terms can be constructed to fit the topography, vegetation, visibility, and character of existing or potential developments on each tract. Easement provisions to protect park resources may address the following points: clearing of vegetation; location and design of new access roads and utilities; density, height, design, and color in developments visible to the public; and access for management of natural and cultural resources.

Sociocultural Impacts. Individual and collective impacts will vary depending on the rights acquired. In most cases an easement continues the current conditions while compensating the owner for the loss of potential uses.

The development of specific easement terms for large tracts requires some detailed site planning to identify the most environmentally sensitive areas and those where development could be accommodated with minimal impacts. The development of specific easement terms can be a cooperative effort to

ensure that development follows traditional land use patterns or avoids any unnecessary disturbance of the natural system.

Effectiveness. Because easements are enforceable interests in property, they provide greater assurance of permanent protection than do agreements or zoning ordinances. Easements "run with the land" and are binding on future owners. Advantages of easements include

continued private ownership and use subject to the terms of the easement

lower initial acquisition costs than fee, and potential to protect more land

reduced costs for NPS operations and maintenance

Disadvantages of easements as compared to fee include

potential difficulty in enforcement of easement terms

unfamiliarity of landowners with less-than-fee ownership

relatively high costs of acquisition on undeveloped properties where no further development is compatible

increased costs of monitoring the terms and conditions of easement provisions

FEE ACQUISITION

When all of the interests in land are acquired, it is owned in fee simple.

Application. Fee acquisition may be recommended when other methods of protection have been found to be inadequate, inefficient, or ineffective to meet management needs. Fee acquisition is most often appropriate under the following conditions:

The land is needed for development of park facilities or heavy public use.

The land must be maintained in a pristine natural condition, which precludes reasonable private use.

The owner does not wish to sell less-than-fee interest.

The land cannot be protected in accord with park purposes by other methods, or alternatives would not be cost-effective.

Sociocultural Impacts. This alternative has great potential for significant change in the life of an individual or community. Unless use and occupancy are reserved, residential dislocations result from acquisition.

Effectiveness. Fee-simple acquisition is the most effective and secure land protection alternative. Generally, it is also the most expensive form of land protection. Advantages of fee acquisition include

- permanent and complete NPS control over use of the land
- provision for public access and access by management
- ability to develop necessary facilities
- familiarity to landowners
- opportunity for continued private use under reservations of use and occupancy

Disadvantages of fee acquisition include

- initial acquisition costs
- maintenance and management requirements, especially for developed properties
- impacts on local community from the relocation of a previous owner or the removal of housing from the local market

METHODS OF ACQUISITION

There are four primary methods of acquisition of fee and less-than-fee interests in lands: donation, purchase, exchange, and relinquishment.

Donation. Landowners may be motivated to donate their lands or interests in land to achieve conservation objectives. The tax benefits of donation also may be an important incentive. Donations of fee are deductible from taxable income. Easement donations also may provide deductions from taxable income, but they are subject to certain IRS requirements to qualify as a charitable contribution. Landowners are encouraged to consult their qualified tax advisors to discuss the specific advantages of donations. NPS representatives may be able to provide some general examples of tax advantages, but they cannot provide tax advice or commitments of what deductions will be allowed by the IRS.

Exchange. Lands or interests in land may be acquired by exchange. The land to be exchanged must be located within Alaska and must be of approximately equal value. Differences in value may be resolved by making cash payments. The National Park Service will consider other federal lands within the authorized boundary as potential exchange lands to consolidate NPS jurisdiction over more manageable units.

Other federal lands in Alaska that become surplus to agency needs would normally go through disposition procedures, including public sale. The National Park Service will work with the Bureau of Land Management and

the General Services Administration to determine if any additional federal land may be available for exchange purposes.

Purchase. Acquisition by purchase requires funds to be appropriated by Congress or donated from private sources. Further funding for purchases depends primarily on future appropriations. Potential donations of funds or purchases by individuals or organizations interested in holding land for conservation purposes will be encouraged.

Relinquishment. State and native corporation lands under application may be relinquished, in which case ownership remains with the United States. The relinquishing entity can utilize the acreage being relinquished to acquire other lands outside the unit.

CLASSIFICATION OF STATE LANDS

The Alaska Department of Natural Resources, Division of Land and Water Management, is responsible for managing state lands that are not specially designated. This division classifies the state lands it manages. Types of classifications include "Resource Management," "Public Recreation," and "Wildlife Habitat." Classifications establish primary uses for state lands; however, multiple uses of classified lands can occur as long as these other uses are compatible with the designated primary use.

Application. Portions of the Kobuk River have been declared navigable, and therefore portions of the bed of the river are in state ownership. Future navigability determinations may affirm that portions of the beds of other rivers in the park are state owned. Additionally, state lands abut the northeastern boundary of the park. The National Park Service, or any individual or organization, can request that the Division of Land and Water Management classify or reclassify state lands. Classification of state lands may be useful in cases where the interests of the National Park Service and the state of Alaska are similar.

Sociocultural Impacts. Classifications of state lands is established through a public process. Any impacts on the people of the region and state would likely be identified and eliminated or minimized during the process. The uses of the lands subject to classification and the type of classification determine what impacts will result.

Effectiveness. Classification can provide protection for state lands within and adjacent to the park. Advantages of classification include no acquisition cost and no need to exchange lands. Disadvantages of classification include lack of permanent protection for park purposes.