# A COMPARATIVE ANALYSIS OF THE LAND ACQUISITION POLICIES AND METHODS USED BY THE U.S. NATIONAL PARK SERVICE AND SOUTH AFRICAN NATIONAL PARKS

By

NOTHILE PRUDENCE SHONGWE

Honours Bachelor of Arts (Geography)

University of Zululand

Kwa-Dlangezwa, South Africa

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# STUDY ORIENTATION

## Introduction

Recent years have seen a growing interest in the identification and encouragement of economic development strategies that are environmentally and socially sustainable. Along with this interest has grown recognition that sustainable development and efficient and equitable use of resources are dependent on the ways in which property rights are distributed and defined (Weibe and Meizen-Dick 1998).

In property ownership schemes, boundary lines are drawn on the earth and some owner acquires rights to control the encompassed space. When the law respects private rights in land, it supports and defends individual power, standing ready to sustain it when appropriate by the use of public force. In the late twentieth century, no force has shaken private ownership more profoundly than the environmental movement (Freyfolge 1995). Growing environmental awareness and pressures for environmental conservation have often placed a greater value on the need to protect a piece of land from perceived exploitation than in granting free will in its use by those who own legal title.

Although it is not the only way for protecting natural resources, public land acquisition is a powerful tool for preserving or sustaining natural and historic areas. The process of land acquisition is a challenge for any government. For example, in the United States, the National Park Service (NPS) purchases land to extend the National Park System and to consolidate federal holdings within the exterior boundaries of existing

national park areas (Brumback and Brumback 1988). Such acquisitions raise a host of sociological and political issues of intense interest to inholders (those owning property that is surrounded by government lands), landrights groups, acquisition intermediaries, conservation organizations, and state and local governments. As it relates to conservation, the process of land acquisition takes place when it is in the public interest that lands not presently owned by the government be available for the use or management for forest, park, grazing wildlife or other purposes. Land may also be brought into public domain to permit the consolidation of scattered land holdings. In addition, provisions may be made for purchase, lease or exchange of land or donations and gifts (American Forest Products Industries 1964).

Like many countries in the world, South Africa has employed land acquisition as a tool to protect nature. The South African Park System and conservation policies have been largely shaped by the political ideologies held by those in power. As a result of the changing political situations in South Africa, there have been new policies related to national park management. Government land acquisition that has taken place in the past has created problems for the South African Park System that can be traced to forced relocations and absence of compensation to landowners for some lands acquired before the 1990s. The purpose of the study is to compare and contrast land acquisition methods and policies used by the U.S. National Park Service and the South African National Parks. Differences and similarities identified may help South African National Parks to reconsider acquisition policies and methods.

## Background and Justification

Land is a sensitive issue in South Africa that can bring emotions that often lead to heated debates. As noted by the Department of Land Affairs (1997), South Africa has a history of conquest and dispossession, of forced removals and of a racially skewed distribution of land resources that has left the country with a complex and a difficult legacy concerning ownership and use. The present South African government has the task of protecting the country's national parks, as part of the world's ecological heritage but at the same time it must deal with land tenure issues created by earlier policies.

The National Park Service is used for comparative reasons because in the United States, as in South Africa, the public owns national parks and so they are a government responsibility. Lessons from the United States may help South African National Parks develop equitable and informed options for its land acquisition programs.

### Study Areas

This study compares land acquisition methods used in the United States and South Africa. United States law is based on English law while South African law has been based on the Roman Dutch law. It was English Law that has most influenced modern South African law. The recognition of property rights has been a historical cornerstone of South African Common Law, and has recently found expression in the Bill of Rights of the Constitution. Under South African Common Law, the state has historically been able to regulate and control the manner in which any property, including biological resources, is conserved or exploited (Encyclopedia Britannica 2000).

Carlsbad Caverns National Park and Kruger National Park have been identified as study areas to illustrate the process of land acquisition in each country. These areas have been selected because they were established at approximately the same time and each has been influenced by a variety of land acquisition policies within its boundaries. Carlsbad Caverns National Park was designated a National Monument in 1923 and later redesignated as a national park in 1930. In 1995 the area became a World Heritage Site. With an area of about 46,766 acres, Carlsbad Caverns was created to preserve numerous caves within a Permian-age fossil reef. The park contains over 85 known caves including Lechuguilla Cave-the nation's deepest and third longest limestone cave at 1,567 feet (478 km). The cave has stalagmites and stalactites and a variety of other formations that have developed over a period of more than 500,000 years. The park is also a sanctuary for over a million Mexican Freetail bats (National Park Service 2000a). Figure I. shows Carlsbad Caverns National Park geographical location.

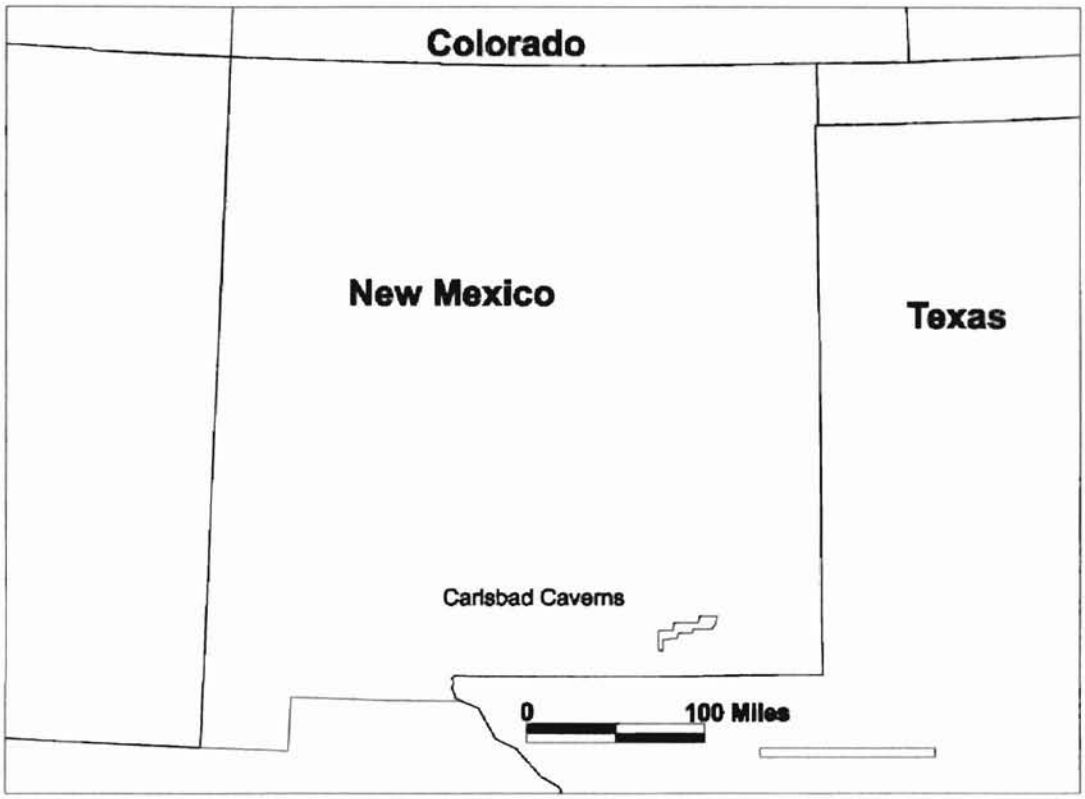


Figure I: Carlsbad Caverns Geographical Location

Kruger National Park, one of the largest parks in Africa, lies in the Mpumalanga and Northern Provinces, west of Lebombo Mountains on the Mozambique border. With an area of 7,523 square miles (19,485 square km), the park is about 200 miles long and 25 to 30 miles wide. Kruger has one of the greatest varieties of wildlife of any park in Africa and is a home to a large population of lions, elephants, rhinoceroses, hippopotamus, buffalo and giraffes. The park also has a wide variety of birds as well as an abundance of fish, amphibians and reptiles species. The plant life is equally diverse, varying from tropical to subtropical with some temperate species occurring at higher altitudes. Kruger is also recognized as being of great archeological value, with the recent discovery of a site at Thulamela Hill dating from the gold and ivory cultures that prevailed from 1200 AD to around 1640 AD (South African National Parks 2000). Figure II. shows Kruger National Park geographic location.

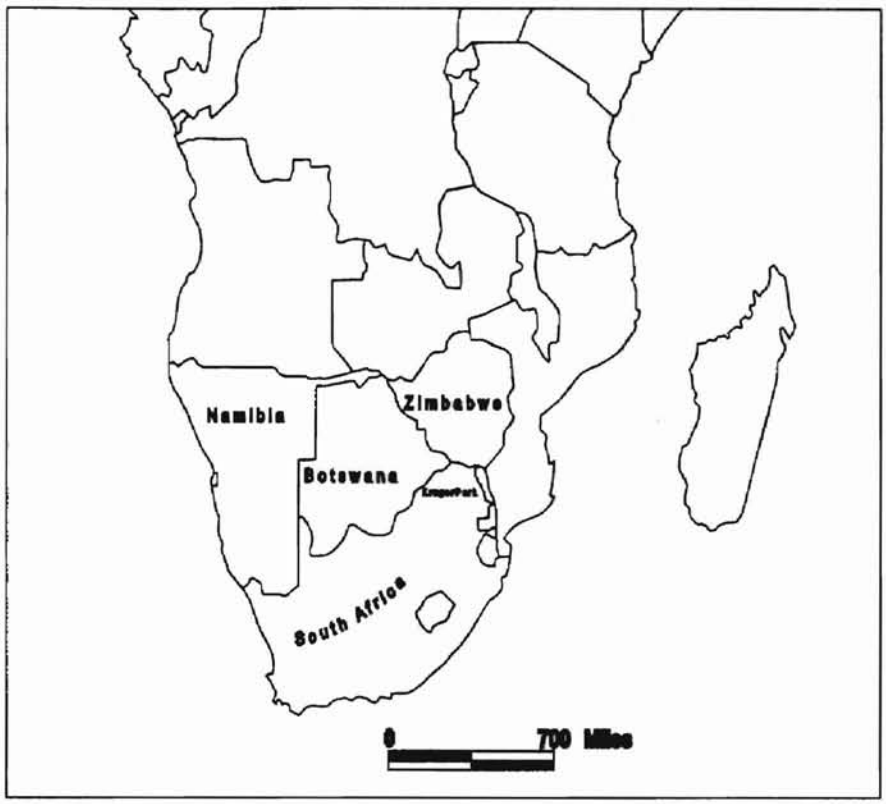


Figure II. Kruger National Park Geographical Location

## Historical Background

The national park concept began in the United States in 1872 (Ise 1961; Frome 1982). Following the establishment of Yellowstone, national parks were created in Australia, Canada and New Zealand in the years before the turn of the century. Over the last hundred years, it has been emulated, adapted, and implemented to fit varied economic, social, cultural, political and land ownership conditions in many countries

(Cahn and Cahn 1992). The idea was also introduced to developing nations under pressure and encouragement from international conservation organizations (Hough 1988).

Legislation establishing Yellowstone, America's first national park mandated that its land would be reserved and withdrawn from settlement, occupancy, or sale. In addition, the act creating Yellowstone required that management must provide for the preservation from injury and spoliation of any timber, mineral deposits, or natural curiosities (Environmental Agenda for a Future Report 1985; Keiter 1988; Sachatello 1990). The act that created Yellowstone serves as an unprecedented piece of legislation in the conservation history of the United States. For the first time, Congress declared that land did not simply exist for one generation's use and profit. Yellowstone and the national park idea had become increasingly more important in the American mind (Sachatello 1990).

## Establishment of the National Parks in the United States

As Congress continued to set land aside as national parks through the turn of the century, it became apparent that there was a need for a central agency to administer these areas. On August 25, 1916, forty-four years after the establishment of Yellowstone, the NPS was created as a federal oversight agency for the parks. Ise (1961) points out that the legislation creating the NPS mandated that the agency manages parklands for a variety of purposes including recreation. As suggested by Keiter (1988) the National Park

Service Organic Act is a logical starting point for understanding the NPS's legal position in considering threats to parklands:

> Besides creating the National Parks Service, the Organic Act establishes the standard under which the Secretary should administer the National Park System to conserve energy, scenery, natural and historic objects, and wildlife, and to provide for public enjoyment, while ensuring that parks are left unimpaired for the enjoyment of future generations. The Secretary is, therefore, confronted with sometimes-conflicting responsibilities of managing the national parks to protect their resources while assuring public access (Keiter 1988 pp. 75).

Over the years, the dual objectives of conservation and use have been the source of numerous controversies over national park management. In recent years conservation objectives expressed in management policies have changed with increased ecological understanding and use demands (Wright 1998).

National parks are created through acts of Congress while national monuments are most often created by presidential proclamation. When Congress creates a new area within the National Park System, it designates its name, approximate boundary and makes reference to the general concept under which it will be managed (Congressional Digest 1999). The authorizing legislation generally confirms that the unit is to be managed according to general rules governing the system and defines management goals for the unit.

Management of national parks in many countries of the world is guided and facilitated by the World Conservation Union (IUCN). This organization is dedicated to the wise use of Earth's natural resources and the maintenance of the planet's natural diversity. Within the overall mandate and program of the IUCN, the IUCN Commission on Natural Parks and Protected Areas (CNPPA) is charged with promoting national parks

and other protected areas as well as providing guidance in their management and maintenance.

According to the IUCN, national parks account for 97% of all land within Africa that is classified by the IUCN as protected with categories I, II, and III. Category I applies to scientific reserves or strict natural reserves whereas Category III applies to natural monuments or natural landmarks. Category II applies only to national parks that are defined by the IUCN as natural areas of land designated to protect the ecological integrity of one or more ecosystem. As defined by the IUCN, the main objective of a national park is to protect natural scenic areas of national and international significance for scientific, educational and recreational use. National parks are relatively large areas that contain representative samples of major natural features or scenery where plant and animal species, geomorphological sites, and habitats have unique scientific, educational and recreational value (IUCN Commission on National Parks Protected Areas 1980; Siegrief et al. 1998). The international definition of a national park, laid down at the 10th General Assembly of IUCN, includes a requirement for the highest competent authority within a country to prevent and eliminate exploitation or occupation of the area (Hough 1988). The international dynamic for protected areas is strong, initiated at almost the same time by the European imperial powers and the United States. In Africa there are several great national parks and wildlife refuges, sometimes said to be the first parks in the world to be established for purely scientific purposes.

## Establishment of National Parks in South Africa

The initial concerns that led to the establishment of national parks in South Africa centered on the protection and preservation of wildlife species. Early actions taken both to protect animals and limit the uncontrollable destruction of wildlife are well documented. The first president of South Africa, Paul Kruger, was concerned about the destruction of wildlife and natural habitat. As noted by Reid and Steyn (1990), Kruger envisioned large areas to be set aside as reserves where wild species could thrive and be protected from outside dangers.

In 1926, the South African Parliament approved Act 56, which was known as the National Parks Act. This legislation provided for the establishment of other national parks and the acquisition of land through proclamation by the government. The general purposes of the National Parks Act were stated to be the propagation, protection and conservation of wildlife and objects of geological, ethnological, historical or other scientific value (Reid and Steyn 1990). South Africa's first national park was established by the Union Parliament in 1926 by combining two provincial game reserves in the eastern Transvaal that had been found at the turn of the century during the first wave of modern protectionism. These areas were the Sabi established in 1898 and Shingwedzi created in 1903 (Carruthers 1995; 1997).

## Establishment of the National Parks Board of Trustees

The National Parks Board of Trustees (now South African National Parks) was officially established in 1926. The Board was a statutory body representing state, provincial, and private wildlife conservation interests. Although the parks were placed

under the supervision of the Minister of Land, national parks were not consolidated as a government department, instead falling under control of the Board. The Board was assigned to control, manage and maintain all aspects of South African national park policy and consequently had considerable power (Carruthers 1995). National parks are protected by the statutory provisions of the National Parks Act. This Act states that parks must be managed in such a manner that the natural environment and all its essential features are preserved for the benefit and aspiration of the country and its people in perpetuity.

In accordance with recommendations of the IUCN, and taking into account the practical realities of South Africa, the National Parks Board has embraced international guidelines for the creation and maintenance of the South African National Park System. These guidelines include, among other things, a call for representation of all natural assets in the country, including both terrestrial and marine areas as well as the creation of contractual parks where the government cannot completely protect natural assets.

## Land Acquisition Overview: United States

As noted by Brown (1993), the creation of a new national park, monument, historic site, battlefield or recreation area is initiated to protect and conserve areas for present and future generations. However, not every site worth protecting is eligible to become a new unit. To be included in the system, units must meet stringent criteria for national significance, suitability, and feasibility. Even if a site meets these criteria,

alternatives for protection outside of the national park system may be more appropriate. Areas managed by the NPS are a small but important part of the nationwide system of areas protected by the federal government that also include public lands controlled by state and local governments, as well as the private sector (Committee on Scientific and Technical Criteria for Federal Acquisition of Land for Conservation 1993).

As noted by Burnham (2000) National Park Service also acquired land from the Indian tribes. Indian lands were acquired by purchase or trade, and in some cases natives American's were forcibly removed from their lands. In many places tribes were coerced into signing agreements that not only surrendered ownership of treaty lands but also compromised their right to use them for subsistence. Eventually the government came to control every conceivable aspect of park ownership, and management.

According to Ritsch (1981) and Brown (1993), until the early 1960s, parks were usually created through withdrawals of land already in the public domain or by donations of land assembled by state governments or private philanthropy. In the 1960s, Congress established the Land and Water Conservation Fund (LWCF) to support land acquisition with revenues from federal surplus property sales, motorboat fuel taxes, and federal recreation user fees being used to purchase land. Since 1964, more than $3.6 billion of the LWCF has been spent by the federal agencies to acquire land (Hocker, 1982). In cases where the federal government cannot afford to buy land, non-governmental organizations, private agencies and individuals may donate it. Brown (1993) identified two ways in which land can be donated to the government: (1) private gifts and, (2) buying over time.

Private Gifts and Buying Time

Private philanthropy was instrumental in establishing many premier national parks in the U.S., including Acadia, Grand Teton, Virgin Islands and Redwood. In creating these parks, help from the private sector has taken several forms, the most desirable being outright gifts of land or money. However, having funds available to buy land is only one part of the equation needed for successful conservation. In the operations of the NPS and other government agencies, protection of sensitive or threatened lands is often a question of not only how much money is available but also when, where and how that money will be available.

As noted by Brown (1993) before the NPS can begin serious negotiations to buy land, a parcel must be within a park boundary authorized by Congress. In addition, land protection plans must be approved, budget priorities established, and funds appropriated. Even under the best circumstances, a new park authorization or expansion of an existing area is likely to take at least a year, with another year or two before acquisition funds appear in a budget. Federal procedures for authorizing land acquisition and appropriating funds usually take considerable time. Private non-profit organizations such as the Trust for Public Land and the National Park Conservation Association have been helpful in bridging this gap between federal intentions to protect land and the ability to buy it. Private groups often and can exercise more flexibility in private real estate dealings (Brown 1993).

## Land Acquisition Techniques: United States

Acquisition can be used as an alternative to other forms of management tools or as a supplement to a regulation, but it is not a substitute for regulatory land-use restrictions. In the United States public land acquisition includes (1) full-fee purchase and condemnation by eminent domain, (2) acquisition of lesser interests, such as easements, rights of ways, and life estates (3) exchange, (4) gifts, (5) bequests. In recent years, financial constraints and political realities have required park managers to explore new alternatives to federal land acquisition and develop better procedures for achieving conservation goals. Brumback and Brumback (1988; 1990) identified three types of land acquisition techniques: fee simple; acquisition of interest, and post acquisition of interest.

### Fee Simple Acquisition

Brumback and Brumback (1988) note that when applied to acquisition, the term *fee simple* comes from feudalism in the Middle Ages when the king owned all of the land in the realm. For a fee, the king would grant the use of the land to his vassals. The higher the vassal's fee, the closer his grant was to actual ownership. In contemporary society, land is acquired fee simple when absolute or nearly absolute ownership is held. Property ownership comes with a bundle of rights, such as the right to develop the land or to cut timber. Such property rights are transferred from the owner to the buyer at the time of sale.

The nature and distribution of property rights are critical in determining how resources are used and conserved. Property rights, as noted by Weibe and Meizen-Dick

(1998), refer to the formal and informal institutions and arrangements that govern access to land and other resources, as well as the resulting claims that individuals hold on those resources and on benefits they generate. Fee simple land acquisition can be a costly method to control land use. In many cases the high cost of fee simple ownership has prompted public agencies interested in making the most out of limited resources to study alternatives.

In 1968, the NPS developed formal policies for acquisition of private lands, including inholdings in existing parks and private tracts in new areas. In 1979, the NPS adopted a policy requiring each park unit manager to prepare, with public participation, land acquisition plans containing specific policies and priorities. The policy required the consideration of alternatives to fee simple acquisition, including the purchase of scenic easements. In early 1980s, the General Accounting Office (GAO) released a study on the land acquisition practices of three federal agencies. In the report, the GAO claimed that the agencies had been acquiring too much land using fee simple acquistion and had not taken advantage of alternative means of controlling land uses.

## Alternatives to Fee Simple Acquisition

There are several alternatives to fee simple acquisition. Most of these fall into two categories: (1) the acquisition of an interest in the property and, (2) the post-acquisition disposal of less than the full interests acquired (Ritsch 1981; Brumback and Brumback 1988; 1990; Brown 1993). In the acquisition of interest approach, instead of acquiring the land fee simple, the level of interest needed to achieve the acquisition's purpose is the

only interest acquired. In other words, out of the bundle of rights, only those rights that could be used to harm the resource are acquired. The balance of the property rights, along with the actual ownership of the land, stay with the private owner. In post-acquisition disposal, the land is initially acquired fee simple but after acquisition there is disposition of some or all of property rights. With either method, land or an interest in land can be acquired through purchase or donation (Brumback and Brumback 1988; 1990).

Acquisition of Interest

According to Brumback and Brumback (1988) easements are another device that can be used to acquire an interest in property. An easement grants rights to others (known as positive easements) or restricts a landowners realm of actions (negative easements). Easements can be granted for a specific term or in perpetuity. However, "in perpetuity" does not necessarily provide rights forever. In simple terms, an easement provides selective rights to property.

Positive easements can provide hunting or fishing rights, or access to hiking trails. Negative easements can prevent activities such as erecting billboards, filling wetlands, cutting trees, or developing property. One of the major advantages in the use of easements is that the documents defining rights can be tailored to meet resource protection or other goals. The use of easements can also be a more cost effective acquisition approach since some, but not all, property rights have to be acquired.

Conservation easements are negative easements that can be placed on land to protect recreational, environmental, or historical values. By acquiring easements, the

holder can control land uses that the landowner could otherwise degrade or harm. Since the land stays in private ownership, it remains subject to local property taxes and the landowner retains the remaining property rights.

Post Acquisition Strategies

Using post acquisition strategies, land is acquired fee simple, but some or all of those property rights are disposed of, either permanently through selective resales, or temporarily through leaseback. Leaseback arrangements allow a government agency to retain the title to the land, but lease it for another's use under conditions consistent with the agency's land management objective. The land acquired can also be leased back to the owner, often as part of negotiated purchase. For land acquisition programs without general eminent domain authority, the ability to lease back to the original owner can improve the ability to acquire a particular tract. Leaseback gives the original owner the opportunity to adjust to the sale or assemble other properties (Brumback and Brumback 1988). Typically, selective resales are accompanied by restrictions that limit the land's later use. Post acquisition strategies can recoup a portion of the acquisition costs and reduce the costs of management. Using purchase and leaseback arrangements, the agency remains the land owner, but leases the land for another's use under conditions or limitations that are compatible with the agency's needs.

Each of the land acquisition techniques reviewed has the potential for assuring that the land is protected in a manner consistent with management objectives. However, no acquisition technique is without limitations. The principal limitation of fee simple

acquisition is the expense of acquiring all property rights and managing the land. When an alternative to fee simple acquisition is used, the transaction can be challenging and time consuming. For example, landowners may be confused about the ramifications of giving up some of their property rights (Brumback and Brumback 1988; 1990). One important issue with acquisition of interest techniques is that the cost rises with restrictions on the property's use. If protecting the land's resource values requires acquiring most of the property rights, the cost of acquisition of interest approaches the cost of fee simple acquisition. Finally, while techniques such as easements, leaseback, and resales typically eliminate the need for management actions, monitoring and enforcement are needed to ensure enforcement of restrictions to protect natural resources (Roush 1982; Brumback and Brumback 1990).

According to Ritsch (1981), when faced with a number of alternatives to acquisition, the question for resource managers is to choose the best method. Ritsch recommends that each case should be evaluated on its own merits with the consideration of five basic factors. First among these factors, is the character of the resource, referring to its rarity and fragility. This will often determine the quality of physical characteristics of the resource and its importance to the ecosystem. In addition, its location and accessibility and its relationship to other types of land uses must also be considered. Second, the public agency objectives for the resource must be clearly defined. If the objective is to protect the scenic vista, then an easement may do the job. Third, a realistic analysis of the landowner's interest is necessary to distinguish between the speculator or developer and the owner who has a sincere attachment to the land. Fourth, market conditions play a role in determining the landowner's interests and therefore what

conservation tools are appropriate. Even the most dedicated conservation-minded landowners might be inclined to sell where development pressure is intense, as evidenced by increasing land values, such as rising taxes. Finally, the political realities are important considerations too often overlooked or misinterpreted in selecting an appropriate resource protection technique.

Each year the federal government decides how much land should be appropriated for land acquisition and how the amount should be allocated among various federal agencies and the states. The Committee on Scientific and Technical Criteria for Federal Acquisition of Lands for Conservation (1993) states that the concern about how LWCF funds are distributed by the federal agencies and how different agencies choose acquisition prompted Congress to ask the National Academy of Sciences to evaluate land acquisition criteria and procedures of the four agencies that are responsible for the bulk of land acquisition. These agencies include the Bureau of Land Management (BLM), the Fish and Wildlife Service (FWS), the National Park Service (NPS) and Forest Service (FS). The committee also compared agencies' methods of land acquisition with those of private groups such as the Nature Conservancy. In acquiring real property or any interest therein, it is the policy of the United States to impartially protect the interest of those concerned.

The Federal government passed standards and policies to support land acquisition in the United States. Uniform Appraisal Standards for Federal Land Acquisition are standards that have been prepared to promote uniformity in the appraisal property among various agencies. Uniformity and fairness in the treatment of property owners is the goal. NPS land acquisition is also supported by legislation such as the Uniform Relocation

Assistance and Real Property Acquisition Policies of 1970 (Interagency Land Acquisition Conference 1992).

### Eminent Domain

Eminent domain refers to government's power to take private property for public use without reaching a mutual agreement with the owner. Constitutional provisions in most countries require the payment of compensation to the owner. There have been legislative attempts in the United States to protect private property against takings. The U.S. Constitution' s Fifth Amendment prohibits the taking of private property without for public use without just compensation. This prohibition is made applicable to states by way of Fourteenth Amendment (Joyce 1999).

## Land Acquisition Overview: South Africa

The creation of parks in South Africa has been largely modeled on the U.S. National Park Service and guidelines provided by the IUCN. The main purpose of establishing park units in South Africa has been to protect natural resources from destruction and to maintain biodiversity. Land acquisition and fund raising to support land acquisition is the responsibility of the South African National Parks (SANP). In some cases land acquisition programs are funded by international organizations such as the World Wildlife Fund (WWF).

More than 32,000 square kilometers of South Africa's total of 1.2 million square kilometers are set aside as national parks, and these areas enjoy the highest conservation status. As suggested by Armstrong (1991) South Africa has been very successful in nature conservation, but the majority of South Africans have not appreciated the country's success in preservation. A question can be asked as to why this achievement has failed to be supported by the majority of the South African population. While these achievements cannot be ignored, they go largely unacknowledged by the greater percentage of the South Africans, especially the rural populations that are in daily contact with the national parks and game reserves. To many, nature conservation has been overshadowed by racial policies that have been responsible for Africans being evicted from their homes in areas designated as national parks. Fourie (1994) summarizes the reasons for the colonists' failure to include Africans in park creation. First, the conservation movement was of Western design and did not incorporate the uniqueness of the African context. Second, this movement offered no room for the interests, values, opinions, perceptions and participation of rural people (Armstrong 1991; Fourie 1994).

South African National Parks and Land Dispossession

As noted by Armstrong (1991) national parks, far from being a symbol of national pride for all South Africans, are perceived by many as part of a former South African government structure from which many Africans have been systematically excluded. National parks have been manifestations of Apartheid repression where the

nationalization of wildlife and conservation policies were used to restrict Africans' access to parks.

As noted by Carruthers (1995) several laws passed over the years to ensure that the political and economic hegemony of the white population. Legislation drew a clear distinction between African and White lands. The history of forced resettlements, that relocated and removed millions of Africans illustrates the massive social upheaval and oppression experienced by a large number of Africans in South Africa. Forced removals were an integral part of white domination in South Africa and went through a variety of phases, each serving to further dispossess, disempower, and impoverish both rural and urban Africans (Carruthers 1995).

## Land Acquisition Techniques: South Africa

The South African National Parks Act 57 of 1976 stipulates two land acquisition methods that could be used by SANP to acquire land. First is the agreement with the owner, meaning that the state can purchase or exchange land or mineral rights provided the owner is willing to do so. Second is expropriation, referring to the government's power to take private property for public use without coming to an agreement with the owner. Constitutional provisions for many countries, including South Africa, require the payment of compensation to the owner. The Expropriation Act of 1973 gives the South African government power to acquire land by expropriation provided the government and the courts have reached an agreement on just compensation.

The Contractual National Parks

Since there is practically no unused land that can be obtained to fill the gaps in the South African National Park Systems, a further amendment to the National Parks Act (Act 234 of 1983) makes provision for the purchase or acquisition of core areas to be declared national parks, with all the characteristics and legal protection of existing national parks. The Act also provides for the inclusion, with the written approval of the owners, of suitable adjacent land in private or other forms of possession, by negotiation, within a larger area to be known as a contractual national park (National Parks Board 1984). These parks are acquired by mutual agreements between the communities (owners) and the South African National Parks.

# CHAPTER 2

# METHODOLOGY

## Qualitative Research Methods

Land acquisition as a process involves government, non-governmental organizations, local communities, environmental organizations, and landowners. The motivation for doing qualitative research, as opposed to quantitative research, comes from the observation that human beings are able to talk. Qualitative research methods are designed to help the researcher understand people and the social and cultural contexts within which they live. They were originally developed in the natural sciences to study social and cultural phenomena. Examples of qualitative methods are action research, case studies, and ethnographic research (Myers 1997). Qualitative data sources used for this study include interviews, documents and text.

Qualitative research seeks to answer questions by examining various social settings and the individuals who create these settings. Qualitative researchers, then, are most interested in how humans arrange themselves and their settings and how inhabitants of these settings make sense of their surrounding through symbols, rituals, social structures, and social roles (Berg 1995). The review of secondary sources involves evaluating and synthesizing a range of research materials, each describing a single but different society, whose authors had them build their descriptions on primary sources.

## Philosophical Perspectives

All inquiry is based on some underlying assumptions about what constitutes valid research and which research methods are appropriate. The most pertinent philosophical assumptions are those that relate to the underlying epistemology (assumption about knowledge and how it can be obtained) guiding the research. Guba and Lincoln (1994) suggest four underlying paradigms for qualitative research: positivism, post-positivism, critical theory, and constructivism. As noted by Myers (1997) positivists generally assume that reality is objectively given and can be described by measurable properties that are independent of the observer and his or her instruments. Constructivism assumes that knowledge is in the heads of people and that thinking subjects have no alternative but to construct what they know on the basis of their own experiences. A critical research approach assumes that social reality is historically constituted and that it is produced and reproduced by people. Although people can consciously act to change their social and economic circumstances, critical researchers recognize that their ability to do so is constrained by various forms of social, cultural and political domination. The main task of critical research is seen as being one of the social critiques, whereby the restrictive and alienating conditions of the status quo are brought to light (Myers 1997).

## Method Description: Historical Comparative Research

Historical Comparative Research is a powerful method for addressing major questions such as, *How did major societal changes take place? What are the fundamental features common to most societies? Why did current social arrangements take a certain*

*form in some societies but not in others?* This research method is appropriate for comparing the entire social system to see what is common across societies and what is unique and for examining long-term societal change (Neuman 1991). Historical comparative research methods can help us to understand how land acquisition takes place over time as well as to compare land acquisition practices in the United States and South Africa. The use of history helps to explain the origins and development of specific social phenomena, which otherwise would appear as a universal and atemporal. It can be argued that the only way of knowing where people are going is by knowing where they come from (Llobera 1998).

There is value in determining how national parks have grown or reduced in size over time and how the decisions that concerned land acquisition have impacted the functioning of national park systems as well as previous landowners. This value may help park officials to learn from the past and develop better land acquisition policies and methods in order to improve their park system. The unique value of historical comparative research is that the researcher recognizes the capacity of people to learn to make decisions and act on what they learn to modify the course of events.

## Research Objectives

Four objectives of the study have been established to guide comparison of land acquisition in South Africa and the United States.

Objective 1: *To examine land acquisition purposes and the forces behind land acquisition efforts in the United States and South African national parks.*

The study identifies reasons why it is necessary for national parks to acquire land. This was done by examining documents and government reports that were in effect during periods of land acquisition. As noted by Lucas (1992) one of the important ways of protecting wildlife species and their habitats is through the establishment of legally protected areas. These areas, apart from benefiting researchers and wildlife enthusiasts, are essential elements in the search for sustainability in all countries. Such protected areas, generally established on public land and with an emphasis on nature free of overt exploitation, are vital to protect biological diversity, the variety and interrelationships of living things on this planet (Lucas 1992). Parks reflect a nation's desire to preserve floral, faunal, and landscape diversity, as well as elements of national and cultural heritage.

Objective 2: *To evaluate the consistency of the United States and South African land acquisition policies.*

The study examined land acquisition policies used by national park system in the United States and South Africa. When analyzing the consistency of park policies, the study looked at how policies enabled managers to acquire land for park purposes. This was done by comparing the NPS land acquisition policy with the SANP land acquisition policy. The NPS land acquisition policy had its foundation on the U.S. C. 16 while SANP land acquisition policy is based on the National Parks Act 57 of 1976.

Objective 3*: Analyze selection criteria used to evaluate the suitability of land to be added to national park areas in the United States and South Africa.*

This study looks at how the NPS and SANP set their priorities in selecting parklands. The Committee on Scientific and Technical Criteria for Federal Acquisition of Lands for Conservation (1993) identified four important considerations that need to be evaluated in determining the appropriateness of new lands: conservation of sustainability, and management options.

Table I. Summary of Key Considerations for the Establishment of a National Park

| Conservation of Sustainability | Management Options |
|---|---|
| Contribute to Sustanability of Renewable Resources | Ability to Respond to Unanticipated Opportunities |
| Consider Cultural Resources and Biodiversity | Adhere to Standard Planning Model and Select an Option that Advances Selected Goals |
| Consider Means of Renewing Resources | Evaluate Costs and Benefits and Weigh Alternatives |

Source: The committee on Scientific and Technical Criteria for Federal Acquisition of Lands for Conservation 1993

Objective 4: *To identify and compare South African National Parks and National Park Service land purchasing options and how they fit the purpose of acquisition.*

The U.S., NPS and SANP employ a variety of methods for protecting park resources. In the case of the U.S. these are considered in the land protection planning process of each unit. Examples include: (1) full fee purchase, (2) condemnation by

eminent domain, (3) acquisition of lesser interest, (4) exchange, (5) gifts, and (7) leaseback (National Park Service 2000b). Government reports and interviews were used to evaluate purchasing options.

In South Africa, SANP purchased, exchanged, and received donated lands or they used compulsory acquisition (without compensation). The study looked at the methods the agencies have used to compensate people for their land. In the case of Kruger National Park, a Makuleke land claim was used as an example. This was done by examining literature and documents on land restitution. Compulsory acquisition was assessed against other land acquisition alternatives and how they have impacted management of the park.

## Primary Data sources

Data for this study were gathered using both the primary and secondary sources. Telephone interviews were conducted to obtain primary information from SANP and NPS.

Table II. Interviews Conducted

| National Park Service | South African National Parks |
|---|---|
| NPS Land Resources Manager and the Division for Planning and Protection | South African National Parks: Legal Services |
| Carlsbad Caverns National Park | Kruger National Park |
| The Trust for Public Land | |
| National Parks Conservation Association | |

Semistandardized Interviews

Interviews may be used either as the primary strategy for data collection or in conjunction with observation, document analysis or other techniques. They require personal sensitivity and the ability to stay within the bounds of the designed protocol. Semistandardized interviews involve the implementation of a number of predetermined question and or special topics. These questions are typically asked of each interviewee in a systematic and consistent order, but allow the interviewers sufficient freedom to digress, that is, the interviewers are permitted to probe far beyond the answer to their prepared and standardized questions (Berg 1995). Certain assumptions underlie this strategy. First, if questions are standardized, they must be formulated in words familiar to the people being interviewed (in the vocabularies of the subject). Questions in a

semistandard interview can reflect awareness that individuals understand the world in varying ways. Thus, the researcher should approach the world from the subject perspective. This can be accomplished through unscheduled probes which arise from the interview itself.

Interviews were conducted with National Park Service and South African National Parks officials that are responsible for land acquisition.

## Secondary Data Sources

Documents are traces that have been left by the thoughts and actions of people, and it is only through these traces that researchers can know the past. Documentary sources can be divided into two classes: documents and contemporary literature. Available data provide the social researcher with the best and often the only opportunity to study the past. Studies of the past can also be done to test general propositions about social life (Berg 1995).

The researcher reviewed and examined NPS and SANP documents and policies that govern the general administration and management of parks units. Among other documents included: American Antiquities Act of 1906, National Park Service Organic Act, 16 U.S.C.1-4, South African National Parks Act of 1976; Carlsbad Caverns Land Plan Use Carlsbad Caverns: Lechuguilla Cave Protection Plan; Carlsbad Caverns Establishment Act, Kruger National Park Management Plan. Contemporary literature used included research done on land acquisition procedures including reports that have been compiled by various organizations on land acquisition and current issues and

challenges in land acquisition. In South Africa contemporary literature addresses land claims and plans for transfrontier parks or peace parks.

Contemporary literature, on the other hand, is a residual term for all other written sources such as treaties, newspapers, and biographies, which are contemporary with the events or people under investigation. Literature reviewed looked at the history of park acquisition as it relates to park establishment and expansion. Contemporary literature reviewed included research done on land acquisition and current issues and challenges in land acquisition. South African contemporary literature included white papers, land claim reports, and plans for transfrontier parks or peace parks.

## Data Analysis and Interpretation

Llobera (1998) defines data analysis as a process of sifting, comparing and contrasting the different ways in which themes emerge within data. According to Llobera (1998), these questions include: *What ideas and representations cluster around them? What associations are being established? Are particular meanings being mobilized?* Analysis is a search for patterns in data- recurrent behaviors, objects, or bodies of knowledge. One pattern is identified and interpreted in terms of a social theory or the setting in which it occurred. The qualitative researcher moves from the description of a historical event or social setting to a more general interpretation of its meaning (Neuman 1991).

## The Illustrative Model

The illustrative method uses empirical evidence to illustrate or anchor a theory. Using the illustrative method, a researcher applies theory to a concrete historical situation or social setting or recognizes data on the basis of prior theory. Pre-existing theory provides empty boxes, and the researcher sees whether evidence can be gathered to fill them. Evidence in the boxes confirms or rejects the theory as a useful device for interpreting the social world. The theory can be in a form of a general model, an analogy, or sequence of steps. The illustrative should show that the theoretical model illuminates or clarifies a specific case or single situation (Neuman 1991).

## The Ideal Type Model

Neuman (1991) defines ideal types are models or mental abstractions of social relations or processes. They are standards against which the data or reality can be compared. The researcher develops a mental model of the ideal land acquisition method. These abstractions, with a list of characteristics, do not describe land acquisition methods. Nevertheless, they are useful when applied to many specific cases to see how well each case measures up to the ideal (Neuman 1991).

Figure III. is an ideal model designed to analyze the data collected for the study. From the literature reviewed, the researcher has build a model that illustrates land acquisition purpose, policies, land selection criteria and land acquisition options. Data analysis is guided by the study objectives. The model assumes that the most important issue in land acquisition is the purpose as defined by managers. Second, park managers

and agency officials evaluate land acquisition purposes against national parkland acquisition policies. Third, park managers set priorities and land selection criteria in order to see if the land is appropriate for acquisition. Last, park managers evaluate all the land acquisition methods, and then decide on the best method that will fit with the intended purpose defined previously.

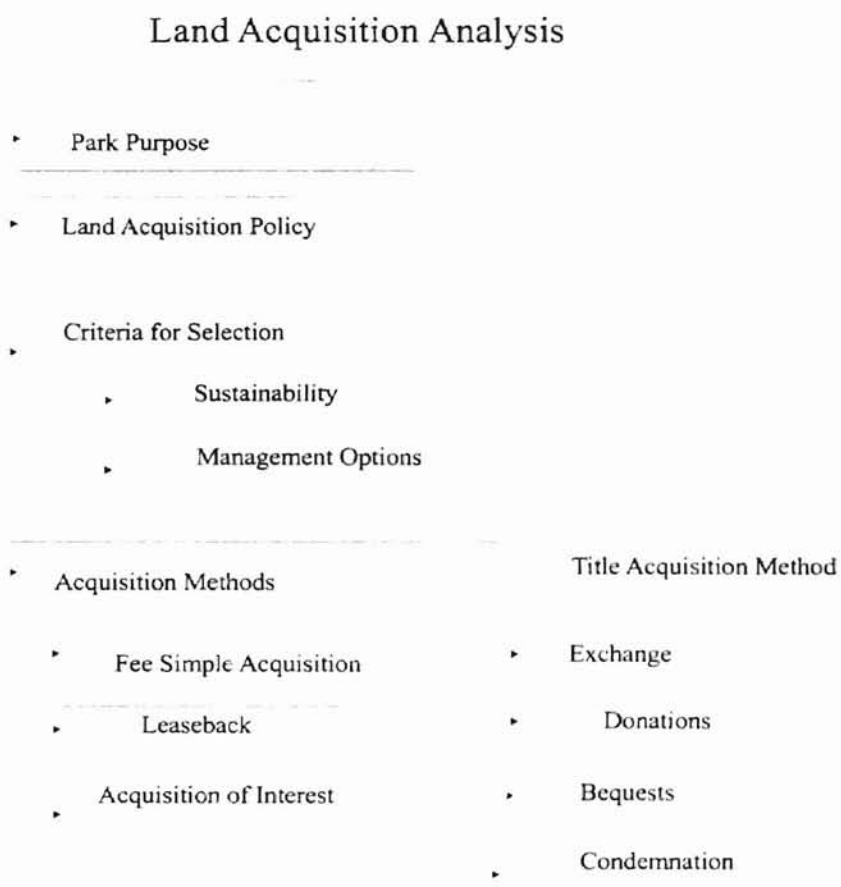


Figure III. Land Acquisition Ideal Type Model

The use of semistandardized interviews helped the researcher to collect information related to the history of parks' establishment. Questions asked were directed toward history of land acquisition. Interviews were also used to verify information collected from the documents. The historical comparative approach was used to identify differences and similarities in SANP and NPS land acquisition policies and land acquisition methods. Tables illustrating land acquisition methods that were used by park officials to acquire land over time have been built.

Documents were reviewed to look at how national parks' policies have been used to facilitate land acquisition. Some documents used included park plans and they helped in examining land selection criteria as well as land acquisition purposes. An illustrative model has been used to construct a sequence of steps with boxes that indicate each objective of the study. An ideal type model compares literature related to each objective of the study and the data collected for study.

# CHAPTER 3

# LITERATURE REVIEW

## Chapter Overview

Efforts to increase public ownership of land have grown dramatically in the last decade. History demonstrates numerous examples of efforts made by governments, rulers or individual landowners to protect certain land areas that possessed unique natural values. Some protected areas survived for several centuries, others were abandoned following changes in government. Nevertheless, these early efforts set a precedent for the idea that protecting landscape is important and that this effort should be a government responsibility (Wright and Mattson 1996).

For most conservationists, the highest priority has been the acquisition of environmentally sensitive lands. The acquisition and exchange of lands and easements for conservation purposes occurs at many scales and for different reasons. For example, minor alterations in the boundary of a park may facilitate management or eliminate non-conforming land uses. Conservation easements attached to mid-sized parcels of land may help conserve local biodiversity and scenic vistas, whereas the protection of large land areas may be necessary to protect a wide-range of species and ecological processes

(Wright 1998). The size of landscapes necessary to ensure the preservation of habitat and species diversity has been widely debated and suggests that approaches to conserving biodiversity must be complemented by more intensive reconnaissance to maximize the protection of resources, particularly the uncommon species.

Using examples from Lake Tahoe, California, Fink (1991) identified three purposes of land acquisition that were established by the Acquisition Bond Act . This legislation focuses on acquisitions that protect water quality by preventing development or damage to sensitive land. In Lake Tahoe land was acquired to head-off threats from development that would have adversely affected the region's natural environment. As noted by Fink, another reason for acquisition was that land was intended to be used primarily for public lakeshore access, preservation of riparian or littoral wildlife habitat, recreation, or a combination of these uses. Another reason was that park officials thought that if land was acquired, it would have to facilitate consolidation of public lands or provide access to other lands.

According to Shafer (1999), the NPS in the 1930s was concerned about the failure of many national park areas to be self-contained, self-walled biological units. They suggested that each park should contain a year-round habitat of all species belonging to the native resident fauna. Each park was expected to include sufficient areas in all these required habitats to maintain at least the minimum population of each species necessary to ensure its perpetuation. Where possible park boundaries were drafted to follow natural biological barriers, particularly life zone or similar habitat boundaries. This helped the NPS promote the idea of protecting ecosystems and areas of national significance. The idea of protecting an ecosystem helped the NPS identify the Greater Yellowstone

Ecosystem. However one quarter of the Greater Yellowstone Area consists of private land containing key winter range, migration routes, or fertile bottom lands (Shafer 1999).

In Europe, governments of densely settled countries designated parks to preserve scenic farming and grazing areas. In England and Wales, national parks are a direct result of human's activities over centuries. Although called the national parks, they do not follow the model as in other countries, notably the U.S., nor do they conform to the classification as set down by the UICN. The international description of areas suitable for national park designation is of the ecosystems not materially altered by human activity. Such land can hardly be said to exist in a small and relatively densely inhabited countries like England and Wales. Over a quarter of a million people live within national parks and every hectare is affected in some way by man's activities, largely agriculture (Stedman 1993).

In Britain, the national park system emerged as a practice of land conservation that respects the long established order of land tenure rather than wilderness preservation. As a result, national parks in Britain not only fully recognized existing rights but also seek to maintain the established farming system. Moreover, they formally involve in their management local government bodies, and special mechanisms ensure that local residents have a direct influence in decision-making (Colchester 1997). In Britain, agreements under which the owners and occupiers enter into voluntary contracts with conservation authorities are currently the favored means for resolving major conflicts between farming and conservation interest (Brotherton 1991).

The process of land acquisition in the establishment of parks has proved successful in holding natural areas in public ownership, but acquisition does not mean

that these areas are preserved or protected. Numerous threats to the resource base have been identified, emanating from within and outside the parks. Many managers believe these threats are symptomatic of a much larger problem related to park creation. For example, land acquisition procedures and park boundary delineation often have been conducted without consideration to biological or ecological regions. Political, economic, and administrative conveniences usually dominate park boundary decision-making despite scientific research and management practices that advocate better congruence between natural and legal boundaries. Management problems associated with boundary delineation include encroaching development, migration of resources outside park boundaries, and the flows of pollutants across park boundaries into parks, and interference with flows of resources into parks (Nordstrom et al. 1990).

## Land Acquisition and Politics

As noted by Carruthers (1989) the creation of a national park can only be understood in the context of the time and place it came into being. Fundamentally, the founding of a national park concerns the allocation of certain natural resources and for this reason it is a political, social and economic issue more than a moral one (Carruthers 1989). As suggested by Wightman (1996) land acquisition cannot separate itself from politics because it is a process that involves power. Yet it is not only the power structures inherent in the land tenure system, which leave people relatively powerless to protect and conserve common heritage, it is the pattern of power, which has developed within that system. Ownership of a parcel of land can be conceptualized as a bundle of rights. These

include (1) the right to sell or bequeath the land, (2) the right to keep others off of it, (3) the right to use it for farming, ranching, recreation, or timber production, (4) the right to extract minerals from it, and (5) the right to erect buildings and others structures on it (Crompton 1999). Once land is acquired by government agencies or by private non-profit organizations, it is the responsibility of the government to protect it through a legislation that will assist in management and use.

When considering international conservation intervention, land politics can be viewed as operating at two geographic scales. The first is global: it raises questions about the relations of power between the rural communities in the developing world and international conservation non-governmental organizations (NGOs), and about how power relations between local communities and the states are affected by global environmental agendas. The second is at the intra-community level. Many of the programs and projects that Neumann (1997) reviewed emphasize land registration and tenure reform in general as key to stimulating the adoption of more resource-conserving land use. Research indicates that land conflict in rural areas has often been heightened by land tenure reform and registration efforts (Neumann 1997)

Wightman (1996) points out that in Scotland, land acquisition during the 1980s saw two important developments in conservation land ownership. The first was the move from purchasing discrete areas of high conservation value to the purchase of much larger areas encompassing entire habitats. The second was the increased interaction with people who lived on these areas. Inevitably this raised tensions over the respective interests of, on the one hand, an organization with national conservation objectives and, on the other, local people with local agendas (Wightman 1996). In Scotland, replacing existing

landowners with conservation bodies does nothing either to reform the overall pattern of ownership, the system of land tenure or arguably, attitudes towards conservation. The growth in conservation land ownership is a statement of failure, not success and is deflecting attention from the underlying issues of power and rights over land (Wightman 1996).

Wightman further mentions that the challenge for conservation is to reform the relationships between society and land. This can be achieved in the short-term through entering the system in legal partnership with local people in key areas and in the medium-term by promoting forms of common ownership within which local people are empowered and resources to conserve nature are under a statutory framework. However, long-term conservation will get nowhere without active engagement by people at all levels. People can be participants in nature conservation as part of a holistic approach to land management. However, the land tenure system itself must be reformed to include the conservation of the natural world as one of the critical obligations placed on the legitimate desire of private interests to own land (Wightman 1996).

In the context of broad struggles over land use that have shaped political and economic relations, those with political power have often built preserves to restrict commoners' use of land. Premodern rulers in many regions created game parks, forest reserves, and gardens for their use. In the modern period, states and economic elites split political and economic authority over land, but they have often joined their efforts to control access to land (O'Neill 1996).

In countries such as the United States, United Kingdom and Australia, national parks emphasize sentiment and pride. For example, in the United States ideas about the

preservation of areas of scenic beauty were mobilized to promote American national feeling and to emphasize the distinction between North America and Europe (Runte 1987). In Australia too, the ideology of nationalism both fed upon and also encouraged the romanticisation of the Australian frontier experience. National parks thus appear to be connected to a country's cultural evolution and in this way serve to weld together different, and perhaps disparate, groups within it. This is also true of South Africa in the mid-1920s, as English speaking and Afrikaans-speaking whites united for a common national identity. Their creation of national parks played a role in the process of unifying these two culturally different, but economically converging groups (Carruthers 1989; Carruthers 1995; O'Neill 1987).

## Land Acquisition and Indigenous People

Indigenous people identify themselves by the importance of the bond with their lands and their distinct cultures. The main conflict for indigenous people centers on land and resources. The emphasis for most governments of the twentieth century was creating parks in which people did not hunt, gather, farm or even collect medicinal herbs. Whenever government established such parks, the results took away access to lands previously held by indigenous people. (Gray 1991; Neumann 1998; Stevens 1997).

National parks and other protected areas have imposed elite visions of land use, which resulted in the exclusion of indigenous land use activities. As suggested by Colchester (1997) what is equally clear is that the western conservationists' concept of

wilderness is a cultural construct not necessarily shared by other people and civilizations who have alternate views of their relationships with nature. An unhappy truth which conservationists have only recently come to admit is that the establishment of most national parks and protected areas has had negative effects on their prior inhabitants. So powerful has been the notion that conservation is about preserving wilderness that conservationists have been intensely reluctant to admit that indigenous peoples and other local residents have rights in protected areas (Stevens 1997).

In the U.S., before the establishment of the Indian Reorganization Act, Indian land had been passing into the government's hands at the rate of about 2 million acres per year (Burnham 2000). The world's first national park, Yellowstone, had originally been conceived as a preserve for both nature and Indians. The Shoshone residents of Yellowstone were expelled from the area, and records suggest that there were violent conflicts between park authorities and the Shoshone as demonstrated by clashes in 1877. Nine years later administration of the park was turned over to the US Army (Colchester 1997; Stevens 1997). It is clear that a large number of indigenous people were forced to move when parks were established.

Yosemite National Park stands as an exception where there were no forced removals of Indians. Yosemite Indians lived in the Yosemite Valley until they were compelled to move out in the 1930s as part of efforts by NPS officials to bring the park in line with the rest of the National Park System. The vanishing of Indians was not sudden. They were gradually driven out by the deterioration of their village and by dwindling job opportunities in the parks, problems that park authorities did nothing to

address (Spence 1996). The park was the only one to have included the Native American community within its boundaries.

The U.S. government established structures that were aimed to deal with Indian affairs, especially issues pertaining to land acquisition and ownership. The Bureau for Indian Affairs (BIA) was established to protect Indian land from public and private acquisition. The Indian Reorganization Act, passed in 1934, ended the allotment of Indian Country. The Act also set up fund to purchase land for landless Indians even though Congress didn't allocate sufficient money and it ended sales of the surplus land. The Indians Claims Commission (ICC), established by Congress in 1946, was to resolve Indian grievances for improper land takings, fiscal management, and host of other complaints, all to be heard in the special court where tribes had the right to sue the federal government. As noted by Burnham (2000) ICC had its own imperfections. It was only empowered to grant monetary compensation, not to return aboriginal land. Moreover, the court was composed exclusively of non- Indian commissioners with little knowledge of tribal history and methods of mediation. It assessed land on subsistence rather than market values.

In some cases Indians offer the Park Service an easement or interest compatible with NPS land uses and administration. NPS did not buy the land from the Oglala Sioux Tribe (Indians from Badlands National Monument) but NPS manage and on behalf of the tribe. The NPS was offered to manage land because of the costs involved.

During the first half of the twentieth century, the national parks became instruments of colonial rule in many countries in the Americas, as well as Africa, Asia and Australia. As the idea of national parks spread to the colonies, it failed to

acknowledge traditional rights and use. As noted in Colchester (1997) and Stevens (1997) traditional environmental management knowledge and skills were looked down upon and were gradually eroded by colonialism. For example, the establishment of protected areas for wildlife conservation in India was found on the forestry experience, and reinforced by the concerns of colonial sportsmen and native aristocrats who wished to preserve game for hunting.

The model for wildlife conservation that was adopted in India was based on experience in the United States. Local people were treated as poachers and encroachers rather than as local owners with prior rights. The tribal residents of many of the areas favored for wildlife preservation were held responsible for the decline in local fauna, particularly as some were by then involved in a lucrative trade in game birds and feathers. It thus transpired that despite the very different historical trajectories of the conservation movement, the needs and rights of indigenous peoples received short shrift (Colchester 1997; Stevens 1997).

In Africa, although hunters and gatherers and agrarian tribes apparently had maintained systems regulating customary hunting rights, European settlers imposed new systems of property ownership and started intensive mine, sheep and cattle operations. In East Africa, this led to the creation of protected areas and forceful removals of the Maasai from an increasingly great area of their traditional pastoral lands in Kenya and Tanzania. Many of the earliest and famous East Africa's national parks and nature reserves were established on Maasai lands including Amboseli, Nairobi, and Serengeti National Parks (Stevens 1997).

In southern Africa, the Boers urged the government to prohibit hunting by the Africans and pushed for the establishment of game reserves where Africans were excluded both in the use and management of natural resources. The South African Republic created game reserves in the Transvaal in 1892 and in Natal in 1894. Siting of game reserves near the state's reservations for Africans made the game parks a means for the Europeans states to limit self-support by Africans (Carruthers 1989; Carruthers 1995; O'Neill 1996).

South Africa saw a total of three million South Africans uprooted from the designated conservation areas in a program that was aimed at achieving territorial segregation. For example, a number of land claims have been filed by communities against SANP. Establishment of national parks such as Richtersveld and Augrabies were based on forced removals of communities. Another example can be seen in the period between 1933 and 1969 when Africans were not consulted at the time when Transvaal administration established the Pafuri Game Reserve. In most cases these communities did not have any legal representation in the government structures. It was only in the 1990s that the African communities were able to voice their grief for land taken by the SANP. In Augrabies removals took place between 1973 and 1974, to allow the expansion of the Augrabies National Park (Battersby 1994).

When Namibia was under South African colonial authority, SANP occupied the Ovambo territory without consulting the local communities. In doing so they put fence around the Ovambo occupied area in order to protect perennial springs and artificial waterholes that became part of the Etosha National Park. Because the fence excluded the

Ovambo community from the water sources the community left the area because they did not have any alternative source of water (Armstrong 1991).

According to Hough (1988) imposing national parks on native communities has had a number of negative consequences, including restrictions of access to traditionally used resources. It also resulted in the disruption of local cultures and economies by tourists and colonists, increased depradations on crops and livestock by wild animals and the displacement of their traditional lands leading to social and cultural disruption, and enforced poverty. As populations expand, their increasing demands for land and resources caused conflicts between national parks and their surrounding human communities to escalate.

As suggested by Lucas (1992) a possible approach would have been for the proponents of the protected landscapes to foster a climate of public and political opinion that encourages a positive attitude towards the establishment of protected landscape. This could have encouraged the community to strongly support the idea of protected areas and also see the area as one of significance needing protection from overuse or from other types of development that would change its character in a manner seen as environmentally and socially undesirable.

Some of the most underdeveloped communities in Africa are located within areas surrounding national parks. More recently, there have been policy shifts toward the integration of wildlife conservation concerns with socio-economic needs of the rural communities living in the neighborhoods of national parks. The emerging policy shifts have often yielded trickle-down benefits to the communities, and concrete progress in rural development has so far remained tentative (Tapela and Omara-Ojungu 1999).

The Contractual Parks

Contractual parks require a strong partnership between the local communities and the government in order to safeguard and support indigenous rights, community-based conservation and self-determination. Governments may be less interested in true partnership than in maintaining a strong level central policy making, planning and enforcement. Co management can nevertheless be means for indigenous peoples to gain greater recognition of their land rights, legal recognition of their system customary tenure including communally owned or used lands (Stevens 1997).

In Richtersveld (South Africa), the SANP proposed the idea of park establishment in the early 1970s but most local residents remained unaware of these plans until at least a decade later. The park was lauded as a great achievement for conservation of natural resources for national significance. Change in South African politics in the early 1990s is reflected in the South African National Parks land acquisition methods. For the first time in the history of the country, South African National Parks was forced to consult the Nama Pastoralits living in the Richtersveld before turning their rugged mountain territory into the Richtersveld National Park, which was proclaimed in 1990. It is the country's first contractual national park, in which land has initially been leased for 30 years from the local subsistence herdsmen. The Namas, most of whom remained in the area herding their sheep and goats according to agreed rules, are represented on the management

committee of the park to ensure their interests are considered within decision making. According to the agreement signed between the Namas and the SANP, the Namas get a significant proportion of all earnings from the park. They also get top priority for jobs for which they are qualified, and the SANP is obliged to offer training in subjects to improve access to jobs (Battersby 1991; Ramphele and McDowell 1991).

## Land Acquisition Policies

Governments set policies in order to accomplish their objectives within a specified period. There are two approaches that a government can use to implement a policy in order to achieve established goals. First, a top-down perspective that starts with a policy decision, such as statute, examines the extent to which the legally specified objectives are attained, and emphasizes the structural design of the implementation proceed. The alternative approach, a bottom up perspective, starts by defining the public and private actors involved in carrying out a program and creates an implementation network by moving from street level bureaucrats and their clients to higher level policy makers. The top-down viewpoint emphasizes program effectiveness and the ability of elected officials to guide the behavior of implementing officials. Land acquisition policy should clearly outline the acquisition procedures that the government should follow in different situations. It should clearly define the roles that different people should play in the process of acquisition and should aim to facilitate the acquisition of lands in the

national interest either by agreement with the owner or by compulsory acquisition and provides for the calculation and mode of payment of compensation (Freyfolge 1995).

In the Seychelles, the Minister plays an important role in the process of land acquisition. If the minister is of the opinion that it is necessary to acquire any land in the public interest and there is reasonable justification for causing the hardship that may result to persons having interest in that land, the minister publishes a notice of intended acquisition. The notice is given wide publicity and states the purpose for which land is intended to be acquired. It also specifies the period within which the land is acquired. After the notice of intended acquisition is published, the Minister and landowners begin with land sale negotiations (Commonwealth Law Review 1997). Besides the acquisition alternatives and title acquisition methods, there are other important issues of land acquisition that the policy should consider: land selection, land appraisal, compensation, adjacent lands and inholdings.

## Selecting Potential National Park Lands

Parks Canada (2000) suggests that park officials should devise innovative approaches in land acquisition programs. They should be able to decide the specific land to acquire and adopt the best site selection strategies. In selecting national park lands, considerations may be given to a wide range of factors including: (1) the extent to which the area represents the ecosystem diversity of the natural region (biogeographical principles), (2) the potential viable populations of wildlife species native to the region, (3) competing land and resources use, and (4) the implications of native people's rights,

comprehensive land claims, and treaties with natives and international criteria for national parks (Parks Canada 2000).

In the United States, areas considered for addition to the park system are subject to criteria dealing with significance, suitability or feasibility and management alternatives. An area proposed primarily for its natural or cultural resources must possess outstanding national significance as determined by professional evaluation.

According to the NPS (2000c) park significance must relate to the theme contained in the park system plan, or a theme that is underrepresented in the system. The area must also be feasible for administration, protection, and preservation. It should be of adequate size and configuration to preserve the significant values and contain such additional lands as may be necessary to accommodate essential public and administrative needs.

## Land Appraisal and Compensation

Land acquisition policy should provide guidance on how to select a land appraiser and also how land appraisal should be carried out. As noted by Lusvardi (1996) because of the intervention of government and preservationists to protect the physical environment, the market for land with sensitive natural resources in some areas is thin or disappearing. In some areas land acquisitions by government and non-profit organizations is taking place at the rate to which there is no longer enough valid information for buyers and sellers to make informed choices and for markets to run

smoothly. Lusvardi further mentions that in such thin or disappearing market conditions, the most unique, high-quality land is sold in small numbers, mainly to government agencies or non profit preservation organizations and land identified as less critical may not be sold at all.

What is often unrecognized by real estate appraisers in active preservation market areas is that seemingly normal private sales transactions, not just government land acquisitions, are affected by both public and private measures to preserve the environment. The cumulative effects of various measures to protect the environment reduces the amount of competition for environmentally sensitive land, mostly to a tier of limited market and non-market buyers. The market for the land identified to contain the most sensitive environmental resources may be reduced to only government and non profit preservation organizations that may exert embargo-like conditions on the transaction of such properties (Lusvardi 1996).

Many countries have land acquisition laws that require prompt and adequate monetary compensation for persons who lose their land and property. However cash compensation has may negative consequences, particularly for tribal and other marginal populations. Tribal economies are in large part non-monetized, based on reciprocal exchange of goods and services; therefore, people are not well-accustomed to managing cash (Zaman 1999).

In the United States, the Fifth Amendment to the constitution protects property owners against uncompensated takings by the government. As with all constitutional rights, it creates an implied right to a judicial view. However, property owners often demand compensation that is higher than the property's actual value, forcing the

government to agree to an out-of-court settlement. A just compensation scheme for regulatory takings is offered, though low market value property owners may be at a disadvantage (Esposto 1998).

In Canada, the Crown has maintained ownership of important natural resources while allocating rights to use those resources to the private sector. Schwindt and Globerman (1996) identified two questions that every compensation policy must address. First, what is a compensable taking? Second, if the taking is compensable, how is the level of compensation to be calculated? Any country accepting the notion that the state should compensate when it takes property must contend with definitions of *take, property* and *compensate*. The relevant question is, if compensation is to be paid, what rule should be used to determine appropriate compensation in any specific case. There are other potentially relevant aspects of this issue. In particular, the credibility of the government's compensation policy may depend upon how the policy is administered or whether the government is perceived as bound by its announced compensation scheme (Schwindt and Globerman 1996).

## National Parks and Adjacent Lands

Parks can be looked at as patches of protected habitat surrounded by unprotected areas that may have dramatic changes in the environmental features. The areas protected as national parks may be defined in terms of their legal and biotic boundaries. Legal boundaries are established by the highest legislative authority of a country while the

biotic boundaries are hypothetical boundaries that are necessary to maintain existing ecological processes and a given assemblage of species (Newmark 1985).

In most units of the United States National Park System, the NPS lacks meaningful authority for dealing with the problems of incompatible use on lands adjacent to boundaries of NPS units. Instead, the agency's cooperates with local government and private landowners (Jarvis 1982).

Dale (1997) used Shenandoah National Park to demonstrate sources of conflict between park authorities and local communities over park lands and boundary issues that face some national parks in the United States. Shenandoah National Park was assembled from privately owned lands in Virginia's Blue Ridge Mountains, a range that had been settled by European colonists more than two centuries before the park's establishment in 1926. Within this context of park establishment, many legal, social and economic obstacles to the establishment of the park developed that took years to solve. In particular, problems arose from acquiring thousands of privately owned parcels and relocating the inhabitants of these areas.

At Shenandoah National Park, boundary issues have created problems for management. After the land transfer had been made, the NPS had significant difficulty determining the actual location of the park boundary; creating conflict between the NPS and adjacent property owners. Tensions have also arisen due to the park's topography. The mountain ridgeline location of the park encourages visitors to trespass on private lands to reach the park. Tension between the NPS and landowners has fueled a surge in the property rights movements that allege that the government and non-profit conservation groups are plotting to seize private land for park expansion. This theory has

found fertile ground in areas where memories of the forced removal of the park families remain strong (Dale 1997).

In developing countries, proposals to create zones of controlled exploitation outside existing park boundaries are likely to meet with massive opposition. A similar outcome is frequently found in developed countries due to complex regional patterns of land ownership. For example, the extension of Yellowstone National Park in 1883 brought protest from adjoining ranchers, miners and others. The situation has not changed in more than 100 years. The fears of adjoining landowners weigh heavily on whether and how land use planning is undertaken outside park boundaries (Shafer 1999).

## Inholdings

There are about seven million acres of privately owned land within the 84 million acres of the U.S. national parks, and even more within state parks. Just like private lands elsewhere, these lands can be developed or sold, and landowners can build access to their property across public lands (Lazaroff 1999). Side by side with growing pressures by inholders is the growing recognition that new concepts in park creation depend on nurturing compatible economic and other activities on lands not owned outright by the NPS. While inholdings are in many instances devoted to uses compatible with the policies of the nationally protected areas, adverse uses of such non-federal lands can threaten the physical integrity of parks and the wilderness areas or conflict with the purpose for establishment (Sherpard 1984; The Conservation Foundation Report 1985).

The growing number of private and public inholders, together with the lack of money for land acquisition, creates a gray area in managing park resources. The question is, how much control should the NPS have over lands that lie within park boundaries but are owned by others? In the United States the NPS has been accused by the National Inholders Association of meddling with private property and by conservationists of excessive timidity (The Conservation Foundation Report 1985).

Inevitably, conflicts arise, for even the most conventional private land uses are frequently incompatible with the historic, archeological, and ecological preservation mandates under which the NPS operates. When private land uses intrude upon park protection, a much more delicate problem arises. Exercise of the eminent domain power is not a fully satisfactory solution either, for people are nearly as unhappy to be removed from their land, even with full compensation, as they are to be regulated. Neither does local land use regulation usually meet the parks' needs, for the constraints land owners are willing to impose upon themselves through local government frequently fall far short of the protection that Congress and the NPS believe is minimally required (Sax 1980, The Conservation Foundation Report 1985).

The incompatibility of private land development with public parks is not a new problem, although it is more severe now than ever before. National parks are rarely thrust upon an unwilling community, and many of the laws establishing parks were carefully tailored to obtain the acquiescence of the host community and its congressional representatives. In some instances strict limits on land acquisition have been inserted in establishing statutes, precisely to protected development opportunities for nearby landowners. At times, park boundaries have been drawn to exclude private holdings

within a park, creating wholly surrounded enclaves; at other times, boundaries are established- quite irrationally from a managerial or ecological point of view-so that private uses inevitably adversely affect the purpose for which the park was created.

In the United States, incompatible practices led to a rather formalistic set of policies that still exists for old parks ( those established before July 1959). First a distinction is made between inholdings (lands inside the boundaries of a park, but not federally owned) and lands outside the boundaries. The current policy respecting inholdings is one of eventual acquisition (when and if there is a willing seller) on the theory that all land within the park boundary sooner or later should come under the control and management of the NPS. As to land outside the boundaries, however, there is no such policy, nor is there any policy of federal control of these lands. Consequently, a tract of private land nearly surrounded by a park is, like all private land adjacent to a park, wholly outside the park's control. The physical boundaries of the park are therefore treated as problem boundaries, that is, as the appropriate natural boundaries of the area of the park's concern (Sax 1980; The Conservation Foundation Report 1985).

A somewhat different policy exists for all parks established after July 1959. For these new parks, the policy is one of prompt acquisition of all privately owned lands within park boundaries, as contrasted with the old park policy of eventual acquisition. Exceptions permit existing residents of new parks to retain their residences and a few acres of surrounding land for their lifetimes or a period of years, as long as they do not significantly change their present use of the land. The policy regarding lands outside new park boundaries is the same as the policy for old parks: Congress does not plan to acquire or control such lands (Sax 1980).

Within new parks in the United States, almost all private holdings have been or are being acquired. The land that has not been acquired is protected by local zoning laws that are kept in place by the threat of condemnation. The biggest problem in new parks is that acquisition funds are sometimes not authorized promptly enough to prevent incompatible development of private tracts or to prevent a price escalation that might eventually deter Congress from completing the acquisition.

# CHAPTER 4

# LAND ACQUISITION IN THE NATIONAL PARKS

## Chapter Overview

This chapter looks at how parks have acquired lands and how they have used different land acquisition techniques over time. It traces the history of park establishment and land acquisition. The chapter examines how land acquisition policies have helped facilitate land acquisition and examines NPS and SANP criteria for selecting parklands. It also looks at how the parks have used different land acquisition techniques.

## Historical Background: Carlsbad Caverns National Monument

Known as the Bat Cave to local communities, Carlsbad Caverns remained unexplored until the 1880s. The earliest exploration for which records exist took place in 1883 when William Caldwell Sublett reportedly lowered his son, Rolth, for a brief time into the area near the cavern entrance. Over time, deposits of bat guano attracted attention, and eventually thousands of tons were taken out of the caverns by mining companies. Among these miners was Jim White who devoted several years to exploration of the cave. Around 1901 White was drawn to the cave by a billowing black cloud of

emerging bats. Exploration of what lay beyond the natural light of bat cave and the twilight zone continued for nearly twenty years. Later, while working intermittently as a miner, White began to explore farther reaches and subsequent efforts to share his discoveries with others brought interest in the cave. The first organized trip into the cave took place in 1922 (Ise 1961; Albright 1985; Hoff 1997).

In 1905, the Santa Fe Railroad conveyed (transferred ownership) their rights to 40 acres of land in the area of the caverns. Rights for the area were conveyed to C.T. Hagen and land was patented on December 30, 1905. Ownership of the 40-acre land changed hands numerous times and eventually, in 1918 title was vested in T. A. Blakely of San Bernardino, California. As a Mineral Examiner for the General Land Office, Robert Holley arrived in April 1923 to survey the cavern, and determined that the only patented land within three or four miles of the cave entrance belonged to the Santa Fe Pacific. He also recorded some state land to the west under lease to Charles Grammer.

Hoff (2000) has noted that despite the cave's discovery in the late 1800s, Bennett Gale's (Park Naturalist) examination of land records in the Las Cruces office of the BLM 1947, revealed no mention of the cavern's entrance or of Bat Cave on the area's map. He also noted that with the exception of placer mining notices, no claims had been made to the land immediately surrounding the caverns entrance. However, land to the east lying over Bat Cave was held in private ownership.

Enabling Legislation: Antiquities Act of 1906

The large caverns appealed to the scientific community, which took responsibility for popularizing the site. Dr Willis Lee and Mr. Robert Holley explored the caves late in 1923. Captivated by what Holley saw and with the help of Dr Lee, they recommended that the cavern be designated as a national monument. In 1923, Carlsbad Caverns Cave National Monument was proclaimed by President Calvin Coolidge. The Antiquities Act of 1906 authorizes the President of the United States at his discretion to declare, by public proclamation, historic landmarks, historic and pre historic structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the government of the United States to be national monuments (Rothman 1989).

During its years as a national monument there was no superintendent to oversee the cavern area. The monument had two custodians, Drs, Lee and McIlvain who were responsible for management and the administration of the national monument (Hoff 1997). When the monument was created, it included some areas that were not on federal land. Although this was not a deliberate act, the President's proclamation to create the monument created problems because it had appropriated state of New Mexico land. For nearly two years, the National Park Service negotiated for a land exchange with the state of New Mexico to legally acquire this area. On March 12, 1925, the New Mexico Governor signed a bill authorizing the area to be conveyed to the U.S. government as part of the monument. (Hoff 1997, Hoff 2000).

## From a National Monument to a National Park

In 1930, Congress passed the Carlsbad Caverns National Park Establish Act. The Bill was introduced by Representative Simms of New Mexico and signed into law by President Hoover. One of the reasons why the park bill passed without much opposition was the fact that revenues to the monument exceeded expenses. In addition to changes made to the park, the name was changed to Carlsbad Caverns National Park. The bill that established the national park provided that on recommendation of the Secretary of the Interior, the park might be enlarged to include additional designated lands (Ise 1961; Albright 1985).

### Land Acquisition

The NPS has employed a number of land acquisition methods in Carlsbad Caverns. These include public land withdrawal, donation, exchange, purchase, and condemnation. Table II provides a summary that shows the use of different acquisition methods used between 1923 (establishment of the national monument) and 1965.

Table III. Land acquisition alternatives used at Carlsbad Caverns National Monument and National Park between 1923-1965

| Year | Acreage | Acquisition Method | Form of Ownership |
|---|---|---|---|
| 1923 | 720 | Public land withdrawal | Public Land |
| 1924 | 85,683 | Public land withdrawal | Public Land |
| 1928 | 2,560 | Public Land withdrawal | Public Land |
| 1928 | 0.34 | Donation | Private |
| 1930 | 34,560 | Public Land withdrawal | Public Land |
| 1933 | 40 | Donation | Private |
| 1933 | 440 | Purchase | Private |
| 1933 | 9,236 | Public Land withdrawal | Public Land |
| 1934 | 80 | Purchase | Private |
| 1939 | 39,4881 | Public Land withdrawal | Public Land |
| 1940 | 40 | 25 years lease | Private |
| 1950 | 320 | Condemnation | Private |
| 1959 | 5,732 | Donation | Private |
| 1963 | 1,055 | Public Land withdrawal | Public Land |
| 1965 | Missing data | Exchange | State of Mexico |

Public Land Withdrawal and Additions

The park's first withdrawal of land was the original 720 acres that established the monument in 1923. Over the history of the Carlsbad Caverns, far more land was withdrawn for possible use than was acquired. For instance in 1924, 85,683 acres were withdrawn pending determination of whether the land should be reserved for national park purposes. In May 1928, 2,560 acres were added to expand the park as means of protecting natural resources and on June 17, 1930 another 34,560 acres were withdrawn. At this point 123,522 acres or 193 square miles were available for inclusion in the park. The act, creating the national park also provided that the park could be expanded from these withdrawn lands. On February 21, 1933 Franklin Roosevelt added 9,239 acres to

the park. In 1939, another 39,488 acres were added to the park that included Slaughter Canyon Cave and much of the western park. At this point, the park contained approximately 49,000 acres. The biggest withdrawal was signed by President Franklin Roosevelt on February 3, 1939, encompassing over 36,000 acres. On December 30, 1963, 1055 acres were withdrawn and added to the park (Hoff 1997; Hoff 2000).

Received Donated Land

Three times the park has received donated land: May 10, 1928, January 20, 1933 and October 14, 1959. In 1928, Miss Dorothy Swigart donated 0.34 acres that were used for the Superintendent's house. This land, along with the residence, was later disposed of in the 1970s by the Government Service Administration (GSA). In 1933, W.B. Grammer donated 40 acres of land and in 1959, Wallace Pratt donated 5,732 acres of land in McKittrick Canyon. At some point, this acquisition referred to as Deed 12 became Deeds 1 and 2 at Guadalupe Mountains National Park (Hoff 1997).

Purchasing Land and Water Rights

On January 20, 1933, on the same day that W.B. Grammer donated 40 acres of lands to the park, the park purchased 440 acres of land from him for $15,000.00. To make this purchase possible, the NPS put up $7,500 and the State Highway Department, at the request of the Eddy County Commissioners, put up another $7,500. Subsequently over

the next two years the present Walnut Canyon road was constructed through this acquired area.

Scarcely a year later, on January 23, 1934, the park purchased water rights and 80 acres of land at Rattlesnakes Springs from Ida M. Harrison for $7,540. While the park managed the Rattlesnakes Springs area, including an area designated as a Civilian Conservation Corps (CCC) area from 1938-1942, it did not become part of the park until December 1963. Rattlesnakes Spring was acquired for the primary purpose of ensuring a reliable domestic water supply for cavern area development. Within this area a water supply pipeline from the spring, which is still in use, was completed in 1935.

The Blakelys, owners of the General Fertilizer Association Company, retained ownership of this land located over the Bat Cave from 1917 until December 1957. In 1940 they threatened to resume guano mining in the Bat Cave. In exchange for not doing so, the Blakelys received a 25-year guano-mining lease at Slaughter Canyon Cave. In December 1957, the Blakelys gave up the lease and received $5,000 from the government for the 40 acres, half of their requested selling price of $10,000. Land purchase gave NPS full title to land.

Exchanging and Condemning Land

The park exchanged land with the state of New Mexico on January 14, 1965 and with a private individual, Mr. Mayes, on April 11, 1965. In May 1950, the park purchased 320 acres for $ 5,040 from E. E. Scoggin. This was not normal purchase because Mr. Scoggin was an unwilling seller and his land had to be condemned as a

public taking. Scoggin fought the taking and eventually appealed to President Truman to force the National Park Service to leave him alone. At one point he asked to be appointed a game warden so that he could stay on his land. In the end, he chose to leave the area.

According to the Carlsbad Caverns Land Protection Plan of 1984, the NPS attempted to acquire privately owned land on several other occasions. The plan reviewed several methods of acquisition or control including fee simple acquisition, the purchase of easements and land exchange. Fee simple acquisition was eventually determined to be the desirable method because the tract of land was surrounded by federally owned lands and because the area was officially designated as wilderness under the Public Law 95-625.

In trying to acquire the private land, the NPS encouraged the landowner to donate it to the NPS. They pointed out that if the owner was to donate the land, there would be tax benefits. The Carlsbad Caverns National Park Land Plan of 1984 suggests that the owner had always been willing to discuss a trade (land exchange) for BLM lands nearer to or within his main ranch property southeast of the park and that he selected some BLM tracts for consideration. Exchange of these tracts was rejected by the BLM for various reasons. Authority then allowed for the acquisition of this land by donation or exchange only. The Land Protection Plan recommended that if ongoing efforts to acquire this tract through donation or exchange are unsuccessful, the Park Service would have to seek legislative authority to acquire it with donated or appropriated funds (National Parks Service 1994).

The park expanded rapidly in the period between 1930s and the 1960s. This expansion was helped by the availability of public lands that were withdrawn from public

use and set aside for park extension. Figure IV illustrates the expansion of the park over time.

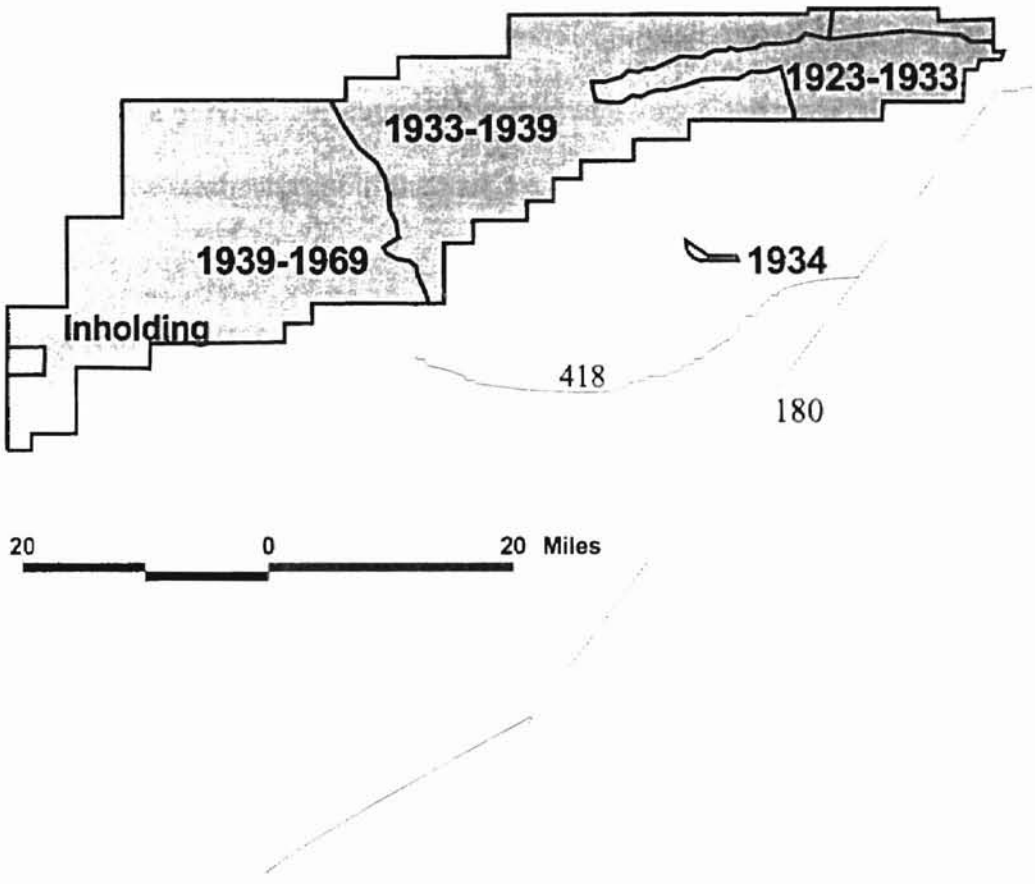


Figure IV. Carlsbad Caverns National Park:
Establishment and Expansion

In addition to acquiring areas managed by the other federal agencies, the NPS also embarked on aggressive land acquisition projects throughout the 1930s. Already favored because of its ability to employ thousands in public works projects, the NPS met with little local resistance to the land withdrawals necessary for park expansion favored by the Depression and the success of New Deal programs (Rothman n.d.). A national park seemed to guarantee economic survival in an era when most economic activity in the rural west was associated with federal programs. Carlsbad proved especially fertile territory for the Park Service. The community enjoyed a long history with the federal government, and the establishment of the park was as much a local triumph as an agency victory. Efforts to expand the park seemed to be popular for the town of Carlsbad and the entire Trans-Pecos region. A larger park meant more people, more money, and more jobs, all desirable during the 1930s. The existence of vast tracts of public domain land near the existing boundaries offered an easy opportunity to expand without the grappling associated with taking land held by the Forest Service that so typified the 1920s (Rothman n.d.)

Although Carlsbad area had no special problems for acquiring land and expanding park boundaries, the NPS goals proved to be ambiguous. First and foremost was the expansion of the agency's domain, a goal inherited from the Mather regime. Next, the NPS sought to broaden its constituency. Under Albright, this meant that the definition of what could be included in the park system was more malleable than it had been under Mather. Garnering support from powerful political leaders ranked high in agency

priorities, as did gaining an advantage against agency adversaries. This loose formula dictated when the Park Service acted and when it was silent, when it expanded hard-won capital and when it watched from the sidelines (Rothman n.d.)

## Revising Park Boundaries: 1963

In 1963, the United States Committee on Interior and Insular Affairs proposed the revision of Carlsbad Caverns park boundaries. The purposes of land acquisition in 1963 were: (1) to adjust and fix boundaries of the Carlsbad Caverns National Park; (2) to eliminate from it by these adjustments approximately 4,500 acres and to add it to about 1,816 acres; (3) to authorize the acquisition of approximately 2,721 acres of state-owned land within the new boundaries by exchanging approximately 2,720 acres of Federal land which would be excluded from the park, (4) to authorize the acquisition of about 640 acres of private land within the park by exchange for federal acreage of equal value outside the park and, (5) to repeal authority given the President in 1930 to enlarge the park to a total of 124,000 acres (United States Committee on Interior and Insular Affairs1963).

Park boundaries were redefined by excluding 4,497 acres from the then park and by adding 1,815 acres, which was a net reduction of 2,681 acres. Within the revised boundaries, there were 2,721 acres of state-owned lands. State owned lands were authorized to be exchanged for 2,719 acres from federal land. It was also suggested that

about 640 acres of private land within the park be exchanged for other excluded federal lands of approximately equal value.

## Carlsbad Caverns Wilderness Area

Congress designated 33,125 acres of Carlsbad Caverns parkland as wilderness in 1978. This was done because of the areas' outstanding opportunities for solitude and primitive recreation. The Chihuahuan Desert Ecosystem and Lechuguilla Cave are found in the congressionally designated wilderness area. Carlsbad Caverns National Park is managing its wilderness according to the National Park Service Wilderness Preservation and Management Guidelines (National Park Service 1973; 2000d). Figure V shows the Carlsbad Caverns area that was designated as wilderness.

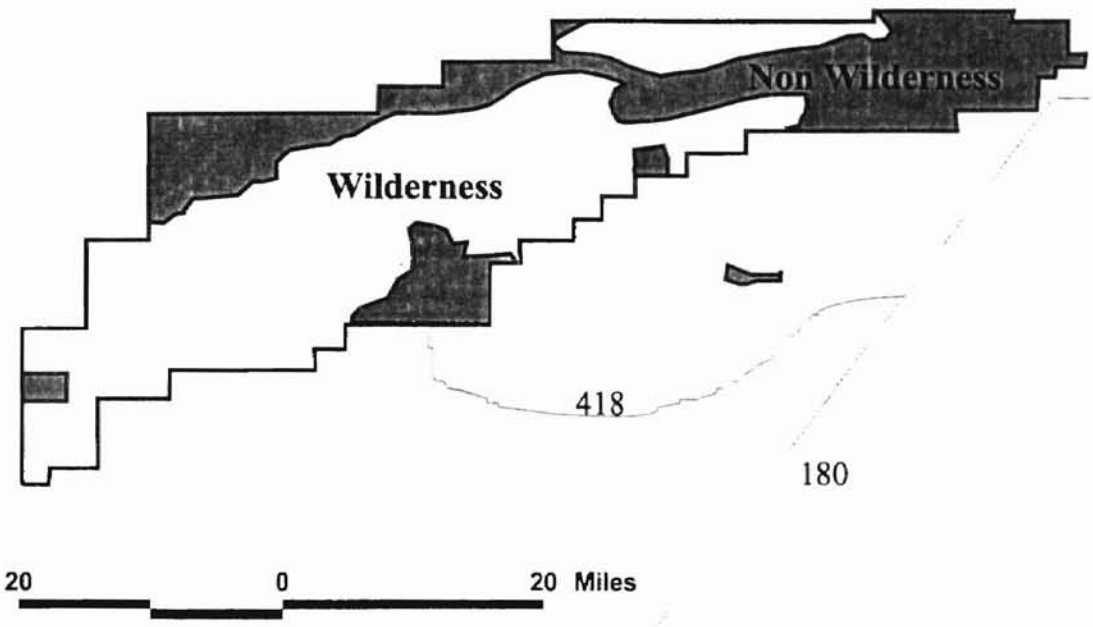


Figure V. Carlsbad Caverns Wilderness Areas

## Land Protection: 1984

The Carlsbad Caverns National Park's Land Protection Plan of 1984 was intended to address the issue of the remaining 320-acre parcel of private land within the southwestern portion of the park. When boundaries were revised in 1963, it was erroneously believed that all of the acreage within the park's authorized boundaries was already under public ownership either as part of the public domain under jurisdiction of the Bureau of Land Management or by the state of New Mexico. It was discovered that one tract of land was privately owned. Administrative files revealed a belief that the Land and Water Conservation Fund Act provided authority to purchase this last remaining inholding on an opportunity basis if the owner was willing to sell. As noted by Carlsbad Caverns National Park's Land Protection Plan of 1984 important cave resources are known to exist both within and around this tract, including several of the so-called pink series caves, which are scattered along the ridge south of Double Canyon, extending from the park into the adjoining national forest (Subcommittee on the Public Lands National Parks of the Committee on Interior and Insular Affairs 1984).

## Protection of Lechuguilla Cave: 1993

Lechuguilla Cave was known until 1986 as a small, mostly insignificant historic site in the park's backcountry. Small amounts of bat guano were mined from the entrance passages for a year under a mining claim filed in 1914. Since 1984, explorers mapped

100+ miles of passages and pushed the depth of the cave to 1,567 feet, ranking Lechuguilla as the fifth longest cave in the world and the deepest limestone cave in the country. Lechuguilla Cave lies beneath a park wilderness area. In February 1993 four geologists identified as the Guadalupe Geology Panel submitted a report to the National Park Service calling for the establishment of a cave protection zone that extended from the northern boundary of Carlsbad Caverns National Park to the intersection of the water table with the northern limit of the Captain-Goat Seep Rock Package, and the axis of the Dark Canyon syncline (Lyles 1999).

Late 1993 Congress responded by enacting the Lechuguilla Cave Protection Act, (107 Stat. 1993), which established a cave protection area of approximately 6,280 acres on the north side of the park that prevented mining and mineral leasing. The Act declared that Lechuguilla Cave and the other resources of Carlsbad Caverns National Park and adjacent public land share internationally significant scientific and environmental values. These values should be retained in public ownership in order to remain protected against adverse effects of mineral exploration and development and other activities presenting threats. However, there is gap between the cave protection zone in this legislation and the northern boundary recommended by the Guadalupe Geology Panel. Lyles (1999) suggests that there could be magnificent, yet undiscovered caves of the quality of Lechuguilla in this zone, which could be irreparably damaged by oil or gas exploration or other mineral activities. For this reason it was recommended that in order to extend the park protection zone, the area of the withdrawal should include the entire cave zone as defined by scientists (United States. Committee on Natural Resources House of Representatives 103rd Congress)

External Threats: Drilling near Lechuguilla Cave

The Yates application to drill on BLM land was controversial, with cavers and environmentalist because of the potential for damage to the famous cave. The BLM decided not to allow Yates Energy Corporation to drill on a site near Carlsbad Caverns National Park because the site is less than half a mile from the park boundary and less than two miles from Lechuguilla Cave (National Parks Conservation Association 1994).

Yates Energy Corporation drilled an exploratory well on federal land just north of Carlsbad Caverns National Park. The location was in a canyon tucked out of sight from all but a few backcountry visitors. The operator failed to find indications of petroleum, plugged the well, and quietly moved along. The controversy centered on drilling oil and gas wells into the same karst system that houses the Lechuguilla Cave. To many people the proposal seemed to trivialize the very resources Carlsbad Caverns was created to preserve. Concerns focused on the operator's inability to ensure that drilling fluids, brine, hydrocarbons, or poisonous gases would not contaminate the cave-forming strata. The NPS had no permitting authority for the well, but cooperated with the BLM to develop the Dark Canyon Environment Impact Statement. Three years in making, the Environment Impact Statement exemplified cooperation among government agencies, the environmental community, and the oil and gas industry. The record of decision was touted as one based on sound science and established a *no drilling cave protection zone.* It also set strict drilling and production criteria aimed at cave protection where drilling would be permitted (National Parks Conservation Association 2000).

In 1999 the BLM proposed to withdraw about 9,000 acres of public land near Carlsbad Caverns National Park from mineral development. If approved, this action

would prohibit oil and gas development and mining on these lands, strengthening protection for the cave system within the park. In addition, the New Mexico State Land Office had offered to trade BLM another 8,200 acres that would also be protected from mineral development. These steps are expected to safeguard over 17,000 acres adjacent to the park from oil and gas development (National Parks and Conservation Association 2000).

Major Boundary Adjustments

Because of the park's long, narrow shape, development and activities (oil gas exploration and extraction, and predator control) outside park boundaries could adversely affect the quality of wilderness and park resources, including caves. Several proposals to modify park boundaries have been made since the 1920s. Most have recommended expanding the park westward along the Guadalupe escarpment to the New Mexico state line which would connect Carlsbad to Guadalupe Mountains National Park and would add about 24,000 acres to the park by transferring land currently administered by the U.S. Forest Service and Bureau of Land Management. Also proposed has been to add a BLM wilderness study area encompassing Mudgetts Cave and Big Manhole Cave to Carlsbad Caverns National Park (O'Connell 1996).

After considering these proposals and consulting with neighboring agencies, the National Park Service has determined that the activities and resources are now being adequately managed. However, it has been recommended that greater efficiency and protection could be achieved by unifying under one agency the management of the entire

Guadalupe escarpment including caves within the Captain Reef complex (O'Connell 1996).

## Land Acquisition Procedure and Approval

Purchase of land in units of the National Park System is accomplished by the Land Resources Divisions of the Regional Offices or where there is a Land Acquisition Office located at the park level, by the appropriate field office. The real property interests sought and the order in which they are to be acquired are specified in each park's protection plan.

Pursuant to the Public Law 91-646, the government can offer no less than the amount of the approved appraisal. There is nothing in that Act or in its legislative history indicating that the property could not be acquired for more than the appraised value. Indeed, most land purchases in the National Park System since enactment of Public Law 91-646, exclusive of Big Cypress National Preserve and Everglades National Park, have been at prices in the excess of the appraised value. Such purchases have been justified on the basis that the alternative-condemnation has certain built-in costs and liability risks that can be saved or avoided by purchasing the land at a figure acceptable to the owner, even though higher than the appraisal. The Department of Interior agreed that acquisitions that exceed appraised value would be submitted to the Appropriations Committee for review.

Consistent with the above, when negotiations for purchase of property result in the property owner tendering an offer to sell in excess of the approved appraisal, a letter stating the offered amount and the appraised value is submitted to the Washington Office of the National Park Service. The letter also contains the pertinent background information, justification for acquisition, and justification for the cost in excess of the appraisal. This information is supplied by the Regional Office, the park Superintendent and, where applicable, the Field Land Acquisition Office. The following National Park Service Officers must clear the letter: The Associate Director, Park Planning and Special Studies; the Chief, Office of Congressional Liaison; Deputy Director and Director (Interagency Land Acquisition Conference 1992).

When a land owner undertakes or threatens to undertake a use of his or her land that the NPS considers detrimental to park resources and the owner is unwilling to sell his or her land, the Service will seek to prevent the damaging use by filing a declaration of taking. Before doing so, however, the Service must obtain the concurrence of the Senate Energy and Natural Resources Committee of the U.S. Senate and the House of Representatives. The letters seeking concurrence follow the same clearance process outlined above except that the Office of the Solicitor is added.

## Historical Background: Park Protection in South Africa

At the time when whites first settled in the Transvaal, both they and the African population of the region pursued wildlife for many purposes, such as profit, subsistence, and sport. When game species began to diminish during the course of the nineteenth century and the groups began competing with one another for access to hunting, it was necessary for regulations to be instituted. Although the prevention of wasting a valuable commercial resource was one reason for the introduction of early game protective legislation in 1846 and 1858, there was a concurrent desire for restricting access to natural resources to the group that wielded the most political and economic power. As noted by Carruthers (1989), conservation strategy failed in both respects and more extreme preservation measures in the form of game-reserve creation followed from the 1890s.

The intervention of the state in saving game has been evident at all times in the Transvaal. In fact, the legal status of game as *res nullius* (things that belong to no one) in Roman Dutch law brought the consequence in the Transvaal that game protection could be implemented only by the state, and initially it was this basic principle which brought game protection within the political arena. Because politically dominant groups wished to restrict access to game, they legislated against others who also desired to utilize it. Protectionism was therefore accomplished by prohibitive state policy. Before land was formally allocated in the republican Transvaal, attempts were made to restrict the hunting of game to members of the Voortrekker community (Afrikaans-speaking migrants). When wildlife on state land diminished, and as more and more lands passed into private

hands, those who did own land began to lose rights to game. Whites became powerful enough to withhold game from Africans in commercial hunting activities, whether the latter were occupiers of land or not (Carruthers 1989).

## Creation of the Kruger National Park

Paul Kruger (the president of Zuid Afrikaansche Republiek) is one who, among others, proposed the establishment of nature protection reserves in South Africa. Kruger's initial proposals in the late 1800s to the Volksraad, the parliament of the Republic of South Africa, were initially rejected but eventually led to the proclamation in 1894 of Africa's first game reserve, the Pongola. This area covered more than 15,600 hectares of ground along the north bank of the Pongola River in the edge of Transvaal between Swaziland and Natal (Braack 1983; Bannister and Ryan 1993). In 1898, Kruger succeeded in establishing the Sabi Game Reserve in the Transvaal's eastern Lowveld. The Sabi was comprised of a strip of land between the Sabi and Crocodile Rivers. Most important, the creation of the preserve was the beginning of a trend. For the first time a large area in Africa had been set aside expressly for conservation. Proponents of nature conservation were confronted with opposition and criticism. Unfortunately Sabi did not get off to a good start because a year later the Anglo-Boer War erupted. In the three years of strife that followed rules governing the management of game reserves became largely irrelevant (Braack 1983; Bannister and Ryan 1993).

Various methods have been used to acquire land at the Kruger National Park. These include exchange, purchase, lease, donations and forced relocations. Table III provides a summary that shows the use of different acquisition methods used between 1902-1969.

Table IV. Land Acquisition between 1900-1970.

| Year | Acreage | Acquisition Method | Form of Ownership |
|---|---|---|---|
| 1902 | 2 560,009 | Five Year lease | Private farms |
| 1902 | Missing data | Forced removals | Communal land |
| 1903-1905 | Missing data | Five year lease | Private farms |
| 1926 | 484,326 | Exchange | Private farms |
| 1933 | 49,421 | Forced acquisition | Communal land |
| 1939 | 10,341 | Donation | Private farm |
| 1940 | 9,943 | Donation | Private farm |
| 1941 | 2,055 | Donation | Private farm |
| 1941 | 10,007 | Donation | Private farm |
| 1946 | Missing Data | Donation | Private farm |
| 1957 | 1,843 | Exchange | Communal land |
| 1959 | Missing Data | Purchase | Private farm |
| 1969 | 49,421 | Forced relocation | Communal land |

## Land Acquisition in the early 1900s

The first appointed game warden of the Sabi Game Reserve, James Stevenson-Hamilton, wanted to conserve land reaching north from the Sabi River to the Olifants River because it was a home to a richer conglomeration of animal life than Sabi Game Reserve. Although divided into numerous large farms during the previous century and owned by the state as well as various land companies and wealthy individuals, the land had not been worked because of its wild character and as a result of fear of malaria.

Stevenson-Hamilton planned interviews to set negotiation forums with landowners. Game preservation seemed the best, and the only practical land use activity. There were no special regulations to support Stevenson-Hamilton and he possessed no judicial or other power. By negotiation with the government and landowners, Stevenson-Hamilton eventually secured agreements that guaranteed the protection of the animal and plant life in the area (Stevenson-Hamilton 1937; Braack 1983).

## Five-Year Lease

In furtherance of the park extension, Stevenson-Hamilton called separately upon the manager of every land-company owning property in the Sabi Olifants area to negotiate land leases. The success achieved surpassed his highest expectations. According to Stevenson-Hamilton (1937) nearly every land owning company agreed to hand over all their land in the Sabi Olifants area to government control. It was agreed that the government would control land and land use for a five years. This was done in order to safeguard fauna and flora, and in return, park managers took responsibility for collecting rents due from native tenants.

They agreed that within the lease period they themselves (companies) would not make use of land, nor sell, lease, or give any rights to third parties. These agreements had to be renewed every five years. Each company signed a separate agreement drawn up in identical terms. The government managed to secure 4000 square miles within the Reserve. Stevenson-Hamilton was also successful in having another piece of ground included in the proposed extension. By extending it twelve miles to the west, the foothills

of the Drakensberg included, and the Reserve gained, an excellent area of well-watered and relatively healthy country, suitable for such game as kudu and sable (Stevenson-Hamilton 1937).

Forced Relocations

The years between 1902 and 1926 are relevant because they contributed to the view that game reserves were white inventions which elevated wildlife above humanity and which served as instruments for dispossession and subjugation. One of Stevenson-Hamilton's first actions in 1902 was to remove African residents forcibly from the area of the original republican reserve. African forced removals did not take place either in the Sabi extension or the Shingwedzi because soon came to be realized that wildlife protection needed labor (for example, park guards). As suggested by Carruthers (1994) and Braack (1983) no Africans became partners in the protectionist enterprise, but instead were looked at as people who imposed danger to wildlife.

As a result, the policy of removing Africans from the game reserve was reversed. After May 1905, almost three thousand residents, like all other tenants on commonlands, were subject to the payment of rent either in the form of cash or labor. Tenants were allowed to tend crops and livestock within the boundaries of the game reserve provided that wildlife regulations were not infringed (Carruthers 1995).

Park Extension 1903-1905

In 1903 the Shingwedzi Game Reserve was proclaimed and Stevenson-Hamilton and his team become responsible for this area as well. The new reserve covered the entire area between the Limpopo and Letaba rivers, which gave Stevenson-Hamilton control over nearly 37,000 square kilometers (Braack 1983). In 1904, the southern Game Reserve extended from Crocodile River to the Olifants and from Lebombo in the east to the foothills of the Drakensberg in the west: this was known as the Sabi Game Reserve. The Sabi and Shingwedzi Reserves were separated by a mining area which Stevenson-Hamilton could not include either as part of the Sabi or Shingwedzi reserves. This is illustrated by map in Figure VI. However in 1904 the reserve comprised nearly 14,000 square miles of country (Stevenson-Hamilton 1937).

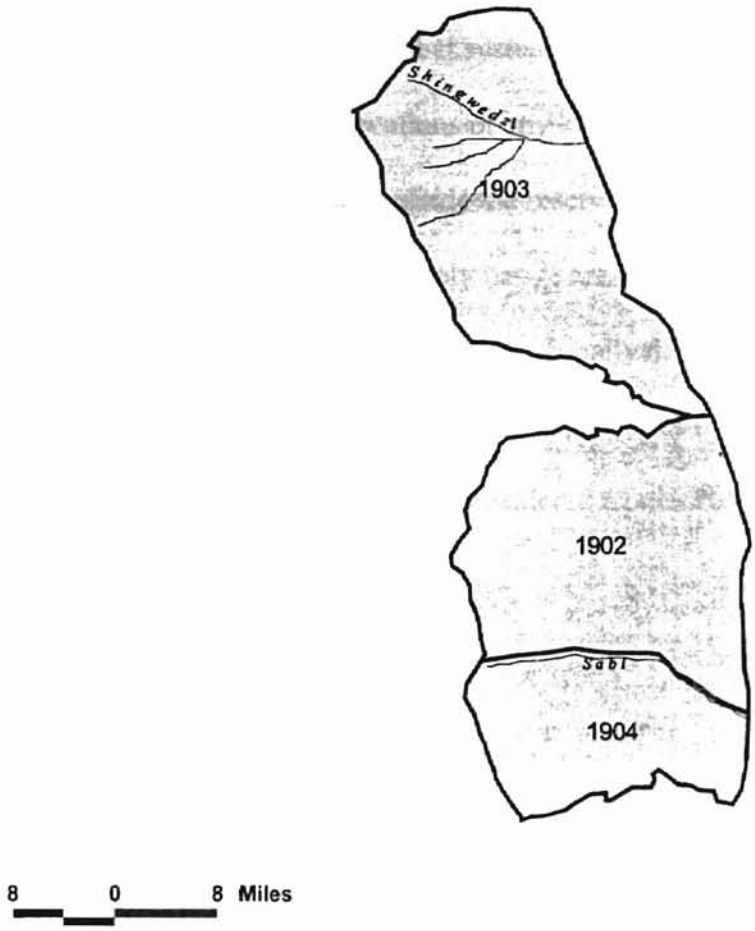


Figure VI. Kruger National Park: 1902-1904
Establishment and Expansion

Land appreciated in value, and for the first time there was a demand for opening other parts of the country to specialized land uses. The Africans of the low-and-middle-velds, living under their old tribal systems, increased greatly in numbers. There were no native reserves or native locations of any kind in the low country and many of the native squatters on land lying just outside the reserve. The government began to see the necessity of providing some purely native areas in order to keep natives out of the park. The national park scheme was still occasionally debated among supporters of wildlife preservation. However, difficulties and expenses of buying out the private owners appeared too great to allow to be considered a practical proposition (Stevenson-Hamilton 1937).

## Land Occupation Threats

Braack (1983) notes that as the numbers of people settled in the adjoining areas increased, the farming potential of Sabi Game Reserve posed serious threats to its existence. People questioned the existence and the usefulness of the park, and animals were regarded as wild and dangerous. It was at this time that Stevenson- Hamilton entered the most critical stage in the fight for the reserves survival. In 1912 a five-year agreement with the land association expired and these placed heavy pressure on the park management and government. In trying to justify the park's existence, Stevenson-

Hamilton proposed the establishment of a national park where visitors could view animals and scenery for relaxation and enjoyment. However, some groups were against the Sabi Reserve and sought to put pressure on government to reduce the size of the Sabi. A commission was appointed to investigate the advisability of altering the boundaries of the Sabi and Shingwedzi Game Reserves. Initially there were debates about the usefulness of the park. However, as the 20th century advanced, people's attitudes toward wildlife and park protection changed. The Transvaal Game Protection Association was partially responsible for advancing the concept of a national park and several public figures rose to encourage game conservation (Braack 1983).

A commission of inquiry appointed in 1916 recommended that the administration's policy should be directed toward the creation of an area to serve ultimately, as a great national park where the natural and the pre-historic conditions of South Africa could be preserved for all time. The commission's report recommended that the government should have the power to open portions of the Sabi Game Reserve for winter grazing on an experimental basis. As a result, the land between the Sabi and Olifants rivers was thrown open to winter grazing. Also proposed was that private land in the protected areas be exchanged for government land in adjoining areas and that farmers be compensated for land which was appropriated. Again, farmers did not accept the proposals (Braack 1983).

In 1922 the Transvaal Consolidation Land Company, which had by then purchased most of land in the Sabi Game Reserve, announced that the Company intended to assert its rights to the extent of establishing a cattle ranch in the middle of the Sabi

Reserve. The government at that time was not prepared to purchase land in order to save Sabi reserve.

## Politics and Park Establishment

According to Carruthers (1989) popular histories of nature perception in southern Africa usually portray the prelude to the passing of the National Parks Act in 1926 as a contest between the forces of good (those in favor of national parks) and evil (those antagonistic or apathetic to the idea). In South Africa many circumstances intertwined to make the national park system a reality. It was not merely accidental that the passing of the National Parks Act in 1926 took place at the same time as demonstrations of an aggressive, though perhaps still nascent, Afrikaner nationalism. Other manifestations of Afrikaner nationalism thrust included the adoption of Afrikaans as an official language, the revival of interest in Voortrekker traditions, the resurgence of republican sentiments and the loosening ties with imperial Britain. This represented a facet in the search for a common national identity for English speaking and Afrikaans speaking white South Africans, and Africans were excluded.

## National Parks Act of 1926 and Land Acquisition

Mr. Piet Grobler, Minister of Lands in 1923, devoted himself to ensuring that the legislation to established national parks was successfully carried through Parliament. He

had devised a noteworthy change in the original bill that was framed in 1923 that placed all future national parks under a board of trustees. With the establishment of the National Parks Board of Trustees, Parliament approved the National Parks Act as the guiding legislation for the management and administration of national parks and nature reserves throughout the country.

The government still held a considerable amount of unalloted land in neighboring areas which was available for exchange and they were prepared to deal generously with the private owners who wished to exchange their farms within the present Sabi Reserve for land lying outside. A sum of money was set aside to buy-out those who did not wish to exchange their land. At the same time the Minister made it clear that if owners would not accept the terms offered, it meant that compulsory expropriation was going to be applied at the market value of the time (Stevenson-Hamilton 1937; Braack 1983).

In April 1926, the Committee on Crown Lands made a unanimous report approving of the exchanges of land necessary to constitute Kruger National Park. The details had been settled by Major Percy Greathead, representing the Transvaal Consolidated Land Company, the largest individual owner of land in the Sabi Game Reserve, and Major Scott, Chairman of the Land Board, representing the government. Through this arrangement the land had been classed under various grades, and the basis of changing hands for proceeded on the lines of exchange for equivalent units of the government land lying outside. Where a piece of higher grade land was estimated at twice the value of another area of lower grade, two units of the latter were given for one of the former. The Company surrendered 196,000 acres of land in the Reserve in exchange of 135,000 acres of government owned land outside the park. The methods of

land exchanges to other companies and private persons proceeded on the same lines. Mineral rights went with exchange and sale on both sides. Some additions were to the reserve, which partly compensated for the 1923 reductions. Notable among these was the inclusion of the area of land lying between the Olifants and Letaba Rivers, which was proclaimed as a mining area. This area marked a boundary between the Sabi and Shingwedzi Reserves. The minister felt that as long as the park boundary was in the hands of the government, the government would be under pressure to alter the boundary (Stevenson-Hamilton 1937). Map in Figure VII is an illustration of Kruger National Park after the park officials exchanged lands with the Transvaal Land Consolidating Company.


Figure VII. Kruger National Park: 1926

Source: Carruthers 1995

## Land Acquisition in 1933-1969

A number of land additions and attempted land changes were made at the Kruger National Park between 1933 and 1969. These adjustments included the following: (1) the Pafuri Game Reserve, (2) the Numbi area, (3) the Central District and (4) the forced relocations of 1969.

### The Pafuri Game Reserve

The borders of the Kruger National Park remained substantially unaltered from 1926 until 1969 when the Makuleke community was removed from the Pafuri region. In 1912, the Makuleke community in the northern part of Shingwedzi was removed, thus reducing the game reserve area. However, owing to the scarcity of rangers in the north, the Makuleke community who had settled on the northern bank of the Levubu River, spilled back into the game reserve zone. Park officials regarded the area as a danger spot and in the 1930s, a proposal was put forward by the National Parks Board to include the tropical forest between the Levubu and Limpopo rivers within the park boundaries. The plan was to evict the Makuleke and move them on to lands further south which would be excised from the park for this purpose. Evicting the Makulekes in the 1930s was not an easy matter since the Native Affairs Department was on the side of the Makulekes (Carruthers 1995).

The Pafuri area was identified as early as 1933 as of high conservation value when it was proclaimed a game reserve under provincial legislation. Through the years SANP took various initiatives to have the area set aside so that it could be included in the

Kruger National Park. The first formal meeting for this purpose was held on 9 April 1947, when officials from the South African National Parks and the government met to discuss the request. The Makuleke community at that time was allowed to continue with their farming activities, although they were regarded as squatters who in time would have to vacate the area (Carruthers 1995; de Villiers 1999).

The Makuleke community in the district was regarded as a danger spot to wildlife. As a result, the Board proposed removing the Makuleke community. For many years the Native Affairs Department (NAD) opposed the Board on this issue. As a result, Makuleke district was proclaimed as the Pafuri Game Reserve, placing it under National Parks Board control (de Villiers 1999). Makuleke's location was surrounded by this reserve, although excluded from it, and this shown in Figure VIII.


Figure VIII. Kruger National Park: 1933- 1969

Source: Carruthers 1995

## The Numbi Area

In 1949, SANP officials negotiated a land exchange with the NAD for the Numbi area in order to trade the Numbi area for land of equal agriculture value in the vicinity. However, after surveys had been done, SANP did not want to exchange this land because the SANP land was of doubtful value. The SANP had previously suggested as an extreme action that the area in question and around Numbi should be included in the Kruger National Park by an act of Parliament on the premise that the national benefit by this action would be far greater than excising this land from the park for settlement by natives (Masterplan for the Management of the Kruger National Park 1985). Proclamation of the Numbi area as part of Kruger National Park materialized in 1957 when SANP exchanged 843 ha for 746 ha (Numbi area).

## The Central District

In 1933 the SANP Executive Sub-committee proposed the addition of all the state-owned farms on the Kruger National Park Boundaries. In 1934, the first addition was made when Mrs. Orpen bought 4,492 ha farm and donated it to the government for the inclusion in the park. The farm was officially incorporated to the park in 1935. In 1935 an amendment was made to the National Parks Act of 1926 to facilitated the inclusion of some state farmland. Between 1939 and 1946, Mrs. Orpen bought farms (approximately 17,638 ha) and donated them to the park. In 1951, there was only one privately owned farm within the Kruger National Park boundaries. The Department of

Lands approached the owner with the intention of purchasing the farm that was accepted. The farm was added to the park in 1959.

Forceful Removals: 1969

In 1957 NAD announced that, henceforth, all residents of Pafuri would be regarded as illegal occupants and would be required to return to their homelands. The Pafuri area was surveyed and its value estimated. An alternative land to the south at Ntlaveni (approximately 60 kilometers from claimed land) was offered to the Makuleke community. During the Apartheid era of the late 1960s, the Makuleke found themselves without allies and were relocated to the Ntlaveni area (Carruthers 1995; Tapela and Omara-OJungu 1999; de Villiers 1999). The community had no choice in the matter. A portion of the land at Ntlaveni was offered to the Makuleke (approximately 6,000 hectares).

## The Makuleke Land Claim

Following the institution of land reform policy by the post-apartheid government, the Makuleke people lodged a land claim against the KNP for the reinstitution of their land rights in the Pafuri area. In Kruger National Park, the claim was lodged with the Commission on Restitution of Land Rights and was dealt with primarily under the auspices of the Regional Claims Commissioner for Mpumalanga and Northern Provinces. As noted by the Land Claims Court of South Africa (1999), Makuleke land claim was

complex for a variety of reasons. First, the land was patently of importance for the purposes of conservation and promotion of biodiversity. Second, the area was strategically important, with the northern edge forming the border between Zimbabwe and South Africa and the eastern point of the land reaching as far as the border with Mozambique. Third, a portion of the land was used by the South African Defense Force for purposes of patrolling the border with a view of controlling illegal immigration. Fourth, there also appear to be mineral deposits on the land. Fifth, the Pafuri area that is classified as Schedule 1 ecological zone of the park, is considered a very valuable section of the park by conservation agencies.

The Makuleke community based their claim on the grounds that they were deprived of their land rights by means of discriminatory legislation and by policies. They never agreed to the exchange and no adequate compensation was offered to them for the land and their possessions lost. Other grievances over the eviction from the original Makuleke territory seem to have emanated from the fragmentation of the community and the alienation of wildlife resources. SANP feared that land claims could reduce the area of the park or affect management of certain areas. They also feared that the Makuleke community might re-impose traditional communal lifestyles and other potentially damaging developments after successful land-claims (Kruger National Park Management Plan 1997).

## Land Restitution

The land restitution committee set terms to verify the validity of land claims and also to determine the form of compensation that the government could employ. The Land

Claims Court laid out criteria in order to verify the validity of the land claim. For example, these criteria examine the conditions under which the land was taken and the form of compensation that was paid for the lost land.

There were no disputes that the Makuleke community did indeed occupy the land in the manner required by the Restitution of Land Rights Act. The community argued that they had been deprived of their land and removed as a result of discriminatory legislation and practices. They also noted that the law under which they were declared squatters and subsequently removed to consolidate the Gazankulu homeland would have violated the new constitution. The community insisted that, though the area was proclaimed part of the national park, the actual purpose was to consolidate the homeland, remove a black spot (Africans occupying an area that was demarcated as a protected area) and create a security buffer between South Africa and Mozambique (de Villiers 1999).

The next question was whether the community received adequate compensation and assistance from the state in return for the losses suffered. The community argued that they did not receive compensation either for the land or possessions lost, or for building new houses and infrastructure at Ntlaveni. SANP argued that the community did receive 6,000 hectares, and contended that this was fair compensation. There is no evidence of financial or any other compensation paid to the community to make up for their loss of their possessions and the cost of erecting new dwellings. The Makulekes and the Department of Land Affairs rejected the contention that adequate compensation was given to the Makulekes before during the process of removal. SANP could not argue this case because the land that was exchanged did not belong to it and, it acted only as a

curator on behalf of the state. SANP officials also had no documented evidence of compensation paid (de Villiers 1999).

As far as feasibility of restoration of land rights was concerned, negotiations were facilitated by the undertaking, given at an early stage by the Makuleke community, that they did not want the land for residential, agricultural or mining purposes. Instead, they indicated that they wanted its conservation status preserved, and that ecotourism should be the only form of commercial activity allowed. This effectively addressed the fears of SANP and conservation groups that the land might be used for purposes that would be severely detrimental to the environment.

Establishment of a Contractual Park

The National Parks Act provides that SANP and a private landowner may agree to have land declared a national park, or part of a national park, under conditions that are mutually acceptable. This provision, added to the Act in 1986, became necessary for two reasons. First, because of limited funds to purchase lands for national parks, SANP has an option for expanding parks through joint ventures with private landowners. Second, it means that there is a forum that combines conservation with private interests through partnership with landowners. A number of national parks have been established or extended on this basis- for instance, Richtersveld, Cape Peninsula (Table Mountain), West Coast, Tsitsikama, Cape Agulhas and Skilpad National Parks.

The Makuleke agreed to have the land declared part of the Kruger National Park for 50 years, provided that the agreement may be cancelled after 25 years (by mutual

agreement). Both parties also agreed that the cancellation would not affect the conditions in the Deed of Donation referred to above. This means that even if the land loses its national park status, it still has to be used for conservation purposes. The agreement may be extended for a further period acceptable to the parties. The area is to be known formally as the Makuleke Region of Kruger National Park.

These agreements are similar to the agreements that were signed by the Canadian National Parks and the Canadian Natives of the Klaune National Park. Canadian National Parks agreed to incorporate native Indians in park management structures and also to give them priority in terms of employment and training opportunities (Sneed 1997).

## Transfrontier Conservation Areas and Kruger National Park

In Southern Africa, countries have come together to promote Transfrontier Conservation Areas (TFCAs). The main aim is to help bind together southern Africa's nations in a vast network of sustainable and environmental partnerships, protecting their unique natural inheritance for generations, and promoting a culture of peace and cooperation. The countries involved are Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

Peace Park Foundation facilitates the establishment of the Transfrontier Conservation Areas (Peace Park). The foundation has identified land to be acquired for the development of the TFCAs taking into account the rights and circumstances of communities living on such land. The Foundation intends to purchase the land for leasing to the various conservation agencies, or negotiate with private landowners and residents

of communal lands for leasing on a contractual basis. They also aim to negotiate with governments and semi-government bodies with regard to political and land tenure and legal issues associated with TFCAs (Peace Park Foundation 1999)

The Kruger/ Banhine-Zinave/ Gonarezhou TFCAs

The Peace Park Foundation has proposed seven TFCAs with the largest being the Kruger/Banhine-Zinave/Gonarezhou Peace Park that would create one of the most impressive conservation regions in the world, having an area 95,700 square kilometers. The South African side will incorporate Kruger National Park and a number of privately owned areas on the western boundaries of the park. Zimbabwe's portion of the TFCA will include a small area of communal land and Gonarezhou National Park. Mozambique will incorporate Gaza National Park, Zinave National Park, Banhine National Park and a large area of state owned communal land with a relatively low population density (The Peace Park Foundation 1999). The Kruger National Park extension will be largely determined by the success of Peace Parks and the Foundation's ability to raise funds for land acquisition and the willingness of landowners to sell their land.

An important consideration for the Peace Park Foundation with any of the proposed Transfrontier Conservation Areas (TFCAs) is the question of communities occupying land within those areas. They are offered the choice of leasing the land to the TFCAs and being given priority consideration for training and employment within the park's management and tourist developments, or to continue their lives within the TFCA boundaries but protected by fences from the wildlife. The Makuleke community chose to lease their land to the TFCA and share in the profits of eco-tourism. Similar sensitive

negotiations are involved with private game parks and farms that fall within, or neighbor, the proposed TFCAs to secure the widest cooperation possible (Peace Park Foundation 1997).

## Land Acquisition Procedure and Approval

According to the National Parks Act (57) of 1976, the Minister of Environmental Affairs and Tourism has the power to approve land acquisition after consultation with interested parties. This act requires the Minister of Environment Affairs and Tourism must consult with the Minister of Mineral and Energy Affairs. This is done to notify them of the intention to declare the land in question to be a park. The Minister must consider all serious objections to the proposed declaration of the park and must have answers which plausibly meet those objections. Finally, the minister must ensure that there is a rational connection between the decision to create a park and the information at the Minister's disposal, including any concerns supplied by the Minister of Energy Affairs (Statutes of the Republic of South Africa-National Parks Act 1976). There is only one essential feature of the agreement, namely that the owners of the land in question must agree to make it available for the purposes of the park (Breitenbach 1996).

In most cases land is privately owned and needs to be purchased. The land is bought only if SANP has sufficient funds and if the owner is willing to sell. If the owner indicates willingness to sell, a valuator is appointed to obtain the market value of the property. There after, the valuation is used as a basis for negotiations. Once agreement

has been reached between the South African National Parks (as buyer) and a seller, the sale goes through the normal legal procedures that apply to the sale of property. A contract is drawn up and signed by both parties and handed over to a conveyancer to handle the transfer. Once transfer has taken place, the seller is paid, and the property is proclaimed in terms of the Act as a national park or as part of an existing national park. The details of the property are then published in Schedule 1 of the Act.

Where there are stakeholders (local communities, local enterprises, other state departments or anyone with the legitimate interest in the park), a public forum may be established to allow individuals or groups to participate in the development of the park. This is a way of ensuring that the new park brings benefits to the region in terms of tourism "spin offs" and development opportunities (benefits beyond boundaries is the way it is expressed in the theme of the pending World Parks Congress in 2002). Once the park is established the forum can develop into a Park Committee, an advisory body on which stakeholders are represented and which guides the development of the management plan for the park. In 1997 a Kruger National Park management team revised the park's Management Plan. Among the major issues examined were land acquisition policies (Novelli 2000).

# CHAPTER 5

## DISCUSSION AND SUMMARY

This chapter provides a comparative summary of land acquisition at Carlsbad Caverns and Kruger National Parks. Included here are findings concerning the differences and similarities in land acquisition. The land acquisition ideal type model is used to illustrate those differences and similarities in land acquisition by NPS and SANP. Study findings are also linked to each research objective.

Objective 1: *To examine land acquisition purposes and forces behind land acquisition efforts in the United States and South African national parks.*

When examining land acquisition purposes, it was discovered that both Kruger and Carlsbad Caverns National Parks used land acquisition, not only for nature conservation purposes, but also used by their governments.

Carlsbad Cavern was established to conserve scenery of supreme and distinctive quality. Land has been acquired to conserve natural resources and cultural resources and to provide recreation opportunities. In contrast to Carlsbad Caverns National Park, Kruger National Park was established to support viable populations of wildlife species native to the region. The park was established to protect wildlife from over harvesting

and poaching. Both parks have been managed following the IUCN guidelines and both parks cater to tourist industries, scientific research and educational purposes.

The NPS has always been faced with the challenge of inholdings within their parks. The NPS acquires inholdings only if their land use or activities pose threats to the park's resources. NPS has always been trying to eliminate or reduce the number of inholdings within the park boundaries. They even went to an extent of reducing the park size in order to adjust boundaries and reduce inholdings. Unlike the NPS, the concept of inholdings does not exist in the South African Park System. Land found within the borders of the park is owned by the Makuleke community and it is co-managed by the community and the SANP. Whether it is a contractual park or an inholding, park agencies are always concerned with the compatibility of land uses.

Objective 2: *To evaluate the consistency of the United States and South African land acquisition policies.*

The Organic Act of 1916 is the backbone of park establishment in the U.S. Because the NPS has land acquisition policies, there are no major complications in acquiring land other than financial constraints and conflicting interests.

There is no record of any formal legislation that was used to establish first protected areas or game reserves in South Africa. When Sabi and Shingwedzi Game Reserves were established in the early 1900s, there was no formal authority to support their existence. These two reserves survived because of the commitment of key individuals and, nature conservation groups who were determined not only to protect wildlife but also to control hunting.

In the U.S., Carlsbad Caverns National Park establishment and land acquisition have been consistent with the Organic Act of 1916. Unlike the NPS, SANP does not have a separate policy concerning land acquisition for park purposes, nor does it have a land acquisition supporting statute such as Uniform Relocation Assistance and Real Property Acquisition Act.

As mentioned earlier parks in South Africa have often been established for political purposes. The South African National Park Act of 1926 was an instrument that the former government used to support discriminatory laws aimed at dispossessing Africans of their land. For almost eight decades, SANP used forced removals to acquire land. The establishment of the Land Claims Court of South Africa serves as evidenceof inadequate land acquisition and nature conservation in South Africa.

Objective 3: *Analyze selection criteria used to evaluate the suitability of land to be added to national park areas in the United States and South Africa.*

Land selection criteria are largely determined by the nature of conservation in each country. The study revealed that there are some common elements between land selection criteria in the U.S. and South Africa. The NPS and SANP consider the extent to which the national park areas represent ecosystem diversity and ecological integrity of the areas as well as those of surrounding areas. Both the NPS and SANP give national significance a high priority. For many years in South Africa parks were not significant to the citizens of the country because they were used to deprive native inhabitants of their lands and the right to use them.

The NPS has declared more than half of the NPS' parkland as Wilderness at Carlsbad Caverns National Park. There are no wilderness area found within the borders of the Kruger National Park and there are no areas that are managed as wilderness. South Africa does not have a wilderness act, although they define wilderness the same way it is defined in the U.S. Wilderness Act of 1964.

Objective 4: *To identify and compare land purchasing options and how they fit the purpose of acquisition.*

There are similarities between SANP and NPS land acquisition methods. The NPS and SANP purchased, exchanged and received donated lands to establish and expand parks. Public land withdrawal accounts for a larger percentage compared to other alternatives at Carlsbad Caverns National Park because the park is surrounded by federally owned lands. Where possible, the NPS emphasizes the *willing buyer-willing seller* philosophy in land acquisition. In the case of condemnation, the NPS tried to treat those affected fairly by offering just compensation. In condemnation proceedings, an independent third party was required to settle the fair market value. In cases where land was acquired by a mistake (Presidential Proclamation in 1923 and the revision of park boundaries in 1963), the NPS made every effort to correct those mistakes by following proper land acquisition procedures.

The SANP's National Parks Act of 1976 lacks details in terms of land acquisition alternatives, or title acquisition methods. It does not have any legislation that supports land acquisition. Although some land acquisition methods were the same as those used in the U.S., South African land acquisition techniques are rooted in racially discriminatory

laws. When SANP acquired land for the park establishment, they were aware that there were African communities within the areas, and that these lands were communally owned. The National Parks Act of 1926 did not accommodate acquisition of communally owned lands but instead forced the removals of native peoples. Unlike the NPS, SANP did not apply legislation such as the Expropriation Act and the National Parks Act to obtain ownership of land at its market value. Methods used to acquire land from private companies and farmers (which were owned by whites) were different from those used to acquire land from the African communities. The establishment of the Pafuri Game Reserve and the forced relocations of the Makuleke community (1969) demonstrate how land negotiations differed from race to race.

## Other Findings

The United States has an advantage in having organizations that support public land acquisition such the Trust for Public Land and National Park Conservation Association (NPCA). These organizations have played a role in facilitating land acquisition for park purposes and have also made contributions by publishing guides for buying land in support of conservation efforts. This enables agencies to plan for real estate transactions.

At Carlsbad Caverns National Park, threats are posed by the drilling of oil and gas as proposed by private companies. Some lands around the caverns area are not owned by the NPS. As a result, the NPS cannot control what happens on adjacent lands as they do not have jurisdiction in such areas. Similarly Kruger National Park has been threatened

by land claims that were filed against SANP. The SANP feared that if the Makulekes were to get their land back, there might be problems in controlling their activities within the park.

When Carlsbad Caverns National Park was established it did not encounter opposition in the same way as was experienced in the establishment of the Kruger National Park. The reason could be that, at the time of establishment of the Carlsbad Caverns, Americans were accustomed to the concept of national parks and park agencies. When Kruger National Park was established, South Africans were not familiar with the concept of national parks, and as a result some people were opposed to its establishment.

As it has been mentioned earlier in the chapter, Kruger National Park was also used for political reasons and the park was employed as a unifying element for both the Afrikaans speaking and English speaking Whites after the Anglo-Boer War of 1899. Kruger was also used to consolidate an African Reserve of Gazankulu by removing Africans from dermacated protected areas. The establishment of the Land Claims Court of South Africa shows that there were inequalities in the system of conservation within South Africa.

When reviewing literature (including South African Eden by Stevenson-Hamilton 1937), it was noticed that there was very little information concerning the forced removals of 1902. One would have expected Stevenson-Hamilton, as the first park warden, to give more details on the removal of people when the Sabi Game Reserve was established.

## Summary

Figure IX. is an illustration of the ideal land acquisition model. It compares NPS and SANP land acquisition by referring to each objective of the study. Because of the problems with South African land acquisition methods and policies, SANP is now faced with the challenge of land claims and nature conservation. The SANP is required by the South African constitution to account for its actions and to settle the matter with the dispossessed communities and land claims court.


Figure IX. Ideal Type Land Acquisition Model: Carlsbad Caverns and Kruger National Park

## Lessons Learned from the Study

South Africa needs a formal policy that will guide and support land acquisition. This policy should be consistent with the objectives of the National Parks Act of 1976. The policy should be a reflection of the democratization and transformation of the SANP and the South African Parks System. Clearly stated land acquisition policy makes it easier for agencies that acquire land for park purposes. This policy should focus on the following:

1. Land Acquisition Purposes: This policy should clearly state and define land acquisition purposes that may depend on the nature of the parks and other protected areas that are managed by SANP. A clear definition of land acquisition purposes will help separate parks from politics.
2. Land Acquisition Alternatives: The policy should expand on the existing land acquisition methods. It should examine each method, where, when and how each method can be applied, and how each would help to accomplish SANP nature objectives. The SANP should consider using other land acquisition methods such as easements and acquisition of interest and consider how they might be applied in South Africa.
3. Realistic Analysis of Land Owners and their Interests: The policy should enable SANP to analyze the form of ownership as well as landowners' interests in order to be able to determine the best acquisition alternatives.
4. Compensation: It is important that the SANP establish a land acquisition policy that will have a strong support system in order to ensure that landowners are treated in a

fair manner. This policy should take into consideration different forms of ownership, and use appropriate methods to acquire land.

5. Conflict Management Strategies: With the establishment of the contractual parks and joint management strategies, SANP should expect complexities in future land acquisitions. Conflicts may emanate from conflicting interests or failure of some parties to meet expectations. Land acquisition policy should also look at conflict management strategies. This policy can also encourage the local communities to initiate or propose the establishment of protected landscapes as a form of regional development while retaining national quality control.

## Conclusion

The study shows that acquiring land for nature conservation involves many issues ranging from, from management and administration to political issues. This study did not look at factors that affect land acquisition such as financial constraints and availability of land. As a result, there are opportunities to expand this study. Future studies might look at the changes in land acquisition policies and methods in post-Apartheid South Africa. Studies may also compare contractual parks in countries such as Canada and Australia with those in South Africa.

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APPENDIX I

1. *South African National Parks, (Legal Services): Research Coordinator*

SANP manages systems of national parks and other units that represent the indigenous wildlife, vegetation, landscape and significant cultural assets of South Africa for the benefit of the nation. SANP has a legal service office that was established to manage and administer land acquisition. SANP legal service handles land acquisition for all the parks and nature reserves in South Africa and they keep almost all the documents pertaining to land acquisition and the establishment of national parks in South Africa.

2. *National Park Service: Land Resources Manager and the Division of Planning and Protection*

Throughout the history of the U.S. Park System, NPS administers the national park system. The National Parks Service preserves natural and cultural resources and cooperates with partners to extend the benefits of natural and cultural resources conservation and outdoor recreation throughout the United States.

3. *National Parks and Conservation Association (NPCA)*

The National Parks and Conservation Association is a private non-profit organization dedicated to protecting, preserving and enhancing the National Park System. NPCA is at the forefront of national park protection, battling damaging projects at individual park areas, opposing national policies that may harm parks, and working to incorporate safeguards that will protect the future of parklands.

4. *Kruger National Park and Carlsbad Caverns National Park: Park Manager and Natural Resources Managers.*

Questions that are related to the management to the use of land acquisition as a management tool were directed to the park managers.

5. *The Trust for Public Land*

The Trust for Public Land is a non-profit organization that works nationwide to conserve land for people in the United States. It speculates in conservation real estate, applying its expertise in negotiations, finance and law to protect land for public use. It negotiates the purchase of real estate and holds land until a public agency can acquire.

VITA

Nothile Prudence Shongwe

Candidate for the Degree of

Master of Science

Thesis: A COMPARATIVE ANALYSIS OF THE LAND ACQUISITION POLICIES AND METHODS USED BY THE U.S. NATIONAL PARK SERVICE AND SOUTH AFRICAN NATIONAL PARKS

Major Field: Geography

Education: Graduated from St. Lewis Bertrands' High School, Newcastle, South Africa in 1989; received Bachelor of Pedagogis (B. Paed) and Honours Bachelor of Arts in Geography from the University of Zululand, South Africa in December 1993 and December 1995, respectively. Completed the requirements for the Master of Science degree with a major in Geography from Oklahoma State University, Stillwater, Oklahoma in December 2000.

Experience: Worked as a high school teacher, and was involved with guidance and counseling; currently employed by the University of Zululand as a Laboratory Assistant.

Professional Memberships: Society for South African Geographers.