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Public Land Acquisition for Environmental Protection: Structuring a Program for the Lake Tahoe Basin

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Public Land Acquisition for Environmental Protection: Structuring a Program for the Lake Tahoe Basin

Richard J. Fink*

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INTRODUCTION

Efforts to increase public ownership of land have grown dramatically in the last decade. State governments throughout the United States have established programs to acquire privately held land and have authorized the expenditure of billions of dollars for such purposes. For example, state and local governments in the Northeast have allocated more than $1 billion for land preservation since 1986. In 1988, California voters passed a $770 million bond issue for a broad range of land acquisitions, and in June 1990, Florida adopted legislation creating a trust fund which will provide up to $3 billion for the purchase of environmentally sensitive land and recreation areas. Although the current land acquisition movement reflects a broad variety of concerns, including preservation of farmland and creation of new parks, the primary focus


of most contemporary programs is environmental protection. The environmental objectives include protection of open space and forests, natural areas with special environmental qualities, wildlife habitat, diversity in plant and animal species, and water quality.

The surge in public land acquisition at the state and local levels during the 1980's coincided with serious challenges to the federal government's well established policy of significant federal land acquisition. A national policy favoring greater public land ownership emerged early in this century when federal agencies began selective reacquisition of land once owned by the United States government. This federal acquisition accelerated with the adoption of the Land and Water Conservation Fund Act of 1965 (LWCF), which created a mechanism for financing acquisition of recreational land. The $3.9 billion federal share of monies appropriated from the LWCF from its inception through fiscal year 1989 financed the acquisition of over 3.8 million acres of land.

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10. See infra notes 14 and 15.


The Reagan administration took steps to discontinue, and even reverse, the policy of selective federal reacquisition. In 1981, Secretary of the Interior James G. Watt imposed a moratorium on spending funds already appropriated from the LWCF for land acquisition. Although Mr. Watt’s successor partially lifted the moratorium following strong congressional criticism, administration budget requests for LWCF spending were significantly lower than the amounts appropriated by Congress in prior years. The “Sagebrush Rebellion” of the last half of the 1970’s, although not primarily a reaction to increasing public land ownership, sought through litigation and legislation to force the federal government to give substantial portions of the public domain to western states. Similar sentiments were reflected in tentative steps toward


16. Cowart & Fairfax, Public Lands Federalism: Judicial Theory and Administrative Reality, 15 ECOLOGY L.Q. 375, 396-407 (1988) (proposing that the Sagebrush Rebellion was motivated by philosophical factors, state reaction to proposed MX missile siting, and federal plans for massive energy development).

17. The Sagebrush Rebellion was a political movement led by disgruntled ranchers in the West who chafed at governmental restriction of their grazing rights on public lands. Prompted in part by competition for public lands and resources, the rebellion has been described as “a poignant effort to turn back the clock to the days when competition among uses of federal lands was rare, when resources seemed inexhaustible, and when a consensus existed for exploitation,” Leshy, Unraveling the Sagebrush Rebellion: Law, Politics, and Federal Lands, 14 U.C. DAVIS L. REV. 317, 349 (1980). Another commentator described the rebellion as “a broad movement among the Western public land states to enhance their control over the natural resources that are central to their economies, environments, and ways of life.” Cowart & Fairfax, supra note 16 at 473; see also Nevada ex rel. Nevada State Bd. of Agric. v. United States, 512 F. Supp. 166 (D. Nev. 1981), aff’d as moot, 699 F.2d 486 (9th Cir. 1983) (Nevada’s challenge to federal title to lands in the state). See generally Note, The Sagebrush Rebellion: Who Should Control the Public Lands?, 1980 UTAH L. REV. 505 (briefly examining legal steps taken by the Western States and proposed federal legislation).
"privatization" of federal assets by selective sales of public lands, including parts of the national forests. 18

These attempts to end federal land acquisition were unsuccessful. The constitutional arguments of the Sagebrush Rebels were never taken seriously, Congress never enacted legislation to "return land to the states," and there has been no significant sale of federal lands to private owners. 19 During the 1980's, Congress consistently appropriated more than four times the amount of the annual administration LWCF budget request for federal land acquisition. 20 In 1987, Congress reauthorized the Land and Water Conservation Fund until the year 2015. 21 The federal government has continued to identify land which it believes should be acquired; the estimated value of this "backlog" of unfunded acquisitions was more than $4 billion in 1989. 22 Certainly, the continuing federal budget crisis has influenced spending levels for land acquisition efforts. However, the Bush administration has recently reversed the policy of its predecessor by requesting $1 billion for land acquisition over four years, 23 which represents a 400% increase over the average annual requests of the prior administration. 24

In contrast to the short-lived efforts to end federal land acquisition, the growth of modern state environmentally oriented acquisition programs is likely to be a more significant development in public land policy 25 because of the sheer number and considerable magnitude of these


19. Cowart & Fairfax, supra note 16, at 394-95. The "privatization" of some federal lands was stymied by the ouster of Interior Secretary Watt, doubts about the amount of revenue which would be raised by land sales, concerns of ranchers that increased private ownership would threaten access to vast grazing areas, and opposition from conservation groups. J. LAITOS, NATURAL RESOURCES LAW 272 (1985). Viewed as a broader movement of the Western States to exert control over resources located on federal lands, the Sagebrush Rebellion was more successful. Cowart & Fairfax, supra note 16, at 380, 473-74.


25. The term "public lands" has been used to refer only to lands owned by the federal government or as synonymous with the "public domain," which are those lands acquired by the United States from other sovereigns. G. COGGINS, PUBLIC NATURAL RESOURCES LAW § 1.02[1][a], [e] (1990). The meaning of the term has varied greatly, however, Id. at
programs. Nevertheless, proponents of further state land acquisition face several obstacles, including philosophical and political objections to increased government ownership of land. The philosophical issues regarding the appropriate extent of public land ownership in a society founded on private ownership of resources have been debated elsewhere and are beyond the purview of this article. In an era of serious fiscal limitations at all levels of government, the high cost of land acquisition makes political support for such programs difficult to achieve. Nevertheless, one lesson from the recent growth in state acquisition programs, and from the failure of efforts to end federal land acquisition, may be that public support of public land ownership, for some purposes, has increased in recent years.

A prime example of this increased political support for public land ownership is found in the Lake Tahoe Basin, which, situated on the California-Nevada border, is now the location of three major public land acquisition programs. In 1980, Congress enacted the Santini-Burton Act, which directed the Secretary of Agriculture to purchase "environmentally sensitive" land in the Tahoe Basin, and which authorized the expenditure of an amount estimated at $96.2 million for that purpose. In 1982, California voters approved the Lake Tahoe Acquisitions Bond Act, which authorized the issuance of $85 million in bonds to acquire land in

§ 1.02[1][e], and this article uses "public land" in its broader, generic sense to refer to lands owned by any governmental entity, whether federal, state or local.


LAKE TAHOE LAND ACQUISITION

the California portion of the Lake Tahoe Basin. Implementation of the California program was assigned to the California Tahoe Conservancy, a new office within the state’s Resources Agency. In 1986, Nevada voters approved the Tahoe Basin Act, which provided $31 million for land acquisition and environmental protection on the Nevada side of Lake Tahoe.

The best way to understand the complex fields of land use and public policy is by examining empirical experience. This article will closely examine the formulation of the government land acquisition programs in the Tahoe Basin, and the influence of public land ownership on land use and environmental quality. Section I describes the historical context of acquisition efforts at Lake Tahoe. Section II explores the role of modern land acquisition efforts in the Tahoe Basin and the genesis of three current programs. It then examines the most active and innovative of these programs, that of the California Tahoe Conservancy, and in the process considers those issues that arise most frequently in land acquisition programs, such as establishment of acquisition criteria, priorities, property valuation standards, and the use of less-than-fee acquisition techniques.

Section III of the article evaluates the governing statutes and the operation of the California Tahoe Conservancy using a framework for policy implementation analysis. The study of policy implementation has developed as a distinct field of inquiry within the last two decades and provides valuable insights into the process of translating policy decisions into tangible achievements. Implementation analysis seeks to understand what takes place from the enactment of a program by a legislature to its ultimate effects, intended and unintended, thereby assisting program proponents and public officials to design an effective program.

34. Policy implementation analysis is a subfield of policy studies, an interdisciplinary effort aimed at "supplying a scientific dimension to the most ambitious of all human activities—to try and influence the future according to our desires through conscious collective choice and action." Dror, Basic Concepts in Policy Studies, in ENCYCLOPEDIA OF POLICY STUDIES 3 (S. Nagel ed. 1983). Since the early 1970's there has been an outpouring of scholarship concerned with implementation. IMPLEMENTATION OF CIVIL RIGHTS POLICY at ix (C. Bullock & C. Lamb eds. 1984). Some recent observers have described implementation analysis as merely one of several tools of policy study. See, e.g., Palumbo & Calista, Opening Up the Black Box: Implementation and the Policy Process, in IMPLEMENTATION AND THE POLICY PROCESS 1, 15 (1990) (implementation research, although criticized, has usefully filled a gap in the field of policy studies); Ingraham, Toward a More Systematic Consideration of Policy Design, 15 POL'Y STUD. 612 (1987) (asserting that the emphasis on policy implementation ignores the significance of the initial policy decision).
which will accomplish the desired objectives in the most cost-effective manner.\textsuperscript{35}

This article employs a policy implementation model developed by Professors Mazmanian and Sabatier,\textsuperscript{36} which, in contrast to other models, emphasizes the role of law in implementation.\textsuperscript{37} Not only should legal structuring of the implementation process be of particular interest to lawyers, but empirical investigations reveal that the degree to which policy objectives are attained may be explained by the legal structure, or lack of such structure, imposed by the relevant statutes.\textsuperscript{38} By exploring the interplay between governing statutes and agency implementation, this article is also intended to assist those involved in public land acquisition efforts (legislators, members of legislative staffs, agency officials, and program proponents) who wish to know “which levers they need to pull to make a program work.”\textsuperscript{39} This article does not apply the complete analytical framework of Mazmanian and Sabatier, but employs the portion of greatest relevance to legal scholarship. It is not intended as a full exposition of all influences on the implementation of the Lake Tahoe Acquisitions Bond Act, nor does it purport to provide a “global understanding” of policy implementation in land acquisition.

\textsuperscript{35} See generally J. PRESSMAN & A. WILDAVSKY, IMPLEMENTATION at xiv-xv (1973) (setting forth a “working definition” of implementation as “the ability to forge subsequent links” in the chain connecting actions to program objectives); PUBLIC POLICY IMPLEMENTATION at ix (G. Edwards ed. 1984) (implementation is the stage between passage of a legislative act and the consequences for affected persons); Van Meter & Van Horn, The Policy Implementation Process: A Conceptual Framework, 6 ADMIN. & SOC’Y 447, 447 (1975) (defining policy implementation as “those actions by public and private individuals (or groups) that are directed at the achievement of objectives set forth in prior policy decisions”). As the study of policy implementation has matured, theories have become increasingly complex. R. NAKAMURA & F. SMALLWOOD, THE POLITICS OF POLICY IMPLEMENTATION 12-19 (1980) (studies form “clear evolutionary trend” toward detailed models which discuss the differing political environments of individual implementors). Although this article concerns a policy decision embodied initially in a statute, implementation analysis may be applied to executive and judicial policy decisions as well. Sabatier & Mazmanian, Policy Implementation, in ENCYCLOPEDIA OF POLICY STUDIES, supra note 34, at 143.


\textsuperscript{37} D. MAZMANIAN & P. SABATIER, supra note 36, at 43.


\textsuperscript{39} D. MAZMANIAN & P. SABATIER, supra note 36, at 18. See generally Heineman, The Law Schools' Failing Grade on Federalism, 92 YALE L.J. 1349, 1349-50, 1355-56 (1983) (lamenting the tendency of legal educators to recommend relatively narrow doctrinal changes to courts, rather than the more complex task of making recommendations to legislatures, thereby only occasionally providing “prescriptions that would be useful to a political executive, agency administrator, or legislator”).
The article concludes that the Tahoe Basin environment historically has been significantly affected by changes in public land ownership, and the California Tahoe Conservancy can effectively promote environmental quality by acquiring carefully selected lands. Policy implementation analysis using the Mazmanian and Sabatier model shows that many, but not all, pertinent aspects of the governing legislation correspond to a well structured program, as a result of a careful tailoring of the land acquisition program to the specific historical and geographic circumstances of Lake Tahoe. An alert agency exercising broad and flexible authority has contributed to the successful structuring of the program.

I

THE CONTEXT OF LAND ACQUISITION AT LAKE TAHOE

A. The Lake and Its Basin

Because of its location, size, altitude, and geologic history, the Tahoe Basin is a region of extraordinary beauty and unique characteristics. It lies between the main crest of the Sierra Nevada to the west and the Carson Range to the east.\(^40\) The 511-square-mile drainage basin is quite small relative to the size of the lake, which has a total area of 192 square miles.\(^41\) The lake has one outlet, the Truckee River, which runs from the north end of Lake Tahoe to Pyramid Lake in Nevada.\(^42\)

Lake Tahoe is the tenth deepest lake in the world,\(^43\) and holds enough water to cover the entire state of California to a depth of more than fourteen inches.\(^44\) Due to its great depth and volume, Lake Tahoe’s water retention rate is extraordinary. Once a molecule of water enters the lake it remains there on average for seven hundred years.\(^45\)

About half of the basin’s exposed land area is granite, with volcanic, glacial, and alluvial deposits comprising the other half. These components have produced geologically young and poorly developed soils.\(^46\)


\(^{41}\) Comment, Lake Tahoe: The Future of A National Asset—Land Use, Water, and Pollution, 52 Calif. L. Rev. 563, 564 (1964). See generally Goldman, Lake Tahoe, Two Decades of Change in a Nitrogen Deficient Oligotrophic Lake, 21 Verhandlungen der Internationalen Vereinigung für Theoretische und Angewandte Limnologie [Int’l Ass’n of Theoretical and Applied Limnology] 45, 45-47 (1981). The ratio of the land surface of the basin to the surface area of the lake is 1.6 to 1. Id. at 47.


\(^{43}\) Western Federal Regional Council, Lake Tahoe; Environmental Assessment 116 (1979) [hereinafter Western Federal Environmental Assessment].

\(^{44}\) D. Strong, Tahoe, An Environmental History at xiii (1984).


\(^{46}\) Id. at 8.
Moreover, the lake lies at an altitude of 6,225 feet where winters are long and cold,47 summers are short, dry, and cool, and the growing season is relatively short.48 As a result, soil does not form rapidly in the basin.49

The foregoing attributes of the Tahoe Basin have produced a lake with brilliantly clear water.50 Limnologists (scientists who study fresh water lakes) classify Lake Tahoe as ultra-oligotrophic because of its high clarity and low concentrations of nutrients supporting algae growth.51 The poorly developed basin soils, in their natural state, contribute relatively small amounts of sediment to the lake.52 Because the surface area of the drainage basin is relatively smaller than most other lakes, the quantity of nutrients entering from the soil is also relatively smaller. Moreover, undisturbed areas of the alpine watershed53 and certain riparian biological communities in the basin, known as stream environment zones (SEZ’s), enhance water quality by removing sediments and nutrients.54 Finally, because the lake contains such an immense volume of water, the relative quantity of nutrients in the lake is quite low. The result is a very transparent lake, which is one of the clearest in the world.55

**B. Land Ownership and Use in the Basin**

The Tahoe Basin has been directly affected over the last two centuries by major changes in national policy toward public lands. Like most

47. **STATE WATER RESOURCES CONTROL BOARD, STATE OF CALIFORNIA, LAKE TAHOE BASIN WATER QUALITY PLAN, FINAL PLAN 5 (1980).**
48. Id.; **EIS FOR ESTABLISHMENT OF ENVIRONMENTAL THRESHOLDS, supra note 45, at 8.**
49. **EIS FOR ESTABLISHMENT OF ENVIRONMENTAL THRESHOLDS, supra note 45, at 16.**
50. Mark Twain, who visited Tahoe in 1861, is often cited for his observations of the basin. Regarding clarity of the water, he wrote: “So singularly clear was the water, that where it was only twenty or thirty feet deep the bottom was so perfectly distinct that the boat seemed floating in the air! Yes, where it was even eighty feet deep. . . . [T]he water was not merely transparent, but dazzlingly, brilliantly so. . . . [S]o strong was the sense of floating high aloft in mid-nothingness, that we called these boat-excursions ‘balloon voyages’.” M. TWAIN, ROUGHING IT 192-93 (H. Hill ed. 1981).
52. 1988 WATER QUALITY MANAGEMENT PLAN, supra note 51, at 15-16.
53. Id. at 63-64.
54. Id. at 60-62. For a discussion of SEZ’s, see infra notes 169-70 and accompanying text.
55. **EIS FOR ESTABLISHMENT OF ENVIRONMENTAL THRESHOLDS, supra note 45, at 9.** Lake Tahoe’s algal productivity is only slightly higher than Antarctica’s Lake Vanda, which is permanently frozen. Id. Over time, lakes generally undergo eutrophication, which is characterized by increased algal growth and loss of clarity. However, given its special characteristics, Lake Tahoe should remain extraordinarily clear for many centuries under natural conditions. Id.
land within the present borders of the United States, the Tahoe Basin was once entirely owned by the federal government, having been acquired along with the southwestern corner of the United States by a combination of conquest and purchase. An early, fateful, and apparently arbitrary decision located the boundary between Nevada and California roughly in the middle of the lake, thus requiring cooperation by two states if basinwide programs were to be undertaken.

Along with most of the original public domain, the government disposed of land in the Tahoe Basin in the second half of the nineteenth century under the prevailing national policy of encouraging settlement and economic development of the West. At Tahoe, substantial land disposition to private owners began with significant migration through the basin and associated settlement at Tahoe, which followed the 1859 discovery of the massive silver deposits of the Comstock Lode just outside the basin. Private citizens acquired land from the federal government for agriculture and cattle grazing primarily through preemption, the preferential right of settler-squatters to buy their claims at modest prices without competitive bidding. At Lake Tahoe, as elsewhere, grants under the General Preemption Act of 1841 and homestead claims under the Homestead Act of 1862 were combined to allow settlers to obtain title to 320 acres. Additional acreage in the northern and northeastern areas of the basin passed out of public ownership under congressional legislation granting the Central Pacific Railroad alternate sections of land along the transcontinental railway right-of-way.

56. J. Laitos, supra note 19, at 240.
58. The California Constitutional Convention in 1849 established the boundary between California and Nevada at the 120th meridian west of Greenwich, but its members knew only vaguely where that line was. J. Hulse, Forty Years in the Wilderness, Impressions of Nevada 1940-1980, at 3 (1986).
59. Glicksman & Coggins, supra note 11, at 128-131; J. Laitos, supra note 19, at 250.
60. Mackey, Evolution of Land Use Patterns in the Lake Tahoe Basin with Emphasis on the Spatial Patterns Resulting from Early Transportation and Mining Developments, in Geologic Studies in the Lake Tahoe Area, California and Nevada 72 (J. Evans & R. Matthews eds. 1968).
61. Id.
64. 43 U.S.C. §§ 161-302 (repealed 1976); see P. Gates, supra note 63, at 393-99.
65. Mackey, supra note 60, at 74.
66. D. Strong, supra note 44; at 25; Pacific Railroad Act, ch. 120, § 3, 12 Stat. 489, 492 (1862), amended by Act of July 2, 1864, ch. 226, § 4, 13 Stat. 356, 358. The railroads were given a choice of 20 odd-numbered sections within a 40-mile belt for every mile of track con-
Most of the land in the Tahoe Basin was converted to expanding agricultural uses and to development of a rudimentary resort industry. Parcels of land devoted to these uses changed hands relatively frequently, and the land often was divided in the process. In contrast, other early patterns of land acquisition encouraged the establishment and retention of large holdings. Perhaps the most significant impact of the Comstock strike on land use in the Tahoe Basin was the creation of a tremendous demand for the timber used to support the ceilings of underground mines. The lumber companies active in the area assembled large tracts by purchasing acreage from the Central Pacific Railroad and by acquiring other sections from owners who had claimed preemption or obtained land under the Timber Culture Act of 1872. These methods did not satisfy the demand for timbered land in the Tahoe Basin, so additional federal land was transferred to private interests under the Timber and Stone Act of 1878, which permitted appropriation of lands “chiefly valuable for timber (or stone)” for $2.50 an acre.

The land ownership patterns of the logging era have influenced development and preservation efforts in the Tahoe Basin to the present day. When the major lumber companies purchased land outright and consolidated ownership, as they did on the eastern shore of the lake, the property remained in large tracts. Once all the timber had been cleared, the land had little other use because of its steepness and relative inaccessibility, and therefore was not divided into smaller parcels for sale. As a result, large holdings were available decades later, some of which became major development projects, and others parts of the national forest and national recreation areas. See P. Gates, supra note 63, at 362-68.

67. Mackey, supra note 60, at 74.
68. Id.
69. D. Strong, supra note 44, at 23. By the 1870's, several lumber firms were competing to control as much timberland in the basin as possible, to cut as much timber as possible during peak periods of mining activity, and to prevent the other companies from improving their positions. Mackey, supra note 60, at 74-75.
72. See D. Strong, supra note 44, at 25-26, 57, 76.
74. Id.; see P. Gates, supra note 63, at 550-52.
75. Mackey, supra note 60, at 77. The largest lumber company at Lake Tahoe ultimately owned outright or leased for timber cutting approximately one-fifth of the total land in the basin, including large amounts of acreage fronting on the lake itself. Id. at 75.
76. D. Strong, supra note 44, at 32.
state park systems.  

In the south basin, however, land had potential value for grazing, and timber cutting rights there were frequently leased rather than purchased.  

As a consequence, land ownership in that area continued to fragment and no holdings reached the size of those on the Nevada side of the basin. The small individual holdings on the south shore, in California, created the potential for the many small developments and subdivisions that followed in the next century.

Toward the end of the nineteenth century, the federal government began to shift its policy from disposing of public lands to retaining them. The General Revision Act of 1891 repealed the Preemption and Timber Culture Acts and authorized the President to “set apart and reserve ... any part of the public lands wholly or in part covered with timber or undergrowth, whether of commercial value or not, as public reservations.”

A public campaign led to the designation in 1899 of 136,335 acres in the southwestern part of the basin as the Lake Tahoe Forest Reserve. A 1905 reservation added 22,160 acres, including much of the California side of the basin, to the forest reserve.

The most visible manifestation of early federal land retention policy was the creation of national parks from the public domain. Beginning in 1899 and continuing for most of the next four decades, public officials periodically considered the Tahoe Basin for national park status. Early proposals foundered on uncertainty about the meaning of such status and the in lieu exchange issue that applied to national parks and forest reserves. Later proposals were unsuccessful because private ownership was by that time extensive and the notion of purchasing land for national parks had not yet been accepted. Strong, Preservation Efforts at Lake Tahoe 1880-1980, 25 J. FOREST HIST. 78, 83-87, 89-91 (1981) [hereinafter Preservation Efforts].

Concern for protection of the Sierra watershed for agricultural irrigation in California’s Central Valley, as well as the continuing rapid disposition of land to private interests under the Timber and Stone Act, prompted proposals for expansion of the Lake Tahoe Forest Reserve. The most serious obstacle to creating new forest reserves was the potential for abuse under then existing in lieu land exchange laws. Under such statutes, privately owned land within the boundaries of reservations could be exchanged for equal acreage of public timber land elsewhere. The widespread fraud which had long been associated with other public land laws gave credence to fears that owners of relatively low value cut over land within the Tahoe Basin would be entitled to exchange such land for the choicest timber land elsewhere if the forest reserve were significantly expanded. When Congress repealed the in lieu exchange law in 1905, opposition to new forest reserves...
tional reservations in the Tahoe Basin were made periodically by presidential proclamations, including one as late as 1970. These public lands included only two shoreline tracts, consisting of approximately ninety-two acres and one-half mile of shoreline. Yet creation of the Forest Reserve marked the beginning of an important federal role in protecting land within the Tahoe Basin and produced the land base from which today’s extensive federal ownership in the basin grew.

The federal government’s policy of selective land reacquisition began early in this century and had a significant impact on the Tahoe Basin. The primary vehicle for expanding public ownership in the basin was the General Exchange Act of 1922, which authorized the Forest Service to trade land with private owners. At Lake Tahoe, exchanges were used primarily to overcome difficulties in managing a forest that contained many tracts of privately owned property within its boundary, particularly at the northern end of the lake where the Central Pacific Railroad still owned many alternate sections of land. The federal government also reacquired land through exchanges, adding to the small amount of publicly owned shoreline and providing areas for public recreational use.

In order to allow private owners to divest themselves of their land holdings instead of acquiring substituted property, the Forest Service employed the “tri-partite exchange” method, through which the federal government received land within the Tahoe Basin and the landowner received a cash payment, the funds being derived from sales of National Forest timber outside the basin to a third party. Using this technique, the Forest Service made the first major addition to the reserved public domain in the Tahoe Basin in 1936, acquiring over 7000 acres from a lumber company which had obtained the property during the Comstock era.

declined. In the following three years, President Roosevelt doubled the amount of forest reserve land throughout the country. Preservation Efforts, supra note 80, at 81-89. See generally P. Gates, supra note 63, at 463-93, 569-70 (history of the politics of the period).

84. ROLE OF THE FOREST SERVICE, supra note 82, at 87. These forest reserves ultimately became portions of the three National Forests (Tahoe, Eldorado, and Toiyabe) that exist in the Tahoe Basin today. Id.

85. Id. at 88.


87. Preservation Efforts, supra note 80, at 91.

88. ROLE OF THE FOREST SERVICE, supra note 82, at 88, 90-93.

89. Id. at 89.

90. Id. at 88-89; D. Strong, supra note 44, at 24-28.
After World War II, the Forest Service's predominant method of land acquisition in the basin was land-for-land exchanges. It made a series of such exchanges in the El Dorado and Tahoe National Forests in order to prevent development on scattered parcels within some forested areas. The owners of these private lands exchanged them for isolated parcels of national forest land which were increasingly surrounded by urbanization at the south shore. By the mid-1960's, the federal government owned few isolated parcels in the Tahoe Basin which could be used by the Forest Service in land-for-land exchanges, all but precluding exchange as a method of acquisition.

C. Urbanization of the Tahoe Basin and Its Consequences

Today, Lake Tahoe is a year-round vacation destination that supports a sizable permanent population. Parts of the basin, particularly along the northern and southern shores of the lake, have the appearance of many other urbanized areas which stretch along highway corridors in the United States. In the years after World War II, Tahoe became increasingly urbanized. New indoor and outdoor recreational facilities accommodated increased tourism, which created higher local employment, and in turn, greater demand for housing, transportation, utilities, and other government and private sector services.

91. ROLE OF THE FOREST SERVICE, supra note 82, at 92.
92. Id.
93. Id. at 93. The exchange authority under the Taylor Grazing Act of 1934, ch. 865, § 8, 48 Stat. 1269, 1272 (repealed 1976), was little used by Lake Tahoe area national forests because the process was "extremely slow and lacked [the] enthusiasm" of the necessary cooperating agency, the Bureau of Land Management. ROLE OF THE FOREST SERVICE, supra note 82, at 93. See Anderson, Public Land Exchanges, Sales, and Purchases Under the Federal Land Policy and Management Act of 1976, 1979UTAH L. REV. 657, 661-64 (discussing statutory authority for BLM land exchanges under the Taylor Grazing Act). However, land exchanges did occur on a limited basis after 1965. WESTERN FEDERAL REGIONAL COUNCIL, LAKE TAHOE ENVIRONMENTAL ASSESSMENT, Technical App. A, at 4 (1979) [hereinafter WESTERN FEDERAL TECHNICAL APPENDIX].
94. WESTERN FEDERAL ENVIRONMENTAL ASSESSMENT, supra note 43, at 45 (table 8).
95. See EIS FOR ESTABLISHMENT OF ENVIRONMENTAL THRESHOLDS, supra note 45, at 44-48; Comment, supra note 41, at 563, 568-69.
96. Urbanization of the basin was stimulated by all year maintenance of highways to the north and south shores, the advent of modern large-scale gambling at the lake, and the opening of major ski areas, all of which occurred in the 1950's. D. STRONG, supra note 44, at 41-50.
97. In 1956, there were almost no recreational facilities in the Tahoe Basin, and visitors totaled only a few thousand per year. By 1979 there were 18 campgrounds, 20 public beaches, 18 public picnic areas, 22 boat launching and mooring facilities, 5 ski areas, and 12 casinos within the basin. WESTERN FEDERAL ENVIRONMENTAL ASSESSMENT, supra note 43, at 7. Recreation on national forest lands increased five fold from 1941 to 1976. Id. at 72. Today, gambling dominates tourism, the local labor market, and, in some places, the Tahoe skyline. One survey showed 74% of the visitors to Lake Tahoe gambled sometime during their visit. Id. at 67. Twenty years after its opening in 1955, Harrah's Tahoe occupied a 50,000 square foot casino in an 18 story building, with a six-level parking garage and restaurant serving 10,000 meals a day. D. STRONG, supra note 44, at 50.
The permanent resident population of the basin, which in 1960 was under 15,000, climbed to over 73,000 by 1978.98 In the latter year, visitor population on peak days in the summer exceeded 150,000.99 Nearly all of the recreational, commercial and residential development occurred in a two-mile wide ring around the lake.100 Although it amounted to nearly half of the land in the Tahoe Basin in 1950,101 the public land base had no important restraining effect on rapid urban development because it was located away from the lakeshore.102

Many developers purchased relatively small tracts, which were particularly prevalent on the California side of the basin, and platted typical suburban subdivisions. Under the traditional forms of local land use regulation in effect at Lake Tahoe before 1971, large areas of the basin were subdivided for residential and, increasingly, commercial use.103 Much of the land division was premature; in the late 1970's, there were some 18,000 vacant residential parcels in the basin,104 of which approximately 15,000 were located in California.105 Many of the subdivisions approved during this era fail to meet the design standards required by typical modern regulations.106

Large parcels occasionally became available for large-scale construction projects. In 1960, a developer purchased 9000 acres on the northern shoreline in Nevada which ultimately became the city of Incline Village.107 On the lake's south shore, a massive dredging operation over four years moved 5 million cubic yards of material from the largest marshland in the basin, creating a system of lagoons for 2000 luxury home sites.108

The Tahoe Basin's environment changed markedly as the area grew. One of the basin's principal attributes, its great scenic quality, has been

98. Western Federal Environmental Assessment, supra note 43, at 45 (table 8).
99. Id. In 1978, eighty percent of the population resided on the California side of the basin. Id. at 44.
100. Id. at 7.
101. Id. at 32 (fig. 6).
102. Mackey, supra note 60, at 78.
108. Id. at 53-54. It is noteworthy that both of these large landholdings had been offered for sale to the Forest Service earlier. The agency, however, did not acquire the properties, because, in the first case, no funding was readily available for the acquisition, and in the second, some officials believed that construction on the marsh was not feasible. Role of the Forest Service, supra note 82, at 89-90, 92.
affected adversely by air pollution\textsuperscript{109} and land development patterns.\textsuperscript{110} Urbanization has affected plant communities in the Tahoe Basin unevenly. While only about fifteen percent of forested land has been converted to development since 1900 and shrub communities have suffered little reduction,\textsuperscript{111} fully fifty percent of the basin's meadows and seventy-five percent of its marsh habitat were lost during this century.\textsuperscript{112} Many of the most affected areas in the basin, such as marshes, are "key habitat types," considered critical to the maintenance of wildlife species diversity.\textsuperscript{113}

\textsuperscript{109} By the late 1970's, air quality was significantly degraded. Natural conditions within the Tahoe Basin make it particularly susceptible to ozone pollution and smog problems. Because of its high altitude, the basin is exposed to increased levels of sunlight which increase the rate of chemical reaction of oxidants in the atmosphere. Certain summer weather patterns trap ozone in the basin and the basin's bowl shape, combined with typical wind conditions, causes pollutants to move back and forth within the basin rather than escaping. \textit{Western Federal Environmental Assessment}, supra note 43, at 104-05. Both the state and federal carbon monoxide and ozone air quality standards were exceeded on many occasions, and air pollution has caused damage to vegetation. \textit{Tahoe Regional Planning Agency, Study Report for the Establishment of Environmental Threshold Carrying Capacities} 7-1 (1982) [hereinafter \textit{Study Report for Threshold Carrying Capacities}]. In 1978, the U.S. Environmental Protection Agency designated the Tahoe Basin a non-attainment area for carbon monoxide. 1988 \textit{Water Quality Management Plan}, supra note 51, at 252. There is no long term data demonstrating historical changes in visibility. \textit{Study Report for Threshold Carrying Capacities}, supra, at 7-32. The extent to which hazy conditions correlate with human activity in the basin is not known, although the levels of certain pollutants emitted in the basin also cause visibility problems elsewhere. \textit{Western Federal Environmental Assessment}, supra note 43, at 114-15.

\textsuperscript{110} Studies that have attempted to quantify the visual quality of land within the basin show deterioration caused by numerous commercial signs, utility lines, removal of vegetation and eroded slopes, and the loss of approximately one quarter of the total view of the lake from the perimeter highways. \textit{Study Report for Threshold Carrying Capacities}, supra note 109, at 13-5 to -6; see also \textit{Western Federal Environmental Assessment}, supra note 43, at 166-70 (summarizing historical changes in visual resources at Lake Tahoe).

\textsuperscript{111} \textit{Western Federal Environmental Assessment}, supra note 43, at 160. Human activity is having an effect on the forested area, however, due to fire suppression policies which have prevented the return of some forest areas to earlier successional stages such as meadows, resulting in a monotopic stand of even-aged timbers. \textit{Study Report for Threshold Carrying Capacities}, supra note 109, at 8-11.

\textsuperscript{112} \textit{Western Federal Environmental Assessment}, supra note 43, at 162. Much of the city of South Lake Tahoe was once a large expansive meadow. The most severely altered vegetation in the basin is at the Truckee Marsh in the lowlands on the south shore, where 440 acres of the original marsh of 1040 acres was converted to residential and commercial development. \textit{Id}. The remaining marsh areas are no longer in contact with the lake or feeder streams, causing the wetland plant community to partially disappear with the result that species composition is evolving toward a forest type of community. \textit{Study Report For Threshold Carrying Capacities}, supra note 109, at 8-11 to -12. One consequence of the loss of the Truckee Marsh has been a reduction of nest and water fowl population. \textit{Id}.

\textsuperscript{113} \textit{Western Federal Environmental Assessment}, supra note 43, at 156. Loss or modification of these key habitats is an indirect measure of wildlife status. \textit{See EIS For Establishment of Environmental Thresholds}, supra note 45, at 33. Direct measures, such as wildlife population counts, show that deer herds in the region were reduced by nearly half in the twenty years after 1960, and some nesting populations of birds have been eliminated, such as the peregrine falcon and bald eagle, which are considered endangered species.
The decline in the quality of the lake itself, however, has received the most attention from conservationists, public officials, and scientists. While there are hundreds of measures of water quality, scientific research has focused on those characteristics which affect Lake Tahoe’s chief attribute, its exceptional clarity. Three decades of research reveals that Lake Tahoe is undergoing eutrophication at a rate far above that which would occur naturally.

The immediate cause of eutrophication is an imbalance in the lake’s nutrient budget, in which inputs of nutrients which stimulate algae growth exceed outputs from the lake. Extensive study has revealed that algae growth is correlated with land disturbance and development. Although it is impossible to provide a precise accounting of nutrients, all of the available data point to an excess of nitrogen and phosphorus inputs over outputs. Because Lake Tahoe’s algae are nutrient starved, increasing the storage of dissolved nutrients in the lake increases algal productivity, which in turn decreases the lake’s clarity. The 700-year residence time of water molecules in the lake means that sediments and nutrients reaching Lake Tahoe are not flushed out by water discharge and remain there for extremely long periods, either suspended in the water column or settled on the bottom of the lake. Nutrients stored on the lake bottom become available to algae near the surface because Lake Tahoe experiences deep lake mixing in response to changes in water temperature and wind conditions.

In its advanced stages, eutrophication causes a dense growth of algae and pond weeds which, when the algal cells die and decay, reduce dissolved oxygen levels to the point that aquatic organisms can no longer survive. Lake Tahoe is still in the early stages of this process and con-

\[\text{STUDY REPORT FOR THRESHOLD CARRYING CAPACITIES, supra note 109, at 9-3 to 9-4.}\]
\[\text{114. STUDY REPORT FOR THRESHOLD CARRYING CAPACITIES, supra note 109, at 4-40 to 4-41.}\]
\[\text{115. 1988 WATER QUALITY MANAGEMENT PLAN, supra note 51, at 72.}\]
\[\text{116. Id. at 76.}\]
\[\text{117. See infra text accompanying notes 370-74.}\]
\[\text{118. For example, inputs from ground water have not been well quantified and atmospheric inputs have only recently been measured. While outputs of nutrients via the Truckee River can be accurately estimated, the main output is settling of nutrients to the bottom of Lake Tahoe and this is difficult to measure. 1988 WATER QUALITY MANAGEMENT PLAN, supra note 51, at 76; see WESTERN FEDERAL ENVIRONMENTAL ASSESSMENT, supra note 43, at 128-31.}\]
\[\text{119. 1988 WATER QUALITY MANAGEMENT PLAN, supra note 51, at 77.}\]
\[\text{120. Id. at 87.}\]
\[\text{121. See supra text accompanying note 45.}\]
\[\text{122. 1988 WATER QUALITY MANAGEMENT PLAN, supra note 51, at 74.}\]
\[\text{123. Id. at 78.}\]
\[\text{124. TAHOE RESEARCH GROUP, UNIVERSITY OF CALIFORNIA AT DAVIS, CHANGING WATER QUALITY AT LAKE TAHOE: THE FIRST FIVE YEARS OF THE LAKE TAHOE INTERAGENCY MONITORING PROGRAM 6 (prepared for California State Water Resources Control Board, covering 1979-84).}\]
Continues to maintain sufficient oxygen even in its deeper waters. Nevertheless, the trend toward lower water quality is already apparent.

**D. Planning and Regulation at Lake Tahoe**

The deterioration of the Lake Tahoe environment sparked a series of governmental responses extending over three decades. These initiatives, the most important of which were capital improvement programs and land use regulation, were often controversial, and met with mixed success. Because the Tahoe environment deteriorated even with such efforts, other approaches, principally public land acquisition, were developed.

**I. Sewage Export**

The quality of the lake’s water was the first focus of governmental attention, and has remained the primary continuing environmental concern. Disposal of sewage on land in the basin contributed to pollution of the lake and ground waters. In 1966, California and Nevada prohibited discharge of waste into any waters of the Tahoe Basin. As a result of an extensive sewer construction program, virtually all sewage waste has been exported from the basin since 1974. Because of the correlation between sewage facilities and development, some landowners without access to sewage facilities may find themselves unable to develop despite the availability of building permits.

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125. *Id.*
126. One of the principal measures of water quality at Lake Tahoe is primary productivity, a measure of the rate of carbon uptake by plants during photosynthesis and, therefore, a measure of how rapidly the algal population is growing. STUDY REPORT FOR THRESHOLD CARRYING CAPACITIES, *supra* note 109, at 4-41; TAHOE RESEARCH GROUP, *supra* note 124, at 6. While there has been year to year variability, the primary productivity rate has increased approximately 150% since 1968. 1988 WATER QUALITY MANAGEMENT PLAN, *supra* note 51, at 30. Using the measure of transparency traditional in limnology and oceanography, researchers have documented an overall trend toward decreasing clarity. TAHOE RESEARCH GROUP, *supra* note 124, at 7. Since 1968 Lake Tahoe’s clarity has declined by approximately 20%. 1988 WATER QUALITY MANAGEMENT PLAN, *supra* note 51, at 30. The lake has lost about 23 feet of transparency, and loses an additional 1.5 feet per year. TAHOE RESEARCH GROUP, *supra* note 124, at 7. The average annual transparency of Lake Tahoe was over 100 feet in 1968 and less than 80 feet in 1982. *Id.* (fig. 5).
127. STATE WATER RESOURCES CONTROL BOARD, *supra* note 47, at 32.
129. STATE WATER RESOURCES CONTROL BOARD, *supra* note 47, at 46.
2. The 1969 Interstate Compact

The second major response to environmental changes at Lake Tahoe was regional land use planning and regulation. After California and Nevada approved legislation for comprehensive regionwide planning for the basin, Congress in 1969 ratified the Tahoe Regional Planning Compact, creating the Tahoe Regional Planning Agency (TRPA) as the basin's principal land use planning and regulatory agency. From its inception, TRPA based its planning on the anticipated effects of various land uses on water quality. In the early 1970's the Forest Service and TRPA participated in the development of a classification system for all land in the basin which became known as the "Bailey system," after its principal architect, Forest Service geomorphologist Robert G. Bailey. The fundamental concept underlying this system was that land should be developed in accordance with its capacity for development. The system was designed to provide an objective basis for regulating development to protect soil and water resources, and ultimately became the primary method used by the California Tahoe Conservancy in land acquisition.

The Bailey system categorized all land within the basin according to its sensitivity to disturbance, based on characteristics such as susceptibility of the soil to erosion, degree of slope, and existence of streams or high water tables, and designated for each category a limit on impervious coverage, such as buildings or pavement. Seventy-six percent of land in the basin is included in land classes that allow only one percent surface coverage.

134. Id. at 4-5. See generally I. MCCHARG, DESIGN WITH NATURE (1969) (describing an ecological model for land use decisions).
135. R. BAILEY, supra note 133, at 17-18, 24-25.
136. EIS FOR ESTABLISHMENT OF ENVIRONMENTAL THRESHOLDS, supra note 45, at 19. An additional six percent of the basin is in class 3, which allows only five percent of each parcel to be covered. Id. The basin is for the most part quite steep and therefore susceptible to soil erosion. Id. at 7. Only one-seventh of the land area has a slope of less than ten percent, while the slope of three-quarters of the basin is in excess of 30%. The highest mountain in the basin is almost one mile higher than the surface of the lake. WESTERN FEDERAL ENVIRONMENTAL ASSESSMENT, supra note 43, at 5. Land influenced by a stream or high ground water was categorized as a "stream environment zone" (SEZ) and given a special land capability subclass 1b because of the importance of these areas in maintaining water quality by filtration, rapid incorporation of nutrients into wetland plants, increasing the retention time of surface water, and diffusing water flow. R. BAILEY, supra note 133, at 23; 1988 WATER QUALITY MANAGEMENT PLAN, supra note 51, at 60-62, 64.
Regional planning at Lake Tahoe was always controversial, with environmental groups and many California state officials favoring greater regulation of development and most local government officials, local businessmen, and most Nevada state officials favoring local control of land use. After the creation of TRPA and the development of its plan, the conflict intensified. During the 1970's, TRPA and other regulatory agencies established permissible uses and land coverage limits based on the Bailey land classification system, thereby prohibiting development on eighty-two percent of the land in the basin. Businessmen and property owners in the basin were angered by these restrictions, and there was "widespread and strong local resistance." On the other hand, conservation groups, such as the League to Save Lake Tahoe, considered TRPA's regulations to have left too much authority in local governments that have been ineffective in implementing the restrictions. The result was "virtually continuous and rather intense conflict" over land use policies at Lake Tahoe for most of two decades and, of course, innumerable lawsuits.

Much of the controversy centered on the composition of TRPA's governing board and its voting procedures. Under the 1969 Compact, a majority of the board were local officials and a majority vote of each state's delegation was required to take action. Furthermore, if the board failed to act within sixty days after development proposals were submitted to TRPA, the proposal was deemed approved. The result was that development applications were rarely denied and variances from TRPA requirements were often granted. In California, dissatisfaction grew to such an extent that the state reactivated its own planning and regulatory agency for the California side of the basin. The California Tahoe Regional Planning Agency (CTRPA) promulgated regulations

139. These land use plans imposed a temporary moratorium on development in land capability classes 1, 2, and 3 and SEZ's. EIS FOR ESTABLISHMENT OF ENVIRONMENTAL THRESHOLDS, supra note 45, at 51. Eighty-two percent of the total land area in the Tahoe Basin was in these classes. Id. at 19.
140. Sabatier, Hunter & McLaughlin, supra note 137, at 455.
141. 5 N. Williams, American Land Planning Law § 160.53 (rev. ed. 1985).
143. A sampling of the extensive litigation arising out of regulatory efforts at Lake Tahoe is set forth in 5 N. Williams, supra note 141, at § 160.53 n.45.
145. Id. at art. VI(k), 83 Stat. at 367-68.
146. 5 N. Williams, supra note 141, at § 160.53.
which were significantly more restrictive than TRPA’s, including a rule requiring eighty-five percent of existing platted lots to be built upon before approval of new subdivisions. 148 Disagreement between California and Nevada also plagued the other major prong of environmental regulation, the regional water quality planning required by the federal Clean Water Act. 149

3. The 1980 Interstate Compact

Under threat of the federal government increasing its control of the basin by establishing a national scenic area, 150 Nevada and California approved extensive amendments to the Tahoe Regional Planning Compact, which were ratified by Congress in 1980. 151 The revised compact changed the composition of the governing board to dilute local influence and amended voting procedures to permit either state’s delegation to reject proposed projects. 152 The 1980 Compact requires the reconstituted TRPA to review any activity that may substantially affect the land, water, air, or other resources of the Tahoe region, based on “environmental threshold carrying capacities.” 153 Such environmental thresholds, which the Compact directed TRPA to establish, indirectly determine the capacity of the Tahoe Basin to accommodate additional development. 154 The 1980 Compact also placed a partial moratorium on development in the basin until May 1983. 155

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149. In 1974, the governors of California and Nevada designated TRPA as the areawide planning agency under section 208 of the federal Clean Water Act, 33 U.S.C. § 1288 (1988). TRPA adopted a water quality plan in 1978, but, although Nevada certified the plan, California rejected the plan for failure to include control and enforcement provisions it deemed necessary and revoked TRPA’s designation as an areawide planning agency. California subsequently adopted a water quality plan of its own for portions of the Tahoe Basin in California. STATE WATER RESOURCES CONTROL BOARD, supra note 47, at 48-51.
150. D. STRONG, supra note 44, at 191-92. See generally Comment, supra note 147, at 681 (examining possibilities for greater federal intervention at Lake Tahoe).
152. Id. at art. III(a), (g), 94 Stat. at 3235-37. Dissension did not end with approval of the 1980 Compact. One member of the TRPA Governing Board reported, “... last August [1983] we voted seven to seven on our board on every controversial issue that’s come before us. The most interesting vote was on a motion of... a Supervisor [from Carson City, Nevada].... At the end of a particularly bad morning of seven to seven votes, he made a motion to go to lunch early. I don’t have to tell you what the vote was. That’s the way it’s been going.” Update on Water Quality Decline, Water Supply and Sewage Capacity: Hearing Before the Senate Select Comm. on Tahoe, Cal. Legislature 47 (1984) (statement of Jim Reed, past chairman, TRPA).
153. Act of Dec. 19, 1980, Pub. L. No. 96-551, art. V(b), (c), 94 Stat. 3233, 3239-41. Environmental thresholds are defined in the 1980 Compact as “environmental standard[s] necessary to maintain a significant scenic, recreational, educational, scientific or natural value of the [Tahoe] region or to maintain public health and safety within the region.” Id. at art. II(i), 94 Stat. at 3235.
154. TAHOE REGIONAL PLANNING AGENCY, REGIONAL PLAN FOR THE LAKE TAHOE BASIN, GOALS AND POLICIES I-2 (1986) [hereinafter TRPA GOALS AND POLICIES].
155. New subdivisions, planned unit developments, and condominiums were prohibited,
In 1984, after adopting a comprehensive set of environmental thresholds including water quality, stream environment zones and imperious land coverage, TRPA amended its Regional Plan to conform with the new standards. However, the conflict over regulatory measures in the Tahoe Basin continued. Immediately after the new plan was adopted, the California Attorney General and the League to Save Lake Tahoe filed actions against TRPA, alleging that the plan failed to comply with the 1980 Compact. Finding that the plaintiffs were likely to succeed on the merits of their claims, the federal courts enjoined TRPA from accepting, reviewing, or approving project applications, except by court approval on a case-by-case basis. This injunction effectively imposed a moratorium on development in the basin.

After a year of failed attempts to resolve disagreements and revise the regional plan, TRPA organized a "consensus building workshop" which succeeded in proposing workable solutions on key issues. In September 1986, TRPA adopted another amended regional plan incorporating these recommendations, and in the following year, TRPA adopted the first fifty-two chapters of the Code of Ordinances implement-

and residential units were limited to 530 per year in California and 1,078 per year in Nevada. Act of Dec. 19, 1980, Pub. L. No. 96-551, art. VI(c), 94 Stat. 3233, 3243-44.

156. Tahoe Regional Planning Agency, Res. 82-11 (1982). The environmental threshold for water quality for the open waters of the lake in terms of numerical standards is to achieve a specified annual mean algal primary productivity standard and a specified standard of clarity; the management standard for both open and near-shore waters is the reduction of dissolved inorganic nitrogen loading to the lake from all sources by 25% of the 1973-81 average. For stream environment zones (SEZ's), the environmental threshold is to preserve existing natural functioning SEZ lands in their natural hydrologic condition, restore all disturbed SEZ's in unsubdivided lands, and to restore 25% of the SEZ's that have been developed. The standard for impervious cover is compliance with the Bailey land classification system. Id. exhibit A at C-7, C-9.

157. The process of developing the amended plan is outlined in TRPA GOALS AND POLICIES, supra note 154, at I-I to -4.

158. California ex rel. Van de Kamp v. Tahoe Regional Planning Agency, No. Civ. S-84-0561 EJG, slip op. (E.D. Cal. June 15, 1984) (Memorandum of Decision), aff'd, 766 F.2d 1308 (9th Cir. 1985). The plaintiffs alleged that TRPA's ordinance implementing the 1984 Regional Plan did not require written findings that development projects will not exceed the environmental threshold carrying capacities and thus failed to comply with the 1980 Compact. Id. at 3-7.

159. California ex rel. Van De Kamp v. Tahoe Regional Planning Agency, 766 F.2d 1308, 1312, 1316 (9th Cir. 1985).

160. See Ingrum, Progress at Lake Tahoe, 44 URB. LAND 13 (1986); Staller, Battle-Weary Lake Tahoe Combats Try Compromise, 89 AUDUBON 44 (1987). The Consensus Workshop Group included representatives of a broad array of interests, including federal agencies such as the U.S. Environmental Protection Agency and U.S. Forest Service, the Attorney Generals' Offices of California and Nevada, local entities such as the Tahoe Basin Association of Governments and Tahoe Transportation District, environmental organizations such as the Sierra Club and League to Save Lake Tahoe, property owners organizations such as the Tahoe Sierra Preservation Council and Tahoe Shorezone Representation, and economic interests such as the Tahoe Sierra Board of Realtors and The Gaming Alliance. TRPA GOALS AND POLICIES, supra note 154, at vii.

161. TRPA GOALS AND POLICIES, supra note 154.
As a result, the injunction on all construction was lifted in July 1987. The final component of the overall regulatory scheme is TRPA's Water Quality Management Plan, which was approved by California, Nevada, and the U.S. Environmental Protection Agency in 1989.

The regulatory system which resulted from this process is complex and extremely comprehensive. Several aspects of the scheme have particular significance for the land acquisition programs of the California Tahoe Conservancy. First, the regulatory program imposes stringent restrictions on the development of privately owned land. It controls the amount of new development by permitting new subdivisions in only very limited circumstances and allowing a maximum of 2000 new residential units to be constructed during the first six years of the plan. Commercial development, which does not include hotel or motel accommodations or outdoor recreational facilities, may be increased by approximately one percent per year over ten years. The relative stringency of land use regulation at Lake Tahoe, both under CTRPA on the California side of the basin and under the current regionwide plan, has led basin landowners to support public acquisition efforts in the area.

Second, the special protection extended to stream environment zones (SEZ's) under earlier regulations has been continued and refined under the current regional plan. The regulatory system defined new procedures for establishing SEZ boundaries. Once a SEZ is identified, no new land coverage or other permanent disturbance is permitted on such property, with limited exceptions. Furthermore, TRPA requires previously disturbed SEZ's in unsubdivided lands to be restored, in order to revive a portion of the natural water treatment capacity.

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162. *TAHOE REGIONAL PLANNING AGENCY, REGIONAL PLAN FOR THE LAKE TAHOE BASIN, CODE OF ORDINANCES (1987)* [hereinafter TRPA CODE].
164. *1-7 TAHOE REGIONAL PLANNING AGENCY, WATER QUALITY MANAGEMENT PLAN FOR THE LAKE TAHOE REGION (1988).*
165. TRPA GOALS AND POLICIES, *supra* note 154, at II-1 to -10.
166. TRPA CODE, *supra* note 162, at ch. 33.2.A(3).
167. *TAHOE REGIONAL PLANNING AGENCY, A SUMMARY OF PART 1, GOALS AND POLICIES OF THE REGIONAL PLAN FOR THE LAKE TAHOE BASIN 10 (1986)*; see also TRPA CODE, *supra* note 162, at ch. 33.3.
168. See infra notes 255, 283-85 and accompanying text.
170. TRPA CODE, *supra* note 162, ch. 37.3. A SEZ is defined as land where any "key indicator" exists, such as evidence of surface water flow, primary riparian vegetation, near surface ground water, or certain kinds of alluvial soils; if no key indicator is present, any one of three secondary indicators, such as location within a designated flood plain, will establish a SEZ. *Id.* ch. 37.3.B(1)-(2). TRPA's land capability maps are used to identify SEZ's initially, but every parcel is subject to field verification. *Id.* ch. 37.3-37.4.
172. *Id.* at IV-23; see also 3 *TAHOE REGIONAL PLANNING AGENCY, WATER QUALITY MANAGEMENT PLAN FOR THE LAKE TAHOE REGION (1988)* (stream environment zone pro-
Conservancy has focused its acquisition and restoration activities on SEZ's because of its emphasis on promoting water quality. 173

Third, the current Regional Plan incorporates a new land classification scheme based on the Bailey system. As applied by TRPA, the Bailey system proved to be very controversial because the determination of soil type alone had such serious consequences for development approval. 174 Under the revised land capability system for residential parcels, the Individual Parcel Evaluation System (IPES), every vacant residential parcel in the Tahoe Basin is evaluated individually by a field team consisting of a soil scientist, a watershed expert, and a planner. Based on the onsite analysis, the parcels receive a numerical score, and TRPA then ranks vacant parcels from most suitable to least suitable for development. Only parcels in the top rank for each city or county within the basin may apply for development permits. 175 As discussed below, the Tahoe Conservancy has adopted IPES as its primary criterion for acquisition of environmentally sensitive lands. 176

Fourth, the new TRPA Regional Plan continues the regulation of impervious land coverage, but uses the concepts of base land coverage, coverage transfers, and mitigation of excess coverage to address problems on a parcel-by-parcel basis, rather than setting inflexible limits through strict application of the Bailey classification system. All new development must conform to the coefficient of allowable land coverage specified by the Bailey system as refined by IPES. 177 However, the plan allows additional coverage on individual parcels through transfer programs based on a direct offset method. 178 The allowed coverage may be increased by transfer of land coverage from other parcels within hydrolog-

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173. SEZ's are particularly important to water quality. See supra notes 54, 136 and accompanying text.

174. In addition, the soil maps which formed the basis for the land capability designations were not of a sufficient scale to consistently identify soils on lots which are typically one-third acre or less in size. 1988 WATER QUALITY MANAGEMENT PLAN, supra note 51, at 5. Some factors which affect the water quality consequences of land disturbance, such as the direction of surface water runoff and whether mitigation measures are available, were not incorporated in the original Bailey system. URB. LAND INST., LAKE TAHOE, AN EVALUATION OF GOVERNMENTAL, PLANNING, ENVIRONMENTAL, AND INFRASTRUCTURE FINANCING ISSUES IN THE TAHOE BASIN 18-19 (1985). Some of the soil maps were not entirely accurate. Id. at 19. Finally, approximately one-third of the vacant residential parcels in the Tahoe Basin were mapped in land capability districts 1, 2, and 3, making it impossible for many owners to obtain building permits. 1988 WATER QUALITY MANAGEMENT PLAN, supra note 51, at 5.

175. TRPA GOALS AND POLICIES, supra note 154, at VII-4 to -7; TRPA CODE, supra note 162, at ch. 37.8.

176. See infra note 304 and accompanying text.

177. TRPA GOALS AND POLICIES, supra note 154, at II-12 to -17.

178. Id. at II-12 to -13. Only parcels of designated size and environmental sensitivity are eligible for coverage transfer.
ically related areas up to specified limits.\textsuperscript{179} Transfers of land coverage may be accomplished by private transactions or by utilizing a land bank,\textsuperscript{180} a role recently undertaken by the California Tahoe Conservancy.\textsuperscript{181} Parcels with existing coverage in excess of Bailey coefficients may be modified or rehabilitated if coverage is reduced off site, or if the landowner pays an excess coverage mitigation fee.\textsuperscript{182} The fee is ultimately paid to a land bank, such as the California Tahoe Conservancy, to finance the acquisition of other parcels with potential or existing coverage, such as dilapidated buildings or paving, and then to restore those sites to a more natural condition.\textsuperscript{183} This system is designed to provide the regulatory agency and property owners with flexibility while still mitigating land use and water quality problems consistent with the environmental thresholds.\textsuperscript{184}

\textbf{E. Summary: Impact of the Context of Lake Tahoe on Public Land Acquisition Programs}

Several attributes of the Lake Tahoe Basin in the late 1970's determined the need for, and design of, future regional public land acquisition programs. The pattern of land ownership that evolved since the mid-1800's resulted in thousands of unimproved subdivided lots and the loss of certain lands which were critical to maintenance of water quality and wildlife.\textsuperscript{185} Only one-third of the lake's shoreline was publicly owned in 1979, and outdoor recreation facilities were frequently at or above capacity.\textsuperscript{186} On the other hand, seventy-one percent of the land in the basin was already publicly owned by 1979.\textsuperscript{187} Thus, extensive public holdings had become an accepted fact at Lake Tahoe. Existing institutions, primarily the Forest Service but also state parks departments in California and Nevada, were in place to manage public lands. However, this public land ownership had not significantly restrained development within the basin, and the existence of numerous subdivided lots created the potential for further urbanization.

Protection of the Tahoe environment through regulation alone had largely failed. A prominent scholar in the field described regional planning in the basin under the 1969 Compact as "notably unsuccessful;"\textsuperscript{188}

\begin{itemize}
\item \textsuperscript{179} TRPA CODE, supra note 162, at ch. 20.3.C(5).
\item \textsuperscript{180} Id. at chs. 20.3.C, 38.8.
\item \textsuperscript{181} See infra text accompanying notes 305-17.
\item \textsuperscript{182} TRPA GOALS AND POLICIES, supra note 154, at II-16 to -17.
\item \textsuperscript{183} See California Tahoe Conservancy, Staff Activities Report 3-4 (June 8, 1990).
\item \textsuperscript{184} 1988 WATER QUALITY MANAGEMENT PLAN, supra note 51, at 126-27.
\item \textsuperscript{185} See supra text accompanying notes 59-66, 79, 103-05, 111-13.
\item \textsuperscript{186} WESTERN FEDERAL ENVIRONMENTAL ASSESSMENT, supra note 43, at 33, 71-75;
\item \textsuperscript{187} 1988 WATER QUALITY MANAGEMENT PLAN, supra note 51, at 27.
\item \textsuperscript{188} 5 N. WILLIAMS, supra note 141, at § 160.53.
\end{itemize}
others have characterized the results of the early bistate arrangement as "disastrous." ¹⁸⁹ When legislation to fund state land acquisition in the Tahoe Basin was first proposed, California and Nevada were struggling to revise the 1969 Compact. Even after approval of the 1980 Compact, the nature of future land use regulation in the basin, and even adoption of regionwide regulations, were in doubt for more than six years, the time during which the current federal, California, and Nevada acquisition programs were designed and implemented.

At the end of the 1970's, private landowners in the basin faced the prospect of strict limitations on development, but there was considerable uncertainty about the nature of future land use regulations. For a number of years, landowners, particularly those on the California side of the basin, were subject to stringent regulation even when, in the view of conservationists, TRPA was ineffective in controlling growth. Property owners seeking to develop their property also confronted limitations on sewage capacity and lengthy moratoria on building.

At the same time, there was a great deal of conflict between conservationists and local residents, and between California and Nevada public officials, over the proper role of government in the Tahoe Basin and the appropriate balance between local and state representatives in any regional agency.

Above all, however, the uniqueness of the resource—the extraordinary clarity of the lake's water, its scenic setting amidst glaciated peaks, and the lake's proximity to large population centers—created the political will to protect it. There was significant support for nonregulatory as well as regulatory approaches to Tahoe's environmental problems, and the proponents of such actions gradually developed a consensus to focus on the quality of Lake Tahoe's water as both the primary indicator of change in the basin's environment and the principal environmental concern.

II
THE MODERN ROLE OF PUBLIC LAND ACQUISITION AT LAKE TAHOE

In response to increased public concern over the deterioration of the environment at Lake Tahoe and the ineffectiveness of land use controls there, governmental agencies have increased the amount of public land ownership in the basin. The acceleration of public land acquisition has occurred in two phases. The first phase occurred between 1970 and 1980, prompted initially by the urbanization of the basin and the con-

cerns that led to the 1969 Compact. The ineffectiveness of TRPA in the 1970's and uncertainty about its future spurred land acquisitions during that decade and, together with concern about Tahoe's environment and equitable treatment of private property owners, motivated the second phase, which began in 1982 and is comprised of the present programs under the California Lake Tahoe Acquisitions Bond Act, the Santini-Burton Act, and the Nevada Tahoe Basin Act.

A. Genesis of the Current Acquisition Programs

1. Proposals for Expanding Public Land Acquisition

Public land acquisition in some form has been repeatedly recognized as an essential ingredient in both the preservation and development of the Tahoe Basin. Even the earliest steps toward regional planning at Lake Tahoe in the 1960's incorporated recommendations for public land acquisition. Such proposals, however, described the objectives of acquisition only in the most general terms.

Early in its existence, TRPA recognized that land acquisition could complement land use regulation. According to one official, "TRPA saw the increase of public lands as the surest way to help ensure environmental control at Lake Tahoe." In July 1970, only four months after its creation, TRPA's governing board adopted a resolution calling on the Secretaries of Agriculture and the Interior to speed acquisition of land in the basin through purchases, exchanges, and other means. The regional agency's first adopted plan contemplated public acquisition of approximately 34,000 acres as a means of protecting the land from development. To accomplish this, in February 1972 the TRPA Executive Director sought $50 million in federal funds for land acquisitions, but administration officials in Washington and some national conservation groups thought more restrictive regulation by TRPA was preferable, and the funding was not approved.

190. See supra text accompanying notes 96-99, 103-15.
191. In the early 1960's, planners from each of the five counties in the Tahoe Basin formed an advisory Tahoe Regional Planning Commission whose primary effort involved support for the preparation of a master plan. The resulting plan simply accommodated anticipated urbanization and did not adequately consider the ecological consequences of continued growth. D. STRONG, supra note 44, at 129-130.
192. The plan proposed that "certain portions of the Basin lands ... be set aside" for uses including recreation and watershed, protected by "[a]cquisition of development rights ... [and] fee title by gift, bequest, purchase or condemnation." TAHOE REGIONAL PLANNING COMMISSIONS OF NEVADA AND CALIFORNIA, LAKE TAHOE 1980, REGIONAL PLAN ch. Development Policy (1964).
193. ROLE OF THE FOREST SERVICE, supra note 82, at 46.
194. Id.
195. Id. at 53.
196. Id. at 53, 62.
Several other federal proposals in the 1970's incorporated the idea of public land acquisition. In 1970, the same year that TRPA was established, Congress directed the Secretary of the Interior to conduct a feasibility study and make recommendations regarding the creation of a national lakeshore at Lake Tahoe. 197 A comprehensive draft report, prepared by the Interior Department’s Bureau of Outdoor Recreation (BOR), 198 analyzed three “public investment options,” all of which incorporated acquisitions of private land, at an estimated cost ranging from $25.4 million to $100.9 million. 199 The BOR draft report identified provision of public access to the lake and public recreation areas along the shoreline as priorities for land acquisition, and accorded somewhat lower priority to acquisitions which would prevent development within an identified “landscape conservation zone” and acquisitions of “unique natural areas such as marshes, meadows, stream and creek sides.” 200 However, in sharp contrast to the BOR draft report, which viewed creation of a national lakeshore as necessary due to TRPA’s ineffectiveness, 201 the final report of the Interior Department recommended against establishment of a national lakeshore at Lake Tahoe and against any direct federal land purchases. 202 Instead, the Interior Department suggested that the federal government use the Land and Water Conservation Fund to support a coordinated acquisition effort by California and Nevada to acquire land around Lake Tahoe for state parks. 203


198. ROLE OF THE FOREST SERVICE, supra note 82, at 60.

199. Pacific Southwest Region, Bureau of Outdoor Recreation, United States Dep’t of Interior, Lake Tahoe: Strategies to Save a Lake 113 (draft June 15, 1971) (copy on file with author). The lower spending option was considered by the authors of the draft report “to be the absolute minimum amount of public expenditure necessary,” Id. at 109, to “prevent further degradation” of the basin’s environment and “provide for restoration of certain environmental values.” Id. at 64, 65-73.

200. Id. at 66, 109-10. Water pollution was not considered an independent criterion for land acquisition, in part because implementing recommendations addressing the other issues would do much to reduce siltation. Id. at 32-33.

201. The draft BOR report proved controversial, primarily because of its sharp criticism of TRPA and the broad scope of its recommendations in areas other than land acquisition. D. STRONG, supra note 44, at 159-60. The Secretary of the Interior selected two members of his immediate staff to draft a “less politically sensitive” report, ROLE OF THE FOREST SERVICE, supra note 82, at 60, and copies of the draft report quietly disappeared. D. STRONG, supra note 44, at 160. (The author obtained a copy of the draft BOR report on Lake Tahoe in preparation of this article.) A separate BOR report prepared in 1970, recommending expenditure of $6.3 billion for urban parks, was reportedly “suppressed” by the same administration. Futtrell, Parks to the People: New Directions for the National Park Service, 25 EMORY L.J. 255 n.41 (1976).

202. U.S. DEP’T OF INTERIOR, LAKE TAHOE, A SPECIAL PLACE 5 (1973). The Secretary of Interior’s transmittal letter to the President stated that national lakeshore designation would be “counter to the desires and interests of the local and regional governments.” Id. at 1.

203. Id. at 22.
The possibility of including the Tahoe Basin in the National Park System was raised in a TRPA proposal to create two national recreation areas in the basin. In contrast to the final Interior Department national lakeshore report, a 1976 TRPA feasibility study recommended federal acquisition of land in the Tahoe Basin. The study recommended the acquisition of some improved residential lots, but also identified the need to acquire undeveloped parcels to "reduce water quality problems related to erosion and sedimentation." The study also reflected TRPA's recognition of the limitations of solely regulatory approaches. However, Nevada did not support the national recreation area concept, because it involved not only greater federal land ownership, but greater direct federal control over private property in the basin, and the plan was never accepted.

At about the same time as the TRPA study, the U.S. Environmental Protection Agency (EPA) completed a congressionally mandated study and concluded, "[c]learly, attainment of the objectives of the Tahoe Regional Plan requires the public acquisition of some lands which are now privately owned," and warned that due to rising land values and pending development proposals, "time is of the essence." EPA recom-

204. On the California side of the lake, the proposed Emerald Bay National Recreation and Wilderness Area would have required the acquisition of approximately 4000 acres of privately owned property, including 700 improved residential lots. TAHOE REGIONAL PLANNING AGENCY, TAHOE BASIN NATIONAL RECREATION AREAS FEASIBILITY STUDY 3 (1976). In addition, approximately 360 private residences existed on national forest land under use permits from the Forest Service. Establishment of the proposed Tahoe-Nevada Recreation Area on the east side of the basin would have involved acquisition of 6,000 acres of private land, including an unknown number of improved parcels. Id. at 21. The overall purpose of the national recreation areas was to remedy "existing problems associated with resource management, recreation use and transportation." Id. at 19. TRPA's feasibility study emphasized that 29 major drainages were located in the proposed national recreation areas contributing approximately 30% to the runoff into Lake Tahoe. Id. at 2-3. Because "the projected build-out of existing urban areas" in the absence of the two proposed national recreation areas could lead to further degradation of the lake's water quality, public acquisition of such potentially developable parcels was viewed as having an important environmental benefit. Id. at 4.

205. Id. at 21. D. STRONG, supra note 44, at 179-82. One part of the TRPA proposal would have permitted continued ownership of private homes in the National Recreation Area so long as local zoning regulations conformed to the management program of the federal recreation area. TAHOE REGIONAL PLANNING AGENCY, supra note 204, at 21, 22. See generally Thomas, The Cape Cod National Seashore: A Case Study of Federal Administrative Control Over Traditionally Local Land Use Decisions, 12 B.C. ENVTL. AFF. L. REV. 225 (1985).


207. U.S. ENVTL. PROTECTION AGENCY, THE LAKE TAHOE STUDY 109, 116 (1975). Issued in June 1975, the EPA study was conducted in 1973 and 1974 and contained only sum-
mended that lands, development of which would cause pollution of the lake, such as stream environment zones, wetlands, and meadows, should be subject to regulation, and that the federal government should acquire lands designated for public access and recreational use.\textsuperscript{209} Courts have frequently upheld restrictive land use controls on wetlands and similar areas,\textsuperscript{210} and sometimes upheld restrictions on uses deemed to be harmful,\textsuperscript{211} but they have generally held requirements that private property be open to the public for access or recreation to be unconstitutional unless the government acquires the property or access rights.\textsuperscript{212} Accordingly, EPA's suggested acquisition priorities emphasized shoreline areas for public access, land suited to recreational facilities development, and land soon to be developed in ways that would threaten environmental values of other public lands.\textsuperscript{213} As discussed below, however, the acquisition programs of the Tahoe Conservancy, the Santini-Burton Act, and the Nevada Tahoe Basin Act, implicitly reject the view contained in the EPA study that the public should acquire land only to accomplish purposes it cannot achieve constitutionally by regulation.\textsuperscript{214}

The EPA study also recommended that the "disparate policies" of the numerous federal agencies that influenced Lake Tahoe's future be focused into a "cohesive statement."\textsuperscript{215} In response, the eleven federal agencies and departments comprising the Western Federal Regional Council\textsuperscript{216} undertook to develop a unified federal policy concerning Lake
Tahoe. In its final policy statement, approved in August 1978, the Council recommended that Congress establish "an expanded basis for land purchase by the federal government" and provide it with sustained funding. The group recommended that new legislation permit federal acquisition of "potential hotel/casino sites, high erosion hazard lands, and stream environment zones." This advice reflected continuing refinement and increasing specificity in acquisition priorities, as well as a recognition of the role that land capability could play in any Lake Tahoe land acquisition program. The ultimate consequence of this recommendation was the Santini-Burton Act, which authorized the Forest Service to purchase environmentally sensitive land in the basin.

Another endorsement of public land acquisition at Lake Tahoe came from the California State Water Resources Control Board. California's Lake Tahoe Basin Water Quality Plan called the creation of a land acquisition program "[t]he ideal solution to the threat of erosion and stream environment zone encroachment from further development." Focusing on the development of individual lots in existing subdivisions as a cause of erosion, the water quality plan "strongly support[ed] a land purchase program to purchase every lot which is unsuitable for development and whose owner is willing to sell." Significantly, the water quality plan also considered public land acquisition "a means of reducing or eliminating the financial impact on individual lot owners" who would be unable to develop their property due to regulatory constraints.

Thus, proposals by two of the basin's principal regulatory bodies, TRPA and California's water quality planning agency, reflected a belief that land acquisition was a desirable complement to land use regulation. Moreover, the California plan's acquisition proposal emphasized the pro-

WESTERN FEDERAL REGIONAL COUNCIL, MEMORANDUM OF CONSSENSUS, FEDERAL POLICY FOR THE LAKE TAHOE BASIN at 1 (1978) [hereinafter FEDERAL POLICY CONSENSUS]. Federal Regional Councils were interagency committees created by executive action. The ten councils, which corresponded to the ten standard federal administrative regions, were directed to "assist state and local government by the coordination of Federal program grants and operations" through, among other actions, "the development of more effective ways of allocating Federal resources to meet the long-range needs of state and local communities . . . ." M. DERTHICK, BETWEEN STATE AND NATION, REGIONAL ORGANIZATIONS OF THE UNITED STATES, 157-81 (1974).

217. FEDERAL POLICY CONSENSUS, supra note 216, at 13, 19.
218. Id. at 20.
219. Id.
220. See supra text accompanying notes 133-35.
221. See supra note 28.
222. STATE WATER RESOURCES CONTROL BOARD, supra note 47, at 300.
223. Id. at 163.
224. Id. The plan noted that land purchase would not be constitutionally compelled under circumstances where development restrictions were very stringent, but reasonably necessary to protect environmental quality. Id. Under land use restrictions called for in the final plan, as many as 7100 lots on the California side of the basin could not be developed for residential or commercial uses. Id. at 247-48.
tection of water quality from the impacts of urbanization. This marked a new stage in the evolution of acquisition proposals.

2. *Forest Service Acquisitions Under the Land and Water Conservation Fund*

Although repeated proposals for greater public land ownership failed to generate any new acquisition programs during the 1970's, the Forest Service expanded its acquisition efforts. Unlike other agencies, it had in place the necessary legal authority and staff to respond to the perceived need for greater public ownership and, in the Land and Water Conservation Fund (LWCF), a potential source of land acquisition funds. The Forest Service had been acquiring private land in the Tahoe Basin since the turn of the century, but the pace of its acquisitions accelerated rapidly after 1970. From 1965 to 1970, the Forest Service acquired 2769 acres in the basin; in the five years from 1970 to 1975, it acquired over 28,000 acres. Once again, a major development in national policy toward public land, in this case the establishment of the LWCF, was clearly reflected in policies in the Tahoe Basin.

Responding to "Federal, State and local concerns," the Forest Service set a goal of public ownership of eighty-five percent of the land in the basin and identified some 33,000 acres of private land for ultimate Forest Service ownership. In accordance with the requirements of the LWCF, agency acquisition criteria originally emphasized public recreation. In 1972, TRPA staff and a Forest Service Planning Team prepared a "Public Lands Priorities Map." This map was essentially an inventory of private properties which, in the judgment of the agencies' policymakers, should be acquired by the Forest Service.

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225. See *supra* note 12 and accompanying text.
226. See *supra* text accompanying notes 86-93.
228. See *supra* text accompanying notes 59-66, 80-91.
229. *U.S. Gen. Accounting Office, The Federal Drive to Acquire Private Land Should Be Reassessed* 85-86 (1979). A unified basinwide approach to federal land acquisition at Lake Tahoe was made possible by the creation of a management arrangement unique in the entire Forest Service. Interview with D. Wayne Shepard, Lands Officer, Lake Tahoe Basin Management Unit, Forest Service, U.S. Dep't of Agric., in South Lake Tahoe, Cal. (June 1, 1989) [hereinafter Shepard Interview]; see also 36 C.F.R. § 200.2 (1990) (table of National Forests by region). The Lake Tahoe Basin Management Unit (LTBMU) was formed in 1973 to provide unified management of national forest system lands which had been previously under the separate control of the three different national forests in the basin. ROLE OF THE FOREST SERVICE, *supra* note 82, at 52.
232. ROLE OF THE FOREST SERVICE, *supra* note 82, at 53. The map was prepared at the request of congressional supporters of TRPA's early request for land acquisition funds. *See supra* text accompanying notes 193-96.
staffs, could serve a variety of useful public purposes. In listing properties, the agencies considered such factors as public need, the size of units that could be acquired, watershed protection, wildlife enhancement, scenic qualities, and, echoing the BOR draft report, the prevention of undesirable future development. The Forest Service revised the criteria in 1975 and instituted a numerical ranking system to evaluate each prospective acquisition.

Despite the development of the numerical ranking system, the actual acquisitions of the Forest Service in the Tahoe Basin reflected a practice of acquiring land when opportunities for purchase presented themselves. The acquisitions were oriented toward the purchase of larger parcels, which would become the location of large development projects and whose size justified the transactional costs. For example, the Forest Service's second largest Tahoe Basin purchase during the 1970's, both in terms of size and cost, came about when "word drifted back through channels of Interior and Agriculture to contact the [corporation] which owned the land. Similarly, it purchased a 236 acre parcel only after the administrator of the deceased owner's estate contacted the Forest Service. Both parcels had been included on the original "public lands priorities map," but they would probably not have been acquired without private initiative.

At the same time, faced with delays in the land acquisition funding process, the Forest Service began to involve private nonprofit land conservation organizations in its purchases. For example, the owner of a private estate wanted the public to own the property, but the Forest Service did not have funds available when the owner first contacted it in 1965. In 1976, nine years after the owner's death, the agency was again

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233. Role of the Forest Service, supra note 82, at 53.
234. Sedway/Cooke, supra note 231, at 45.
236. During the 1970's, the Forest Service purchased only 12 parcels in the Tahoe Basin less than 10 acres. Only one of these parcels was under two acres. Id. at 50-52.
237. Id. at 48-52 (tables 1-2 to 1-4).
238. Role of the Forest Service, supra note 82, at 94.
239. Id. at 95.
contacted about purchasing the property but was unable to act promptly because it still did not have funds readily available. As a result, pursuant to a prior agreement with the Forest Service, The Nature Conservancy, a nonprofit organization, purchased the property in July 1977 and resold it to the Forest Service in February 1978. From 1970 to 1979, the Forest Service relied on nonprofit organizations in eight acquisition transactions totaling over $9.3 million.

3. State Park Acquisitions at Lake Tahoe and Attempts at Interstate Cooperation

The states of California and Nevada had acquired some land in the basin prior to 1970 for state park purposes. Although limited in area, these acquisitions provided important additions to the small amount of Tahoe shoreline in public ownership. For instance, beginning in 1928, the California State Parks Commission acquired several large lake front estates which had never been divided into small parcels.

Nevada's reluctance to cooperate with California in acquiring park lands doomed efforts at bistate cooperation and set the stage for the current independent land acquisition programs of California and Nevada. In 1961, in an early effort at interstate cooperation, members of the parks commissions of each state met to consider the increasing need for public recreational areas at Lake Tahoe. A large stretch of undeveloped shoreline, located on a 20,000 acre privately owned property, lay within the state of Nevada, and a portion was under tenuous month-to-month lease to the Nevada state parks system. Because the last large blocks of land in its natural state were located in Nevada, and most park users

241. Role of the Forest Service, supra note 82, at 95-96. Similarly, when the owner of a 645-acre lake front parcel advised Forest Service officials that he would be receptive to an offer to buy the property, no purchase funds were available. The agency then informally suggested to the League to Save Lake Tahoe that the League purchase the property and hold it for eventual Forest Service acquisition. In 1971, a private citizen acquired the property at the request of the league, and when LWCF funds became available in 1974, the Forest Service purchased the land. Id. at 95.

242. Western Federal Technical Appendix, supra note 93, at 49-51.

243. See supra text accompanying note 186.

244. With funds from the first state parks bond issue in 1928, which required matching private funds, the California State Parks Commission acquired 900 acres at Lake Tahoe, including 18,340 feet of shoreline from the descendants of the owner of the largest of the Comstock era lumber companies who donated one-half of the property. This site is now the D.L. Bliss State Park. Other large lakefront estates were subsequently acquired by the state, including one of 1975 acres with 7700 feet of lakefront, now Sugar Point State Park, obtained by purchase with funds from the Cameron-Unruh Beach, Park, Recreational and Historical Bond Act. Preservation Efforts, supra note 80, at 92-93; Dep't of Parks and Recreation, Cal. Resources Agency, Lake Tahoe Region Study (1965); see also J. Engbreck, State Parks of California from 1864 to the Present 57-62, 100-03 (1980).


246. Preservation Efforts, supra note 80, at 95-96.
would come from more populous California, a bistate park was proposed. The two commissions recommended that California and Nevada establish the Lake Tahoe Park Interstate Park Authority, and California proposed doing so by compact, but the Nevada legislature refused to approve the proposal. Nevada subsequently appropriated its own funds to acquire 13,000 of the 20,000 acres; this land became a Nevada state park on the northeast shore of the lake.

A second unified approach to land acquisition throughout the Tahoe Basin was embodied in a proposed Tahoe Conservancy Agency Compact which would have created a bistate agency with a mandate to acquire private land, comparable to TRPA in the planning and regulation sphere. California ratified the compact in 1973, but the Nevada legislature never approved it. Nevada's continued reluctance to participate in interstate land acquisition efforts at Lake Tahoe has been an important political factor determining the ultimate structure of land acquisition programs there.

Nevertheless, Nevadans perceived the need for additional state level land purchases in the eastern portion of the basin and later instituted their own acquisition program. In 1986, Nevada voters approved a $31 million bond issue "to be used to purchase privately owned land in the Tahoe Basin to preserve the resources and natural beauty of the area" and to fund erosion control projects in the Nevada portion of the basin. Of this amount $23.25 million was to be allocated for land acquisition. As was true of the Santini-Burton Act and the California Lake Tahoe Acquisitions Bond Act, the Nevada measure was supported by conservationists and basin property owners.

The Nevada Tahoe Basin Act, as the bond act has come to be known, is much less specific than either of the statutes authorizing the

247. CAL. COMM’N ON INTERSTATE COOPERATION, supra note 245, at 18.
248. Id. at 19-28.
249. Preservation Efforts, supra note 80, at 97.
250. CAL. GOV’T CODE § 66901 (West 1983). The proposed interstate Compact was a part of the legislation which created the California Tahoe Conservancy. 1973 Cal. Stat. 1064.
251. CAL. GOV’T CODE § 66900 (West 1983).
253. Id. § 1(2).
254. DEP’T OF CONSERVATION AND NATURAL RESOURCES, NEV. DIV. OF STATE LANDS, FINAL REPORT AND RECOMMENDATIONS OF THE COMMISSION ON LAND ACQUISITION IN THE TAHOE BASIN 3 (1987) [hereinafter NEVADA COMMISSION REPORT]. The Act provided that no more than one-fourth of the bond proceeds may be used for erosion control purposes. 1985 Nev. Stat. 585, § 1(2).
255. NEVADA COMMISSION REPORT, supra note 254, at 135 app. B. The coalition of organizations which supported the ballot proposition stressed that land acquisition was necessary to avert further decline in the water quality of Lake Tahoe as a result of development on environmentally sensitive lands, but also argued that "the most equitable way to prevent development on these lands is a purchase program that fairly compensates the property owners.” Id.
other Lake Tahoe acquisition programs. The land eligible to be acquired is described by the act only in very general terms.\(^{256}\) Implementation of the Nevada bond act was assigned to the Division of State Lands, rather than to a new agency, as was the case in California.

Another difference between the Nevada act and the two other acquisition statutes is the valuation standard applied to eligible property. As amended, the Nevada Tahoe Basin Act requires that the purchase price be not less than the fair market value of the property as of July 1, 1980, for owners who acquired their property on or before that date, and not less than the fair market value of the property at the time it was acquired if acquisition occurred after July 1, 1980.\(^{257}\) The Nevada Commission on Land Acquisition in the Tahoe Basin found “overwhelming evidence” that property values in the basin peaked in 1980 and declined thereafter for reasons which may include regulatory enactments and decisions.\(^{258}\) Thus, the Nevada program has usually bought land in the basin for more than its fair market value at the time of purchase.

The acquisition program established for the Lake Tahoe Basin by the state of Nevada is much less extensive than its California counterpart. Because of the limited amount of funding provided for the Nevada program, the state has acquired primarily SEZ lands, not lands for public lakeshore access, wildlife enhancement, or other similar purposes.\(^{259}\) Although it would be possible within the terms of the Tahoe Basin Act, Nevada has not implemented a land coverage bank program under the TRPA’s land coverage regulations.\(^{260}\) Finally, while the current acquisition program has had the effect of resolving lawsuits brought by a few individual property owners, the Nevada legislature has not appropriated general fund or other monies to assist in the settlement of ongoing litigation over the regulation of basin properties.\(^{261}\)

4. **Summary: Lessons from Tahoe Basin Acquisitions Before 1980**

The criteria governing public acquisitions of land evolved over time. Traditionally, agencies acquired land for recreation and to preserve its scenic qualities. As scientific study increased understanding of the biological processes at work in Lake Tahoe,\(^{262}\) governmental bodies began

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\(^{256}\) The act directs that purchase priorities are to be established “based on environmental, social, economic or other considerations consistent with this act.” 1985 Nev. Stat. 585, § 3(2)(d).


\(^{258}\) *NEVADA COMMISSION REPORT*, supra note 254, at 4, 67-69. This contrasts with the preliminary finding of the Tahoe Area Land Acquisition Commission. *See infra* notes 344-46 and accompanying text.

\(^{259}\) Interview with Richard Grimes, Acquisition Program Coordinator, Division of State Lands, State of Nevada, in Carson City, Nev. (July 6, 1989).

\(^{260}\) *Id.*

\(^{261}\) *Id.*

\(^{262}\) *See supra* notes 115-26 and accompanying text; *infra* notes 368-74 and accompanying
to give greater emphasis in their land acquisition programs to preventing development and forestalling harm to the lake's water quality by removing land from private ownership.\textsuperscript{263} However, although the LWCF afforded the Forest Service some latitude in acquiring land, existing law did not provide express authority to acquire property specifically for water quality protection.\textsuperscript{264} The "numerical ranking system" was a systematic way to identify parcels that were appropriate for acquisition,\textsuperscript{265} but the ranking criteria did not focus specifically on what most public officials had come to see as the basin's central environmental problem—the quality of the water in the lake itself.\textsuperscript{266}

Evidence that development helped to cause soil erosion and eutrophication of the lake highlighted the need to prevent development of the numerous small unimproved subdivided lots in the basin.\textsuperscript{267} Yet the only agency actively accumulating land, the Forest Service, traditionally had not acquired small isolated lots or parcels in urbanizing areas at Lake Tahoe or elsewhere.\textsuperscript{268}

Federal efforts to acquire land faced other obstacles as well. In some cases, the delays and uncertainties of funding under the LWCF hindered the acquisition of desired property.\textsuperscript{269} In addition, the Forest Service program was to a considerable degree reactive, responding as acquisition opportunities presented themselves rather than seeking them out. All of the foregoing considerations suggested that a new statutory foundation for land acquisition at Lake Tahoe was needed.

B. The California Lake Tahoe Acquisitions Bond Act and Tahoe Conservancy

California historically has funded large-scale state land acquisition, including purchases for state parks at Lake Tahoe,\textsuperscript{270} by issuing general obligation bonds.\textsuperscript{271} The Lake Tahoe Acquisitions Bond Act, approved
by California voters in 1982, authorized creation of an $85 million indebtedness for the purpose of acquiring specified types of undeveloped land in the basin.

The Tahoe Acquisitions Bond Act, as implemented by the Tahoe Conservancy, marked a departure from the traditional approaches of the California legislature and the Department of Parks and Recreation to land acquisition. In the past, the legislature had often failed to establish specific criteria for park acquisition, and had often set priorities based in part on political considerations. Furthermore, the Parks Department had historically favored the purchase of large tracts in rural areas rather than small urban parcels. The Acquisitions Bond Act focused on specific types of land to be acquired and funded the purchase of small urban parcels.

The Acquisitions Bond Act established three categories of land eligible for acquisition with the proceeds of bond sales: (1) "lands threatened with development that will adversely affect the region's natural environ-

and approved by a majority of votes cast at a general or primary election. Cal. Const. art. XVI, § 1 (West Supp. 1990).

272. The first bond measure solely for acquisitions in the Tahoe Basin was passed by the California legislature in mid-1980, 1980 Cal. Stat. 253 (approved by the Governor on June 26, 1980), at a time when legislation for a revamped Forest Service acquisition program at Lake Tahoe was still pending in Congress. Staff of House Comm. on Interior and Insular Affairs, supra note 29, at 61, 64 (1981). The state proposal, Proposition 2 on the November 1980 general election ballot, would have provided $85 million for land acquisition exclusively at Lake Tahoe. Secretary of State, State of California, California Ballot Pamphlet, General Election, November 4, 1980, at 8-9 (1980). However, the proposal was defeated with 48.8% of votes in favor and 51.2% against. Secretary of State, State of California, Statement of Vote, General Election, November 4, 1980, at 30 (1980).

A similar bond proposition, Lake Tahoe Acquisitions Bond Act, Proposition 4 on the November 1982 general election ballot, was approved with 52.9% of votes in favor and 47.1% against. Secretary of State, State of California, Statement of Vote, General Election, November 2, 1982, at 45 (1982).


274. D. Mazmanian & P. Sabatier, supra note 36, at 242. Land acquisition programs devised by conservation groups have also been described as "park barrel" legislation for allocating funds to acquire lands so as to generate political support. California: Proposition 70 Spurs Interest in Acquisition, 4 Cal. Plan. & Dev. Rep. 5, 7 (1989).

275. D. Mazmanian & P. Sabatier, supra note 36, at 242. This practice was also evident at Lake Tahoe. See supra note 244.

276. See infra text accompanying notes 277-82 and 299-300. One precursor of the California Tahoe Conservancy legislation is that creating the State Coastal Conservancy, Coastal Resource Enhancement Projects Act, Cal. Pub. Res. Code §§ 31100-31406 (1986), which incorporates, for example, authority to acquire land, id. § 31105, restore areas, id. § 31213, and to make grants to other agencies and nonprofit organizations for coastal resource enhancement, id. § 31251-31270. As in the case of the Tahoe Conservancy, one function of the Coastal Conservancy is to complement the programs of a land use regulatory agency. See Petrillo, The Conservancy Concept, 16 Coastal Mgmt. 1, 3-7 (1988). See generally California State Coastal Conservancy, The California State Coastal Conservancy (1986) (describing the functions of the agency); Grenell, The Once and Future Experience of the California Coastal Conservancy, 16 Coastal Mgmt. 13 (1988).
The types of land identified in the bond measure corresponded closely to previously identified land use problems in the Tahoe Basin. In line with the emphasis in recent acquisition proposals on the water quality of Lake Tahoe, the Acquisitions Bond Act established a preference for acquisition of undeveloped lands in stream environment zones and lands which, if developed, would be likely to "erode or contribute to the further eutrophication or degradation of the waters of the region."

The Acquisitions Bond Act also departed from traditional public land acquisitions in its implicit intent to provide relief to property owners whose land was subject to restrictive regulations. Arguments by the bond measure's proponents in the 1982 ballot pamphlet emphasized that "[w]hen owners are precluded by government regulation from developing their property, the owners are entitled, as a matter of equity, to fair compensation" which would be afforded by public purchase of their land. Like the federal Santini-Burton Act and the later Nevada Tahoe Basin Act, the California program received strong support from land-

277. CAL. GOV'T CODE § 66957(a) (West 1983). This section also authorized acquisition of a related category of lands, specifically, "undeveloped lands threatened with development that . . . will adversely affect the use, management, or protection of public lands in the vicinity of the development." Id.

278. CAL. GOV'T CODE § 66957(b) (West 1983).

279. CAL. GOV'T CODE § 66957(c) (West 1983). In all these categories, the bond act permits acquisition only of "undeveloped lands," but consistent with the existence of numerous subdivided lots whose disturbance is potentially harmful to water quality, "undeveloped" is defined to include "land that has been subdivided and improved with streets and utilities." CAL. GOV'T CODE § 66957 (West 1983). The Santini-Burton Act permits acquisition of improved land under narrow exceptions. Act of Dec. 23, 1980, Pub. L. No. 96-586, § 3(c), 94 Stat. 3381, 3384-85. Under that statute, no improved land in Nevada may be acquired, but improved land located within California may be acquired in very limited circumstances. In view of restrictions on acquiring developed land contained in the federal act, it is not surprising that no improved property has been acquired by the Forest Service under this authority. Shep-ard Interview, supra note 229.

280. See text accompanying notes 102, 113, 117, 186.

281. The act further defines "stream environment zone" as "that area which surrounds a stream; . . . which owes its biological and physical characteristics to the presence of water; which may be inundated by a stream; or in which actions of man or nature may directly or indirectly affect the stream." CAL. GOV'T CODE § 66957(a) (West 1983).

282. Id.


owners in the basin who saw government purchase as a desirable alternative to ownership under building moratoria and changing land use regulations.  

The Acquisitions Bond Act left undefined many important attributes of the land acquisition program itself. Instead, the legislature created an independent commission to study "all aspects" of such a program and recommend to the legislature and Governor how the funds derived from the bonds should be used. The Tahoe Area Land Acquisition Commission (TALAC) was composed of three representatives of local governments in the Tahoe Basin, six members appointed by the legislature, and six members appointed by the governor. Thus, the legislature structured the study commission to include local representation, but avoided the dominance of local interests which had characterized TRPA under the 1969 Compact. In 1984, the legislature acted favorably on all the Commission's recommendations for amendments to existing statutes, and the Commission's report became the blueprint for the implementation of the acquisition program, which began in 1985.

On the recommendation of TALAC, the state legislature delegated broad responsibility for administering the land acquisition program to the California Tahoe Conservancy. The Conservancy, which is located in the state's Resources Agency, is governed by a board of seven

Lawrence Hoffman, General Counsel, Tahoe-Sierra Preservation Council). During the congressional hearings, the federal bill was sometimes described in part as a "buy-out or a bail out bill." Id. at 155 (Statement of Jim Bruner, Executive Director, League to Save Lake Tahoe).


290. Interview with Dennis Machida, Executive Officer of the California Tahoe Conservancy, in South Lake Tahoe, Cal. (Sept. 28, 1987).

291. The Tahoe Conservancy Agency was originally created in 1973 at the same time as the interstate compact with Nevada for acquisition of basin lands was proposed. Tahoe Conservancy Agency Compact, 1973 Cal. Stat. 1064 (codified as amended at CAL. GOV'T CODE §§ 66900-66909.5 (West Supp. 1991)). See supra text accompanying notes 250-51 and accompanying text.

voting members, appointed by state and local officials. In addition to its role under the Acquisitions Bond Act as the principal agency responsible for acquiring environmentally sensitive land, the Conservancy under the 1984 amendments may improve and develop acquired land "for the purpose of protecting the natural environment." It may also make improvements "for the purpose of . . . otherwise meeting the objectives of this title," and may award grants to governmental agencies and nonprofit organizations "for the purposes of this title."

1. Land Acquisition Programs of the Conservancy

In exercising its broad mandate, the Conservancy has organized its land acquisition efforts into three programs. First, in order to protect the natural environment, it purchases environmentally sensitive land and land necessary to control erosion, and procures land coverage in connection with the impervious coverage regulations of TRPA's Regional Plan. Consonant with the emphasis of the Acquisitions Bond Act, these efforts focus primarily on acquisitions that will protect water quality by preventing development or further damage to sensitive lands, controlling erosion and mitigating excess land coverage, and transferring development potential from relatively more sensitive to less sensitive parcels. The Conservancy's second program acquires land directly and awards monetary grants to other entities for public access and recreation purposes, and the third acquires land to enhance wildlife habitat in the basin.

The Conservancy's highest priority program has been the acquisition of environmentally sensitive lands, the first category of undeveloped land set forth in the Acquisitions Bond Act. These lands consist

293. Three voting members are appointed by local legislative bodies, two by elements of the State legislature (the Speaker of the Assembly and the Senate Committee on Rules); the others serve ex officio (the Secretary of the Resources Agency and the Director of Finance); an eighth, nonvoting member is appointed by the U.S. Secretary of Agriculture. Id. § 66906.1.
294. Id. § 66907.
295. Id. § 66907.10.
296. Id. § 66907.7(a).
297. See infra text accompanying notes 299-317.
298. Acquisitions of lands to be used for wildlife habitat and public access and recreation are incorporated in the Conservancy's comprehensive programs to accomplish those objectives, which include additional activities such as site improvements and grants to other agencies. See infra text accompanying notes 327-30. Although acquisitions are categorized by the agency according to the foregoing programs for administrative purposes, individual acquisitions may serve multiple objectives. Land on which wildlife enhancement projects are undertaken, for example, will often include environmentally sensitive land such as stream environment zones, e.g., Tahoe Conservancy, Staff Activities Report, at attachment 1 (Feb. 10, 1989) (Lake Christopher Wildlife Habitat Enhancement Project involves restoration of meadow, riparian, and stream zone areas), and can reduce sediment erosion into Lake Tahoe, e.g. Tahoe Conservancy, Staff Activities Report, at attachment 2 (June 8, 1990) (Blackwood Creek Enhancement Project includes a stream environment zone in which stream bank stabilization will reduce erosion).
299. CAL. GOV'T CODE § 66957(a) (West 1983).
largely of small subdivided lots.\textsuperscript{300} The agency bases its determination of environmental sensitivity primarily on land capability criteria. The Conservancy initially used the Bailey land classification system and required parcels to be verified as possessing, in whole or in part, the characteristics of high hazard lands or of a stream environment zone.\textsuperscript{301} In addition, lands which cause unacceptably high rates of sedimentation, eroding shoreline, and substandard lots were eligible for acquisition.\textsuperscript{302} The criteria the Conservancy adopted were similar to those employed by the Forest Service when it began land purchases under the Santini-Burton Act\textsuperscript{303} in 1982, three years before the Tahoe Conservancy began acquiring land. Subsequently, in 1988 and 1989, the Conservancy, the Forest Service, and the Nevada Tahoe Basin Act programs all adopted TRPA's Individual Parcel Evaluation System (IPES) as one of the primary criteria for future purchases.\textsuperscript{304}

Using funds provided under the Acquisition Bond Act and from other sources, the Conservancy also acquires property in its capacity as a land bank designated by TRPA to assist in implementing its land coverage regulations.\textsuperscript{305} The 1986 TRPA Regional Plan provides that new

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\item \textsuperscript{300} Interview with Dennis Machida, Executive Officer of the California Tahoe Conservancy in South Lake Tahoe, Cal. (June 1, 1989) [hereinafter June 1989 Machida Interview].
\item \textsuperscript{301} E.g., Tahoe Conservancy, Staff Recommendation 4-87-2, at 4 (Apr. 17, 1987).
\item \textsuperscript{302} E.g., Tahoe Conservancy, Staff Recommendation 5-89-2, at 5-6 (May 26, 1989).
\item \textsuperscript{303} "Substandard" lots are those whose size is too small to be developed under current land use regulations or lack basic services such as access by paved road. \textit{Id.} at 6.
\item \textsuperscript{304} In September 1988, the Conservancy began using data generated by TRPA as the latter agency prepared to implement IPES for regulatory decisions. California Tahoe Conservancy, Public Meeting Minutes, September 22-23, 1988, at 17-20. In February 1989, the Conservancy adopted an IPES score of 725 or less as a measure of a parcel's environmental sensitivity. California Tahoe Conservancy in South Lake Tahoe, Cal., Public Meeting Minutes 6-7 (Feb. 17, 1989). \textit{Cf. U.S. FOREST SERVICE, DECISION NOTICE AND FINDING OF NO SIGNIFICANT IMPACT FOR AMENDMENT OF THE LAND ACQUISITION PLAN, PUB. L. 96-586 (Mar. 13, 1989)} (TRPA currently considers a parcel with an IPES score of 725 or less environmentally sensitive and eligible for acquisition).
\item \textsuperscript{305} Because of its expertise in acquisition and restoration, Machida & Gussman, \textit{The California Tahoe Conservancy: Applying the Principles}, 16 COASTAL MGMT. 39, 40 (1988), the Conservancy was the first entity approved by TRPA to serve as a land bank. June 1989 Machida Interview, \textit{supra} note 300; Memorandum of Understanding Between the Tahoe Regional Planning Agency and the California Tahoe Conservancy (Feb. 18, 1988) [hereinafter TRPA-Conservancy Memo]. Regarding TRPA's current land coverage regulations, see \textit{supra} notes 177-83 and accompanying text. These acquisitions serve the same purposes and are undertaken with the same legal authority as the Conservancy's acquisition of environmentally
\end{itemize}
development shall conform to the allowable land coverage established by the Bailey land classification system, referred to as "base coverage." In some circumstances, however, owners may increase their permitted coverage above the allowable base coverage by transferring land coverage to the parcel. Land coverage transfer is intended to allow greater flexibility in placement of land coverage without exceeding the aggregate base coverage which would otherwise be permitted in the same area. One method involves restoring part of the parcel to natural conditions and retiring coverage either on site or off site by, for example, removing a building or pavement. The Regional Plan also provides landowners with the opportunity to modify or reconstruct existing structures even on parcels with coverage in excess of the Bailey coefficients. TRPA intended this land coverage mitigation program to encourage the rehabilitation and upgrading of existing structures in the basin. One of several options available to reduce excess coverage is payment of a mitigation fee by the property owner to TRPA, which disburses the fee for California parcels to the Conservancy upon its request. The Conservancy may use the excess coverage mitigation fee to purchase land and eliminate or reduce coverage on the acquired parcel. The Conservancy’s other activities as a coverage bank have involved restoration and mitigation of public service project development impacts on stream environment zones and the sale of coverage rights on the open market.

sensitive lands, and they generally involve the same acquisition procedures. Tahoe Conservancy, Staff Recommendation 5-89-2, at 1 (May 26, 1989). However, the Conservancy’s ability to undertake the financial and transactional aspects of the land coverage program depends on the broad authority conferred by the enabling legislation. CAL. GOV’T CODE § 66908 (West Supp. 1991) (authority to receive royalties and other funds from private sources); id. § 66908.1 (authority to fix and collect fees for any services rendered); id. § 66907.8 (authority to transfer any interests in real property to public or private entities or individuals).

306. See supra text accompanying notes 133-35.

307. TRPA GOALS AND POLICIES, supra note 154, at II-12 to -13; see also supra text accompanying notes 177-181.

308. TRPA GOALS AND POLICIES, supra note 154, at II-14.

309. Transfers are permitted only within “hydrologically related areas” and up to certain specified limits on total coverage. TRPA GOALS AND POLICIES, supra note 154, at II-14 to -17; TRPA CODE, supra note 162, ch. 20.3.C(5).

310. TRPA CODE, supra note 162, chs. 20.3.C(7), 34.5.

311. TRPA GOALS AND POLICIES, supra note 154, at II-16.

312. id.

313. TRPA CODE, supra note 162, at ch. 20.5.A.

314. TRPA-Conservancy Memo, supra note 305, at 4.

315. Id. at 7-8. See also California Tahoe Conservancy, Staff Activities Report 3-4 (June 8, 1990).

316. E.g., California Tahoe Conservancy, Staff Activities Report 6 (May 19, 1989).

317. See, e.g., Tahoe Conservancy, Staff Recommendation 11-88-3, Guidelines for the Allocation and Transfer of Land Coverage and Other Marketable Rights (Nov. 17, 1988); Tahoe Conservancy, Staff Recommendation 5-90-3, Allocation and Authorization to Sell Land Coverage and Other Marketable Rights (May 18, 1990). The Conservancy set an initial goal of acquiring over time up to 270,000 square feet of coverage to partially address projected coverage demand on the California side of the basin, and has allocated $2 million to the land cover-
2. The Conservancy's Approaches to Acquisition and Resource Objectives

The Conservancy's major land acquisition programs incorporate four innovative approaches. First, the agency has established two "tracks" for deciding what land to acquire. One track applies to acquisitions of a relatively uniform nature, in particular small environmentally sensitive lots, which can be handled as a group within a single staff recommendation; the other track is reserved for "special projects" which are large in size or cost, or involve unusual circumstances requiring individual decisions by the governing board.\(^{318}\) An example of a special project is the acquisition of significant resource lands which are the subject of long-standing litigation against the state of California. The Conservancy has given high priority to such acquisitions in order to resolve land use conflicts and facilitate regulatory efforts.\(^{319}\) Generally, the parcels subject to litigation have been partially improved and thus are not eligible for Acquisition Bond Act funds.\(^{320}\) However, these acquisitions have furthered the Act's purposes by providing enhanced public recreation, public access, or protection of environmentally sensitive lands.\(^{321}\)

The Conservancy's second innovative approach to land acquisition is the adoption of two complementary site selection strategies. Under the primary strategy, the Conservancy establishes specific, verifiable acquisition criteria, such as IPES scores, and treats eligible parcels as a class.\(^{322}\) Under this strategy, the agency takes the initiative and seeks out desirable land. In addition, the Conservancy has adopted guidelines for each of its land acquisition programs, establishing the purposes of each program and the priority to be accorded particular kinds of projects, such as public lakeshore access. This approach permits specific acquisition and improvement projects to be developed by Conservancy staff, other public agencies, or private landowners.\(^{323}\) The secondary strategy relies on other entities or property owners to bring specific acquisition needs to the
This reactive capability permits the agency to act quickly to acquire lands which may be lost if, for example, the property is taken off the market.

Third, in addition to acquiring land directly, the Conservancy provides local assistance grants to help federal, state, and local governments and nonprofit organizations acquire parcels of land which they need to obtain quickly in order to meet resource and public access objectives. An example of this approach is the Conservancy's program to finance erosion control projects, which is based on the recognition that past development practices are continuing to cause deterioration of the lake's waters. The six local governmental jurisdictions on the California side of the Basin may apply for grants to acquire eroding sites and to improve them through activities such as revegetation, slope stabilization, wetland restoration, and construction of roadside drainage facilities. The Conservancy also awards grants as an integral part of its public access and wildlife enhancement programs.

The final innovative approach utilized by the Conservancy is linking land acquisition with site improvement on acquired lands. In some

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324. Telephone interview with Dennis Machida, Executive Officer of the California Tahoe Conservancy (March 30, 1991).

325. Machida & Gussman, supra note 305, at 43. See generally CALIFORNIA TAHOE CONSERVANCY, A REPORT ON SOIL EROSION CONTROL NEEDS AND PROJECTS IN THE LAKE TAHOE BASIN (1987) [hereinafter REPORT ON SOIL EROSION]. Although such a grant program is permitted by the Conservancy's enabling legislation, Acquisition Bond Act monies may be spent only on activities which are directly related to land acquisition. CAL. GOV'T CODE §§ 66907.7(a), 66957 (West 1983 & Supp. 1991); LEGIS. ANALYST, CAL. LEGISLATURE, ANALYSIS OF THE 1988-89 BUDGET BILL, REPORT OF THE LEGISLATIVE ANALYST TO THE JOINT LEGISLATIVE BUDGET COMMITTEE 291 (1988). Accordingly, funds for the erosion control program have been appropriated by the State legislature from the Environmental License Plate Fund and from California's share of federal offshore oil revenues. Id. at 290-91.

326. The jurisdictions owning or controlling the rights-of-way which are sites of the erosion control projects and have the capability to accomplish the projects are the City of South Lake Tahoe, the Counties of El Dorado and Placer, and Placer, Tahoe City, and South Tahoe Public Utility Districts. Report on Soil Erosion, supra note 325, at 2. The Conservancy has allocated 75% of available site improvement funds to local governments in proportion to the amount of high priority erosion control work needed within each jurisdiction as determined by the 1987 study. The balance is available for expenditure on a discretionary basis for high priority projects identified by the Conservancy. Machida & Gussman, supra note 305, at 43. By early 1991, under this grants program the Conservancy had funded 52 projects at a cost of $19.2 million. Those erosion control measures include revegetating more than 91 acres of disturbed land, restoring nearly 30 acres of wetlands and meadow, and constructing 37 miles of roadside drainage facilities and seven miles of retaining wall. California Tahoe Conservancy, Executive Summary, Five Year Report 12 (draft 1991).

327. E.g., California Tahoe Conservancy, Staff Activities Report 11, attachment 1 (Feb. 10, 1989) (discussing Lake Christopher Wildlife Enhancement Project proposed by City of South Lake Tahoe).

328. Costs for improvement of property to provide public access, for wildlife enhancement projects, or for recreation facilities have been appropriated from the State's share of federal offshore oil revenues and the Acquisition Bond Act. See, e.g., LEGIS. ANALYST, CAL. LEGIS-
circumstances such improvement is necessary to fully accomplish the purposes of the acquisition. For example, the agency has restored critical habitat areas on lands acquired to preserve wildlife habitat.\textsuperscript{329} Public access and recreation land acquisitions also often require improvements, such as pathways, ramps, and trails.\textsuperscript{330}

3. \textit{Acquired Property Interests}

Two major characteristics of any public land acquisition program are the authorized methods of acquisition and the kinds of property interest which may be acquired.\textsuperscript{331} While the Acquisitions Bond Act is silent regarding permitted acquisition methods, the Conservancy's enabling legislation enumerates a wide variety of such methods, including exchanges,\textsuperscript{332} gifts, donations, dedications,\textsuperscript{333} and options to purchase.\textsuperscript{334} The Conservancy itself does not possess the power of eminent domain, but it may request the State Public Works Board to condemn property on behalf of the Conservancy.\textsuperscript{335} The Tahoe Conservancy has authority to acquire a wide range of interests in land. Like many other acquisition agencies, it may acquire both fee and less than fee interests, including easements, development rights, life estates, and leases.\textsuperscript{336}

Like other land acquisition programs currently operating in the Tahoe Basin,\textsuperscript{337} the Conservancy has only occasionally acquired less than fee interests, although sellers are advised of such options.\textsuperscript{338} Other

\texttt{LATRATURE, ANALYSIS OF THE 1987-88 BUDGET BILL, REPORT OF THE LEGISLATIVE ANALYST TO THE JOINT LEGISLATIVE BUDGET COMMITTEE 325 (1987).}

\texttt{329. Machida & Gussman, supra note 305, at 44.}

\texttt{330. \textit{E.g.}, Tahoe Conservancy, Staff Recommendation 6-90-1, Quail Creek Recreational Access Improvements (June 15, 1990).}

\texttt{331. See Owens, supra note 7, at 637-41.}

\texttt{332. CAL. GOV'T CODE \$ 66907.1 (West Supp. 1991).}

\texttt{333. \textit{Id.} \$ 66907.2.}

\texttt{334. \textit{Id.} \$ 66907.6.}

\texttt{335. \textit{Id.} \$ 66907.5; see infra text accompanying notes 381-82.}

\texttt{336. CAL. GOV'T CODE \$ 66907.1(a) (West Supp. 1991). In recent years public land acquisition programs have been urged to employ alternatives to fee acquisitions since less than fee interests may be less expensive than full fee purchases, because maintenance costs may remain with the private owner who retains title, and because the interest not acquired remains on the local property tax rolls. U.S. GEN. ACCOUNTING OFFICE, supra note 229, at 22-25; see generally STAFF OF SENATE COMM. ON ENERGY AND NATURAL RESOURCES, 97TH CONG., 2D SESS., WORKSHOP ON LAND PROTECTION AND MANAGEMENT 292-375 (Comm. Print 1982). For example, beginning in 1982, the federal share of LWCF funds could be used to acquire fee interests only after the federal agency justified that alternative measures, including easements, leases, and transfer of development rights, were unsuitable. Policy for Use of the Federal Portion of the Land and Water Conservation Fund, 47 Fed. Reg. 19,784 (1982); see also Lambert, \textit{Land Acquisition in the National Parks: Examples from Yosemite National Park and Indiana Dunes National Lakeshore}, 6 HARV. ENVTL. L. REV. 35, 39 (1982).}

\texttt{337. Interview with Richard Grimes, Acquisition Program Coordinator, Division of State Lands, State of Nevada, in Carson City, Nev. (June 6, 1989); Shepard Interview, supra note 229.}

\texttt{338. June 1989 Machida Interview, supra note 300. See generally CALIFORNIA TAHOE
characteristics of Conservancy acquisitions recommend the policy. First, where the purpose of the acquisition is to prevent virtually all development on the parcel, a less than fee interest is nearly as expensive as a full fee, but provides the state with less management control. Second, it may be easier for the Conservancy to transfer property if necessary to carry out the overall resource protection goal if it holds full title. Finally, and most significantly, most private owners have preferred not to retain any interest in their land, which in many cases is undevelopable under current TRPA regulations. When the Conservancy has purchased conservation easements in subdivisions or condominiums, it has acquired only less than fee interests in order to avoid agency responsibility for continuing homeowner's association assessments or where the property owner wished to retain some level of use or control of an undeveloped parcel adjacent to his or her lot.

4. Property Valuation Standard

The provisions of the Acquisition Bond Act that govern the price to be paid for acquired land reflect the objective of providing compensation to owners of property which is strictly regulated. The Conservancy may purchase land for fair market value. In addition, it may pay more than fair market value under the Act's valuation provision, which permits, but does not require, the Conservancy to purchase land "for a price it determines would insure fairness to the land owner" where the value of the land has been "substantially reduced by any statute, ordinance, rule, regulation, or other order adopted after January 1, 1980, by state or local government for the purpose of protecting water quality or other resources of the region."
Despite this provision, the Conservancy has chosen to purchase land at fair market value, rather than adopting an alternative valuation standard, for several reasons. TALAC recommended against adoption of a standard other than current fair market value in part because it did not find that the values of parcels in the Lake Tahoe Basin had declined since 1980.\textsuperscript{344} It was also unclear whether, if property values did decline after 1980, the reduction was caused "by any statute, ordinance, rule, regulation or other order... by state or local government,"\textsuperscript{345} since there was evidence that, at least in the South Lake Tahoe area, constraints on sewage treatment capacity strongly influenced property values.\textsuperscript{346} Even if the Conservancy had made the requisite findings, it would have been difficult to determine whether it was advisable to adopt an alternative valuation standard, and what specific standard should be adopted.\textsuperscript{347} In consideration of such difficulties, the California Tahoe Conservancy

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\textsuperscript{344} TAHOE AREA LAND ACQUISITION COMM'N, supra note 289, at 56-57. This conclusion was based on a study by the Office of Real Estate Services of the California Department of General Services, which found that the value of lots between 1980 and 1984 remained stable and that there was "no conclusive evidence" that values have either increased or decreased during the period. Id. at 57. A study commissioned by the California State Water Resources Control Board pointed out that market prices had been "low" because values were affected by continuing "uncertainty" as to the extent of development which would be permitted in the basin. Interestingly, the same study observed that prices were "buoyed to some extent" by the prospects of a public acquisition program and favorable judgments in pending inverse condemnation lawsuits. Recht Hausrath & Assoc., Economic and Fiscal Effects of SWRCB's Water Quality Plan for the Lake Tahoe Basin, in STATE WATER RESOURCES CONTROL BOARD, supra note 47, app. D at 12. In contrast, the commission formed to make recommendations for implementation of the Nevada Tahoe Basin Act concluded with respect to land on the Nevada side of the basin that "1980 values will be virtually in all cases, higher than current market value" for land eligible to be acquired under that act. NEVADA COMMISSION REPORT, supra note 254, at 69. The Nevada side of the basin constitutes a real estate market distinct from that on the California side, in part because of the different mix of parcels. Oct. 1990 Machida Letter, supra note 287.

\textsuperscript{345} CAL. GOV'T CODE § 66958 (West 1983).

\textsuperscript{346} Some data indicated that parcels without sewer permits had appreciated up to 50% while lots with sewer permits rose in value 100%-300% over the same period. Recht, Hausrath & Assoc., supra note 344, app. D at 14. Market related factors, such as high interest rates and an abundant supply of small undeveloped lots, may have affected values as well. Oct. 1990 Machida Letter, supra note 287.

\textsuperscript{347} "In determining the price to be paid to the landowner, the agency may consider the price which the owner originally paid for the land, any special assessments paid by the landowner, and any other factors the agency determines should be considered to ensure that the landowner receives a fair and reasonable price for the land." CAL. GOV'T CODE § 66959 (West 1983). Payments in excess of current value may also raise issues under the state constitutional provision prohibiting gifts of public funds. See CAL. CONST. art. XVI, § 6 (West Supp. 1991).
chose to purchase land at the current fair market value established by appraisals.\textsuperscript{348}

III

STRUCTURING IMPLEMENTATION OF THE TAHOE CONSERVANCY ACQUISITION PROGRAM

One of the continuing concerns of our time (and a source of considerable public skepticism) is the ability of government in the United States to accomplish the public policy goals it sets for itself.\textsuperscript{349} These concerns have led to the rapid development of implementation analysis, the subfield of public policy studies that attempts to identify the factors that allow governments to deliver on the promises they make.\textsuperscript{350}

There is no single "correct" theory of implementation analysis or methodology for it.\textsuperscript{351} The proposed approaches generally take one of two viewpoints. A "top-down" perspective starts with a policy decision, such as a statute, examines the extent to which the legally specified objectives are attained,\textsuperscript{352} and emphasizes the structural design of the implementation process.\textsuperscript{353} The alternative approach, a "bottom-up" perspective, starts by identifying the public and private actors involved in carrying out a program, and creates an implementation network by moving from street level bureaucrats and their clients to higher level policymakers.\textsuperscript{354}

In seeking to provide useful insights for those directly involved in public land acquisition, this article, for several reasons, applies the analytical framework developed by Professors Sabatier and Mazmanian, the

\begin{itemize}
  \item \textsuperscript{348} See supra note 344 and accompanying text. By contrast, the Nevada Tahoe Basin Act requires that the purchase price be not less than the fair market value of the property. See supra note 257 and accompanying text.
  \item \textsuperscript{349} See, e.g., W. Williams, Studying Implementation, Methodological and Administrative Issues at vii (1982).
  \item \textsuperscript{350} D. Mazmanian & P. Sabatier, supra note 36, at preface.
  \item \textsuperscript{351} Sabatier & Mazmanian, Policy Implementation, in Encyclopedia of Policy Studies 143-44 (S. Nagel ed. 1983).
  \item \textsuperscript{352} D. Mazmanian & P. Sabatier, supra note 36, at 288.
  \item \textsuperscript{353} Yanow, Tackling the Implementation Problem: Epistemological Issues in Implementation Research, in Implementation and the Policy Process, supra note 34, at 213.
  \item \textsuperscript{354} See, e.g., Hjern & Hall, Implementation Research as Empirical Constitutionalism, 10 Eur. J. of Pol’y Res. 105 (1982); Elmore, Backward Mapping: Implementation Research and Policy Decisions, 94 Pol. Sci. Q. 601 (1979) [hereinafter Backward Mapping]. Some efforts have been made toward integrating the top-down and bottom-up approaches. E.g., Sabatier, supra note 36 (an "advocacy coalition" framework which is primarily concerned with theory construction rather than providing guidelines for practitioners); Elmore, Forward and Backward Mapping: Reversible Logic in the Analysis of Public Policy, in Policy Implementation in Federal and Unitary Systems 33 (1985). Such syntheses tend to "demand more data collection and analysis than can normally be done within one study." Winter, Integrating Implementation Research, in Implementation and the Policy Process, supra note 34, at 19.
\end{itemize}
leading proponents of the "top-down" perspective. First, the top-down viewpoint emphasizes the importance of legal structuring of implementation. Second, a top-down approach emphasizes program effectiveness and the ability of elected officials to guide the behavior of implementing officials, which is a focus of this article. Moreover, this approach is more useful in situations involving a dominant agency and piece of legislation, as is the case with the Tahoe Conservancy and the Lake Tahoe Acquisitions Bond Act. It would be less useful when analyzing programs involving a multitude of public and private actors, which is the overall focus of the "bottom-up" approach. Finally, because the "top-down" perspective has received greater theoretical development and has been subject to empirical testing, it is more useful in making preliminary assessments of policy impacts and in predicting program success. These advantages are important when evaluating policy decisions over a

355. Other "top-down" analytical frameworks have been advanced. See J. PRESSMAN & A. WILDAVSKY, IMPLEMENTATION (1973); Van Meter & Van Horn, supra note 35; C. VAN HORN, POLICY IMPLEMENTATION IN THE FEDERAL SYSTEM (1979). Mazmanian and Sabatier built on this earlier work and directly incorporated some implementation variables identified by such scholars. Models proposed later, e.g. Alexander, From Idea to Action: Notes for a Contingency Theory of the Policy Implementation Process, 16 ADMIN. & SOC'Y 403 (1985); Lester, Bowman, Goggin & O'Toole, Public Policy Implementation: Evolution of the Field and Agenda for Future Research, 7 POL'Y STUD. REV. 200 (1987); Winter, supra note 354, at 19-38, tend to be abstract or are admittedly tentative, and have not yet been subjected to extensive empirical testing. The Mazmanian and Sabatier model has been applied in over 20 instances, including case studies by Mazmanian and Sabatier themselves. D. MAZMANIAN & P. SABATIER, supra note 36, at 291-92 (listing empirical applications of their framework). Interestingly, nearly half of these cases have involved the land use control and environmental protection policy areas. Id. The Mazmanian and Sabatier model has been described as "the standard for scholars who wish to test the validity of the leading propositions of the implementation literature," Goggin, Book Review, 14 PUBLIUS 159, 160 (Fall 1984) (reviewing D. MAZMANIAN & P. SABATIER, IMPLEMENTATION AND PUBLIC POLICY (1983)), and as "the conventional wisdom," Palumbo & Calista, supra note 34, at 3.

356. Other models of policy implementation emphasize behavioral aspects and tend to ignore the importance of legal variables. See, e.g. E. BARDACH, THE IMPLEMENTATION GAME (1977); Van Meter & Van Horn, supra note 35; Berman, The Study of Macro- and Micro-Implementation, 26 PUB. POL'Y 1957 (1978). However, several studies have confirmed the importance of legal structuring of the implementation process. See supra notes 38, 355. While emphasizing relevant statutory variables, Mazmanian and Sabatier also recognize the role of other factors in policy implementation, such as the tractability of the problem being addressed, and a variety of political variables, including the resources of constituent groups and the leadership skill of implementing officials. D. MAZMANIAN & P. SABATIER, supra note 36, at 21-25, 30-35.

357. D. MAZMANIAN & P. SABATIER, supra note 36, at 301. The "top-down" approach has been criticized for ignoring actors other than the central decision-making policy-makers and for viewing implementing officials and others as impediments. See, e.g., Hjern & Hull, supra note 354; Backward Mapping, supra note 354, at 603-04. This article, however, seeks at least in part to avoid this bias by examining in some detail the role of the implementors. Indeed, the article concludes that, far from operating as an impediment to policy goals, the California Tahoe Conservancy has acted to reinforce the legislature's objectives. See infra text in Conclusion.


359. Id.
time frame shorter than the optimal ten years or more of implementation experience, as in this article’s assessment of the California Tahoe Conservancy land acquisition programs.  

The underlying tenet of the Mazmanian and Sabatier model is that original policymakers, who are often legislators, can substantially improve the likelihood that a program’s objectives will be achieved by structuring the implementation process coherently, primarily through the statutes which govern the program. In the case of California’s current program of land acquisition at Lake Tahoe, the governing statutes are the Lake Tahoe Acquisitions Bond Act and the enabling legislation of the California Tahoe Conservancy. The principal policy decision embodied in these statutes is that acquisition of private land is appropriate to protect and improve the environment of the Tahoe Basin for the benefit of the public.

Mazmanian and Sabatier have identified seven variables that determine the ability of a statute to structure implementation of policy decisions: (1) the validity of the underlying causal theory regarding the manner in which legislative objectives are to be attained; (2) the precision and clear ranking of legal objectives; (3) the initial allocation of financial resources to the implementing agency; (4) the extent of hierarchical integration within and among implementing institutions; (5) the commitment of responsible public officials to statutory objectives; (6) the extent of formal access by outsiders; and (7) the rules governing the decisions of implementing agencies. This section will employ these variables to evaluate the Tahoe Conservancy land acquisition program, and will examine additional issues of particular importance to public land acquisition efforts.

360. Fox, Implementation Research: Why and How to Transcend Positivist Methodologies, in IMPLEMENTATION AND POLICY PROCESS, supra note 34, at 209-10. The longer time frame for evaluation permits full appreciation of learning by program proponents and the policy formulation-implementation-reformulation cycle to manifest itself. Id.


362. In the Acquisitions Bond Act the legislature found the “waters of Lake Tahoe and other resources of the region are threatened with deterioration” and “increasing urbanization is threatening the ecological values of the region,” and recognized the state interest in preserving the scenic, recreational, and natural values of the basin. CAL. GOV’T CODE § 66951 (West 1983 & Supp. 1991). The Tahoe Conservancy enabling legislation contains parallel declarations and the further finding that “it is imperative... there be established a government agency with power to acquire and hold property in the Tahoe Region.” Id. § 66905.2.


364. This section is not intended to test this portion of the Mazmanian and Sabatier framework. Rather it applies their established approach to policy implementation analysis as the basis for a systematic evaluation of one public land acquisition program in a way which identifies essential issues for similar efforts.
A. Causal Theory: How Tahoe Water Quality Can Be Protected

Policy implementation analysis emphasizes that major government initiatives contain, at least implicitly, a theory concerning how the desired objectives can be accomplished. According to Mazmanian and Sabatier, an adequate causal theory requires, first, an understanding of the principal causal linkages between government intervention and program objectives, and second, implementing agency control over enough of the linkages to allow it to attain the objectives. Of course, an initiative, even with a fully developed "causal theory" of how policies will solve a problem, will fail unless grounded in an accurate understanding of what "causes" the problem itself. Thus, achieving the principal objective of protecting water quality at Lake Tahoe depends, first, on whether development on privately owned land is a major contributing factor to degradation of the lake's waters, and second, on whether the state can and will acquire those lands whose development would have the greatest impact on the lake's water quality.

Extensive water quality studies indicate that the urbanization of the Lake Tahoe Basin, by increasing drainage density and adding impervious coverage to the watershed, increases loads of sediments and dissolved nutrients to the lake and accelerates its eutrophication. This conclu-
sion is not universally accepted, but it does represent the consensus of both the scientists most involved in research at Lake Tahoe and the principal government agencies with responsibilities in the basin.

Several studies document the relationship between land use and Lake Tahoe's water quality. Research on the distribution of free-floating algae has shown a "marked correspondence of the highest algal growth rates with the most extensive shoreline development." The open waters of the lake are characterized by the lowest density of algae, while the near-shore areas closest to development on the north and south shores of the lake have shown increased planktonic algal production. Attached algal growth shows a similar pattern. Investigations of tributary streams have demonstrated that streamwater is a strong stimulant for algal growth, indicating that Tahoe watersheds are "the most important single source of nutrients responsible for enhanced algal growth." Nutrient yield from the watersheds is generally correlated with the extent of disturbance of soils in those watersheds. Moreover, in most of the Tahoe watersheds studied, release of sediments and nutrients is correlated to the extent of land development.

369. The principal argument to the contrary emphasizes that the processes by which nutrients are transported to the lake by streams are little understood, and that natural processes are probably the dominant cause of sediment flow to the lake. The effects of modern land development are discounted under this view because the great disturbance of the basin during the Comstock logging era did not have a significant impact on the quality of Lake Tahoe. S. Papadopulos & Assoc., Inc., Effects of Development on the Water Quality of Lake Tahoe 3 (1988) (report prepared for attorney of plaintiff in litigation against TRPA). Those who hold the majority position on the causes of Lake Tahoe's eutrophication respond, in part, that the basin recovered rather quickly from disturbance by logging because it was unnecessary to establish many roads, a return to natural conditions was permitted following logging, and modern development with impervious surfaces lasts longer and has different effects. 1988 WATER QUALITY MANAGEMENT PLAN, supra note 51, at 100; STATE WATER RESOURCES CONTROL BOARD, supra note 47, at 7. A limnologist who has studied core samples of undisturbed sediments concluded, "the perturbation of the 1860's was a very minor event in comparison to the last 40 years of development in the Tahoe Basin." Goldman, Lake Tahoe: An Oligotrophic Lake's Response to Nutrient Loading, in EUR. WATER POLLUTION CONTROL ASS'N, LAKES POLLUTION AND RECOVERY, PROCEEDINGS - PREPRINTS 249, 253 (1985). TRPA's current Regional Plan recognizes the need for further scientific research and continued monitoring programs. TRPA GOALS AND POLICIES, supra note 154, at VII-21 to -26. See generally Porter, Alluvial Pursuit: Lake Tahoe's Environmental Conundrums, 44 URB. LAND 34 (1985) (recounts the controversy over links between development and eutrophication and notes TRPA's plan to study these links more closely).

370. TAHOE RESEARCH GROUP, supra note 124, at 5.

371. Id. at 7. See generally Aloi, Loeb, & Goldman, Temporal and Spatial Variability of the Eulittoral Epilithic Periphyton, Lake Tahoe, California-Nevada, 4 J. FRESHWATER ECOLOGY 401 (1988) (biomass of nutrient dependent diatoms found to be much higher near disturbed areas).

372. TAHOE RESEARCH GROUP, supra note 124, at 8; see Byron & Goldman, Land-Use and Water Quality in Tributary Streams of Lake Tahoe, California-Nevada, 18 J. ENVTL. QUALITY 84 (1989).

373. TAHOE RESEARCH GROUP, supra note 124, at 8.

374. Id. at 8-9.
Therefore, in directing acquisition of “undeveloped lands that, if developed, would be likely to erode or contribute to the further eutrophication or degradation of the waters of the region,” the Acquisitions Bond Act implicitly incorporated a causal theory based on scientific findings which had received general although not unanimous acceptance. The causal relationship between the Conservancy’s acquisition of lands for other authorized purposes and accomplishment of the legislative goals is more obvious in other cases, as when the Conservancy maintains land in an undeveloped state in order to preserve wildlife habitat, or when it acquires land so the public can use it for recreation and access.

The second requirement of an adequate causal theory is that the implementing agency have jurisdiction over all linkages necessary to obtain the desired results. As discussed below, the Tahoe Conservancy can select for possible acquisition those parcels which are most likely to contribute to degradation of the lake, and may manage and dispose of acquired land in a manner consistent with those objectives. However, the Tahoe Conservancy has acquired land entirely on a “willing seller” basis, rather than exercising the power of eminent domain. The Conservancy has not initiated condemnation proceedings even when it has considered a particular piece of property necessary for a project. Therefore, one critical link in the acquisition process, the decision of any individual landowner to relinquish ownership, has been beyond the control of the agency. The decision to rely on willing sellers adds an important element to the underlying causal theory: the hypothesis that a sufficient number of landowners will elect voluntarily to sell their property to the acquiring agency.

The Conservancy conducts its acquisition program in the Lake Tahoe Basin without condemnation proceedings, although the Tahoe Conservancy enabling legislation grants the agency a circumscribed authority to do so. The amended enabling statute requires a supermajority vote of the governing board in order to request the State

376. See supra text accompanying notes 278-79.
377. See infra text accompanying notes 398-402.
378. See infra text accompanying notes 454-58.
379. June 1989 Machida Interview, supra note 300. The approach of the Tahoe Conservancy was established by the strong recommendation of TALAC to rely primarily, if not exclusively, on willing sellers. The study commission concluded that condemnation was “costly, time consuming, and could undermine public confidence” in the program. TAHOE AREA LAND ACQUISITION COMM’N, supra note 289, at 54; see infra text accompanying notes 384-85.
380. CAL. GOV’T CODE § 66907.5 (West Supp. 1991). Similarly, under the Santini-Burton Act, condemnation may be employed only when, in the judgment of the Secretary of Agriculture, “all reasonable efforts” to obtain the land by negotiation have failed, and only with the concurrence of TRPA. Pub. L. No. 96-586, § 3(d), 94 Stat. 3381, 3385. Although the Nevada Tahoe Basin Act does not expressly preclude exercise of eminent domain power, the statute uses only the word “purchase” in describing methods of acquisition. 1985 Nev. Stat. 585, §§ 1, 5.
Public Works Board to exercise eminent domain power, and the Conservancy must first find that "all reasonable efforts to acquire the property have failed and that the action is necessary to remove an impediment to an otherwise voluntary acquisition. ..." For example, such circumstances might arise where a judicial decree is needed to remove a legal defect in the title or to acquire a parcel which provides the only location for desired public access. To date, however, the Tahoe Conservancy has never found it necessary to invoke such authority.

Two factors made reliance on willing sellers particularly appropriate at Lake Tahoe. First, any land acquisition program must avoid increasing tensions in an already highly charged atmosphere if it is to be accepted by the local public. Often, the public strongly resists the inclusion of eminent domain authority in land use plans. Following the protracted disputes concerning other methods of environmental protection at Lake Tahoe, the regular exercise of condemnation to acquire land in the basin would likely have been perceived by many in the region as yet another unilateral exercise of raw governmental power.

Second, the Tahoe Conservancy can afford to be flexible in its methods of acquiring environmentally sensitive land. Given the Conservancy's limited funds and the large number of environmentally sensitive parcels, a decision by one landowner not to sell means an offer can be made to the owner of another parcel. To some extent, small environmentally sensitive lots at Lake Tahoe are fungible.

The experience of the Tahoe Conservancy has validated the hypothesis that, at least under circumstances prevailing there, a sufficient number of landowners will voluntarily decide to sell for the appraised fair market value, thus establishing the necessary link to complete the causal theory. By June 1990, the Conservancy had extended purchase offers to owners of 4475 parcels and 3270 owners had accepted, yielding a favorable response rate of seventy-three percent.

382. Id. § 66907.5.
385. See Hearing on H.R. 7306, supra note 284, at 120 (statement of Lawrence Hoffman, referring to "trauma and anxieties" of Tahoe landowners over condemnation authority); U.S. GEN. ACCOUNTING OFFICE, FEDERAL PROTECTION OF WILD AND SCENIC RIVERS IS SLOW AND COSTLY 24-27 (1978) (noting condemnation usually alienates the local population).
386. June 1989 Machida Interview, supra note 300.
387. California Tahoe Conservancy, Activities Report 2 (June 8, 1990). Of the total offers extended by that date, owners of 550 parcels had not responded or were undecided regarding the decision to sell. Id.
B. Precision and Clear Ranking of Legal Objectives

Statutory objectives may be expressed with different degrees of specificity, or even left unexpressed, in the governing legislation. Those objectives which are precisely defined and clearly ranked in importance can serve to direct officials unambiguously in implementing the legislation. By designating certain types of land for purchase, the Acquisitions Bond Act provides some such direction. However, to the extent that the objective of the implementing agency is "enhancing governmental effectiveness of the region," the governing statutes provide little precision. Because the Tahoe Conservancy is also directed to enhance the natural, scenic, recreational and other values in the basin generally, and to do so using land acquisition and management as its principal tool, the agency itself has undertaken the task of integrating these statutory objectives into a comprehensive approach to protect the Tahoe Basin, establishing priorities for its efforts, and accomplishing the objectives in an efficient manner.

The first characteristic of the bond act, and one perhaps easily overlooked, is that land acquisition under its auspices is limited to one geographical area. This focus necessarily establishes a priority which is missing from traditional state level land purchase programs by, for example, parks agencies with statewide responsibilities. In addition, the bond act specifies the types of land that are eligible for acquisition. Thus, the second characteristic of the relevant statutes defining acquisition objectives is a fairly precise description of lands which may be acquired.

The relevant statutes also rank objectives by establishing acquisition priorities. TALAC concluded that it must establish priorities because the cost of eligible environmentally sensitive land was likely to be far greater than funds available under the Acquisitions Bond Act. The bond act itself creates a "preference" for the acquisition of land within stream environment zones and lands which, if developed, "would be likely to erode or contribute to the further eutrophication or degradation of the waters of the region . . . ." This legislative decision to emphasize water quality was a critical one, providing a focus for the overall efforts of the Conservancy.

Thus, the legislature ranked some purposes of land acquisition, but it did not prioritize the other categories of acquisitions: public recreation,
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Lake access and preservation of wildlife habitat areas. However, it recognized the need for further ranking of acquisition objectives, and specifically directed TALAC to recommend "priorities... for land purchase so as to best serve the need to protect water quality and other resources of the region." TALAC recommended that the highest priority of the program be acquisition of environmentally sensitive subdivided lots and parcels needed to protect the environment, but it also recognized the "dual goals" of preventing environmentally damaging development and providing equity to landowners. The latter purpose would be accomplished by emphasizing the purchase of small lots and parcels, thus providing relief to many property owners rather than a few.

The Conservancy's program also is defined by the specific types of land it acquires. The Acquisitions Bond Act had described only one preferred category with precision. However, the Tahoe Conservancy further refined acquisition priorities within the category of environmentally sensitive parcels, and did so with unusual specificity. Initially, the agency relied on the Bailey land classification system as a method of identifying land which had the greatest potential for affecting water quality, and incorporated a determination of whether a given parcel was a high hazard land or was located in a stream environment zone into its evaluation criteria.

Upon adoption of the Individual Parcel Evaluation System (IPES) by TRPA, the Tahoe Conservancy further refined its criteria based on the best available scientific understanding of the relationship between development and water quality in the Tahoe Basin. As noted above, IPES involves a detailed assessment of every vacant residential parcel in the basin. These lands constitute a significant portion of the undeveloped "lands threatened with development" referred to in the Acquisitions Bond Act. The Tahoe Conservancy utilizes IPES scores to identify the environmentally sensitive parcels it will acquire. This system per-

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396. Id. at 29-30.
397. This precision is provided in part by the legislative definition of "stream environment zone," which closely parallels the definition of that term by TRPA. CAL. GOV'T CODE § 66957(a) (West 1983).
398. See supra text accompanying note 174.
400. See supra text accompanying notes 175-76.
401. CAL. GOV'T CODE § 66957(a) (West 1983).
402. Tahoe Conservancy, Staff Recommendation 5-89-2, Authorization to Acquire Environmentally Sensitive Lands and Lands Necessary to Protect the Natural Environment 5-6 (May 26, 1989).
mits a further prioritizing of acquisitions even within the preferred, but broad, category of environmentally sensitive lands.

Thus, the governing statutes identified the land acquisition objectives of the Tahoe Conservancy by identifying lands eligible to be acquired, and established some ranking of the various purposes by designating the highest priorities. This legislative guidance was significant, but equally important has been the action of the agency in precisely identifying the criteria it uses for its principal acquisition program. In acquiring environmentally sensitive land, the Conservancy moved from the qualitative standard of the Acquisitions Bond Act to an increasingly quantitative standard through use of the Bailey system and later, numerical IPES scores. The existence of a high level of scientific information which had been refined for practical application by the regulatory system was critical to this development.

The Conservancy has also utilized its land acquisition power in specific ways to attain the broader goal of "enhancing ... governmental effectiveness of the region." Proposals for expanded acquisition made during the 1970's had as one of their objectives providing support for TRPA's regulatory system. This objective is also reflected in the second of the "dual goals" of the Acquisitions Bond Act, providing equity to private landowners, since creating an alternative for owners helps to decompress a highly charged situation and allows some room for regulations to operate. These objectives are further promoted because the Conservancy adapts for its own uses the resource information generated by TRPA through the IPES system. As a result, the majority of its acquisitions are among the most strictly regulated parcels, which are unlikely to be developed, at least in the near future. Furthermore, the Conservancy acquires parcels for purposes which can be accomplished by regulation alone, as well as those which cannot, such as public recreational uses. Thus, the agency regularly acquires land when the regulatory entity could constitutionally accomplish its purposes by restricting regulation without acquiring the property or compensating the owners.

403. The Bond Act described such lands in part as "undeveloped lands threatened with development that will adversely affect the region's natural environment." CAL. GOV'T CODE § 66957(a) (West 1983).
404. See supra notes 301-04, 174-75 and accompanying text.
405. CAL. GOV'T CODE § 66905.2 (West 1983).
406. See supra text accompanying notes 191-224.
408. See supra text accompanying notes 210-14 (other acquisition programs acquire land which could be protected by regulation); Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 638 F. Supp. 126, 133-35 (D. Nev. 1986), modified, 911 F.2d 1331 (9th Cir. 1990) (per curiam) (TRPA's 1984 Regional Plan held a valid exercise of police power and not an unconstitutional taking).
The foregoing indirect ways in which land acquisition has served as an adjunct to regulation are implicit in the Tahoe Conservancy’s governing legislation. The agency itself, however, has alertly used its broad authorities to respond to the new regulatory scheme established by the 1986 Regional Plan in order to provide direct support for TRPA. The Conservancy’s role as the land bank for coverage transfers on the California side of the basin is the clearest form of such direct support. In connection with both coverage transfer and acquisition of environmentally sensitive parcels, the Conservancy undertakes restoration of stream environment zones, thus furthering a specific goal of the Regional Plan and Water Quality Management Plan. The Conservancy carries out other activities which support the regulatory program, and which are not specified in the governing legislation. The agency’s reliance on purchases from willing sellers, rather than condemnation, avoids exacerbating resentment of state government intervention in the basin. The use of land acquisitions as a tool to settle litigation clearly has the purpose of mediating conflicts between regulators and property owners. Thus, the ambiguous goal of “enhancing governmental effectiveness,” as stated in the governing legislation, has also been made more precise by the implementing agency.

C. Initial Allocation of Financial Resources

Adequate funding is obviously essential to achieving the objectives of most government programs. In particular, an agency must have a threshold level of funding if it is to have any realistic chance of attaining its statutory goals.

The Lake Tahoe Acquisitions Bond Act authorized the state to incur an indebtedness of $85 million. As provided by the State General Obligation Bond Law, the issuance and sale of bonds requires authorization from a designated finance committee, and actual expenditure of bond proceeds requires legislative appropriation. Nevertheless, the Acquisitions Bond Act did establish an available source of revenue, thereby removing California land acquisition at Lake Tahoe from direct competition with other programs for monies from the state general fund. These funds may be expended only for land acquisition purposes, ex-
cept for a limited amount of bond sale proceeds which may be used for administrative costs directly associated with acquisitions.417

The initial level of funding was not based on any precise calculation of the ultimate cost of purchasing a given amount or category of land.418 Likewise, the amount authorized was apparently determined without considering the funding level of the Santini-Burton Acquisition program.419 The first assessment of "need" and of the probable cost of acquisitions under the California legislation was made by TALAC, which estimated the value of environmentally sensitive lots alone at $125 million, while the amount anticipated to be available from bond act proceeds for all acquisition purposes was only $75 million after deducting anticipated administrative expenses and acquisition processing costs.420

However, although the projected cost of eligible land on the California side of the basin was much greater than the funds provided by the Acquisitions Bond Act, the amount authorized was nonetheless substantial. This fact had a critical effect on implementation of the Tahoe Conservancy program. The early provision of adequate funding allowed the Conservancy to pursue a "mass acquisition" approach, and to acquire high priority environmentally sensitive parcels.421 The mass acquisition approach is desirable because the process of purchasing any single environmentally sensitive parcel involves numerous steps. The Tahoe Conservancy initially contacts landowners to determine their interest in having their environmentally sensitive lots evaluated for possible acquisition. If a landowner is interested, the Conservancy has the eligibility of the property verified by soil scientists or through utilization of the IPES data generated by TRPA. The Conservancy staff then prepares appraisals and conducts site inspections in order to ascertain any conditions affecting management of the parcel, such as boundary encroachments. Finally, the agency contacts the landowner again to ascertain his or her

generally Warne v. Harkness, 60 Cal. 2d 579, 387 P.2d 377, 35 Cal. Rptr. 601 (1963) (considering claim that state bond proceeds were used contrary to authorizing act); Farley v. Cory, 78 Cal. App. 3d. 583, 144 Cal. Rptr. 923 (1978) (concerning taxpayer standing to enjoin improper expenditure of public funds). The Acquisitions Bond Act limits the amount of bond act proceeds which may be expended for administrative purposes. CAL. GOV'T CODE § 66906.7 (West Supp. 1991).

418. June 1989 Machida Interview, supra note 300.
419. The Acquisitions Bond Act, approved as Proposition 4 at the 1982 California general election, incorporated the same funding level as the ballot measure presented to the voters in 1980. See supra note 272 and accompanying text. The California Legislature's vote to place the first Lake Tahoe land acquisition bond proposal on the 1980 ballot was taken months before adoption of the Santini-Burton Act, and the federal act was passed just days before the end of the Congressional Session. See STAFF OF HOUSE COMM. ON INTERIOR AND INSULAR AFFAIRS, supra note 29, at 86.
420. TAHOE AREA LAND ACQUISITION COMM'N, supra note 289, at 91.
421. There are approximately 6,000 undeveloped lots in high hazard areas and stream environment zones. Id. at 29 (figures obtained from county assessor's records).
interest in selling at the appraised value. If the response is favorable, the Conservancy pursues the numerous steps involved in transaction settlement.422

The administrative costs of processing thousands of individual transactions can be reduced if the properties are consolidated into larger groups and processed on a mass acquisition basis.423 To do so, the agency must be assured that it has the funding needed not only for the various staff functions, but also to complete the purchase of properties which meet the evaluation criteria. Thus, the existence of a substantial source of funds becomes critical.

The mass acquisition approach, as implemented by the Tahoe Conservancy, involves several components. First, the agency adopted consistent and objective criteria to apply to all parcels (initially the Bailey classification system and later IPES numerical scores). While each lot must be evaluated under the criteria, the consistency of the criteria avoids the potentially interminable process of comparing one lot against another to ascertain, in a process of increasingly marginal distinctions, which is more environmentally sensitive.424

Second, the Conservancy designed its administrative arrangements to facilitate a high volume of transactions. It made use of the technical expertise of soil scientists working under contract with the Tahoe Resource Conservation District425 to ascertain the environmental characteristics of lots before IPES data became available. The Conservancy promotes both efficiency and consistency by focusing site inspections and appraisals on specific geographical areas and having most appraisals conducted by the Office of Real Estate and Design Services (OREDS) of the California Department of General Services. OREDS reviews both private and state appraisals. Consequently, data on market values are readily available from one source. The Tahoe Conservancy also utilizes computer databases to trace each parcel through the acquisition process. Finally, it arranges settlement procedures by contract with local title insurance or escrow companies to allow rapid closing of numerous similar transactions.426 Contacting many owners at once, typically a hundred or more, generates a relatively constant flow of transactions. The consequence of the "mass approach" is greater cost-effectiveness, which in turn permits the purchase of more eligible land. This approach to acquisition has been possible only because the governing statute initially cre-

422. See, e.g., Tahoe Conservancy, Staff Recommendation 5-89-2, Authorization to Acquire Environmentally Sensitive Lands and Lands Necessary to Protect the Natural Environment 2-3 (May 26, 1989).
424. Id.
425. The Tahoe Resource Conservation District itself was under contract with the Tahoe Conservancy. Id.
426. Id.
ated a source of substantial funds for a large-scale and long-term program.\textsuperscript{427}

The provision of adequate funding also made it possible for the Conservancy to acquire parcels that were discovered to be high priority environmentally sensitive lands after the program was initially implemented. In the earlier years, the Conservancy allocated available funds to land identified as sensitive under the Bailey system. However, other lands, such as disturbed lots directly depositing sediment in the lake but not identified as high hazard or stream environment zones under the Bailey system, were not eligible. As more information was developed in subsequent years through evaluation of individual parcels under the IPES system, the Conservancy still had funding available under the Acquisitions Bond Act to purchase these priority lots as well.\textsuperscript{428}

\section*{D. Integration Within and Among Implementing Institutions}

Coordinated action, which tends to promote efficiency and effectiveness, depends on the level of integration both within and among implementing agencies.\textsuperscript{429} The degree of integration is determined by the number of clearance points involved in attaining legal objectives and the ability of the agency to control or influence decisions at each clearance point.\textsuperscript{430} The extent of integration among the agencies involved in acquiring land in the Tahoe Basin is heavily influenced by political variables,\textsuperscript{431} particularly the history of division between state officials in Nevada and California regarding Lake Tahoe. As reflected most clearly in the tumultuous existence of TRPA, the differences between the two states over environmental initiatives, combined with Nevada’s traditionally strong opposition to federal government involvement, made a unified basinwide land acquisition program very unlikely.\textsuperscript{432}

This same political variable established a second parameter for institutional arrangements: an entity other than TRPA would be responsible for implementing land acquisition. Since both states at various times had

\begin{itemize}
  \item \textsuperscript{427} Id.
  \item \textsuperscript{428} Oct. 1990 Machida Letter, supra note 287.
  \item \textsuperscript{429} D. Mazmanian & P. Sabatier, supra note 36, at 27. Mazmanian and Sabatier describe this variable as “hierarchical integration,” which is especially significant in many federal programs which rely on state and local agencies to perform federally directed functions. Id.
  \item \textsuperscript{430} Id. The concept of clearance points, as utilized by Mazmanian and Sabatier, “involves[s] those occasions on which an actor has the capacity (quite apart from the question of legal authority) to impede the achievement of legal objectives.” Id.; see also J. Pressman & A. Wildavsky, supra note 355; Bowen, The Pressman-Wildavsky Paradox: Four Addenda on Why Models Based on Probability Theory Can Predict Implementation Success and Suggest Useful Tactical Advice for Implementers, 2 J. Pub. Pol’y 1 (1982) (discussing complications in analyzing clearance points).
  \item \textsuperscript{431} Cf. supra note 356 (discussing political influences in policy implementation).
  \item \textsuperscript{432} See supra text accompanying notes 137-49, 206.
\end{itemize}
withdrawn support for the agency, attempting to include responsibility for land acquisition among TRPA functions would have made it more difficult for the states to establish mutually acceptable arrangements. Moreover, from the perspective of those proposing land acquisition programs in the late 1970's, the considerable uncertainty about the future of TRPA made that agency an unsuitable candidate. Perhaps equally important was concern over the potential legal ramifications of vesting land use control and land acquisition powers in the same entity. 433 Officials of TRPA and the Tahoe Conservancy 434 have been sensitive to the possibility that an unconstitutional taking may occur in some limited circumstances where a single agency both strictly regulates development and acquires the same land either by purchase or condemnation. 435 Thus, the decision of whether and how to employ land acquisition in the Tahoe Basin rested as a practical matter with the individual legislatures of the two states.436

The existence of the three separate acquisition programs in the Tahoe Basin (the Forest Service, California, and Nevada) makes an integrated public land acquisition approach more difficult to implement. In circumstances where several autonomous institutions are involved in carrying out the same general policy, the degree of integration is determined by the extent of coordination between them. 437 For example, the Forest Service is acquiring environmentally sensitive lands that are virtually identical to those the Tahoe Conservancy acquires. The Acquisition Bond Act made a limited attempt to address the need for such coordination by providing that funds could not be used to acquire land "designated and authorized" for purchase by the Forest Service. 438 The Tahoe Conservancy enabling legislation also sought to increase the likelihood of coordination between the programs of the Conservancy and the Forest Service by including a representative of the Secretary of Agriculture on the Conservancy governing board. 439

434. Interview with Susan Scholley, Staff Counsel to TRPA, in Zephyr Cove, Nev. (June 1, 1989); June 1989 Machida Interview, supra note 300. Other observers have urged linking planning with regulation at Lake Tahoe to achieve most efficient use of acquisition funds and that "any legal problems . . . that might inhibit that process must be laid to rest." URB. LAND INST., supra note 174, at 9-10, 33-34.
435. For examples of cases in which a local government adopts a restrictive zoning classification to depress the value of land it seeks to acquire, see Smith v. County of Santa Barbara, 243 Cal. App. 2d 126, 52 Cal. Rptr. 292 (1966); Howell Plaza, Inc. v. State Hwy. Comm'n, 92 Wis. 2d 74, 284 N.W.2d 887 (1979). Also, as examples of cases where the government has acted unfairly or engaged in oppressive conduct, see Benenson v. U.S., 548 F.2d 939 (Ct. Cl. 1977); Urbanizadora Versalles, Inc. v. Rios, 701 F.2d 993 (1st Cir. 1983). See generally WINDFALLS FOR WIPESOUTS 222-55 (D. Hagman & D. Misczynski eds. 1978).
436. See supra text accompanying notes 225-61.
438. CAL. GOV'T CODE § 66957 (West 1983).
Ensuring that the Santini-Burton Act land acquisition program and that of the Tahoe Conservancy do not conflict has been a continuing theme in the development and administration of both programs. This is exemplified by the Conservancy’s decision to adopt the same valuation standard used by the Lake Tahoe Basin Management Unit (LTBMU) of the Forest Service and by both agencies’ decision to adopt IPES scores as the primary criteria of environmental sensitivity.\(^{440}\) In order to coordinate the actual acquisition process, the two agencies also established geographic areas in which they would concentrate their respective efforts.\(^{441}\) The land acquisition objectives of the California and federal programs are so similar and coordination among them so extensive, that the Tahoe Conservancy has taken the unusual step of making two grants totaling $6 million to the Forest Service to permit purchases under the Santini-Burton Act when federal funding has been curtailed.\(^{442}\)

Integration has been furthered by the careful composition of the Conservancy’s governing board. The inclusion of local government representatives\(^{443}\) reflected the need for representation by the local agencies that would be affected by and involved in the implementation of the programs through grants.\(^{444}\) The inclusion of California’s Secretary for Resources and the Director of the Department of Finance\(^{445}\) promotes communication of agency needs to the primary state agencies involved in setting policy on resource matters and making fiscal decisions on a state-wide level.\(^{446}\) The legislative appointees help provide communication with the legislature.\(^{447}\) Finally, the U.S. Forest Service representative\(^{448}\) helps to coordinate the activities of the two agencies.

The Tahoe Conservancy has control of all governmental clearance points involved in state land acquisition on the California side of the basin. The Conservancy alone identifies the specific parcels of land which

\(^{440}\) Shepard Interview, supra note 229; June 1989 Machida Interview, supra note 300. TALAC was concerned that if a California acquisition program paid more than fair market value, landowners in California would prefer the state program resulting in fewer federal purchases and creating demand beyond the financial means of the state purchase effort. TAHOE AREA LAND ACQUISITION COMM’N, supra note 289, at 60. The Santini-Burton Act provides that fair market value is to be determined by an independent appraisal made at time of acquisition. Pub. L. No. 96-586, § 3(e), 94 Stat. 3381, 3385 (1980).

\(^{441}\) Shepard Interview, supra note 229. As annual funding levels are established and acquisitions occur, the agreement permits changes in the reserved areas to reflect the anticipated abilities of both agencies. Id.

\(^{442}\) California Tahoe Conservancy, supra note 316, at 10. These interagency grant agreements are also possible because the Conservancy enabling legislation confers flexible authority, in this case the power to award grants to public entities including federal agencies. CAL. GOV’T CODE § 66907.7(a) (West Supp. 1991).

\(^{443}\) CAL. GOV’T CODE § 66906.1(a)-(c) (West Supp. 1991).


\(^{445}\) CAL. GOV’T CODE § 66906.1(d), (g) (West Supp. 1991).


\(^{447}\) Id.

may be acquired, establishes evaluation criteria, evaluates available parcels, designates the method by which purchase price is determined, and makes the final decision on each acquisition transaction. This high degree of integration within the Conservancy was a result of a conscious decision by TALAC and the legislature to place sufficient authority with one agency to carry out the program.

With three autonomous public agencies acquiring comparable environmentally sensitive lands, no single management rationale underlies the pattern of ownership of parcels acquired since 1980. The pattern of lots acquired by the Conservancy and the Forest Service is a “patch quilt,” which makes monitoring and management of the parcels difficult. Mixed ownership creates problems such as lack of access to isolated tracts, potentially conflicting management objectives, and administrative inefficiency. A coherent management arrangement will almost certainly require a large-scale transfer of ownership or control of acquired lands, especially between the Tahoe Conservancy and the Forest Service, and between the Conservancy and other state agencies such as the Parks Department and the Wildlife Conservation Board, which also own lands in the basin.

The Tahoe Conservancy’s enabling statute does attempt to make rational, cost-effective land management possible by conferring broad authority upon the agency. The statute empowers the Conservancy to lease, rent, sell, exchange or otherwise transfer any real property to any government agency, nonprofit organization, individual, or corporate entity for management purposes, to enter into land management agreements with agencies or private parties, and to merge or split acquired lots, adjust boundaries, or “take similar actions needed to facilitate the acquisition and management of lands.” The Conservancy also has

449. The Tahoe Conservancy’s enabling statute exempts it in most cases from the requirement of the Property Acquisition Law, CAL. GOV’T CODE §§ 15850-15866 (West Supp. 1991), that the Public Works Board select land to be acquired by the state and approve acquisition by the state. The requirements only apply to the Conservancy where the value of an individual parcel exceeds $250,000. Id. § 66907.4. TALAC was concerned that the process of preparing for and obtaining approval would be time consuming and inject a second decisionmaking body in numerous routine purchases of small lots. TAHOE AREA LAND ACQUISITION COMM’N, supra note 289, at 53.


452. One example which suggests that joint federal-state planning in accomplishing such transfers is workable occurred between Arizona and the Federal Bureau of Land Management. Cowart & Fairfax, supra note 16, at 426-27.

453. TAHOE AREA LAND ACQUISITION COMM’N, supra note 289, at 73-76.


455. Id. § 66907.9.

456. Id. § 66907.11.
been exempted from the requirements that it obtain legislative approval and give notice to other state agencies and the public when transferring surplus state land. This exception ensures that another clearance point important in achieving program objectives is located within the implementing agency.

Long-term ownership and management are the major unresolved issues of the current land acquisition programs at Lake Tahoe. Their resolution will determine whether the objectives of the original policy decision will be realized. The governing statute increases the likelihood of cooperation between the implementing agencies, in part by conferring flexible authority on the Tahoe Conservancy, and hence increases the level of integration among these institutions in managing land.

E. Officials' Commitment to Statutory Objectives, Access by Outsiders, and Decision Rules of the Implementing Agency

If a new program is to be successful, the officials responsible for implementing it must have sufficient focus and persistence to develop new procedures and to apply them in the face of possible resistance. The legal objectives of the program are also more likely to be obtained if actors outside the implementing agency have access to and leverage within the agency, and if the formal rules for decisionmaking are biased in favor of the objectives.

In the case of California's land acquisition efforts at Lake Tahoe, the governing statute, by creating a new agency, increased the likelihood that the implementing officials would be committed to the statutory objectives. The Tahoe Conservancy's primary function is land acquisition in one geographic area, which ensures that it will pay attention to that particular method of addressing the environmental protection needs of one region. The existence of a single identifiable state acquisition agency focuses the responsibility for achieving objectives and allows officials to develop expertise in the conditions of the locality.

457. Id. § 66907.8 (notwithstanding any other provisions of law, Conservancy may transfer any real property for management purposes pursuant to its own terms and conditions). The Santini-Burton Act authorizes the Forest Service to transfer environmentally sensitive lands in the Tahoe Basin acquired under that statute to state or local government units if such are "unsuitable for Forest Service administration." Pub. L. No. 96-586, § 3(b), 94 Stat., 3381, 3384 (1980). Other Forest Service land exchange authority is found in the General Exchange Act of 1922, 16 U.S.C. § 485 (1988), and in provisions of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1715-1716 (1988). The current approach of the LTBMU to transfer and management of such parcels is set forth in LAKE TAHOE BASIN MANAGEMENT UNIT, supra note 450, at IV-6, IV-38.


460. Id. at 27-29.

461. TAHOE AREA LAND ACQUISITION COMM'N, supra note 289, at 34. The legislature
Access by the public and by other agencies operating in the Tahoe Basin, such as TRPA and the LTBMU, which are headquartered there, is enhanced by the statutory requirement that the Conservancy maintain an office in the basin.\textsuperscript{462} The decision to locate the entire agency in the basin has enhanced the agency's ability to meet the needs of prospective sellers, including the specialized needs of individual landowners, thus allowing it to process a large volume of acquisitions as quickly and efficiently as possible.\textsuperscript{463} The location of the agency at Lake Tahoe also responds to the resentment of some basin landowners to government intervention from outside the basin. As recognized by TALAC, "to be successful the program will need local credibility [and] to do so it must . . . maintain a knowledge of the local situation . . . ."\textsuperscript{464}

The Conservancy's rules for decisionmaking are unremarkable, and the governing statutes reflect little effort to structure the internal dynamics of the agency.\textsuperscript{465} The Conservancy is governed by a board of seven voting members, two of whom serve ex officio, two of whom are appointed by elements of the legislature, and three of whom are appointed by designated local governments within the Tahoe Basin.\textsuperscript{466} The inclusion of local representatives may have been influenced by the history of local-state conflict at Lake Tahoe.\textsuperscript{467} Except when the governing board requests the state Public Works Board to exercise the power of eminent domain, its actions may be taken by a majority vote of the members present, provided the number present is not less than a quorum.\textsuperscript{468}

CONCLUSION

The quality of the environment in the Tahoe Basin has been determined to a very significant degree by changes in the law concerning public land ownership. Since it became a part of the United States, the Tahoe Basin has been affected by every major change in national policy toward public lands: disposition to settlers, railroads, and timber companies; retention of the remaining public domain in Forest Reserves; and

\begin{footnotes}
\item[462] CAL. GOV'T CODE § 66906 (West 1983). This amendment of the Conservancy's enabling legislation resulted from a recommendation by TALAC, which believed organizational placement within the Resources Agency "will also assist the Tahoe Conservancy in legislature and budgetary matters." TAHOE AREA LAND ACQUISITION COMM'N, supra note 289, at 62.
\item[464] See supra text accompanying notes 137-41.
\item[466] Id.
\item[467] See supra text accompanying notes 137-41.
\end{footnotes}
reacquisition by the federal government using exchange laws and funds provided by the Land and Water Conservation Fund. Today, the basin provides a leading example of what may be the next phase in the evolution of policy toward public lands: acquisition by state level agencies for environmental purposes.469

The basic policy decision embodied in California’s Lake Tahoe Acquisitions Bond Act responded to specific circumstances at Lake Tahoe by, for example, seeking to prevent further land disturbance and coverage, focusing on water quality objectives, and providing private landowners with an alternative to development under restrictive land use regulations. Moreover, the legislature utilized a study commission, TALAC, to refine the acquisition program in light of the particular context at Lake Tahoe. The use of this study commission appears to have been crucial to the state’s ability to tailor land acquisition to the particular circumstances at Lake Tahoe and quite possibly to the ultimate success of the Conservancy program. Many of the acquisition program characteristics that resulted from TALAC’s recommendations suggest great promise of attaining policy objectives when viewed in terms of the variables of implementation analysis. Equally important, the Tahoe Conservancy enabling legislation conferred broad and flexible powers that permit the agency to adapt to changing circumstances and take advantage of opportunities to employ the tool of land acquisition. In the final analysis, the Tahoe Conservancy is well adapted to its surroundings because of this delicate balance of clear statutory direction and flexible authority.

When the operation of the Tahoe Conservancy and its governing statutes are analyzed by application of the Mazmanian and Sabatier framework for policy implementation analysis, two general conclusions regarding the importance of the program’s legal structure and the role an agency can play in maximizing the program’s effectiveness emerge. First, the Acquisitions Bond Act has several important characteristics which make the achievement of policy objectives likely.470 The statute limited the geographical scope of land acquisition and identified specific types of land for acquisition, thereby narrowing the focus of the implementing agency’s efforts. This focus was the consequence of a variety of proposals made over many years, which identified an important role for public land

469. See supra notes 1-9 and accompanying text.

470. Certainly, the Acquisitions Bond Act alone does not satisfy each of the policy implementation variables to a high degree. For example, no funds are provided for management of acquired lands, and there is minimal guidance on the process for reaching a workable scheme for long-term ownership and management. See supra text accompanying notes 416-17. The recommendations of TALAC, adopted almost entirely by the legislature in the Tahoe Conservancy enabling legislation, compensate in many areas by providing broad authority and exemptions from generally applicable statutes which would hamper implementation. See, e.g., supra note 305; text accompanying notes 325, 442, 454-56.
acquisition at Lake Tahoe and refined the criteria for its implementation.\textsuperscript{471} The preference established for acquisition of lands, whose development would adversely affect water quality and stream environment zones, provided minimal ranking of priorities. An initial allocation of substantial funds made a cost-effective "mass acquisition" approach possible.

The most important features of the enabling statute were the delegation of land acquisition to a new agency as its primary mission, the assignment of multiple resource objectives to that agency, the inclusion of significant local representation on its governing board, and the requirement that the agency be located in the Tahoe Basin. The delegation of land acquisition authority to a new agency helped focus attention on acquisition and restoration issues at Lake Tahoe; the agency's advocacy was instrumental in gaining new sources of funds for its efforts. The assignment of multiple resource objectives, such as enhancement of water quality, wildlife, and public recreation, gives the Conservancy the ability to deal with issues in a complex land use situation comprehensively, rather than restricting the Conservancy to a single issue orientation. The composition of the Conservancy board helped to ensure that other state, local, and federal agencies would facilitate implementation of the Conservancy's programs. The predominance of state representatives sustains the characterization of the Conservancy's efforts as a state program trying to achieve objectives of statewide significance. This characterization is critical to the agency's effectiveness in dealing with policy and fiscal issues with the Governor and State legislature.\textsuperscript{472}

The second conclusion which emerges from application of the Mazmanian and Sabatier framework is that an alert agency can play a valuable role in ensuring effective policy implementation. The Conservancy adopted an increasingly refined system for determining land capability in the Tahoe Basin, resulting in precise, consistent, objective criteria for identifying land for purchase. Eschewing condemnation, the agency succeeded in obtaining enough cooperation from "willing sellers" to allow it to carry out its program effectively, thus satisfying an essential link in the causal theory underlying program objectives. Perhaps most significant, the implementing agency was flexible enough to adjust to changing circumstances. This has been particularly apparent in connection with developments in land use regulations: the Conservancy incorporated into its acquisition decisions IPES information generated by TRPA; it also utilized its broad authority and experience in land acquisition to function as a land coverage bank under TRPA ordinances, restored stream environment zones as contemplated by TRPA's Regional

\textsuperscript{471} See supra text accompanying notes 191-224.
\textsuperscript{472} Oct. 1990 Machida Letter, supra note 287.
Plan, and assisted in settling litigation arising under TRPA regulations. As a consequence, it has succeeded in its objectives of supporting the regulatory system and promoting governmental effectiveness in the basin.

The crucial role the Conservancy has played in structuring an effective program is also reflected in the approaches it has taken to acquisition. Its use of dual site selection strategies (specific, verifiable criteria and programmatic guidelines) permitted other agencies and private landowners to develop projects, thereby making the overall program flexible enough to respond quickly to purchase opportunities which could be lost due to changing conditions in the real estate market. The Conservancy's use of grants permitted the agency to utilize the resources of other public agencies and nonprofit organizations in developing, implementing, and managing projects.

Because a number of agencies are pursuing a variety of programs designed to protect Lake Tahoe, it will probably be impossible to quantify the contribution that the Tahoe Conservancy's land acquisition has made to any future change in water quality. Moreover, because changes in the basin environment may be reflected in changes in water quality only decades later, it may also take decades to reverse the trend once deterioration has begun.

However, policy implementation analysis suggests that the California land acquisition program for the Tahoe Basin is likely to attain many of the policy objectives set for the effort, and the evidence to date supports this assessment. By early 1991, the Conservancy, under its program to acquire environmentally sensitive land, had authorized the expenditure of funds for the acquisition of interests in more than 5200 acres, at a cost of over $54 million. This land consists of more than 4100 parcels of the approximately 6000 to 7000 parcels on the California side of the basin which have been identified as environmentally sensi-

473. See supra text accompanying notes 322-24.
475. Lake Tahoe has exemplified the difficulties in establishing effective regulatory systems and the inherent limitations of solely regulatory approaches to environmental protection. Yet despite its shortcomings, regulation retains a vital role. Clearly, the Conservancy has relied on information and processes developed by TRPA to conduct land acquisition more effectively. The current TRPA Regional Plan appears to be working, providing stability in the governmental framework at Lake Tahoe not known for nearly two decades. See Dipeso, Semblance of Stability in Tahoe Following TRPA’s First 20 Years, Tahoe Daily Trib., June 5, 1989, at 1, col. 1. Land acquisition programs, no matter how well structured, are only one component of a comprehensive approach to exceedingly complex resource issues. As recognized by the Acquisitions Bond Act, public ownership is not a substitute for public regulation of resources. CAL. GOV’T CODE § 66957(a) (West 1983) (“Acquisitions made pursuant to this subdivision are not intended to replace, wholly or partially, the exercise of any authority conferred by law for the protection of the region’s natural environment . . . .”).
476. STATE WATER RESOURCES CONTROL BOARD, supra note 47, at 34.
477. California Tahoe Conservancy, supra note 326, at 10.
The Conservancy had also authorized the expenditure of $13.1 million for twenty-two public access projects, undertaken other access related activities involving the acquisition of over 350 acres of land, and "authorized the expenditure of over $1.1 million for 11 projects which will result in the acquisition and/or restoration of 176 acres of critical [wildlife] habitat areas, the restoration of 4.8 miles of streams for riparian and fisheries habitat enhancement," and the preservation of over 100 acres of significant forest habitat and animal movement corridors.\footnote{479}

Through its land coverage reduction program, the Conservancy had authorized expenditures of more than $1.5 million for the acquisition of over 290,000 square feet of coverage, of which more than 80,000 square feet had been restored by the end of 1990.\footnote{480} Credits to mitigate excess coverage had been provided for 740 private and public projects, and the Conservancy's land bank has generated more than $665,000 to be reinvested in the program.\footnote{481}

Mazmanian and Sabatier remind us that the appropriations process serves as an important indicator of legislative support over time\footnote{482} and, therefore, as an indirect measure of a program's perceived accomplishments. The Tahoe Conservancy's efforts have received praise from California's Governor,\footnote{483} and the Governor and legislature have provided it more than $35 million over and above the amounts appropriated under the Acquisitions Bond Act.\footnote{484}

Lake Tahoe has long been recognized as an exceptional resource. A broader appreciation of its value, brought about by increasing threats to its environmental quality, generated the political will which made the current public land acquisition programs possible. Although unique in many ways, the Tahoe Basin is typical of many other fragile and valuable natural areas in this country which are under pressure for development or in need of restoration. The experience gained at Lake Tahoe, together with insights provided by policy implementation analysis, provides useful lessons to those interested in environmental protection through public land acquisition.
