

# Land Use Policy Along the Big Sur Coast of California; What Role for the Federal Government?\*

Craig A. Marvinney†

*A horseman high alone as an eagle on the spur of the mountain over  
Mirmas Canyon draws rein, looks down  
At the bridge-builders, men, tracks, the power-shovels, the teeming end  
of the new coast road at the mountain's base.  
He sees the loops of the road go northward, headland beyond headland,  
into gray mist over Fraser's point,  
He shakes a fist and makes the gesture of wringing a chicken's neck,  
scowls and rides higher.  
I too  
Believe that the life of men who ride horses, herders of cattle on the  
mountain pasture, plowers of remote  
Rock narrowed farms in poverty and freedom, is a good life. At the far  
end of those loops of road  
Is what will come and destroy it, a rich and vulgar and bewildered  
civilization dying at the core,  
A world that is feverishly preparing new wars, peculiarly vicious ones,  
and heavier tyrannies, a strangely  
Missionary world, road-builder, wind-rider, educator, printer and pic-  
ture-maker and broad-caster,  
So eager, like an old drunken whore, pathetically eager to impose the  
seduction of her fled charms  
On all that through ignorance or isolation might have escaped them. I  
hope the weathered horseman up yonder  
Will die before he knows what this eager world will do to his children.  
More tough-minded men*

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\* This article was originally submitted in uncondensed form by the author in the spring of 1982 at Case Western Reserve University in Cleveland, Ohio, where it earned the 1982 Stanley I. and Hope S. Adelstein Award for excellence as an essay on a subject in environmental law.

† Craig A. Marvinney is an associate attorney with Roetzel & Andress, L.P.A., in Akron, Ohio. B.A. *cum laude* Chemistry, 1979, Case Western Reserve University; J.D. 1982, Case Western Reserve School of Law. The author wishes to thank Peter D. Junger, Professor of Law, Case Western Reserve School of Law, for his suggestions and comments on an earlier draft of this article.

*Can repulse an old whore, or cynically accept her drunken kindness for  
 what they are worth,  
 But the innocent and credulous are soon corrupted.  
 Where is our consolation? Beautiful beyond belief  
 The heights glimmer in the sliding cloud, the great bronze gorge-cut  
 sides of the mountain tower up invincibly,  
 Not the least hurt by this ribbon of road carved on their sea-foot.*

Robinson Jeffers<sup>1</sup>

## I.

### INTRODUCTION

The Big Sur is one of the most dramatic coastlines in the world. Extending over seventy miles along the California coast between Monterey and San Luis Obispo, the Big Sur is the longest and most scenic stretch of undeveloped coastline in the continental United States. It is a land where redwood and chaparral coated mountains loom precipitously above misty canyons and pounding surf. As a prime habitat for endangered species, the region has an isolation and solitude that draws some of the hardest of individualists.

Pressures from the urban spawling of the San Francisco Bay metropolitan area to its north and from the Los Angeles and Santa Barbara metropolitan areas to its south threaten destruction of the very elements that form the character of Big Sur. Tourists eager to enjoy its unspoiled delights, and developers seeking to exploit Big Sur's attractions are each extracting their toll from the area's beauty and serenity.

This article examines the efforts undertaken by local organizations, the State of California, and the federal Government to protect the Big Sur from development that threatens the very essence of the region. The article also suggests that the only way to preserve the wild treasures of Big Sur may be through an expanded federal involvement in its protection.

## II.

### BACKGROUND

Situated on the edge of a continent, the Big Sur remained a wilderness largely untouched by man until early in the twentieth century. Big Sur was originally only accessible by sea since overland travel was, by the late 1800's, only possible via the Old Coast Road

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1. R. JEFFERS, *SUCH COUNSEL YOU GAVE TO ME AND OTHER POEMS* 86-8 (1937). Mr. Jeffers was a long-time resident of Big Sur.

which was rendered treacherous due to hazardous seasonal rock-slide and mud-slide conditions. Sparsely populated, Big Sur was only used for some minor lumbering, mining, and tan-bark operations until the 1930's.

A new era for Big Sur began in 1919 when construction started on the Coast Highway, later designated California Highway One. Only by blasting through granite promontories and filling deep canyons was the highway finally completed in 1937.<sup>2</sup>

Attempts to protect Big Sur from unwanted development began immediately after the Coast Highway was completed. Monterey County established zoning controls for the area in the 1930's.<sup>3</sup> Long-term protection was initiated by descendants of pioneer families in the region who donated or sold land to California for state parks, preserving the land for future generations to enjoy.<sup>4</sup>

### III.

#### THE MONTEREY COUNTY COAST MASTER PLAN

Private sales and donations of land were inadequate to curb development in Big Sur. From 1959 to 1962, Monterey County developed the Monterey County Coast Master Plan [hereinafter "*CMP*"] in an attempt to manage development in Big Sur.<sup>5</sup>

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2. *Monterey County Local Coastal Program for the Big Sur Coast* (as revised and approved by the Monterey County Planning Comm'n) at 40 (Feb. 11, 1981) [hereinafter cited as "*LCP*"].

3. Monterey County drew national attention when it successfully prevented the construction of a service station advertising sign along the highway by winning an important dispute that secured the County's right to use its police powers for aesthetic purposes. *LCP*, at 2.

4. John Pfeiffer sold 706 acres in 1934 for the nucleus of the 822-acre Pfeiffer Big Sur State Park. The Lathrop-Browns, who purchased the old Saddlerock Ranch, donated 1,700 acres which now constitute the Julia Pfeiffer-Burns State Park. Frances Molera, granddaughter of Juan Bautista Roger Cooper, placed 2,000 acres in trust for the Andrew Molera State Park. The 2,100-acre John Little State Park, originally part of the Slate property sold to Milton Little, was donated by Elizabeth Livermore. *LCP*, at 40.

5. The *CMP* was originally recognized as innovative and far-reaching, generating much support from the people of Big Sur. Through it, County officials and local residents were to work together in preserving the aesthetic qualities of the land based on environmental standards and concepts that evolved during the 1950's and early 1960's.

The impetus behind the *CMP*'s final acceptance was a group of residents concerned over a 1961 California State Division of Highways proposal. The proposal, if implemented, would have straightened the Coast Highway, widening it from two lanes to four and doing away with the graceful bridges spanning the canyons. The bridges would be eliminated by filling the canyons with landfill. Enraged residents soon persuaded the County Board of Supervisors to adopt the *CMP*. *LCP*, at 3. Shortly thereafter, Monterey County invited the federal government to study Highway One for designation as a National Scenic Parkway. Although the study was never undertaken,

By 1970, it became clear that the *CMP* was inadequate to ensure the protection of Big Sur from development and environmental degradation. Modern standards for environmental protection had evolved which were unknown in the early 1960's. Land parcel sizes permitted by the *CMP* were too small to ensure protection of the coast against excessive development that would soon occur. Pressures were mounting for new residential and commercial development and for increased public land acquisition and access. There were steady increases in recreational development and use which still continue today.<sup>6</sup>

Because there is a lack of soil suitable for cultivation, the primary agricultural activity in the area is ranching. Nonetheless, the increasing costs of ranching, high taxes resulting from property value increases, government restrictions on ranching techniques, and encroaching public, recreational and residential development make ranching increasingly difficult and less profitable. Because the land cannot be cultivated, the only alternative to ranching is commercial or residential development of the land. Commercial development today looms over Big Sur as the most obvious land-use alternative.<sup>7</sup> The *CMP* does not solve this problem.

While the *CMP* has shortcomings in its ability to balance the natural hazards of Big Sur, such as flooding, fires, and earthquakes, with community and residential land use in a manner providing a high degree of safety, the most severe deficiency in the *CMP* is its inability to adequately control problems associated with Highway One, Big Sur's main access route. Each year, nearly three million people drive down Highway One along the Big Sur coast, congesting the highway nearly beyond its capacity.<sup>8</sup> This figure consti-

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this led the County to publish a report entitled *Wonderful One*, expressing its concern for protecting the national interest along the Big Sur coast.

6. Residential development is expanding by roughly ten houses per year. Brown, Y.E., *et al.*, CAL. COASTAL COMM'N CENT. COAST DIST. STAFF REP. ON THE BIG SUR LAND USE PLAN, SUMMARY, REVIEW AND ANALYSIS (June 29, 1981), at 1-3 (hereinafter "*Staff Report*"). Presently, approximately half of the Big Sur area's 150,000 acres are within the Los Padres National Forest and the Ventana Wilderness. Nearly 10,000 acres are contained within units of the State Park system. The remaining 65,000 acres of the Big Sur are privately owned. *LCP*, at 2.

7. Land that sold for less than \$100 an acre thirty years ago is now being sold for \$10,000 to \$15,000 an acre. Unfortunately, ranching is an activity that produces little economic return per acre of land that otherwise, except for development, has few or no economic alternatives.

8. Recreational traffic is estimated to comprise 95 percent of all trips during the peak summer months. The remaining 5 percent consists of residential traffic and a small volume of commercial and agricultural traffic. Driving for pleasure accounts for about 70 percent of the recreational traffic volume during the summer. Passenger cars are

tutes more people than the number who visit Yellowstone National Park or Yosemite National Park in one year and is predicted to double over the next twenty to twenty-five years.<sup>9</sup> Commercial and residential development, which generates truck traffic, further compounds the traffic congestion and contributes to the deterioration of Highway One.

The *CMP* has also been unable to cope with the problem of how this heavy use of Highway One encourages local property owners to develop their land. Spiraling property values in Big Sur and resultant increases in property taxes, as well as large numbers of tourists, encourage property owners to develop tourist facilities, thereby capitalizing upon the tourism to help pay off the heavy property taxes. With these imminent problems, it is clear that the *CMP* is obviously outdated. The *CMP* was not enacted to deal with the types of pressure Big Sur faces today. Any proposal to limit development in Big Sur must counter the pressures created by the fact that commercial development is the most profitable land-use alternative in the area. Any such proposal must include funds to acquire and set aside undeveloped land. Because alone Monterey County has been financially unable to bear this burden, persons concerned with curbing development in Big Sur began to push for State involvement.

#### IV.

##### THE CALIFORNIA COASTAL ACT

The State of California, interested in preserving the state's entire coastline from problems similar to those at Big Sur, is one of the first states to have enacted a comprehensive coastal management act.<sup>10</sup> Originally passed as Proposition 20 by voters in 1972, the Act provides a mandatory management plan to preserve the natural and scenic resources of the coastline. The goals of the Act are to protect, maintain, enhance, and restore the quality of the coastline environment and its natural and artificial resources.

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estimated at 91 percent of the traffic with buses, trucks, campers, and trailers constituting the remainder. *LCP*, at 43-44. See also *A Bill to Establish the Big Sur Coast Nat'l Scenic Area in the State of California: Hearings on S. 2551 before the SubComm. on Parks, Recreation and Renewable Resources of the Senate Comm. on Energy and Natural Resources*, 96th Cong., 2d Sess. 13 (1980) (statement of U.S. Senator Alan Cranston, of California) [hereinafter cited as *2551 Hearings*].

Another negative effect of this excessive traffic is the inability of emergency vehicles to respond quickly, thereby endangering residents in need of emergency health care, and their property, in need of protection from fires and flooding.

9. *2551 Hearings*, *supra* note 8, at 13, (statement of U.S. Senator Alan Cranston).

10. Cal. Pub. Res. Code §§ 30000-30900 (West Supp. 1985) [hereinafter cited as the *Coastal Act*].

These goals include emphasizing the economic needs of the people of California, prioritizing coastal development, and maximizing public recreational access and opportunities within a described Coastal Zone. The goals are to be accomplished through sound resource conservation principles and by protecting the constitutional rights of the property owners within the Zone.<sup>11</sup>

The Coastal Act requires that orderly economic development proceed within the Coastal Zone.<sup>12</sup> The Coastal Act provides six categories of conservation development, including public access to the coast, recreation on shorefront lands, operations affecting wetlands and estuaries, land resources, and new and industrial development.<sup>13</sup>

The Coastal Act requires that the counties within the Coastal Zone develop local coastal programs.<sup>14</sup> These land-use programs must then be approved by both the California Coastal Zone Conservation Commission and the local county planning commissions. The approval procedures for the local coastal programs involve public participation, hearings, and resolutions. The programs must comply with local zoning and land-use laws and must be reviewed and certified by the particular area's regional coastal commission.<sup>15</sup>

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11. Cal. Pub. Res. Code § 30001.5 (West Supp. 1985).

12. The Coastal Zone extends generally from the outer limit of California's jurisdiction over the waters of the Pacific Ocean, inland to 1,000 yards of the mean high-tide line of the sea. In significant coastal estuarine, habitat, and recreational areas, it extends inland to the first major ridgeline paralleling the sea or five miles from the mean high-tide line, whichever is less. Cal. Pub. Res. Code § 30103 (West 1981). This latter designation is particularly applicable to the Big Sur Region.

13. Cal. Pub. Res. Code §§ 30200-300 (West Supp. 1985), information was culled from Nairn, J., *New Coastal Act Will Control California Shore Development*, THE ARCHITECTURAL RECORD (Feb. 1977), at 34.

14. The Coastal Act defines "Local Coastal Program" to include the local government's land-use plans, zoning ordinances, zoning district maps, and implementation plans which meet the requirements and policies of the Coastal Act at the local level. Cal. Pub. Res. Code § 30108.6 (West Supp. 1985). A "land-use plan" is the portion of the local government's general plan sufficiently detailed, indicating: the kinds, locations, and intensities of land uses, the applicable resource protection and development policies, and a listing of all development policies. Cal. Pub. Res. Code § 30108.5 (West Supp. 1985).

15. These Regional Coastal Commissions, six in all, were originally set in 1976 to terminate on June 30, 1979, or at the time of submission of the last local coastal program to the state. This was amended in 1978 to June 30, 1981. Cal. Pub. Res. Code § 30305 (West Supp. 1985) (amended by Stats. 1978, c. 879, p. 1, § 1, urgency, eff. Sept. 19, 1978). The State Commission, then, is entitled to maintain regional offices past that date if it finds the public is better served or that the Coastal Act is better implemented through their maintenance. Cal. Pub. Res. Code § 30317 (West Supp. 1985). The State Commission is deemed successor in interest to the six regional commissions. Cal. Pub. Res. Code § 30331 (West Supp. 1985).

The Coastal Act required these local programs to have been completed and certified by June 1, 1981.<sup>16</sup>

Under the Coastal Act, developers must file for permits to "develop" land. The California Court of Appeals has interpreted "development"<sup>17</sup> broadly to include virtually any structure or operation which would materially affect the coastal zone's natural resources.<sup>18</sup> The Coastal Act and local coastal programs, therefore, regulate practically any artificial disturbance of the Coastal Zone's ecosystem.

Other parts of the Coastal Act address specific problems in the Big Sur region. The Act states that, in rural areas of the Coastal Zone, Highway One is to remain a scenic, two-lane road.<sup>19</sup> Natural land forms are to be preserved, as are special communities with unique characteristics that are popular points for recreational uses.<sup>20</sup>

A vital part of the Coastal Act is the requirement of public participation in nearly all of the details of the Act's implementation. The California Coastal Act allows for public participation either through public hearings on the local program's proposals or through the appointment of members of the general public to the state and regional planning commissions.

The local and state commissions are authorized by the Coastal Act to acquire land within the Coastal Zone provided that property owners are justly compensated.<sup>21</sup> Property can be acquired for many reasons, including ensuring public access to shorelines, maintaining prime agriculture land in production, flood control, preserving ecologically sensitive habitats, and protecting aesthetics.<sup>22</sup>

Though its policies are impressive and its implementation provi-

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16. Cal. Pub. Res. Code § 30501(b) (West Supp. 1984) (as amended 1978).

17. The Coastal Act specifically defines "development" to include, in part: "The placement of any solid material or structure [on land or under water] . . . change in the density or intensity of use of land," including extractions from the land, discharge of materials into the environment, lot splitting, water use and access, and forms of vegetation harvesting. "Structure" is meant to include any building, road, pipe, distribution line, conduit or electrical power transmission line, including telephone lines. Cal. Pub. Res. Code § 30106 (West Supp. 1985).

18. *Get Oil Out! Inc. v. Cal. Coastal Zone Conservation Comm'n*, 131 Cal. Rptr. 603 (App. 1976) (withdrawn from publication by order of the Court). See Cal. Pub. Res. Code § 30106 notes of decisions, p. 353 (West, 1977).

19. Cal. Pub. Res. Code § 30254 (West Supp. 1985).

20. Cal. Pub. Res. Code § 30253(1), (2), and (5) (West Supp. 1985).

21. Cal. Pub. Res. Code § 30010 (West Supp. 1985).

22. These land-acquisition rights are set forth in Chapter 3 of the *Coastal Act* (Cal. Pub. Res. Code §§ 30200, *et seq.*) (West Supp. 1985). The threat of the conversion of highly productive agricultural farm lands and forests to urban-industrial usage is very

sions are among the most comprehensive in the country, California lacks the financial resources needed to administer effectively the Coastal Act. The Act, standing alone, fails to protect Big Sur from the encroaching development that threatens destruction of its natural splendors. Some of the proponents of various plans to protect Big Sur from such development believe that the State of California, operating through the Coastal Act, working together with the local area residents operating through their local coastal program, can successfully contain the commercial and residential development of the region.

## V.

### MONTEREY COUNTY LOCAL COASTAL PROGRAM FOR BIG SUR

The Monterey County Local Coastal Program for Big Sur, the LCP, which was prepared to comply with requirements of the Coastal Act, evolved from a 1976 pilot planning study. The study yielded a consultant-prepared document, *Big Sur Coast/Preliminary Monterey County Coast Master Plan*.<sup>23</sup> This draft was never enacted, but many of its recommendations for preserving scenic resources in Big Sur are reflected in the present LCP. A comprehensive inventory of water, highway, and visitor accommodations along the Big Sur coast was made to support the pilot program.<sup>24</sup>

A work program for the LCP was approved by the State Commission in January 1979 and was subsequently amended several

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real. The future implications of this process were summarized by the late Senator Henry M. Jackson (D-Wash.) in 1973:

Over the next thirty years, the pressures upon our finite land resource will result in the dedication of an additional 13 million acres or 28,000 square miles of undeveloped land to urban use. Urban sprawl will consume an area of land . . . the equivalent of the total area of the States of New Hampshire, Vermont, Massachusetts and Rhode Island. Each decade, new urban growth will absorb an area greater than the entire State of New Jersey. . . . In short, between now and the year 2000, we must build again all that we have built before. We must build as many homes, schools and hospitals in the next three decades as were built in the previous three centuries. . . . In the future—in the face of immense pressures on our limited land resource—these land decisions must be long-term and public.

Cong. Rec., Senate, January 9, 1973, reprinted in U.S. Congress, Senate, Comm. in Interior and Insular Affairs, *Land Use Policy and Planning Assistance Act, Hearings*, 93d Cong., 1st Sess., 1973, p. 59, quoted in Lamb, C.M., *Land Use Politics and Law in the 1970's* (Washington, D.C., George Washington University Monograph No. 28 1975), at 2.

23. Hall, Coodue & Haisley (Sept. 1977).

24. Cal. Coastal Zone Conservation Comm'n, "Big Sur Coast; A Subregional Analysis" (Dec. 1976).

times. As costs escalated, additional funding needed to be approved. With many background resources, a draft LCP was available in July 1980, after which hearings were held before state and local groups. By mid-1981, the LCP was referred by the Joint Regional/State Commission to a state and local arbitration committee to smooth out differences between state and local planning ideas. By the end of that year, the LCP had yet to be approved with an implementation plan acceptable to the state.<sup>25</sup> Full certification of the LCP was expected during 1982.<sup>26</sup>

The LCP's "Philosophy and Goals" set forth guiding concepts establishing as preeminent factors in land-use planning Big Sur's scenic splendor, historic and individualistic life styles, and accessibility to the public.<sup>27</sup> The plan deals extensively with resource management, including historic, scenic, agricultural, water, and mineral resources, as well as hazard areas, environmentally sensitive habitats, and shoreline development. The LCP specifically addresses problems associated with Highway One and public access to recreational facilities.<sup>28</sup>

The LCP has been criticized by private groups as well as by the California Coastal Commission. Once the LCP was approved by the Monterey Commission, it was submitted to the state for certification. Because the Coastal Act requires that local coastal programs consist of land-use plans and *implementation* plans, Monterey County's submittal, being only a "land-use" plan, was origi-

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25. Telephone interview with Lynne Monday, of the Monterey County Planning Dep't, (November 9, 1981).

26. Local public participation in the development of the *LCP* has been remarkable. Early town hall meetings evolved into a Citizens Advisory Committee of approximately twenty persons appointed by the Monterey County Board of Supervisors. The County also developed a Technical Advisory Committee comprised of the principal public agencies with a role on the coast. Mailing lists of interested citizens were maintained, and these people received copies of every major *LCP* document.

The Citizens Advisory Committee and the Technical Advisory Committee worked with the County as it cleared off phases of the *LCP*. Public audiences packed the meeting halls when the Citizens Advisory Committee held hearings on the Plan. The Planning Commission appointed an *LCP* subcommittee that conducted public workshops on the Plan and then recommended revisions to the Commission. Public comments were numerous, as were those from the agencies involved, the United States Navy, the California Department of Parks and Recreation, and the Coastal Conservancy Commission; and such comments resulted in many revisions of the final version of the *LCP*. The five-year effort by the people of Monterey County in preparing the *LCP* has carried great weight in the discussions over the potential success or failure of the *LCP* in protecting Big Sur.

27. *LCP* § 2, at 5-8.

28. *LCP* § 4, at 43-51.

nally denied certification since it lacked the required "implementation plan."

The LCP also leaves one-half of the planning area to federal control with the understanding that one-half of this area is within the Los Padres National Forest. Nevertheless, only one-third of the area belongs to the Forest, thereby leaving approximately one-sixth of the area as private inholdings within the park that is uncontrolled by the LCP.

In its present form, the LCP sets forth noble goals for environmental preservation in Big Sur but backs these with flaccid implementation provisions. The key resource management policy for the LCP prohibits all future public or private development visible from Highway One and major public viewing areas.<sup>29</sup> Many problems arise from the LCP's ambiguities, inconsistencies, and lack of adequate funds to administer the program.

The principal problem in implementing the development prohibition is compensating affected lot owners. To address this problem, the LCP policies include consideration of a system of transfer development credits,<sup>30</sup> coastal conservancy restoration projects, and state

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29. LCP § 3.2.1, at 10.

30. A system of transfer development credits (hereinafter "TDC System") involves development rights and a landowner's ability to be compensated for those rights. A development right is the right of a property owner to develop his land. This can be the landowner's most economically valuable right, particularly in developing or urbanizing areas. Public land use in zoning laws affects these rights by adjusting the landowner's development rights satisfactorily with the surrounding community. The right to develop is actually a potential for future development. This future development potential can be transferred by sale or exchange for other consideration. A TDC System is one means by which this is accomplished as landowners are credited in various amounts for transferring their properties' future development potential.

In the Big Sur region, these potentials vary depending on the existing water tables and terrain. The Coastal Zone area has some areas where these rights are worthless because of the mountainous terrain. Other areas are flat and have very valuable potential. Since the primary land use in the rural areas is grazing, the land must be valued by measuring its development potential over and above its present grazing use value.

In the Big Sur LCP, these potentials or rights to development beyond grazing uses would be purchased by the Government in the form of scenic easements. An alternative is to transfer these rights to lands where more intense development will not be objectionable, perhaps inland from the Coast Highway viewshed. The desired result is protection of the viewshed while allowing the landowner to recoup the economic value represented by the site's frozen potential.

Adequate financing is central to such a program. Because of the strapped finances of the local and state governments, this is one of the areas in which the federal government might aid Monterey County and California. This can be accomplished either through funding or a surplus land exchange with the Los Padres National Forest. For further discussion of the transfer of development rights, see Costonis, *Development Rights Transfer: An Exploratory Essay*, 83 YALE L.J. 75 (1973); Sax, *Buying Scenery: Land Acquisition for the National Park Service*, DUKE L.J. 709 (1980); and Tomain, *Compen-*

and federal financial assistance. These proposals show a major weakness and potential for failure of the LCP.

Throughout the LCP, references are made that suggest the state or local governments should acquire land. Nevertheless, Monterey County cannot afford to acquire land and should not be so required if these acquisitions are necessary for the success of the LCP. The burden for funding, therefore, will fall either on the State of California or the federal government.

California's fiscal spending is much different today than it was seven years ago when the Coastal Act was passed. In 1976, California had liberal spending policies. Since the 1978 movement to reduce taxes,<sup>31</sup> California has been required to curtail severely spending. With southern California's burgeoning population, more and more state funds will be required merely to maintain present levels of public services. The Reagan Administration's federalistic stance has exacerbated California's financial difficulties.<sup>32</sup>

Although funding is the LCP's main stumbling block, its land-use plan still requires substantial revision. The LCP contains vague and ambiguous wording and policy statements. Without further clarification, this issue will be resolved only by much litigation. The LCP itself defines "development" instead of using the Coastal Act's all-encompassing definition. The separate LCP definition allows several types of visible development within viewshed areas protected by the Coastal Act. The LCP permits mining, paving, grading, and dumping in areas under Coastal Act protection.<sup>33</sup>

Other sections also allow development which is inconsistent with the policies of the Coastal Act.<sup>34</sup> Certain development locations

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*sable Regulations in an Alternative Compensation System*, 21 SANTA CLARA L. REV. 89 (1981).

31. Commonly known as Proposition 13.

32. The Reagan Administration has set policies designed to return public welfare and food stamp programs over to the states. Although these programs will be funded by the federal government until 1987, each state must develop its own system for administering and eventually for funding these programs. California will then be further handicapped from funding major land acquisitions in the Big Sur area. The Executive Director of the California Coastal Commission, Michael Fischer, admits this funding problem existed even before Mr. Reagan became President. In reference to the preservation of Big Sur, he stated: "Implementation of substantial state programs will be hampered by meager funds." Letter from Michael Fischer to Congressman Leon E. Panetta (16th Dist.) of Monterey County, Cal. (April 16, 1980) [hereinafter cited as the *Fischer Letter*].

33. The California Coastal Commission Staff Report, a Review and Analysis of the LCP, indicates numerous incomplete lists where the County planners attempted to specify exceptions to general policies underlying the *Coastal Act*.

34. For example, the *LCP* allows rural community centers to be built along the Big

permitted by the LCP would directly contradict the Coastal Act's requirements that allow development only if designed to minimize safety risks. The plan's allowing for such developments, as presently proposed, instead seems to maximize these risks.

The LCP lacks adequate descriptions of structure limitations and kinds and intensity of land use within the Coastal Zone.<sup>35</sup> Other parts of the LCP must also be changed. Implementation plans should amend county zoning ordinances that conflict with the policies of the Coastal Act. The TDC system introduced in the LCP must be further refined. Perhaps the federal government can exchange inland national forest land with viewshed areas where development is prohibited. The basis for credit assignments must also be further defined.<sup>36</sup>

Although the LCP as of 1981 fell far short of the Coastal Commission's interpretation of the Coastal Act, future revisions of the LCP should include ways to meet these demands. The State and local arbitration committee to which the land-use plan had been referred negotiated these differences to arrive at a local coastal program compatible with the Coastal Act. In the meantime, the resources of Big Sur have been subject to the *laissez-faire* provisions of the vastly inadequate 1962 *CMP*.

The final LCP may have achieved too little, too late, to assure adequate preservation of Big Sur. The actual implementation of the LCP or any other local, state or federal program that may help pre-

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Sur River, within the hazardous zone of the river's flood plain. This has been done in the face of court decisions in California which uphold the right of a county to zone out development within a flood plain. Such a "flood plain ordinance" does not amount to a taking by the government for which compensation must be granted. *Turner v. County of Del Norte*, 24 Cal. App. 3d 311, 101 Cal. Rptr. 93 (1972).

Other centers are planned within a major active landslide zone.

35. For example, the *LCP* does not limit quarry or mine acreage. It does not impose restraints on specific locations or sizes of future tourist accommodations. *Staff Report* at 9. The *LCP* does not specify how much commercial timberland can be converted to alternative uses. The *LCP* also fails to evaluate many grazing land management uses including alternative agricultural activities.

36. For instance, areas such as Pico Blanco, one of the largest mountains in the area which dominates certain viewshed areas along Highway One and in which substantial mining activity has taken and is taking place, would receive credits for the mountain's western slopes but not for the land on the eastern slope that can be developed outside of the Highway One viewshed. While this landowner is not entirely prohibited from developing his land, he is entitled to some credit for the areas he cannot develop. Other landowners, particularly those with land parcels west of Highway One, are completely prohibited by the *LCP* from further development of their land. Such a landowner should receive credits for the entire development rights of his property. Furthermore, each parcel's development potential may differ due to terrain, underlying mineral deposits, or other reasons. These, too, should influence the credit assignment system.

serve the area will not have any profound effects until several years after that particular plan's commencement. For this reason, many interest groups are dissatisfied with the LCP as it stood at the end of 1981. The LCP may not adequately meet the pressures for development by the end of this decade.

Aside from the problems created by the delay in certification of the LCP and from inadequate funding, the LCP has other inherent shortcomings. For example, the LCP's provisions do not adequately encourage use of land other than development. Once again, the main stumbling block of the LCP—its lack of funding—prevents its main weapon, the purchase of lands to be set aside undeveloped, from succeeding.<sup>37</sup>

For example, because high taxes have encouraged development along the coast, the County proposed certain tax disincentives against development. One proposed disincentive was through Williamson Act contracts.<sup>38</sup> Under these contracts, the landowner is taxed on the current-use value of his land for agricultural purposes rather than on the more developed or economically profitable uses or on the speculative value of the land. However, as of 1979, no parcels of land had been taxed under the 1965 Williamson Act contracts, probably because a landowner's profits from developing the land greatly exceed the tax savings under these contracts.<sup>39</sup> Further, these contracts will have little significance in future land-use decisions in Big Sur because Proposition 13 placed a lid on property taxes.

An alternative to the Williamson Act contracts in reducing property taxes is the donation or sale of "conservation easements." These easements give the government the development potential of lands located within the viewshed areas. Under the Williamson Act contracts, the landowner has an option to renew the contract in the

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37. A group of local citizens formed "The Big Sur Foundation" in an effort to free other sources of funding in order to acquire land, thereby protecting the Big Sur region from development. In support of their efforts to obtain Federal legislation for this, the Foundation in 1980 drafted a forty-five page document expressing its views on the ability of Monterey County and the California Coastal Commission to implement various provisions of the LCP as it then stood. *Draft Rep. on the Ability of Monterey County and the Cal. Coastal Comm'n to Implement the Agricultural and Visual Resource Policies of the Big Sur Coast Local Coastal Program*, submitted by Saunders Hillyer, Executive Director of the Big Sur Foundation (March 26, 1980) [hereinafter the "Foundation Report"].

38. Cal. Gov't Code §§ 51240-51255, *et seq.* (West Supp. 1985), a.k.a. the Cal. Land Conservation Act of 1965 or the Williamson Act.

39. Monterey County Planning Dept's, *The Big Sur Coast Draft Agricultural Background Rep't* (Nov. 1979), at 2.

future, thereby retaining a potential for his own future development of the land. Only during the duration of the contract term does the government receive future development rights from the landowner. However, conservation easements are sold or given in perpetuity and result in no retention of future development rights on behalf of the landowner. Therefore, these may not be attractive to the landowner. Nonetheless, these easements can reduce the taxable value of property to its present-use value.

The sale or donation of the scenic or conservation easements, as well as the concept of TDC systems or otherwise, will also reduce the sizeable inheritance taxes that plague many property owners in the area. Just as one's present ownership of future development rights enhances the value of the property in that particular landowner's hands, it will also enhance the value of the property upon the passage of the land into his heirs. By severing the development rights from the land, a resultant devaluation in the value of the land left in the estate causes a corresponding reduction in the estate tax, with the state inheritance taxes applying less pressure on the landowner than the much more substantial federal estate taxes. The potentially beneficial effect of these easements has been minimized by the reductions of the federal estate taxes by recent congressional legislation.

Because of the presence of various governmental agencies in the Big Sur area, the LCP by itself does not adequately protect the coast from development on public land in the viewshed areas. The United States Forest Service, the United States Navy and Coast Guard, and the California Department of Parks and Recreation all administer land along Highway One's viewshed. Elsewhere in California's coastal zone, there have been major contests between the California Department of Parks and Recreation and the California Coastal Commission concerning development of state parks. Results of these conflicts suggest that the LCP will have to accommodate new buildings by the Parks and Recreation Department in the protected viewshed areas.<sup>40</sup>

Monterey County lacks staff and funding to conduct the development permit analysis now administered by the regional commissions, to enforce the land-use regulations, and to oversee the ongoing planning needed to protect the Big Sur coast. The federal

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40. *Foundation Report*, at 14. A similar problem is shown in the Coastal Commission Staff Report where the Report suggests that some structures vital to the commercial fishing industry should be excepted from the LCP's development prohibitions. *Staff Report*, at 8.

government can aid the county by providing National Forest personnel for assistance to the local administrators in their duties.

While Monterey County's fiscal problems in attempting to protect Big Sur and the financial pressures existing in the region encourage local residents to develop their land, state and local political pressures are even more significant in threatening Big Sur's scenic beauty. Increasing numbers of tourists and demand for housing and development may force the government to relax restrictions on land-use<sup>41</sup> and even further constrict funding of anti-development programs, thereby crippling the government in its fight against development.<sup>42</sup>

State pressures have been even more ominous. The California Coastal Commission is often the testing ground for shifts in the state political climate. While former California Governor Jerry Brown supported the Commission and its efforts, present Governor George Deukmejian has opposed the very existence of the Commission since its inception in 1972. The futures of the Coastal Act and the Coastal Commission are clouded by political uncertainties as, each year, bills eroding the Act's authority are introduced in the State legislature. While most have been defeated, the uncertainties have contributed to the failure of the sixty-seven coastal jurisdictions required to submit LCP's to receive certification of their LCP's by the original mid-1981 deadline. While the deadline for submission was extended to January 1984, it is still unlikely that most will have received certification by 1985.<sup>43</sup>

The local governments are stalling for time. They are concerned that, because of political uncertainties in Sacramento, their LCP's may be outdated before they can be implemented. Several proposals to abolish the coastal commissions and return the power over development permits directly to the local governments have been

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41. Richard Andrews, a Monterey County administrative officer, predicts that, while the tourism demands along the Big Sur coast continue to mount, the government will, in response to unmet housing demands, substantially relax restrictions and controls on land-use, development, and construction. Mr. Andrews forecasts a conservation and environmental backlash that will become so dominant that, by 1990, there will be "significant setbacks to some of the conservation gains made in recent years." Monterey Peninsula Herald, March 21, 1980, § 1, at 3, col. 3. For discussion of the conservation backlash in the United States Department of the Interior, see H.R. 211 and Sen. amendment No. 1924, 96th Cong., 2d Sess., 126 Cong. Rec. S16,335, S16,337 (daily ed. Dec. 12, 1980).

42. Proposition 9, a sort of "Proposition 13, Part II," prompted Samuel Farr, a Monterey County official, to state he did not believe the State or County would be able to afford the LCP. Monterey Peninsula Herald, Feb. 27, 1980, § 1, at 2, col. 2.

43. See Weber, *Evolution of an Agency*, 4 CAL. LAWYER 2, at 26 (1984).

submitted to the legislature. If these proposals should pass, the permit provisions in the local programs would then have to be amended to provide for permit-power jurisdiction by the local governments. This will further compound the fiscal void presently existing at the local level. Stalling by local officials, based upon uncertainties in Sacramento, could cause the entire program restricting shoreline development to be "returned to the legislative cauldron."<sup>44</sup>

A more subtle problem results from the interplay between the local stalling and the political uncertainties in Sacramento. During the past few years, as the LCP's have been prepared, decisions on many pending applications for development have been suspended or deferred. Indeed, under the Monterey County LCP, most of the pending applications will probably be denied. The County government will then be faced with paying for claims by aggrieved applicants, compensating them for losses in development rights due to the denial and for losses incurred from waiting during the stall period for decisions on their applications. Since Monterey County cannot afford to pay these claims, many permit applications that should be denied will be granted to avoid the costs of these claims. Because of this lack of financial resources, significant development will occur contrary to both the LCP and the Coastal Act conservation policies.

The approval of pending development permits and the allowance of the applications of various hardship cases will result in piecemeal development.<sup>45</sup> Ten or fifteen years from now, this piecemeal development and transfer of property from the old established residents to new owners who may be less concerned with preservation will result in irrevocable damage to the valuable resources, scenic and otherwise, of the area. The remedial price tag for salvaging the value of the land may be many times higher than the costs of present, anticipatory action.<sup>46</sup>

## VI.

### THE PUSH FOR FEDERAL INVOLVEMENT

The present situation at Big Sur and the potential failure of the LCP to adequately protect Big Sur led residents in interest groups

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44. San Francisco Sunday Examiner and Chron., *The Coastal Debate Goes On*, March 23, 1980, as reprinted in the *Foundation Report* at 36.

45. Such a hardship case may be a family which cannot afford to pay its estate taxes or is losing too much money by ranching.

46. *Foundation Report*, at 40.

to push for federal involvement in the protection of Big Sur. The Big Sur Foundation began enlisting support from local congressional representative, Mr. Leon Panetta,<sup>47</sup> and Senator Alan Cranston.<sup>48</sup> The first phases of the lobbying effort progressed without opposition from the Big Sur community.

Support for federal government aid in protecting Big Sur has not been limited to private interest groups. State officials have intimated that they welcome federal support. Absent federal assistance in land acquisitions, the county must rely upon state or local regulation to avoid division of the Big Sur ranches. The Coastal Act's approach to change or amendment is based subjectively upon the success or failure of special interest lobbying in Sacramento.<sup>49</sup>

Certain economic interests in the Big Sur area are already controlled by federal statute. Commercial logging is specifically exempt from the Coastal Act permit requirements, and most of the mining activities are controlled by federal mining laws. With a present existence in the Big Sur area successfully established, new federal legislation would be appropriate to protect the area. Federal funding would help maintain California's Protected Waterway Plan adopted for the Big Sur and Little Sur Rivers. Federal funds could be used to implement traffic management plans for the Coastal Highway.<sup>50</sup> Funds could also be applied to create access to off-highway public recreation areas and to acquire scenic easements, development rights, or entire property rights to land within the viewshed along Highway One.<sup>51</sup>

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47. Leon Panetta represents California's 16th Congressional District including Monterey County and parts of San Luis Obispo, San Benito, and Santa Cruz Counties.

48. Senator Cranston is also a Democrat.

49. Michael Fischer, the Executive Director of the California Coastal Commission, has written:

Some federal financial assistance and land management must be among the options considered by [Monterey] County. . . . It is clear that federal funding assistance could be critical to the effort to protect ocean views from Highway One; views that each year are appreciated by 3,000,000 coastal visitors.

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Evaluation of a possible federal role in managing the Highway is called for, since the National Forest is a major attraction of recreational traffic. Experience gained on the Blue Ridge National Parkway and in similar areas would benefit the Big Sur coast.

*Fischer Letter*, at 3, 4.

50. *Id.*

51. Edward DeMars, Director of the Monterey County Planning Department, clearly expressed the County government's position by stating:

The protection of the coast has always been envisioned as a total cooperative project;

## VII.

## CURRENT FEDERAL INVOLVEMENT

The idea of federal involvement in the preservation of Big Sur is not new;<sup>52</sup> and, indeed, a federal presence exists with respect to some of the development in Big Sur today. The Los Padres National Forest and Ventana Wilderness<sup>53</sup> are the most obvious federal presences in the area. All mining in the area on federal land is controlled by the Federal Mining Act of 1872, which, except for wilderness areas, allows mining interest groups a virtual free hand in the mining of national forest land. Timber usage is also heavily regulated by federal law.

In Big Sur and elsewhere, perhaps the most comprehensive piece of environmentally oriented federal legislation is the Federal Coastal Zone Management Act of 1972 (hereinafter the "FCZMA").<sup>54</sup> Congress enacted the FCZMA to foster development of coastal management practices and institutional reforms by the states. The FCZMA authorizes the Secretary of Commerce to allocate grants to the states for their corresponding coastal zone acts. The requirements of the FCZMA in California were largely assumed by the Coastal Act and its predecessor, the California Coastal Zone Conservation Act of 1972.<sup>55</sup>

The FCZMA also grants aid administration of the coastal acts of the various states in certain circumstances. Once a state has developed the appropriate administrative machinery and the Secretary of Commerce has approved a coastal protection implementation plan, the federal government may grant up to 80 percent of each state's costs of operating its program.<sup>56</sup> A limiting provision dictates that

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citizens, local jurisdictions, state and federal government participation was and is, considered essential if we hope to be totally successful.

You may well discuss the degree or detail of federal involvement but I can't see any way that you can question federal responsibility.

H.R. REP. NO. 1240, Part 1, 96th Cong., 2d Sess. 12, 13 (1980), testimony by Edward DeMars on H.R. 7380, a Bill to establish the Big Sur Coast Area, before the House Comm. on Interior and Insular Affairs."

52. In 1960, the Boards of Supervisors of Monterey and San Luis Obispo Counties passed a joint resolution endorsing the establishment of Highway One between Carmel and San Simeon as a National Parkway.

53. 16 U.S.C. § 1132 (1982).

54. 16 U.S.C. §§ 1451-1461 (1982). While an in-depth discussion of the FCZMA is beyond the scope of this article, an excellent synopsis of the act, its implementation, and strengths may be found in M. BARAM, ENVIRONMENTAL LAW AND THE SITING OF FACILITIES: ISSUES IN LAND USE AND COASTAL ZONE MANAGEMENT at 128-42 (1976).

55. Repealed and replaced by the California Coastal Act of 1976; see n.10, *supra*.

56. 16 U.S.C. § 1454(c) (1982).

not more than 10 percent of the total available Federal funds may be granted to any one state.<sup>57</sup> The FCZMA appropriates only \$48,000,000 per year through 1985 to meet these grant allocations.<sup>58</sup>

California established its Coastal Commission in 1972. The maximum amount available to California under the FCZMA is \$4,800,000. In order for the maximum percentage of its Coastal Act administration costs to be paid from Federal funds, California may spend only \$6,400,000. The total, \$11.2 million, is miniscule when compared to the potential acquisition funds needed to implement the Coastal Act.<sup>59</sup> Federal funds for the protection of Big Sur must, therefore, come from a source other than the FCZMA.

### VIII.

#### PROPOSALS AND ATTEMPTS TO PROTECT BIG SUR ON THE CONGRESSIONAL LEVEL

The United States Congress has heard many proposals to protect the Big Sur, ranging from preservation studies to bills providing for major federal land acquisitions. These proposals have galvanized the Big Sur resident community into forces supporting and opposing federal legislation in Big Sur.

In 1978, Congressman Leon Panetta tried to tack onto an omnibus parks bill a rider authorizing an Interior Department study of ways to protect Big Sur. Some Big Sur residents circulated a petition urging Panetta to drop the amendment, which he subsequently

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57. 16 U.S.C. § 1454(e) (1982).

58. 16 U.S.C. § 1464(a)(1) (1982).

59. Cost estimates of the initial funds necessary to adequately protect Big Sur through land acquisitions have been over \$30,000,000. H.R. 7380, 96th Cong., 2d Sess., § 11 (1980). Pursuant to the *Coastal Act*, funding for certified coastal program land acquisitions comes from no less than 50 percent of the funds received by California pursuant to the FCZMA. *Coastal Act* § 30340.5. Costs to local implementers not reimbursed through the FCZMA come from the California State Budget. The only costs reimbursed are those directly incurred as a result of implementing the *certified* coastal program in localities involved in the particular reimbursement claim. The local governments are not reimbursed for expenses incurred which can be paid from reasonable permit fees or can be incorporated into the routine regulatory process of the local governments. *Coastal Act* § 30340.5, 30340.6, and 30350-30353.

On its face, the *Coastal Act* would appear to provide adequate funding for the local coastal programs. It would appear that Big Sur could be protected from excessive commercial and residential development by the *Coastal Act* and the Monterey County *LCP* for Big Sur. Unfortunately, lack of funding available on the local levels, the State levels, and, finally, the ceiling placed on FCZMA funding by the FCZMA, prevent implementing these programs.

did. Senator Alan Cranston then introduced a bill in the Senate<sup>60</sup> which would have removed limits on the amount of land the Forest Service could add to the Los Padres National Forest. In effect, the bill would have authorized the Forest Service to acquire through donations most of the 75,000 acres in Big Sur that presently remain in private hands. Senator Cranston withdrew the bill when his office received some 2,000 letters, telegrams and phone calls opposing his proposal.<sup>61</sup>

The local residents then began speaking out with their opinions on the need for effective and comprehensive Federal legislation. Many joined the Big Sur Foundation, while many others coalesced into the Friends of the Big Sur Coast, an interest group opposed to the legislation. Under the tutelage of the National Inholders Association, an organization representing the interests of private landowners within national parks and other preserves, the Friends embarked upon an intensive lobbying campaign opposing federal legislation. The Friends wanted to forestall federal legislation until the LCP was given an opportunity to succeed.

Many local residents feel that federal legislation will be dangerous and wasteful. These residents believe the area is adequately protected and fear that the federal government, equipped with authorization to acquire land and scenic easements, will pressure landowners to sell. Those who do not sell will be reduced to inholder status and will eventually be forced to give up their land for a minimal value.

As with the residents of the Big Sur area who support a more expansive federal role in the area, those who oppose such a role are largely environmentalists who ardently oppose development in Big Sur. Those opposing this federal role want the LCP to have an opportunity to succeed. These groups, such as the Friends, are as opposed to the unrestrained commercial and residential development of this area as those who support the broader federal role, such as the Big Sur Foundation.

In February 1980, the Wilderness Society proposed that the federal government make Big Sur the nation's first National Scenic Area.<sup>62</sup> This proposal would give the United States Forest Service management of the Scenic Area with advice and assistance from a Big Sur National Scenic Area Advisory Committee of local repre-

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60. S. 2233, 96th Cong., 2d Sess., 126 Cong. Rec. S552 (daily ed., Jan. 29, 1980).

61. Brandt, THE FIGHT TO SAVE BIG SUR, *Atlantic Monthly* (Sept. 1981), 71, 75.

62. The Wilderness Society, NATIONAL SCENIC AREA PROPOSED FOR BIG SUR (Feb. 21, 1980).

sentatives and representatives of many of the governmental agencies affecting land use in Big Sur.<sup>63</sup> The Forest Service was authorized to acquire land throughout Big Sur from willing sellers. Land held by the United States Navy and by the State of California would be exempt from Forest Service acquisition. The proposal severely restricted the circumstances under which the federal government could condemn private property.

All development would cease under this proposal since the Forest Service was empowered to purchase all land on which landowners began significant expansion and development. Land would be acquired in fee simple or in scenic easements. Policies would be set determining when it was best to purchase property in fee or in scenic easements. Landowners could bequeath or sell their property to their direct lineal descendants with the federal government entitled to third-party first right of refusal.

The Wilderness Society proposal recognizes the need to anticipate pressures for development and not simply to react to them. This proposal also suggests the Forest Service as an outstanding alternative to the National Park Service for Scenic Area management.

The Forest Service was suggested primarily to maximize support for the Scenic Area proposal. Although the National Park Service has not had a significant role in the area's past, the Forest Service has long been a neighbor of Big Sur residents while administering the Los Padres National Forest. The Forest Service, therefore, seemed the appropriate agency to administer the Scenic Area.

In April 1980, Senator Cranston introduced a bill in the Senate implementing the Wilderness Society Proposal.<sup>64</sup> The bill followed the proposal's format and set out more details. Under this bill, the Monterey County LCP would be subordinate to a Comprehensive General Plan to be designed by the Forest Service and approved by the Secretary of Agriculture. The Comprehensive General Plan would set forth the implementation procedure for the National Scenic Area.

The Scenic Area would include all private lands from Malpas Creek in Monterey County to the Hearst Ranch and visitor facilities in San Luis Obispo County one hundred miles to the south. Nearly 410,000 acres of land in the Monterey District of the Los Padres National Forest, the Hunter Liggett Military Reservation, and

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63. *Id.* Agencies involved include the Big Sur Citizens Advisory Committee, the Monterey County Planning Department, the California Department of Parks and Recreation, the California Coastal Conservancy, and the California Coastal Commission.

64. S. 2551, 96th Cong., 2d Sess., 126 Cong. Rec. S3530 (daily ed., April 3, 1980).

some state lands were also included.<sup>65</sup> The bill authorized \$100,000,000 for these land acquisitions.

The Friends of Big Sur opposed the Scenic Area bill because they claimed it would transfer regulatory power from the local government to the federal government.<sup>66</sup> The Friends also claimed that no appropriations were made in the Scenic Area bill for ongoing maintenance of the area for legal, relocation, or other costs.<sup>67</sup>

Support in Congress for the Friends' position came primarily from the other California Senator, S.I. Hayakawa.<sup>68</sup> Initially, he was not hostile to the Scenic Area concept. The Friends of Big Sur, perceiving Senator Hayakawa's neutrality, lobbied him intensively, recruiting him to lodge their views with Congress.

The battle lines were drawn in the California Senatorial delegation. The Democratic Senator Cranston, supporting substantial federal legislation over Big Sur as a means of preserving it, was backed initially by the Big Sur Foundation, the Wilderness Society, and the Sierra Club. On the other side, the Republican Senator Hayakawa opposed the legislation, backed by the Friends of Big Sur.

At the April hearings on the Scenic Area Bill before the Subcommittee on Parks, Recreation, and Renewable Resources of the Senate Committee on Energy and Natural Resources, Senator Hayakawa testified against the bill. He submitted a petition bearing 820 signatures against the bill, noting that there are slightly more than 1,100 residents in Big Sur.<sup>69</sup> Unknown to the Subcommittee, the signatures were largely of non-residents who, either by absentee landownership or otherwise, had personal interests in Big Sur.<sup>70</sup>

Senator Hayakawa attacked the bill on several grounds. He

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65. 126 Cong. Rec. S3530 (daily ed., April 3, 1980) (remarks of Sen. Cranston).

66. The Friends suggested that the Bill was patterned after the Sawtooth National Recreation Area Legislation for Idaho's Central Mountain Region. 16 U.S.C. § 460(aa)(1)-(14) (as amended Pub. L. 95-625), Title II § 202, Nov. 10, 1978, 92 Stat. 3473. The Sawtooth Bill provided for little local input in land-use decisions from potential recreation area inholders primarily because the area is located within National Forest land. As much of the proposed Big Sur Scenic Area included private landholdings, a power shift to the federal government created an anxiety on the part of local residents who feared indiscriminate condemnation of their land by the federal government.

67. Section 11(a) of the Bill actually provided \$500,000 to meet these development costs.

68. Senator Hayakawa, who was not re-elected to the Senate in 1982, was a Republican.

69. 2551 Hearings (Testimony by Senator Hayakawa, at 2).

70. Interview with Katherine Files, Legislative Aide to Senator Cranston, at the Russell Senate Office Building, in Washington, D.C. (Nov. 12, 1981).

noted the bill would give the federal government the power to condemn virtually all of the private property in Big Sur.<sup>71</sup> He cited figures showing a decrease in the number of development permits approved for single family homes in the Big Sur Coastal Area for the years 1974-1979.<sup>72</sup> It was not indicated to the Subcommittee that these figures were of development permit approvals and not applications. The Monterey County officials had been stalling most of the applications until LCP approval and certification.

Arguing that federal intervention was officious, Senator Hayakawa stated that local management and control could preserve Big Sur. He called the bill "Federal bureaucracy at its worst."<sup>73</sup>

Support for the Cranston bill began to dwindle, particularly among those who had originally favored the bill until better alternatives were presented. Congressman Panetta testified before the Subcommittee in support of Federal legislation for Big Sur. While he originally favored Senator Cranston's ideas, he later criticized the Scenic Area Bill's failure to incorporate adequately the work of local citizens and of local and State governmental units.<sup>74</sup> Mr. Panetta then outlined legislation drafted largely by himself<sup>75</sup> which fulfilled these objectives better than Senator Cranston's bill. With a notable lack of support, the Cranston bill died in committee.

The legislation summarized by Congressman Panetta was introduced in the House of Representatives the following month.<sup>76</sup> The bill, H. 7380, proposed a "Big Sur Coast Area" in a region roughly the size of the California Coastal Zone in the Big Sur area. The total area was less than one-third of the area proposed by Senator Cranston's Scenic Area Bill.<sup>77</sup>

71. *2551 Hearings* (Statement by Senator Hayakawa, at 3).

72. These figures came from the Santa Cruz Regional Office of the California Coastal Commission.

73. *2551 Hearings* (Statement by Senator Hayakawa, at 5).

74. *2551 Hearings* (Testimony by Congressman Panetta, at 4). Congressman Panetta continued, stating:

Big Sur needs management assistance from the Federal government, it does not need management authority. The planning capabilities at the State and local levels should be supplemented, not superseded. Tourism and traffic need to be managed, not encouraged.

*Id.*

75. Interview with Andrew Lauderdale, Legislative Assistant to Congressman Panetta, at the Cannon House Office Building in Washington, D.C. (Nov. 12, 1981).

76. H.R. 7380, 96th Cong., 2d Sess., 126 Cong. Rec. H3,311 (daily ed., May 19, 1980) (hereinafter "H. 7380"). An amended version of this Bill passed in the House of Representatives. H.R. 7380, 96th Cong., 2d Sess., 126 Cong. Rec. H7,673 (daily ed., Aug. 25, 1980).

77. The amount of land involved stretched from Malpaso Creek just south of Car-

H. 7380 was more detailed than the Cranston bill in every respect. It proposed a nine-member Big Sur Coast Area Council with four locally appointed members, two state-appointed members, and three federally appointed members: one from the Forest Service, one at large from the State of California, and one local resident. The major governmental agencies and the local residents interested in the Big Sur Area were fully represented.<sup>78</sup>

This proposal incorporated the land-use plans of the Monterey County LCP and the San Luis Obispo County LCP as the land-use component of its Comprehensive Management Plan.<sup>79</sup> The Plan would be periodically reviewed for revision by the council. The council could be dissolved only by congressional act.

The bill further required the federal, state, and local entities in the area to act consistently with the policies of the Comprehensive Management Plan. They would consult with the council, allowing the council to fulfill its function for monitoring compliance with the plan. The Secretary of Agriculture would act as a functional agent enabling the council to implement the plan within the laws applicable to the National Forest System.<sup>80</sup>

Power to acquire land under the Panetta bill is severely restricted. Condemnation may only occur under certain specified circumstances. No existing legal structure may be condemned. Only those land uses substantially incompatible with the Management Plan are subject to this authority. The bill sets forth specific provisions guiding when less than fee title should be acquired.<sup>81</sup>

All lands acquired by the federal government would be incorporated within the boundaries of the Los Padres National Forest. Lands owned by state and local governments could be acquired by donation only. Subject to valid existing rights, all federally owned lands could be withdrawn from the mining and mineral leasing laws

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mel in the north to San Carpojo Creek in San Luis Obispo County to the south. Most of the Hearst Ranch and the Los Padres National Forest was excluded, as well as the entire Hunter Liggett Military Reservation.

78. H. 7380, § 5.

79. This plan called for eight other specified components, including a compendium of available land and water protection and management techniques, an inventory of lands that could be purchased by the administering agencies, coordinating actions of the numerous entities involved in preserving the area, a developed-community resource program to study possible new developments in existing communities, a highway transportation management program for Highway One, an agricultural studies element, a public-use component addressing public use of land within the Area, and a comprehensive management component. *Id.*, § 6.

80. *Id.*, § 7.

81. *Id.*, § 8.

of the United States. No timber harvesting would occur on these lands except for that which served bona fide conservation purposes.

State and local governments would retain their existing jurisdictional authority. The Forest Service could acquire land or make grants and assistance available for state and local governments interested in acquiring interests in land. To accomplish this, the Bill allows lease-back provisions, contracts with public and private agencies for land acquisition, purchase of development rights in the area, and the conveyance of properties to state and local governments. Incorporated within this broad range of options is a cost-sharing requirement for participating private and public agencies, thereby providing a cost-effective approach to protecting the national interest in the area.<sup>82</sup> The appropriations made in the bill totaled \$30 million: \$25 million from the Land and Water Conservation Fund in the United States Treasury for acquisition and \$5 million from the General Fund of the Treasury<sup>83</sup> for administration, management, and grant costs.<sup>84</sup>

Hearings on H. 7380 were held before the House Committee on Interior and Insular Affairs, Subcommittee on National Parks and Insular Affairs. Support for the bill was considerable since Monterey County and California State officials testified in favor of the legislation. Opposition forces used the same arguments against it that had defeated the Cranston bill.

The Panetta bill, much tamer than the Cranston bill, passed through the Committee with minor amendment.<sup>85</sup> Concerns over the bill expressed on the House floor centered on the issue that the federal government need not control land that is already subject to local control.<sup>86</sup> This argument set forth three prerequisites for the federal government's involvement in protection of land resources. These are: first, an unquestioned national significance in the character of the resources of the area; second, an unquestioned inability of local government jurisdictions to solve the problems; and, third,

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82. *Id.*

83. *Id.*, § 11.

84. See the House Comm. on Interior and Insular Affairs Rep., section-by-section analysis of H.R. 7380. H.R. Rep. No. 1240, Part 1, 96th Cong., 2d Sess. 13-17 (1980), reprinted in 126 Cong. Rec. H6,634 (daily ed., July 28, 1980).

85. One significant change was the deletion of an original provision giving the Secretary of Agriculture injunctive authority preventing development incompatible with the Comprehensive Plan. This provision was removed because of its questionable legality and the existence of comparable state and local powers. See the discussion of the legality of these federal regulatory powers, at n.109, 112, *infra*.

86. 126 Cong. Rec. H7,678-82 [remarks by Rep. Sebelius (R. Kans.), Rep. Jenkins (D. Ga.), Rep. Clausen (R. Cal.), and Rep. Foley (D. Wash.)]

a strong willingness by the local governments to help solve these problems through regulatory or financial means should the federal government become involved.

The bill's opposition felt that, although Big Sur met the first and third criteria, the second criterion had yet to be established. Representative Sebelius of Kansas, the ranking Republican member of the House Subcommittee on National Parks and Insular Affairs, stated that Congress "should let the local governments shoulder more of the burden of worry, deliberation, and solution before the Feds step in."<sup>87</sup> Mr. Sebelius requested a delay in federal action until the local process was given a chance to work. Connected with this theme was the idea that, since California budgets had consistently run in surplus and federal budgets had consistently created deficits, California should shoulder the responsibility for the protection of Big Sur.

Other points were raised regarding the bill's land-use policies. H. 7380 did not consider land-use alternatives other than the preservation of scenic, aesthetic, and rural qualities. While satisfying some, particularly environmentalists and conservationists, these policies did not serve the desires of those who wished to develop the area for tourism.<sup>88</sup>

Critics maintain, *inter alia*, that the bill favors large, wealthy landowners at the expense of small landowners. The Hearst properties in San Luis Obispo County were cited as an example. This large landholding was excluded from the Big Sur Coastal Area, but most small landholdings were included. Another criticism was the fear of federal expansion of regulatory control that would reduce corresponding local control. Finally, issue was taken on the inconsistency between the Panetta bill and the National Forest Management Act of 1976<sup>89</sup> regarding regulatory powers granted the Forest Service.

These criticisms are fallacious. State and local governments need federal fiscal aid to adequately save Big Sur from development. Without the aid, for reasons discussed previously, the LCP will fail. While criticisms that the bill does not allow for development are on point, the purpose of the bill is to prevent development, and any

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87. *Id.* at H7,678 (Remarks by Rep. Sebelius).

88. For an extensive discussion of this dilemma, see Sax, J.L., FASHIONING A RECREATION POLICY FOR OUR NATIONAL PARKS: THE PHILOSOPHY OF CHOICE AND THE CHOICE OF PHILOSOPHY, 12 CREIGHTON L. REV. 973 (1979).

89. National Forest Management Act of 1976, Pub. L. No. 94-588, § 17, *et seq.*, 90 Stat. 2962.

suggestion that it would encourage development is contrary to the spirit of the bill. The Panetta bill provides that the unique powers it grants the Forest Service are limited solely to the Big Sur area; the Forest Service cannot use these powers in any other Forest Service area.

The criticism that the bill favors large landowners, such as those holding the Hearst properties, is groundless. First, the Hearst property is partially owned by the State of California. The other land controlled by the Hearst Corporation was withdrawn from the Coastal Area because acquisition of this land is unnecessary to achieve the purpose of the bill. Further, after hiring an independent environmental organization, the Hearst Corporation approached the supporters of the legislation and indicated that a portion of the Big Sur ecosystem extended into their land and that portion should be included in the Coastal Area protected by the Bill.<sup>90</sup>

The opposition's arguments proved unpersuasive; the Panetta bill passed in the House of Representatives in late August, 1980.<sup>91</sup> With the support of Senator Cranston, H. 7380 was then transferred to the Senate Committee on Energy and Natural Resources, where it remained dormant for many weeks. Senator Hayakawa again spearheaded the Senate opposition.

The Republicans developed a list of political reasons for opposing Federal Big Sur legislation setting their strategy for the fall elections of 1980. While citing many of the arguments refuted above, the strategy plan called for a filibuster by Senator Hayakawa if Senator Cranston tried to move H. 7380 to the floor of the Senate.<sup>92</sup> One argument emphasized repeatedly by the Republican opposition was that the federal government need not become involved because of the already existing Land and Water Conservation Fund, LWCF,<sup>93</sup> which at the time, funded state and local land-acquisition programs.

The LWCF was, until recently, administered through the Department of the Treasury by the Heritage Conservation and Recreation Service of the Department of the Interior. The fund was granted \$900 million annually from revenues from sales of surplus federal land, offshore oil leasing and motorboat fuel taxes. Funds

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90. 126 Cong. Rec. H7,681 (daily ed., Aug. 25, 1980) [Remarks by Rep. Burton (D. Cal.)].

91. *Id.*, at H7,682.

92. "Possible Political Implications of the Big Sur Issue for the Republican Campaign" (1980), at 2.

93. 16 U.S.C. § 460 (1)-(5) (as amended by Pub. L. No. 95-42, § 1(1), 91 Stat. 210 (1977)).

were provided for two purposes. One was for assisting states by financing up to 50 percent of the costs incurred preparing recreation plans, acquiring land and water areas, and developing areas for public outdoor recreation purposes. The other purpose provides funding enabling federal agencies such as the National Park Service and the Forest Service to acquire certain areas for recreational use, protection of threatened or endangered species and their habitats, and preservation of areas of national importance.<sup>94</sup>

While the opposition's LWCF argument against the Panetta bill had merit when the bill was before the Senate in 1980, the argument fails today. In the past, the LWCF was an important catalyst enabling states to acquire lands for outdoor recreation areas and for protection of endangered areas such as Big Sur. The policies and actions of the Reagan Administration have disabled the LWCF as a means to aid protection of Big Sur.<sup>95</sup>

With his opposition strategy set, Senator Hayakawa awaited Senator Cranston's attempt to bring the Bill to the Senate floor. Finally, in December, during the biennial legislative rush, Senator

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94. ENV'T REP. (BNA), at 51:4,362 (1981).

95. On February 19, 1981, the then-Secretary of Interior, James Watt, ordered the consolidation of the Heritage Conservation and Recreation Service, "HCRS," into the National Park Service in order to achieve economy in the utilization of funds, personnel, equipment, and the improvement of program services. The Federal Regulations involved with the HCRS were either redesignated to the National Parks Service, 36 C.F.R. Chap. 1, or eliminated. 46 Fed. Reg. 34,329 (1981), Order No. 3060. The Order froze all non-obligated funds in the Land and Water Conservation Fund, "LWCF," that were designated for State matching-aid grants.

Mr. Watt had stated his intention to ask Congress to amend the LWCF and reallocate these funds for "upgrading" the existing National Park System, thereby eliminating the State matching-aid grant program. Speech by Hon. Nathaniel P. Reed, former Asst. Secretary of the Interior, before the Sierra Club (May 2, 1981), published in 66 SIERRA 12 (July/Aug. 1981).

Mr. Watt, as director of the HCRS when it was a part of the Bureau of Outdoor Recreation, administered the LWCF. His reasons for eliminating the LWCF, part of a \$1.5 billion Dep't of the Interior budget cut, are "out of a concern for the economy and out of concern for our system of government . . . out of a concern for good stewardship." Speech by Secretary J.G. Watt, United States Secretary of the Interior, before the Nat'l Recreation and Park Ass'n, in Minneapolis, Minn. (Oct. 27, 1981).

Mr. Watt's policies involved halting further Federal land acquisition. Unfortunately, by eliminating the State grant function of the LWCF, he would also halt most State land acquisitions. Most of these lands are slated to be acquired because they need to be protected from private development. Eventually, these lands must be acquired by a later government administration. The acquisition cost of land that could be acquired today at a reasonable price will probably spiral two or three times its present cost within ten or fifteen years. This escalation will eventually cost taxpayers far in excess of what presently could be spent. Since President Reagan's philosophies are to reduce costs for the American taxpayer, it seems that the land acquisition policies of former Secretary Watt contradict the Reagan Administration's economic ideals.

Cranston attempted to amend the Bill to a noncontroversial Sacramento Canals Bill.<sup>96</sup> As expected, Senator Hayakawa objected, and Senator Cranston withdrew the bill when Senator Hayakawa threatened a time-consuming reading of the entire bill. Although Senator Cranston had support for the bill, it was not enough to pass under the threat of a filibuster so late in the year.

Senator Cranston re-introduced the Panetta bill in the Senate at the start of the 97th Congress in January 1981.<sup>97</sup> The bill was referred to the Senate Committee on Energy and Natural Resources. No further action was taken on the bill, and it died in Committee.

Reasons behind the fate of the Panetta bill are clear. With the Senate of the 97th Congress dominated by Republicans, and in light of the budget cuts enacted in 1981 and 1982, it was unlikely, by the fall of 1982, that the Senate would approve the Panetta bill. President Reagan has expressed views opposing any federal control of Big Sur. The actions of his administration reflect his position and, at the time, suggested to Congress that, even if the Panetta bill was passed over a Reagan veto, enforcement of its provisions would be lax.

By 1983, in light of the shifting environmental attitudes prevailing during the Reagan Administration and the concurrent diminishing of environmental activism, it was unlikely that Congress would consider a bill regarding Big Sur. Indeed, no bill on the subject has been introduced in either the House or Senate during the 98th Congress. Senator Hayakawa stepped down in 1982; he has been replaced by Senator Peter Wilson, also a Republican.

The 98th Congress did not consider the Big Sur issue. It is certain that since the Reagan Administration will serve until 1988, proponents of an expanded federal role in the Big Sur area will have to remain dormant until at least 1988. Unfortunately, while the outcome of the Big Sur issue is uncertain in Washington, D.C., the primary villain in the Big Sur preservation dilemma continues undisturbed. New buildings and developments incessantly encroach upon the Big Sur countryside, continually taming and dispoiling its wild treasures. Until, and possibly after, the role of the federal government is resolved, the real loser will be Big Sur itself—the very paradise that the disputants earnestly wish to protect.

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96. H.R. 2111, and Sen. Amendment No. 1924, 96th Cong., 2d Sess., 126 CONG. REC. S 16335, S 16337 (daily ed., Dec. 12, 1980).

97. S. 40, 97th Cong., 1st Sess., 127 CONG. REC. S48 (daily ed. Jan. 5, 1981).

## IX.

## PROPOSED ROLES FOR FEDERAL AGENCIES IN BIG SUR

Most proposals for federal involvement in protecting Big Sur call for Forest Service administration of the proposed Big Sur Coastal Areas through the Department of Agriculture. Some proposals, however, suggest that the National Park Service, under the auspices of the Department of the Interior, would be best qualified to preserve Big Sur.<sup>98</sup> The land-use acquisition and funding policies in these departments must be examined before a particular agency is selected.

Recent land use and acquisition policies in the Department of Interior have shown a dramatic shift towards reducing future acquisitions and increasing the efficiency of use on lands presently held by the government. The consolidation of the Heritage Conservation and Recreation Service and the National Park Service and proposals to limit the states' matching grants from the Land and Water Conservation Fund show the trend towards halting federal land acquisitions.<sup>99</sup> The Reagan Administration has promulgated four basic Interior Department policies emphasizing efficient use of public land: (1) making more public lands available for multiple uses rather than limiting them to single uses such as recreation or wilderness treatment; (2) developing a strategic mineral production policy; (3) working towards national self sufficiency in energy; and (4) improving management of park and recreation lands with new technologies which allow more public use.<sup>100</sup>

These policies partly reflect the events of the 1970's that reduced the quality of services performed in the national park system by the Department of the Interior. During the 1970's, the number of lands administered by the National Park Service experienced almost unrestrained growth. Visitation increased by almost 100 percent. While demand for public recreation land increased, available funds began to dwindle later in the decade due to the depressed economy. Services experienced a similar cutback.<sup>101</sup>

The National Park Service revised its land acquisition policy to better serve the needs of the new National Park Service areas vis-a-

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98. Wilderness Society Proposal, *supra* note 62, Appendix, at 7.

99. *See* n.95, *supra*.

100. 127 CONG. REC. S483 (daily ed. Jan. 22, 1981).

101. Changes in National Park Service responsibilities and resources in the 1970's:

vis private and public entities affected by the land acquisitions.<sup>102</sup> Some Park Service land acquisition and administration of recently federalized lands caused the federal government embarrassment during the 1970's. For example, the creation of the Redwood National Park in 1968<sup>103</sup> illustrates many of the problems in forming a modern (post-1959) national park. Timber interests lobbied intensively for commercial redwood lands in northern California. The original act passed as a political compromise and did not consider the natural watershed boundaries of streams and rivers within the new park. Extensive timber harvesting on bordering land threatened to destroy the park's ecosystem. Redwoods, delicate trees when openly exposed to high winds, were being blown down in areas adjacent to timber harvesting on nearby private lands. Rivers and streams crossing from harvested areas into the park became clogged with silt and debris from the bordering timber cutting. Lawsuits were filed against the Department of the Interior claiming the Department was inadequately administering the preservation policies and goals of the Redwood National Park Act.<sup>104</sup>

The results of these lawsuits carry a message to the Reagan Administration, which tends to be lax in enforcing the preservationist policies that form the basis for national park and forest systems. The lawsuits, decided in 1974, 1975, and 1976, were all filed by the Sierra Club. The Sierra Club contended that the Interior Department was at fault for allowing adjacent timber interests to despoil

Fiscal Year	Development	Fulltime Employees	# Areas	Acreage Visitation	
	Budget (\$ in millions)			(in millions)	
1970	20.0	5359	252	27.0	167.0
1973	68.1	6522	269	28.6	215.1
1975	97.4	6608	281	29.3	229.0
1978	159.1	8265	321	31.1	271.0
1980	112.2	7555	323	72.0	294.6
1981	43.4	N/A	N/A	N/A	N/A

—Lienesch, W.C., "How Much Will We Pay to Save the Parks?" *55 Nat'l Parks* 11, at 12 (Feb. 1981).

102. National Park Service Revised Land Acquisition Policy, 44 Fed. Reg. 24790 (1979). The Policy reflects the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601-4655, Pub. L. No. 91-646. See H.R. Rep. No. 91-1656, 91st Cong., 2d Sess., (1969), *reprinted in* 1970 U.S. CODE CONG. & AD. NEWS 5850.

103. Redwood National Park Act of Oct. 2, 1968, Pub. L. No. 90-545, 82 Stat. 931 (codified at 16 U.S.C. §§ 79a-79j) (1976).

104. *Sierra Club v. Morton* [Dep't of Interior], 376 F. Supp. 90 (N.D. Cal. 1974), *Sierra Club v. Morton*, 398 F. Supp. 284 (N.D. Cal. 1975), and *Sierra Club v. Morton*, 400 F. Supp. 610 (N.D. Cal. 1976).

the Park. The Interior Department argued that its duty was to administer the park land and not to correct problems inherent in the original congressional legislation. This series of cases established that the Interior Department holds all national park lands in trust for the public and, accordingly, is under a duty to protect them from threatened injury.

This doctrine has its origins in two early cases involving the right of the Interior Department to regulate activities on private land adjacent to the public domain. In *U.S. v. Alford*,<sup>105</sup> the Interior Department sought to prosecute a person who started a fire on property adjacent to a national park. The United States Supreme Court held that the Interior Department could prosecute the person starting the fires. The Court stated that the danger to the park depends upon the nearness of the fire to the park and not upon the ownership of the land where such a fire is built.<sup>106</sup>

In *Camfield v. U.S.*,<sup>107</sup> fences on private property adjacent to a park effectively enclosed federal land. The Supreme Court held that, although the federal government does not have unlimited power to regulate against nuisances within a state, it may invoke federal policy powers so long as they are directed solely for the government's own protection. This trend continued over the years at the district court level until it was stated clearly in the form of the "public trust doctrine" in 1972 in *Pyramid Lake Paiute Tribe v. Morton*.<sup>108</sup> In *Pyramid Lake*, the Interior Department improperly favored private landowners' water rights over those of an Indian tribe on its federal reservation. The Court held that the Secretary of the Interior holds Indian land in public trust, thereby concluding that the water rights of the Indians on Indian land are superior to those of the private landowners. The court further cited *Alford* and *Camfield*, stating that the federal government should not hesitate to regulate private property owners to protect the public domain.<sup>109</sup>

As a result of the Sierra Club cases, the Department of the Inte-

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105. 274 U.S. 264 (1927).

106. *Id.*, at 267.

107. 167 U.S. 518 (1897).

108. 354 F. Supp. 252 (D.D.C. 1972).

109. See also *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922), *U.S. v. Unzeuta*, 281 U.S. 138 (1930), *U.S. v. Butler*, 297 U.S. 1 (1936), *Halpert v. Udall*, 231 F. Supp. 574 (S.D. Fla. 1964), *aff'd*, 379 U.S. 645 (1965), *Kleppe v. New Mexico*, 96 S. Ct. 2285 (1976), and *Just v. Marinette County*, 201 N.W.2d 761 (Wis. 1972). See also *Sax, Helpless Giants, infra*, n.111, at 248, for discussion of a suit to enjoin construction of a view tower adjacent to a National Battlefield Site, *Pennsylvania v. Morton*, Civil No. 2188-73 (D.D.C. 1973), settled out of court.

rior may no longer refuse to enforce these policies on grounds of political philosophy. It follows that the National Forest Service, under the Agriculture Department, is correspondingly responsible for protecting the lands under its administration.

Because of the Sierra Club decisions, the Interior Department submitted proposals redrawing the boundaries of the Redwood National Park, reflecting the ecosystems of the natural watersheds. Congress passed the measure, along with new appropriations for the necessary land acquisitions.<sup>110</sup> In addition to establishing the Interior Department's duty to protect the public domain, this land-use debacle suggests that, if Congress is not willing to provide the resources necessary to preserve viable wilderness units, park creation may not be worth undertaking at all.<sup>111</sup>

More inholdings and private enterprise leaseings occur in national forestland than in national parkland. This may be the strongest reason for accomplishing Big Sur protection through the Forest Service and not through the Park Service. Land presently or designated to be controlled by the Park Service is generally subject to the exclusive control of the federal government through the Department of the Interior. If the Interior Department finds a need for recreational or other types of development, it may act unilaterally, without consideration of other entities whose interests may be affected thereby and still be in full compliance with the National Park Organic Act of 1916.<sup>112</sup>

Land under Forest Service control may not be affected as easily by unilateral federal decisions. Many Forest Service lands have been used for private leasing and other activities. Forest Service land-use decisions must, therefore, be subject to input from these private entities.<sup>113</sup>

Legislators who have studied the Big Sur protection proposals generally believe the Forest Service is best suited for administering a Big Sur Coastal Area. Administration could be effective in a subtle

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110. Pub. L. No. 95-250, Title I, § 101(a)-(c) (1978), 92 Stat. 163 [amending 16 U.S.C. § 79(a), (1976)].

111. For excellent discussions of the Redwood National Park issues and controversy, see Sax, *Helpless Giants: The National Parks and Regulation of Private Lands*, 75 MICH. L. REV. 239 (1976) and Hudson, *Sierra Club v. Department of Interior: The Fight to Preserve the Redwood National Park*, 7 ECOLOGY L.Q. 781 (1978).

112. 16 U.S.C. § 1 (1982).

113. For a discussion of the growth and development of Forest Legislation, see KINNEY, *THE DEVELOPMENT OF FOREST LAW IN AMERICA* (1972), and Staff, U.S. Dep't of Agriculture, *The Principal Laws Relating to the Establishment and Administration of the National Forests and Other Forest Service Activities* (1964).

approach that allows much local input into Forest Service decisions. Congressman Panetta has stated:

National Park designation for Big Sur . . . would be the biggest mistake this Congress could ever make. Such an approach would not only be costly, it would totally ignore the planning efforts that have been made on the local and State level and in fact would induce the kind of insensitive tourism and visitation that would in itself destroy the precious and unique qualities of the area.<sup>114</sup>

## X.

### CONCLUSION

Big Sur is a unique region of national significance as the largest and most scenic stretch of undeveloped coastline in the continental United States. Big Sur's natural grandeur and cultural character must be protected and preserved for future generations. To accomplish this, development must be controlled carefully or perhaps stopped entirely.

The region is affected by some of the most stringent local and state protection laws in the country. The policies of the Coastal Act and the proposed Local Coastal Program may be able to control encroaching development from the north and south, unrestrained traffic along Highway One, and slow destruction of sensitive ecological habitats.

However, since these policies involve acquiring property rights from present landowners, funds must be made available to compensate these landowners. Unfortunately, local and state fiscal resources alone cannot meet the costs of preserving Big Sur.

The federal government must play a role in the preservation of Big Sur. Without federal resources, Monterey County and the State of California are virtually powerless to halt further development in the region. The federal government can initiate effective preservation of Big Sur by providing funds enabling the state and local gov-

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114. 2551 Hearings (Testimony of Congressman Panetta), at 4. Senator Hayakawa uses Department of Interior figures to show that, when an area attains National Park or Monument status, the number of visitors over a period of time increases to three or four times the number of visitors prior to federalization. Statement of Sen. S. I. Hayakawa regarding legislation to create a Big Sur Coast Area, Press Release (Sept. 11, 1980). This trend indicates that the number of tourists in Big Sur will increase to nine to twelve million annually if National Park or Monument status is granted. The burdens on and the damage to Highway One and the Big Sur coast would create management problems requiring further development to accommodate this tourism crunch. Such development contradicts the policies and goals of the *LCP* and all who seek preservation of the Big Sur.

ernments to acquire scenic easements, development rights, or land in fee simple. Such a program should use an approach that assures local control in planning and management of the area.

The legislation proposed by Congressman Panetta during the 96th Congress would be ideal protection for Big Sur. Federal funds would be made available for land acquisitions controlled by local residents through the Big Sur Coast Area Council. The financial resources needed to implement the LCP under the Coastal Act can come only from the federal government. The Panetta bill is the most effective means by which this can occur.

Effective alternatives to the Panetta bill will either need an independent appropriation similar to that of the Panetta bill or require funds directly from the Land and Water Conservation Fund. Proposals to eliminate the Land and Water Conservation Fund must be defeated in Congress so that the most effective land protection undertaking in the country can play a role in Big Sur's preservation and in the preservation of other threatened areas.

The National Forest Service is best suited to represent the government in such a program. Nevertheless, while fulfilling its duty to enforce the conservationist policies inherent in such legislation, the Forest Service should allow as much local control and decision-making to occur as is possible.

Development incessantly continues in Big Sur and will continue until adequate funding is made available to restrict it. Action by which the federal government provides financial resources to Monterey County and the State of California for the protection of Big Sur must be undertaken in the near future. If land acquisition funds are not made available to the county and the state for anticipatory preservation of Big Sur, the costs of remedial preservation will spiral so high as to eventually prohibit all possibilities of preserving the magnificent Big Sur.

*This great wilderness does not belong to us. It belongs to the nation.  
Let us . . . set it aside, never to be changed, but to be kept sacred  
always.*

—Cornelius Hedges,  
early Yellowstone explorer.

