9

Conclusions

If Mount Vernon was the right place to start our story, the Cosumnes Preserve in northern California seems an ideal place to end it. Complex mosaics are the signature feature of modern land acquisition, and Cosumnes is state of the art. Many miles from the nearest BLM enclave, a full-time BLM employee manages the preserve for an extraordinary array of conservation landowners (Graziano 1993: 89–90; Eaton and Cooper 1997). Using Farm Bill funds, BLM land exchanges, and almost every other land acquisition fund and tool we have discussed, the partners have protected approximately 40,000 acres of threatened wetlands south of Sacramento in California's Central Valley.[1]

The preserve is home to the largest valley oak riparian forest in the world and is one of the few protected wetland habitats in the state. Its grasslands, vernal pools, and marshes make it a critical stop on the Pacific flyway for migrating and wintering waterfowl. More than 200 species of birds have been sighted on or near the preserve, including Swainson's hawks, sandhill cranes, and white-fronted geese (U.S. BLM 2004).

It was the water, however, that first attracted the federal government's interest. In the 1950s and 1960s, the Bureau of Reclamation eyed the Upper Cosumnes River as a site for thirteen dams, with intensive wildlife management and recreation on the waterway's lower reaches (now included in the preserve) proposed as mitigation. Somewhat surprisingly, the mitigation plan rather than the dams aroused public opposition and derailed the project. Consequently, the Cosumnes is the only free-flowing river remaining in the Central Valley.

The California Department of Parks and Recreation fared little better with a 1970s proposal to create a state park. Although funding for the necessary acquisitions was already available under a state bond measure, locals again protested. Aggrieved by the lack of advance notice that their land was about to be included in the new park, property owners threatened to clear their impressive stands of valley oaks before the plans could come to fruition. In the face of such resistance, State Parks followed the Bureau of Reclamation and backed off.

When TNC showed up in the mid-1980s to work with willing sellers on just a few small acquisitions, the reception was somewhat warmer. The group soon recognized the Cosumnes as a major biodiversity resource and expanded its acquisition program in the area. The BLM became involved in 1987, as part of its participation in the North American Waterfowl Management Plan, to acquire and restore habitat for waterfowl populations. Initially the agency exchanged scattered BLM parcels in the Sierra foothills for land near existing TNC holdings in Cosumnes. The BLM then directly acquired several parcels using LWCF funds and became more actively involved in the growing partnership.

Farm Bill programs have been an important source of acquisition dollars at Cosumnes. Both the BLM and TNC have used money from the Wetlands Reserve Program to acquire farmland easements. The county became involved as a landowner when TNC helped it apply for Farm Bill grants for habitat acquisition. As local farmers became accustomed to the idea that bird habitat was compatible with profitable farming (the migratory waterfowl move on just when it becomes possible to farm on the floodplain), they became receptive to restoration projects. TNC easements lowered land prices and allowed both established and new farmers to acquire farmland in the preserve (Eaton and Cooper 1997).

The BLM manager collects and distributes revenues for all the other preserve owners. TNC pays $10,000 of the BLM manager's salary and shares the cost of a site coordinator with Ducks Unlimited, while the county parks department provides ranger patrols and interpretation. Thus as figure 9.1 shows, the Cosumnes is an excellent example of the postmodern approach to land conservation: a mosaic of protected lands assembled by diverse partners using a complex array of tools, agreements, and funding sources.[2]

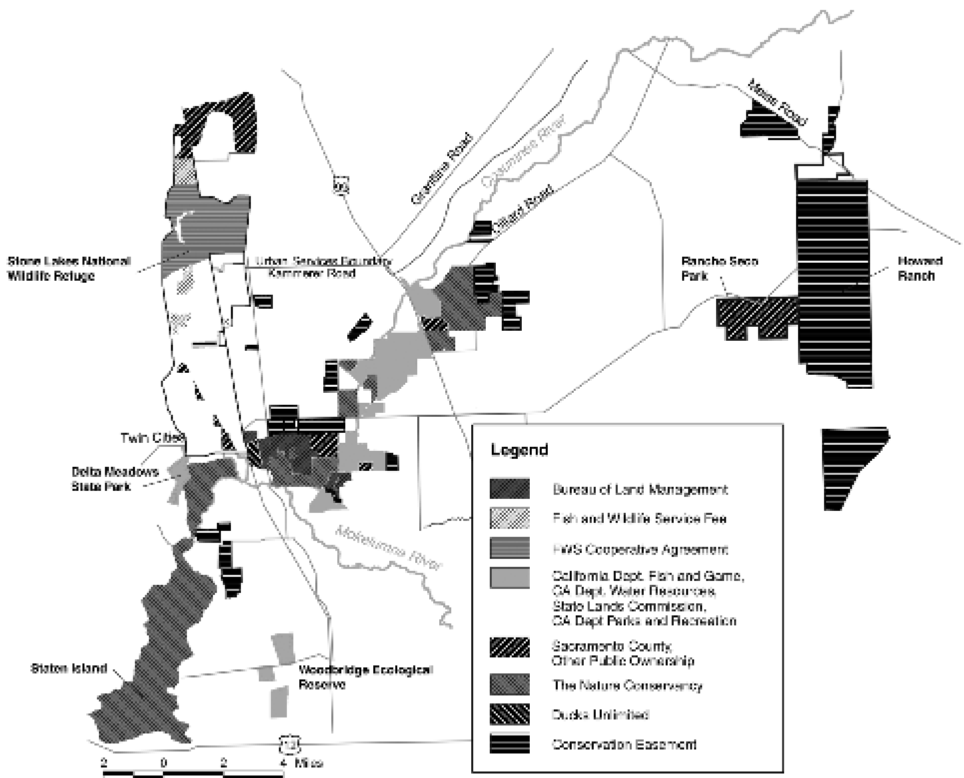

Figure 9.1
Location and mosaic of land protection in the Cosumnes River project area. Source: Created with the assistance of the Nature Conservancy. Reproduced with permission.

Although both Cosumnes and Mount Vernon are prominent examples of successful acquisitions, neither supports the idea that ownership is an easy or reliable approach to land conservation. "Just buying it" was difficult for the MVLA in 1856 and did not fully protect Washington's estate over the long haul. Since then, conservation acquisitions have only become more complex, as the mosaic of ownership and control arrangements at Cosumnes suggests.[3] Landowners and resource users regularly contest conservation acquisitions, irrespective of who does the buying. And just like much-disparaged regulatory tools, both full fee and easement acquisitions raise significant enforcement and management issues.

Partnerships like the Cosumnes are not without precedent. We think here of the long and productive cooperation between The Trustees of Reservations and the state and localities in Massachusetts, and between the Save-the-Redwoods League and the state in California. But management of contemporary mosaics continues to become more intricate.

Our conclusions are therefore complex as well. In the next section we summarize the story we have told, highlighting connections between the changes we have described—in who acquires what lands using which tools—and the drivers of those changes: changing economic conditions combined with evolving ideas about government, property, and conservation. In the third section we reflect upon the implications of our account for persistent myths in conservation policy and for assessing the effectiveness of land acquisition for conservation. Finally, we offer some concluding thoughts about how to transcend the limits of a bucks-and-acres approach to land conservation.

Creating Mosaics: Land Acquisition for Conservation in the United States

Acquisition Before the Civil War

Contrary to the idea that private conservation is a recent innovation, antebellum groups of citizens regularly pursued what are now considered public goals of honoring national heroes and completing historic memorials. The federal government demurred on buying Mount Vernon in part because its authorities over land at that time were weak. Indeed, Congress originally intended to transfer nearly all public lands into private ownership as rapidly as possible. Early federal acquisitions were limited to transactions under the enclave clause for "needful buildings" and the capital, or under the war powers for defense and expressions of nationhood. Trying to imagine a private group buying and preserving Washington's estate today or building a monument in his honor on the National Mall demonstrates how perceptions of the government's proper role in such activities have changed. However, in our first century, public acquisitions for conservation were rare.

The few early conservation efforts by the government were linked to nation building. Acquisition or reservation of historic sites designed to

inspire national pride and patriotism were common, as well as acquisition of other properties with military value, such as the naval reserves. Acquisition for scenery or outdoor recreation was rarely discussed, and the notion of conservation as an ecological priority awaited future developments. Nevertheless, in the earliest acquisitions and reservations for naval timber and for medicinal benefits (at Hot Springs, Arkansas), we observe a durable pattern. Federal conservation for utilitarian goals such as timber production proceeds under general authorities whereas efforts to protect scenery and ecological values face greater scrutiny and require unit-by-unit authorization.

Willing sellers were a necessary precondition for nearly all conservation acquisitions in this period. Mount Vernon only came on the market when Washington's heir fell on hard times, and the federal power of eminent domain was still forty to fifty years from being ratified by the Supreme Court. Hence this era exhibits a strong reliance on private acquisitions of land, combined with public reservations of property that never left the public domain.

That said, although Lockean ideas that give preference to private ownership dominated the political and economic landscape, assertions of public land ownership frequently were not "persuasive," to paraphrase Carol Rose. Land and timber speculators plundered New York state, taking title only to strip the land and abandon it to state ownership. Similar stories were played out on federal lands. Easements and partial estates were also rare, awaiting the bundle-of-sticks metaphor of the late nineteenth century. Nevertheless, although mosaics were as yet relatively simple, Bunker Hill, Mount Vernon, and the Washington Monument were all conserved by a mix of public and private actors.

Expanding Federal Authorities and Programs, 1865–1952

After the Civil War, rapid industrial expansion and the development of a more powerful national identity gave new direction and momentum to public reservations and acquisitions. Conservation efforts were marked by an expanding federal role, leading first to broad reservations of land in the West and then outright purchases in the East. New interpretations of the Constitution underwrote this change, giving the federal government authorities over land that had been previously exercised only by

states. Private efforts did not disappear, however, even in this era of federal ascension. Private philanthropy was vital to the expansion of the national park system in the East, often with the support of new private conservation groups. The Trustees organized in Massachusetts, for example, the same year (1891) that Congress authorized the president to reserve forests from the public domain.

In fact, private individuals and states continued to make many key nineteenth-century acquisitions, including many Civil War battlefields. Eventually the national government became involved, acquiring land at Gettysburg in a transaction that led the Supreme Court to confirm the federal power of eminent domain under the war powers. Conservation of Civil War sites remains a public-private partnership to this day, neither exclusively nor even primarily a federal project. Commissions of private citizens who had fought in the war were central to managing the acquired lands, a pattern of private oversight of public acquisition efforts that continues in the present.

Federal acquisitions truly picked up steam under the direction of Teddy Roosevelt and Gifford Pinchot in the early twentieth century. New initiatives were undertaken by federal agencies that were initially established to manage reserved public domain land. An expanding concept of valid conservation goals justified many of the purchases. Rather than national pride and historic preservation, Pinchot's philosophy favoring public, scientific management of natural resources paved the way for new acquisitions of forests and watersheds rather than battlefields and presidential estates. The Supreme Court supported this Progressive doctrine in a key series of decisions ratifying federal power over public land (*Camfield, Light,* and *Grimaud*). In the process, restrictions on federal acquisition authorities described in the enclave clause largely faded. However, residual effects remained, including jurisdictional bargaining between state and federal governments over acquired lands that allowed the states to retain many of the benefits of ownership while passing the burdens to the national government.

Despite the expanding federal powers, many nominally public lands remained substantially beyond the government's control. In some cases, local residents simply ignored unpersuasive public claims of ownership. California's protection of Yosemite was so expensive and yet inadequate

that the state ceded it back to the federal government (Runte 1979: 57), while destructive timber harvesting in the Adirondacks continued well after the state's "forever wild" constitutional amendment. The army was the only organization available to protect Yellowstone from depredations intensified by its protected status. In general, states and private users made sure to retain key sticks in the bundle of property rights, such as taxation, exclusion, and use, on land legally owned by the federal government.

Nevertheless, many conservation advocates continued to seek public ownership, in part because government regulatory authorities over the use of private land remained largely undefined. The Weeks Act in 1911 was a key moment in this process, authorizing the USFS to acquire private land for watershed protection. Between 1911 and 1929, more than 3 million acres of largely industrial holdings were purchased under the statute. Again, a separate, independent commission oversaw the selection of parcels; Congress did not wholly trust the agency to do so itself. The program avoided condemnation, giving landowners control over what property wound up in federal ownership, and the terms of the act were extraordinarily generous to the seller. Consequently, the eastern national forests constitute a patchwork of public and private lands, averaging only about 50 percent federal ownership.

Our "seller controls" assertion is less clearly applicable to the southeastern national parks that emerged in the 1920s. Again, an external commission supervised the acquisitions. The purchases involved removing many Appalachian smallholders, whose land was usually condemned by the states under highway construction authority before the farmers knew that a park was headed their way. The resulting conflict put park management under a cloud of local resentment that remains an issue to this day. Moreover, the NPS quest for exclusive jurisdiction over its properties and the removal of all inholders created enduring conflict with surrounding communities. By the 1970s, even park boosters had reconsidered their enthusiasm for park units in light of these difficulties.

If willing sellers were rare in the southeastern parks, they were ubiquitous in other Depression-era acquisitions. Federal acquisitions peaked during the 1930s; almost half of all federally acquired lands were purchased during this period of economic crisis. Conservation priorities

were secondary; much of the land was purchased mainly to take it out of production or to provide employment for CCC crews. Most of it was in the East and South and wound up in national forests. During this period, the federal government simply could not buy land fast enough to meet the demands of desperate landowners. More than 25 million acres were purchased between the stock market crash of 1929 and the end of World War II.

Nor were private acquisition efforts crowded out by this federal buying spree. Private conservation, particularly of historic homes, intensified with donations to The Trustees of Reservations being a prominent example. Many private owners, large and small alike, could not pay their taxes and gave up their land to conservation organizations either in foreclosures or by donation. Even the Pells were financially strapped and established a public charity to own and manage Fort Ticonderoga.

Depression-era acquisitions reflected new ideas about property. Lockean ideas of ownership were nearing their low point. However, expanded federal ownership continued to encompass varying degrees of effective control. Although the days of widespread trespass and squatting were over, federal agencies did not retain full control over "their" land. Within western grazing districts in particular, federal control was highly compromised by the substantial private claims of ranchers and mineral developers. Split estates and other partial ownership interests in land increased the complexity. Although conservation easements were not yet common, the FWS used them to create refuges in the upper Midwest without dislodging local farmers, and the NPS developed the Blue Ridge Parkway by acquiring scenic easements as well, again complicating the nature of ownership on public lands. A pattern of mosaics was beginning to become clear, particularly on lands in formal public ownership.

The Environmental Era and the Modern Land Trust Movement, 1953–2004

In the economic boom that followed World War II, federal purchases continued, for new purposes but without the urgency of the Depression. The federal government moved to meet the outdoor recreation demands of newly prosperous Americans enjoying unprecedented amounts of leisure time and disposable income. In 1964, the Land and Water Conser-

vation Fund Act codified land acquisition for scenery and recreation as a legitimate federal purpose. At the same time, Congress began to authorize NPS acquisition of diverse new units, even by condemnation. Ironically, the consensus supporting federal acquisition began to erode just as its legal and funding authority was clearly established.

As the "parks for the people" program took root during the Civil Rights era, many new federal units were created in urban areas. Some of these urban experiments—notably in St. Louis and the much-contested acquisitions in the Cuyahoga Valley—were initially fiascos. Others were positive examples of how federal/local partnerships and mixed ownership regimes can result in promising forms of land conservation. Nevertheless, many traditional NPS supporters and employees questioned the wisdom of expanding the agency's mission into suburban and urban areas. Almost inevitably, as the NPS moved into residential areas, relying heavily on condemnations, a backlash resulted. By the late-1970s that option was once again largely off the table.

The NPS was not the only government agency getting into hot water. Despite the multiple-use mandates of the era, the BLM and the USFS were widely viewed as being "in bed" with commodity interests. At the same time, more public rights were exercised on private property. A major suite of federal land use regulations—particularly the Endangered Species Act and the Clean Air and Clean Water acts—weakened the effective control of many private property owners. Media coverage of the Sagebrush Rebellion briefly obscured the quiet emergence of land trusts (as well as a rival property rights movement), and anger against federal authority boiled over.

When Ronald Reagan was elected on an antigovernment, antiregulatory agenda in 1980, both acquisition of public land and regulation on private land took a major hit. Indeed, in a remarkable reversal, land disposition reappeared on the policy agenda while several Supreme Court decisions appeared to reassert traditional Lockean notions of strong private ownership rights. As federal acquisition lost steam, land trusts multiplied and began filling the gap. Despite the setbacks to federal efforts, however, Reagan's attempts to sell off the federal estate failed, and Congress continued to devote significant resources to acquiring land under the LWCF and under new sources like the 1985 Farm Bill.

The Reagan years thrust private land trusts into the spotlight. This was not only because of growing hostility to all things federal; emerging science and advocacy now argued that conservation efforts limited to publicly owned parcels were inadequate. As it became apparent that private lands provided many vital ecological services, including critical habitat for many endangered species, the policy emphasis gradually moved toward preserving entire ecosystems of public and private property. Land trusts emerged as partners who could work more effectively than federal agencies on the private land part of the equation.

Thus, federal managers began calling on TNC, TPL, and TCF when they wanted to acquire a key parcel. Changes in federal tax law and state property law regarding conservation easements, combined with Farm Bill funds, provided essential government support for acquisitions by land trusts. Without such changes, the rapid growth of the land trust movement is unimaginable. By 2003, regional and local conservation groups had used their diverse tools, including conservation easements, to protect more than 16 million acres through voluntary donations or sales.

The result? The strong links between formal ownership and effective control are eroding on private lands even as they did on the public estate a hundred years ago. Many conserved landscapes are now a hodgepodge of public and private claims. On the one hand, willing seller acquisitions dot the landscape with parcels under varying ownership arrangements and degrees of environmental protection. On the other, federal and local land use regulations continue to impose conservation restrictions on private properties. This has produced mosaics of breathtaking complexity, bred substantially by acquisition strategies reputed to offer a "simpler" answer to conservation concerns.

The national land trusts—TNC, TPL, and TCF—have provided the framework in which many of these transactions have occurred. Yet, as the second Bush administration's hostility to environmental protection has taken hold, the local roots of the movement are proving vital. It is of more than symbolic importance that as the phenomenal CARA funding proposals died in Congress, states and localities continued to support funding for conservation acquisitions.

Land Acquisition: Myths, Realities, and Limits

A major goal of this volume has been to examine a neglected and misunderstood aspect of U.S. environmental policy: the use of land acquisition as a conservation strategy. In doing so, we have encountered persistent myths regarding that history. These misunderstandings have contributed to expectations that acquisition is an innovative and much-to-be preferred approach to conservation. Our story suggests, on the contrary, that there are significant limits to what acquisition can accomplish. We revisit and summarize these myths and limits here.

First, we urge dispensing with a pair of overarching misconceptions. It is well past time to abandon the assumptions and vocabulary of the familiar "acquire, dispose, retain" triptych regarding public lands. Besides obscuring the wide range of actual government control over nominally retained lands, the idea also ignores the public acquisition of millions of acres of land that continues today. At the same time, we also see a need to discard a newer, parallel idea: that acquisition of private land for conservation is a late twentieth-century innovation. It is not, as the managers of Mount Vernon, Fort Ticonderoga, and other national treasures would gladly explain. While private conservation groups clearly expanded in scope and strength in the decades following World War II, their actions were not unprecedented. Indeed, some of the most durable private conservation organizations predate both modern land trusts and the federal conservation agencies by half a century or more.

Second, the steady blurring of boundaries between public and private conservation programs is too frequently neglected. The myth of a clean and simple division between public and private makes it easy to leap to familiar conclusions: Public lands provide communal goods and belong to every citizen equally, while private lands are largely exempt from public control. In fact, neither public nor private modern conservation efforts fit cleanly in either category, and it is not clear that they ever did. A protected landscape like the Cosumnes is neither public (BLM) nor private (TNC). It is a mosaic of private, working farmland mixed with state and municipal properties, all supported by a number of voluntary nonprofit groups. Split estates in the form of easements create multiple owners even on many individual parcels.

The misapplication of the terms *public* and *private* is not just a semantic problem. The myth that private acquisition transactions are located outside the public sphere creates serious barriers to public accountability. We therefore regret the wilder rhetoric of the property rights movement because we find their complaints regarding inadequate public discussion of private acquisitions to be right on target. The proliferation and fragmentation of such transactions among more than 1,600 land trusts nationally only exacerbates the issue. Assuredly, when federal agencies are major players, the deals are subject to at least nominal public review and sometimes even intense congressional scrutiny. When state funds are appropriated for a transaction, as in the Northern Forest acquisitions, citizens are also generally able to make themselves heard, however formulaically, through hearings and other traditional channels. Nevertheless, in transactions that are presented as private, expectations regarding public comment are unclear and frequently sacrificed to the momentum of the deal.

Third, the history of public and private acquisition "victories" needs to be reassessed in light of our assertion that sellers have driven much of the process. Doing this underscores our conclusion that government programs do not generally crowd out private acquisition efforts. More typically, federal agencies serve as buyers of convenience where the private sector, frequently for good reason, does not act. There is a consolation prize of sorts. Many federally acquired properties were initially uninspiring, yet have been converted by careful management and evolving public expectations into productive and deeply cherished lands. Eastern national forests and the national grasslands are good examples of this. However, we should not deceive ourselves into thinking that the government controls the public acquisition agenda.

Fourth, even if we could move beyond the dominance of willing sellers, it is quite apparent that we neither can nor should "buy" our way out of all or even most of our conservation problems. That we cannot do so is evident from recent, expensive acquisitions of old-growth redwoods in California and prime real estate in New Mexico. At prices close to $100,000 per acre, deals like the Headwaters are going to be few and far between. The demise of CARA only emphasizes the point that federal funds for such acquisitions are likely to remain limited.

Perhaps more important, even if we could print enough money, it would be an error to do so. An undue reliance on acquisition, particularly to avoid the messy and unpopular process of enforcing regulations, is a grave error. Land ownership entails both rights and responsibilities, and it includes at a minimum the duty to avoid harming one's neighbors. The more society compensates landowners for conservation, the more landowners will sensibly conclude that in the absence of such payments, they are entitled to develop their parcels to the detriment of society.

This strengthening of ownership "rights" is similar to the problem of moral hazard in insurance and risk analysis. If we lower the personal costs of engaging in environmentally risky or damaging behavior, we will be sure to get more of exactly the behavior we do not want. This is why deductibles make sense in insurance policies, and why at least some risk of uncompensated regulation is essential in conserving land (Sax 1971a; 1993).

Finally, we return to the most fundamental limit of all: Ownership does not ensure control. The relevant myth here suggests that if you own land, you can protect it. The reality, repeated throughout our story, is that formal ownership frequently provides little control or resource protection at all. This is particularly true on federally owned land, despite federal ownership being commonly portrayed as the preferred tenure arrangement for conservation. In this volume we have described public reservations and acquisitions that allowed looting of naval stores and required the army to restore order in Yosemite and Yellowstone. Lest we dismiss this all as ancient history, current examples include an uncoordinated response to multiple threats in Gettysburg and along the Blue Ridge Parkway, not to mention farms left to fall in ruins within Cuyahoga Valley National Park. Moreover, states and private interests have been quite effective in skimming off the benefits of land ownership while leaving federal owners (and taxpayers) with many of the burdens.

Private conservation owners may control their property more successfully than the government, but Mount Vernon and Fort Ticonderoga demonstrate how difficult it is to maintain even a small estate in the face of encroaching urban forces. In short, there is a growing divide between legal title and effective control on both public and private lands, and rapidly fragmenting mosaics of public and private claims have only widened

the gap. In this age of mosaics, acquisition is simply not "the answer" to the conservation question, if indeed it ever was. Many resources, we conclude, are better protected at less cost and with less difficulty through regulation or other options besides purchase.

Expanding the Limits: Going Beyond "Buying Nature"

Having spent considerable effort describing the limits, myths, and generally checkered history of acquisition policy, it seems only fair to spend a few pages reflecting on how we might move beyond the alluring simplicity of just buying it. In doing so, we are acutely aware of the risks. Far too many studies do an admirable job deconstructing existing policy options only to promulgate even more lamentable alternatives as an afterthought. In many cases, we think, it would be better to leave the recommendations out entirely. Yet we resist doing so here, partly out of hubris no doubt, but also because we have benefited from so many worthwhile ideas and suggestions from people working in the field. While we recognize the limits of our own expertise, failing to bring those ideas together would be unfair to the practitioners who take the time to educate academics.

We begin then by reiterating a basic point of our analysis: Holding formal title to land is less important to its conservation than is frequently supposed. Thus, the critical question is not whether to acquire land; it is how to identify the most effective tools for encouraging, limiting, conditioning, or prohibiting particular land uses. Sometimes the answer is acquisition, but more often, we conclude, it is not. A host of regulatory options are available to direct land use without transferring title.

Even if we are correct in our assertion that ownership is not the sine qua non of land conservation success, we must think about when, where, and how acquisition *is* a good idea. Cynical readers might conclude that the major benefits are pecuniary and narrowly distributed—greater cash flow for well-connected (or lucky) private landowners—but that is too glib. Targeted and partial acquisition can make new controls over private land politically palatable. This is not a trivial outcome; during eras of Lockean ascendance such as our own, it may be essential.

In addition, while ownership does not lead to undisputed control, it may strengthen it. Land acquisitions have protected numerous parcels, large and small, public and private, that would likely have been degraded if conservationists had waited for development of local land use plans and regulations. In Gettysburg, a clear government acquisition plan in concert with local land trusts and related support groups has allowed the nation to impose its preferences on a community of largely reluctant local, small landowners. And the Save-the-Redwoods League has pushed for comprehensive state planning and management.

But palatable or not, acquisition is simply too expensive to be more than a minor player in land conservation. Thus, we must consider carefully where and when to spend our scarce acquisition dollars. We organize our thoughts on this matter around the three questions structuring our discussion: who should acquire, what should be acquired, and what tools of acquisition should be used (Merenlender et al. 2003)?

Agents: Who Should Acquire?

The rise of the modern land trust movement has been an undisputed benefit to conservation efforts in the United States. The simplicity of the core idea—local actors organizing to protect their environmental interests through voluntary market transactions—is fundamentally appealing. Indeed, it is so appealing it has served conservation interests well for almost 200 years. We are heartened by this combination of hard-headed economics and diligent local organizing in the service of important conservation goals.

Furthermore, recent experience suggests that land trusts are simply better than the U.S. government at brokering deals. Isolated problems like those discussed in the *Washington Post* are distressing, but they do not erode our confidence in the movement's impressive competence overall. Tools such as tax subsidies that facilitate private acquisitions between willing sellers and buyers strike us as appropriate public expenditures. They are cheaper and more likely to enjoy broad support than full fee purchase and management by public agencies.

We have already observed, however, that the mingling of public and private efforts in land trust activities makes us concerned about ensuring responsiveness to the larger citizenry. Thus, a crucial step in acquiring

private land is addressing accountability issues. Fortunately, we see some encouraging signs in this regard on the present landscape, as well as some relatively easy innovations that might improve the situation further.

First, public funding of private acquisitions already passes through a fragmentary but potentially useful filter of oversight. Constraints on nonprofits imposed by the IRS are indirect but important. If tax code-based funding is notoriously beyond the control of Congress (Salamon 2002), Farm Bill money is not. Its distribution is presided over by state and regional evaluators, experts, and committees. Finally, the frequency with which acquisition advocates turn to state and local voters for funding support is another form of accountability—voters could shut down many of these programs quite easily. They continue to give them overwhelming support.

Second, since purchasing land for the capital, Congress has consistently put the public acquisition of land under the close scrutiny of external commissions, generally made up of citizens. It is not a very big stretch to view land trusts, particularly the national and regional ones—such as TNC, TPL, TCF, SPNHF, and The Trustees—as acting in a similar capacity. We do not view the current partnership between land trusts and public acquisition funds as a great break with past practice.

Third, both states and the trusts themselves already exercise considerable effort toward ensuring accountability. Conservation easements are defined in state law and subject to extensive state oversight. As noted in chapter 7, the Massachusetts government approves every easement written within its borders. In Montana, county commissions are consulted. In Virginia, the VOF co-holds most easements, and in New Hampshire, the SPNHF guarantees to defend every easement in the state. A recent court of appeals decision in Tennessee held that every resident of the state, as a beneficiary of conservation easements, has standing to enforce them.[4] The LTA, through its education programs and its Standards and Practices, is crucial to the movement's accountability at a national level.

Fourth and finally, many land trust participants believe they are accountable to the community where they live and work. Indeed, many land trusts rely on local funding and, more important, on local volun-

teers to staff their education centers, serve on their committees and boards, and become dues-paying members. The national organizations partner with state and local land trusts when undertaking transactions. These not-always-compatible bedfellows keep a keen eye on each other.

Such informal checks go only so far, however. Working in a community and responding to its needs is one of the most attractive elements of land trust activity. But the enterprise is typically most responsive to the landowners who might sell or donate land or easements. Accountability in that context often exacerbates the preferential treatment that acquisition tools have long offered to the landed and well to do.

At bottom, the web of formal and informal accountability mechanisms presented in this section suggests that land acquisition for conservation is about as accountable to the general public as any other example of government activity. However, the shortcomings described require that land trust advocates and government officials pay more attention to openness. By openness, we mean first that land trusts must be more forthcoming about the quasi-public character of their programs. Perhaps the only thing worse than private control of public resources and authority, in terms of accountability, is reducing scrutiny of substantially public programs by declaring them private.

Tracking a proliferating set of decisions and acquisition deals undertaken by land trusts with little public notice is a daunting task. Add the fact that there are more than 1,600 groups "doing deals" and holding easements, and the problem only gets worse. A crucial first step, therefore, is for all parties involved to be far clearer that these transactions are not fully private, nor are they entirely philanthropic. Furthermore, land trusts must invite and facilitate public involvement, however challenging that might be.

We are as weary as anyone of the turgid and ritualistic public involvement programs that have accompanied federal agency planning since the 1970s. Nevertheless, ostensibly private acquirers rarely do even that much. A first step is to recognize that land trusts must involve diverse communities in their activities. Indeed, they must do better than the federal agency programs that have all but given democratic participation a bad name. Our story has been, in part, about land trust flexibility in the face of similar government rigidity regarding acquisitions. Surely these

organizations, rooted as they claim to be in real communities, can be as nimble and creative about involving their neighbors in planning as they are in structuring preacquisitions.

At a minimum, land trusts could enlarge their range of local contacts by expanding the pool from which they select their boards and employees. They could also work with county and local land use planning programs to ensure that their conservation priorities support local aspirations. We are impressed by TNC's efforts in the Blackfoot to involve local communities in identifying ultimate owners for its Plum Creek acquisitions, but we believe that more creativity is both possible and necessary. The government agencies should be seeking to enhance public accountability through innovative land trust ideas, rather than how to avoid it.

Public accountability would also benefit from some form of public certification of land trusts. The idea is not new. More than twenty years ago, the members of the National Conference of Commissioners on Uniform State Laws debated oversight issues. Their suggestions included restrictions on the types of organizations eligible to hold conservation easements, local or state agency review of easement transactions, and special recording requirements for these unique instruments. Ultimately, such language was not incorporated into the Uniform Conservation Easement Act, but a number of state statutes have adopted more stringent provisions. These include, notably, waiting periods in Virginia and Colorado and state approval in Massachusetts. The examples strike us as useful reminders that public oversight of land trusts is not unprecedented. Further analyses may reveal whether such requirements actually discourage rogue activity and increase public accountability.

The same issues are heating up in Washington. The IRS announced plans to intensify scrutiny of deductions for conservation easements (Small 2004; U.S. IRS 2004),[5] and Congress began reviewing a full range of charitable deductions (Wentworth 2004). The Joint Committee of Taxation (JCT), established to advise members of Congress on revenue matters, added its weight to the discussion. Its lengthy report recommended imposing severe limits on the deductions landowners can take for donating a conservation easement. It proposed that such deductions be limited to 33 percent of the easement's appraised value, and that no

deduction be allowed for an easement on a property used by the taxpayer as his or her personal residence.

Where and when *public* acquisition should occur is a stickier question. It should be evident by now that we are far less concerned that government programs might preempt or displace private efforts than are some of our colleagues. Indeed, our primary fear is the opposite: that the sterling reputation of private acquisition efforts will give public land managers and politicians the sense that *all* acquisitions are best left to the private sector. A reverse "crowding out" of public acquisition efforts by private ones would be a terrible mistake.

Yet that appears to be exactly what is happening; the public sector is currently unwilling to acquire land even in situations where it really should. Two points stand out. First, the controversial tool of condemnation is underutilized. Ironically, Congress often withdraws condemnation authority from the agencies in exactly the limited situations (wilderness areas or wild and scenic river corridors) where it makes the most sense. We find this frustrating, particularly since eminent domain is used routinely in highway construction, power line rights-of-way, and similar public projects.

In urging greater use of eminent domain, we are sensitive to past abuses and problems. The NPS' dismal record removing smallholders in Appalachia, Cuyahoga, and even Yosemite is not a big selling point for the procedure. However, condemnation is too important a tool to reject completely simply because some agency programs have been poorly implemented. The key again is transparency and accountability. It is a rare individual who will appreciate the mandatory sale of the family farm, home, or summer cabin. Stronger public leadership must clarify the importance of equitable and environmental priorities, and the fact that land ownership is not an unqualified right but includes duties to society. In exceptional cases, those duties may involve giving up one's property in exchange for fair compensation. Coercion is never pleasant, but the government uses it in many other contexts without major disruption; it should be able to do the same for conservation.

The courts could help in making eminent domain a less odious tool. At present, judicial review of condemnations is minimal. Courts typically ask whether the agency is authorized to condemn land, and if the answer

is yes, they look no further (Plater and Norine 1989). Condemnees ought to have a better opportunity to challenge the reasonableness of specific applications of the tool. To that end, we propose that the LTA work with government agencies to identify circumstances when a NEPA-style review of condemnations is in order. This was part of some versions of the CARA. Ritualistic though it may be, it would provide an opportunity for public comment on transactions that have heretofore not enjoyed such transparency.

Second, we see public acquisition (voluntary or not) as essential for those parcels that private conservation buyers are unlikely to acquire. In some cases, these are inholdings or other unique properties that provide a monopoly of sorts to the seller. In others, however, they are areas of minimal interest to private buyers, or at least private buyers wealthy enough to be in the market. In particular, the public sector must focus on acquisitions in areas that land trusts do not serve well: urban areas and poor communities lacking the resources to organize and buy properties themselves. Willing sellers and private acquisition efforts have left clear gaps in the conservation landscape, and public purchase is one of the few ways we can imagine filling those holes. We urge public agencies to do so.

Targets: What Should We Acquire?

Once again, we are generally supportive of the broadening notion of what lands are worth conserving. We especially welcome the expansion of the debate beyond the wilderness absolutism of the early post-World War II decades. However, conservation of working landscapes requires more thought than it has so far enjoyed (Cronon 1995; Fairfax 1996). When agricultural land is "conserved" in ways that facilitate or perpetuate reliance on pesticides or the erosion of topsoil, for example, we begin to get uncomfortable. Moreover, the expansion of conservation goals only makes the identification of specific working landscapes to be protected particularly important.

So what lands should we acquire? We begin with the obvious: Acquisition should appeal in direct proportion to price. Like any other buyer, conservation purchasers should be savvy about a good deal. This sounds absurdly elementary, but the experience of the federal government in

Mount Rainier at the start of the twentieth century and in the Redwoods at its close suggests that the point remains a salient one for public acquisition efforts.[6]

We have little to say, however, about selecting properties of ecological importance. This is partly because we are not biologists and partly because even those who are have only just begun to identify standards for designing nature preserves, determining habitat requirements for protected species, and estimating the impacts of different human uses on ecological sustainability. To the extent that identifying the right lands for conservation requires more knowledge than is presently available, we are hard pressed to answer the question even partially.

We do think it is important to question one principle, common among conservation advocates, that what is not conserved now is lost forever. The idea may justify the tendency, particularly apparent during the Watt years in Interior, for conservationists to prefer new acquisitions to investment in management of existing properties. We have spoken to enough biologists to understand that some resources are not renewable for many ecological purposes. Nor are we sanguine about using easements to "mitigate" the loss of vital habitat (Owley 2005).

Having emphasized the changing nature of conservation priorities over time, we point out once more that almost everything we protect seems to end up being valued, regardless of its initial ecological status. Americans seem enormously accepting of both architectural and natural restorations. We have called the Valles Caldera undisturbed, and we have designated wilderness on national grasslands that had been acquired specifically because they were degraded farms and pastures. Even such obvious political chicanery as the St. Louis waterfront park has become a valuable economic resource and a cherished local landscape. In short, acquiring exactly the right land may not always be as important as one might think, particularly when the supply of relatively unsullied sites is diminishing rapidly. In this respect, conservation often seems to be its own reward.

We also find it troubling that ecological goals, however poorly defined or understood, are the first line of rhetorical defense on many acquisitions. This worries us because we fear that current ecological enthusiasms will push land conservation efforts farther and farther from equity

considerations. Acquisition for conservation must be conducted in a more equitable manner. Despite the elitist reputation that has dogged the conservation movement from its beginning, this idea is not without precedent. Public conservation acquisitions have frequently been defined by goals of fairness and social justice. In the Depression, economic relief for the poor was a primary purpose of land acquisition programs. Clearly, well-to-do landowners were among the most obvious beneficiaries of the programs, but the economic needs of the poor and unemployed were a major factor. In the 1960s, bringing recreation access closer to the urban, eastern, underserved population was again a clearly stated goal that did not fully disappear until the Reagan era. In sum, as a nation we have considerable experience in defining conservation goals with reference to social justice.

The emergence of land trusts is, as we have noted, very much a part of the Reagan era. Perhaps it is no coincidence, then, that although early land trust advocates were seriously concerned with equity, the concept has all but disappeared as a movement priority. We see evidence of the problem in land trust priorities and in the faces at LTA gatherings. The movement's clear emphasis is on protecting ecological values and controlling urban sprawl. Those are worthy goals, but they are not enough. In the future, equity must take a more prominent role, not only for its own sake, but also because it is necessary to maintain both the rights acquired, particularly in easements, and the movement's political sustainability.

Equity is a key part of embedding land trust tools and programs in the community, of persuading local people of the importance and validity of the trust's title arrangements. Title, we have repeatedly observed, is not enforceable when the citizenry does not find the asserted rights persuasive. If easements are not seen as valuable to a community, community structures (including courts) that are necessary to sustain them will not operate effectively in their defense. Moreover, local credibility is ethically and politically crucial to the continued use of public funds.

To us, equity means two things in particular for acquisition efforts. First, it means acquiring or otherwise protecting land in all communities, not just rural and wealthy ones. Precisely because land trusts are now substantially running federal land acquisition programs as well as their

own, they must pay far more attention to underserved citizens and landscapes. As a practical matter, until urban areas are experienced as pleasant places to live, urban residents will continue to seek clean air and water, aesthetic benefits, and open space in the hinterland, threatening ecological values there with further development.

In other words, even if protecting ecological resources were the only goal, enhancing the cities is still essential. The urban gardens programs of TPL, the Neighborhood Gardens Association, and the Madison Area Community Land Trust, and the efforts of the Black Family Land Trust, all discussed in chapter 8, provide provocative examples of the equity-driven application of land trust tools that we think needs to be far more common.

In this respect, the land trust movement could learn something from a parallel movement: community land trusts (CLTs). CLTs are much like the conservation land trusts we have discussed at length in this volume, using many similar tools to lower the cost of land ownership, albeit for different goals. The typical CLT works on providing affordable housing; some pair this with sustainable rural development. Although much smaller than the conservation trust movement (there are about 100 CLTs in operation in the United States today), CLTs provide useful insights for conservation land trusts trying to develop a more diverse constituency.[7] However, at present, the two types of land trusts do not overlap greatly in their work. Most CLTs are not members of the LTA, and relatively few attend the annual LTA Rally. Nor have land trusts shown much interest, with a few important exceptions, in the urban issues addressed by CLTs. We think more cross-fertilization could be a step forward for both movements.

Finally, acquiring more lands with public access is critical. We recognize that unfettered recreation is not appropriate on all conservation lands. We are also aware that easements complicate the access issue, particularly when an organization relies on donations. Nevertheless, access for the select few is difficult to defend, and that is what many easements, limited development, and conservation buyer acquisitions seem to provide. But this is not an unavoidable outcome. Recall, for example, that The Trustees' land, even its donated parcels, must be open to the public or the organization is subject to property taxes. In New Hampshire, *all*

SPNHF lands are open to the public. Yet according to one study, less than 10 percent of all conservation easements allow access for general recreation (Guenzler 1999: 13). Such outcomes are unacceptable when so many public resources are involved.

Tools: What Instruments Should We Use (and When)?

In terms of acquisition tools, our concerns and suggestions begin with the issue of longevity. The land trust movement has proven that it is highly capable of motivating and organizing local groups to protect small sites of local significance as well as of brokering far larger and more complex transactions. Civic life is enriched by these efforts. The land trust movement has yet to demonstrate, however, that it is capable of stewarding the rights obtained over the long term. Nor is it entirely obvious to us that all such conservation rights should be in perpetuity, as is the general practice, even if there is adequate infrastructure within the movement to defend them (Mahoney 2002).

To begin with, we share the worries of many observers about the future of conservation easements. Setting aside the important questions of durability and enforcement, we are even more concerned about the issue of motive and reputation. Particularly because the boundaries between private and public conservation are fuzzy, and Congress is watching more closely as worries about rogue land trust actions grow, it is essential that the land trust community not allow itself or its credibility to be drawn into dubious transactions.

In addition, we worry about easements held by the large number of land trusts formed since 1985. Those organizations have no real track record and frequently have only limited resources for stewarding and defending easements. Moreover, it is not clear what will happen to these easements in the continuing shakeout among small land trusts. The issue has concerned many in the movement. The main focus of concern is on how easements will fare over time as the original enthusiasm for the tool and the organizations involved fade, and second and third owners buy the underlying fee title. The fate of these easements as various small land trusts merge, go under, or simply atrophy is another major concern.

We wonder as well what will happen when the time for "doing deals" winds down. Numerous island- and county-based land trusts have just

about reached the limits of what they can buy, and others are not far from the saturation point. When a land trust's primary tasks are maintaining the achievements of the past rather than extending them, will there still be volunteers, board members, and money for monitoring and stewardship? Experience with public land holdings gives reason for worry—both Congress and the public prefer to create new park units rather than fund the management of existing ones.

Finally, research suggests that land trusts are not monitoring their easements adequately, or even keeping basic records. In a recent study of nine San Francisco Bay Area counties, the authors found that about half of the land protected from 1979 to 1999 (about 800,000 acres) relied upon easements. Yet few of the organizations studied had reserves to cover the costs of enforcement. Worse, the baseline studies essential to both monitoring and enforcing compliance were available for only 40 percent of the easements. Of those, 14 percent were seriously deficient (Guenzler and Douthit 2002; Dana, A. and Dana 2002).

Government easement holders, FWS and NPS experience notwithstanding, are potentially even more troubling. Several studies have found that easements accepted as mitigation for development or as part of planning and permitting processes (Guenzler and Douthit 2002; Owley 2005) have been lost, not recorded, or not monitored. This is especially problematic since once an easement appears to have been abandoned, it becomes extremely difficult to resurrect and enforce, assuming it can be eventually located. Even when the government is actively pursuing and monitoring easements, as under many Farm Bill and Forest Legacy programs, the work remains underfunded and hit-or-miss (Guenzler and Douthit 2002).

We also share some concerns about the longevity and unchanging nature of conservation easements. IRS rules state that any conservation easement must be "in perpetuity" in order to qualify for a tax deduction. This means, however, that a single owner of a parcel can effectively strip that land of specified uses forever. No one, in theory, can repurchase those rights from the land trust in the future. This again raises troubling issues of equity. Allowing a current individual to define the use of land for the next few centuries or longer is granting a lot. Who can even imagine what land use issues will arise in 2020, let alone 2120? A

conservation easement that makes excellent sense today may become either useless or ridiculous over time. And as we have seen, conservation goals have changed considerably over the past 200 years.

State laws and common law have been generally hostile to such "perpetuities" in property for just this reason.[8] Thus, we wonder whether there is a place for tax-deductible, renewable ninety-nine-year easements, or some other lengthy but time-limited instrument to protect a given parcel.[9] Alternatively, we could imagine a process by which easements could eventually be transferred, allowing at least a theoretical option for a trust to reposition conservation programs after a lengthy period of time. Of course, such changes would be controversial and would require careful safeguards to prevent abuse. However, the current system invites abuse as well because wealthy landowners take advantage of tax breaks to guarantee the viewshed around their home literally forever. Nor do the obvious concerns seem insurmountable. Resale could be limited to easements more than fifty years old, for instance, and require a unanimous or super-majority vote of the trust's board. Regardless of the specifics, the issue of avoiding the perpetual determination of a land use by a private individual is something that should be considered seriously by land trust activists and policymakers.

It is important not to overstate these issues. The longevity of groups such as the MVLA, which focused only briefly on one deal, is a useful counterpoint. In fact, the few examples we do have of long-standing easements—FWS refuges, the BRP, and Wisconsin's Great River Road—are, contrary to many anecdotal references in the literature, quite positive. And the results of early private conservation—the MVLA, The Trustees, the Fort Ticonderoga Association, and the Save-the-Redwoods League—are nothing less than inspiring.

The main source of funding for public acquisition efforts raises a related longevity issue. Congressional enthusiasm for acquisition via agricultural subsidies is well established; more than half of federally acquired land was purchased during the Depression. Now, even in the absence of an equivalent crisis, Farm Bill money provides the major portion of federal spending in this area. However, there is a real difference between New Deal and Farm Bill programs. During the Depression, the federal government acquired land and managed it in a generally restor-

ative way. Today the bulk of Farm Bill money is not used for restoration and durable protection; it is used for leases.

We have several reservations about this change. First, some of these leases under the Conservation Reserve Program violate our first principle of seeking a good bargain; payments over the life of the lease sometimes approach or surpass the full value of the land itself. Second, as Farm Bill programs return to providing subsidies for industrial agriculture and not much else, they look like a bad bargain. We are particularly concerned when commodity groups such as cattlemen's associations are the easement holder or steward in such programs. These groups must be far more creative in encouraging farm practices that reduce or eliminate pesticides and chemical fertilizers and other unsustainable agricultural practices.

The problem of farm subsidies leads us to reiterate that land trusts must be careful about becoming or being portrayed as advocates of universal compensation for every diminution of property value, or otherwise acting in ways that further ideas about absolute dominion in land ownership. The psychology here seems crucial to us and requires renewed attention to enforcement of basic land use regulations and social expectations about property.

Finally, we think that Congress had it right the first time on exchanges—when they expand beyond limited programs to clean up boundaries and eliminate management problems, they become an invitation to fraud and, almost as damaging, the appearance of fraud. Here the public discussion provided by an environmental impact assessment seems called for, tedious or otherwise. Moreover, we are not convinced that large-scale repositioning of the federal estate is a good idea. At a minimum, it is worth discussing apart from the evaluation of specific deals. Even if this process continues, we conclude that land trusts should not participate. It can only harm the land trust movement if individual organizations allow Congress and developers to imply that these dicey transactions have the approval of the conservation community.

Conclusion

Throughout this volume we have urged readers to take note of the growing mosaics of ownership and control in land conservation today. Yet we

have left an obvious question until last: Are mosaics good? Do these intricate webs of ownership and control bode well for land preservation activities?

Our simple answer is yes, mosaics are a positive trend. At their best, they represent a new, collaborative, and sophisticated approach that can approximate the elusive win-win model so frequently touted in conservation circles. Mosaics can mean land trusts helping federal agencies work better with local citizens, acquisitions that conserve key resources while trying to provide local economic stability, and integrated approaches to protecting resources. These are positive outcomes, especially compared with older models of top-down scientific management or unilateral private conservation by wealthy citizens. They also are clearly preferable, in many instances, to waiting for adequate budgetary resources or planning procedures to ensure the protection of threatened sites.

Nevertheless, some acquisition mosaics have not worked as well. The Blue Ridge Parkway is not entirely functional, nor are some of the less savory assembled exchanges. Cuyahoga Valley National Park was a mess until recently and still faces an uncertain future. Complexity, in short, is not a virtue in and of itself and should not be pursued as if it were.

That said, we are inspired by the accomplishments of 225 years of citizen efforts to conserve land. We would be a poorer nation indeed if Mount Vernon were a hotel and all the redwoods were picnic tables. We are gratified that the general public's insistence on participating and being heard has moved The Trustees out of the Harvard Club and into the reach of many, if clearly not most, citizens.

Willing sellers will most likely always define the agenda. Buying nature began as the noticeably clubby concern of elites—both inside the government and out. They have met their own needs and impressed their vision on the landscape in the process. But they have also left a legacy—of land, institutions, and civic participation—that is diverse and dispersed. We have a more than adequate foundation for adding equity and accountability to the architecture and evaluation of conservation mosaics.