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SURPLUS FEDERAL PROPERTY FOR PARKS PROGRAM IN REVIEW

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Public Law 91-485 approved October 22, 1970, amended Section 203 of the Federal Property and Administrative Services Act of 1949 (FPAS) to allow disposal of surplus federal real property for public park and recreation purposes (40 U.S.C. 484(k) (2)).

Specifically, this section of the law allows the administrator of the General Services Administration (GSA), "in his discretion, to assign to the Secretary of the Interior for disposal, such surplus real property, including buildings, fixtures, and equipment situated thereon, as is recommended by the Secretary of the Interior as needed for use as a public park or recreation area." Once notified of a proposed land transfer by the Secretary of the Interior, GSA has 30 days to disapprove the transaction. Thereafter, the Secretary may sell or lease the property to any state, municipality, or political subdivision for public park or public recreation purposes. In transferring title to the land, the Secretary must ensure that the "property shall be used and maintained for the purpose for which it was conveyed in perpetuity." At the option of the federal government, property may revert (return legal title) to the United States if it ever ceases to be used for public park and recreation purposes.

In establishing the lease value or sale price for park and recreation transfers, the Secretary of the Interior is to "take into consideration any benefit which has accrued or may accrue to the United States from the use of such property" by a state, municipality, or political subdivision. Since 1970, 884 surplus federal properties containing 100,645 acres have been transferred at little or no cost to state and local governments for public park and recreation purposes. The fair market value of this land is estimated at \$381.7 million.

LEGISLATIVE HISTORY OF P.L. 91-485

The House Committee on Interior and Insular Affairs provided some indication as to the intent of Congress in passing P.L. 91-485. According to the committee's report on this piece of legislation, transferring suitable surplus federal property to states and localities for park and recreation programs would further "the program objectives of the Land and Water Conservation Fund Act." The committee noted that "the national need for increased recreation opportunities cannot be met effectively with money alone." As a result, the committee determined that land "uniquely suited for recreation" should be devoted to that use when it becomes available. In explaining its rationale for allowing transfers for parks and recreation purposes, the committee noted that existing surplus property law provided cost-free public benefit transfers for airports, wildlife conservation, health, and education purposes. While a 50 percent public benefit discount for the park and recreation purposes was available at the time, the committee said, "this discount . . . is not sufficient where the monetary value of lands for other purposes is substantial."

Then Secretary of the Interior Walter T. Hickel reiterated this point in his departmental report to the House committee on the proposed legislation. "We recognize that escalating land values,

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particularly in urban areas, have often precluded financially pressed state and local governments from obtaining the benefits of the existing 50 percent discount on acquisition of surplus federal property suitable for park and recreational uses (S)ubstantially cheaper—if not free—means of making such acquisitions . . . should significantly accelerate the development of sorely needed recreation opportunities in urban areas.”

Providing legislation to allow surplus federal land transfers to states and localities at no cost for public park and recreation purposes implemented an earlier recommendation made by the Outdoor Recreation Resources Review Commission (ORRRC) in 1962 The ORRRC reports recognized “the intangible value which attaches to public outdoor recreation—a value which cannot be measured in monetary terms or comparative appraisals.” In adopting the ORRRC recommendation regarding surplus federal property, the House committee intended to supplement the Secretary of the Interior’s authority to make monetary recreation grants to states thus enlarging the scope of the program authorized by the LWCF Act. The committee, however, emphasized that such supplementary power for the interior secretary was not intended to “diminish the discretionary authority of the Administrator of General Services with respect to the disposition of excess or surplus federal lands.” According to the House report, the GSA administrator “retains the authority to determine whether or not a particular tract of excess land should be used for park and recreation purposes.”

COURT UPHOLDS CONVEYANCE

In 1979, the United States District Court for the District of Columbia referred to the legislative history of P.L. 91-485 in considering the legality of a federal surplus property transfer for park purposes. In the case of *New England Power Company v. Goulding*, 486 F.Supp.18, a utility company contested a decision by the GSA administrator to sell 237 acres of a 604 acre parcel to the town of Charlestown, Rhode Island, “for municipal, administrative, and recreation purposes.” The GSA administrator had determined that 367 acres of the former Navy airfield would be transferred to the Department of the Interior and the Environmental Protection Agency for wildlife conservation purposes. The remainder was to be used in a manner consistent with the conservation purposes of the federal tracts.

The administrator’s decision was based upon an environmental impact statement (EIS) which discussed 18 separate proposals submitted by interested parties for use of the site. Originally, GSA had attempted to negotiate a private sale of the property to the plaintiff for a nuclear power plant site. This sale was blocked by a federal district court which held that the National Environmental Policy Act (NEPA) required an EIS before the property could be transferred.

In deciding the case, the court looked to the discretionary powers of the GSA administrator as described in the law (40 U.S.C. 484(k)(2) and the applicable federal regulations. The court focused on the legislative history of P.L. 91-485 described above. In passing P.L. 91-485, the court found “Congress emphasized both the value of making surplus property available to local governments for park and recreation purposes and the fact that the GSA had the discretion to decide whether the land should be used for those purposes.” In determining whether this specific

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request for public park and recreation should be given priority over plaintiff's or other potential uses for the site, the court simply reiterated the above stated principle from the legislative history of P.L. 91-485. "(As) stated in the legislative history . . . the decision (to honor the town's request) is within the sound discretion of the Administrator, but that Congress has indicated through the passage of 40 U.S.C. 484(k) (2) and through the structure of paragraph 484 itself that the Administrator is to give particular attention to the conservation and recreation values and to the needs and requests of local and state governments."

According to the court, FPAS required the GSA administrator to give highest priority to the needs of other federal agencies in disposing of surplus property. In this particular instance, the court found the GSA administrator had proceeded correctly by first honoring the requests of EPA and 001 before transferring the remaining acreage in a manner consistent with the proposed activities of these federal agencies, i.e. conservation and recreation.

GAO REPORT CITES PROBLEM CASES

A 1978 report by the U.S. General Accounting Office entitled "Increasing Public Use and Benefits from Surplus Federal Real Property" (LCD-78-332) reviewed 62 "problem" properties which had been transferred to states and localities for public benefit uses. The review included 26 properties valued at \$4.6 million which had been conveyed to the recipients at no cost for recreational purposes. According to GAO, 17 of the recreation properties had not been developed, while the remaining nine parcels had only partial development in violation of program guidelines. In addition, GAO found instances of unauthorized leasing which violated deed restrictions prohibiting non-recreational revenue-producing activities.

The GAO report recommended that federal agencies work more closely with state/local recipients of surplus property to assure public benefit uses are realized or, alternatively, take action to return the property to the federal government. To improve the surplus property program, GAO also recommended strengthening the role of GSA by establishing an inventory of surplus property containing deed restrictions and systematic controls to ensure compliance with such restrictions.

In its commentary of the 1978 GAO report, the Department of the Interior expressed disappointment that the review focused attention only on selected problem properties and not on the entire public benefit transfer program. James Joseph, Under Secretary of the Interior, said a more thorough and objective report "would have noted that the Heritage Conservation and Recreation Service (HCRS) currently has compliance responsibility for 932 former surplus properties out of 1,082 deeded for public park and recreation purposes." The GAO review of 26 problem properties, therefore, represented less than 3 percent of those park and recreation parcels subject to HCRS compliance review. Unfortunately, opponents of discounted public benefit transfers, including Reagan Administration officials, continue to refer to the findings of the 1978 GAO report based upon 62 selected problem cases as indicative of widespread abuse among all such federal surplus property conveyances to states and localities.

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In 1978, HCRS found approximately 8 percent of their 932 transfer parcels in some stage of minor noncompliance. In addition, there were then 32 instances where HCRS had brought about reversion of parcels back to the federal government for noncompliance. According to staff at the National Park Service (NPS) which has assumed responsibility for the surplus property programs, all 26 of the problem properties listed in the 1978 GAO report are now in compliance with deed requirements, albeit at a slower rate of site development.

While acknowledging some problem cases, NPS notes that there are presently no parcels under its jurisdiction which are in noncompliance. Generally, the mere threat of reverter is usually sufficient to bring about compliance. In instances where reversion has been necessary, it has been accomplished voluntarily without requiring court proceedings to recover the property.

FUTURE OF TRANSFERS DOUBTFUL

Since surplus federal property transfers for public park and recreation purposes are discretionary rather than mandatory under the law, they are particularly susceptible to the prevailing political climate in the executive branch of the federal government. The present administration has clearly stated that parks and recreation is not a federal responsibility since it provides primarily state and local benefits. Applying this rationale, the administration has proposed terminating LWCF grants to states and localities for parks and recreation projects. This attitude has apparently carried over to the P.L. 91-485 program. As of late February 1982, the administration has put a freeze on all public benefit conveyances of surplus federal properties to states and localities, including park and recreation transfers authorized by P.L. 91-485.

In the future, no cost transfers to states and localities will be limited to proposed correctional facilities. Other public benefit uses, including parks and recreation, will be required to pay 100 percent of the fair market value (FMV) for surplus federal property. Obviously, few, if any, surplus parcels will be acquired by states and localities for parks and recreation under the administration's proposed 100 percent FMV price tag.

Prior to the passage of P.L. 91-485 in 1970, surplus tracts could be acquired for parks and recreation at 50 percent FMV. In the year preceding the enactment of P.L. 91-485, only 18 surplus federal properties were conveyed to state and local governments for parks and recreation purposes. While the value of low or no cost transfers to state/local governments under P.L. 91-485 has averaged approximately \$30 million per year, the previous 50 percent FMV requirement provided less than \$1 million annually in surplus property for parks and recreation.

On February 25, 1982, President Reagan issued Executive Order 12348 establishing a property review board to guide the efforts of the GSA administrator in identifying surplus federal property, for disposal in accordance with annual target amounts for federal agencies. The property review board concept is not new; similar executive orders were issued in the Nixon and Ford Administrations. Once identified, surplus federal properties are to be made available for their most beneficial use under the various laws of the United States affecting such property. Arguably, the proposed termination of low-cost public benefit transfers ignores the legislative

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history and intent of P.L. 91-485 which recognized public parks and recreation as a “most beneficial use” for some of these surplus properties.

Under this executive order, the GSA administrator must first seek consultation and guidance from the property review board before conveying property at discounted rates for public benefit uses such as parks and recreation. In his February 25 testimony before a Senate governmental operations subcommittee, David Stockman, Director of the Office of Management and Budget, said the “elimination of nearly all real property discount conveyances to state, local, and nonprofit entities for public benefit use. . . will result in a further expansion in the supply of excess property for sale.” Based upon this statement, the President’s property review board (of which OMB’s Stockman is a member) can be expected to veto any future proposals for discounted park and recreation property transfers to states and localities pursuant to P.L. 91-485.