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Cost Estimate For The Currituck Outer Banks National Wildlife Refuge Needs Revision

The Department of the Interior has proposed establishing a national wildlife refuge in the Currituck Outer Banks off the North Carolina coast. The Department estimated that acquiring nearly 16,000 acres of land and wetlands for the refuge will cost \$94 million over a 5-year period.



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In proposing the refuge, the Department generally adhered to the requirements of the National Environmental Policy Act. However, in developing the cost estimate, it did not consider a number of factors that could substantially reduce the cost of establishing the refuge. One such factor was working with the Corps of Engineers to protect wetlands using existing regulatory authority. This authority could be used to protect a portion of the refuge area during the administration's land acquisition moratorium.

GAO recommends that the Department of the Interior revise its cost estimate before requesting funds from the Congress for the refuge and that the Departments of the Interior and Army develop a cooperative agreement to protect the wetlands.



CE-81-48
APRIL 21, 1981

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UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

COMMUNITY AND ECONOMIC
DEVELOPMENT DIVISION

B-201700

The Honorable Jesse Helms^A
United States Senate

The Honorable G. William Whitehurst
House of Representatives

Subject: Cost Estimate for the Currituck Outer Banks
National Wildlife Refuge Needs Revision
(CED-81-48)

In December 1979 the Fish and Wildlife Service, Department of the Interior, released a draft environmental impact statement for a proposed national wildlife refuge on the Currituck Outer Banks in Currituck County, North Carolina. Subsequently, Senator Jesse Helms and Representative G. William Whitehurst asked us to determine whether the Service followed its regulations and established procedures in proposing the refuge.

The Service's final environmental impact statement for the proposed refuge, released in August 1980, proposed fee purchase (full ownership rights) and/or easements (certain rights to use or impose restrictions on the use of private land) of about 16,000 acres of land and wetlands containing 157 improvements and 3,211 lots. The Service estimated that the fee purchase cost would be about \$94 million over a 5-year acquisition period to be completed in fiscal year 1985. It estimated that if easements were acquired, the cost would be about \$84.2 million.

The Service generally adhered to requirements of the National Environmental Policy Act of 1969 and followed its internal policies and procedures in developing its proposal for the refuge. However, the Service did not consider a number of factors in developing its cost estimate for the refuge.

THE CURRITUCK COUNTY
OUTER BANKS

The Currituck County Outer Banks are part of a chain of barrier islands that lie off the mainland from Maine to Texas. The Currituck Outer Banks are 23 miles long and range from less than 2,000 feet to more than a mile wide. They consist of 22,000 acres of beach, dunes, wooded vegetation, and wetlands. The Currituck Outer Banks are bounded on the north by False Cape State Park, Virginia; on the south by Dare County, North Carolina; on the east by the Atlantic Ocean; and on the west by the Currituck Sound.

This stretch of the barrier islands greatly depends on grasses and other vegetation for its quasi-stability. Sea oats and other vegetation, for example, trap sand and build dunes that absorb wind and wave energy and replenish the shoreline with the trapped sand. Grasses and other vegetation in the sound hold and stabilize the shores and create great patches of wetlands that provide food and shelter for large flocks of wild fowl. The ocean's saline and the sound's brackish water foster an abundant and productive marine ecology.

Frequent winter gales can change the topography overnight. Hurricanes have opened and closed inlets and "rolled" the barrier stretch inland. Strong shore currents produce severe erosion, particularly during high winds known as "nor'easters." Saltwater intrusions from ocean overwash during storms can alter the types and abundance of life in the sound.

The Currituck Outer Banks peaked economically in the late 1800s when commercial fishing and hunting were at an alltime high. There were few permanent residents during the first 60 years of this century. During the 1960s and 1970s, however, wetlands were dredged, canals dug, dry land "created," dunes flattened, shallow wells sunk, and septic tanks installed. More than 6,000 lots were platted, most of which have been sold or have contracts for sale. Presently, 223 lots have homes on them.

Nature can accommodate only a sparse human population to retain the attractiveness of the natural characteristics of the Outer Banks. The Service proposed the refuge because it believes that more intensive development would end the unique and delicate balance and radically alter the environment.

The Service assigned study of the Currituck Outer Banks area to its region 5 office, Newton Corner, Massachusetts. A project team leader, under the direction of the regional director, was responsible for developing the refuge proposal and preparing the decision documents.

OBJECTIVES, SCOPE, AND METHODOLOGY

Our objectives were to determine if the Service followed its regulations and policies as it explored alternatives for establishing the refuge and the reasonableness of its proposed acquisition method and cost estimates. We did not evaluate the need for the proposed refuge in terms of costs and benefits primarily because of the great difficulty in quantifying benefits. However, a reading of the final environmental impact statement shows that the Service appears to have justified establishing the refuge in order to protect the ecology and wildlife.

In performing our work, we familiarized ourselves with the physiography of the proposed refuge area as it may relate to development and refuge potential. We reviewed estimated and projected refuge costs, alternative ways to achieve refuge objectives, and the adequacy and accuracy of the Service's decisionmaking data base. We also reviewed pertinent laws, policies, and regulations. We examined records and/or interviewed officials from concerned departments at the Federal, State, and county levels. We also contacted developers and interested citizen's groups to obtain information and their views regarding the proposed refuge.

We considered the annual revenue that will be received by the county under various alternative means of protection but we did not attempt to match the cost of the refuge with the potential cost to the Federal Government, State, county, or private interests if the land were not protected.

THE SERVICE FOLLOWED PROCEDURES
IN PROPOSING THE REFUGE

The Service, in developing its proposal for establishing the Currituck Outer Banks National Wildlife Refuge, generally followed the requirements of the National Environmental Policy Act and Council on Environmental Quality guidelines. The act and guidelines require

- close participation with Federal, State, and local agencies and other interested parties;
- preparing a draft environmental impact statement that includes reasonable alternatives, costs, and the selection of a preferred alternative and distributing the statement to Federal agencies, States, and local governments;
- considering comments; and
- preparing a final environmental impact statement indicating the proposed action.

In the draft impact statement, the Service included a proposed action and four alternative actions and discussed the impact of each. The proposed action provided for fee purchase and/or conservation easements of about 16,000 of the 22,000 acres. It included all land and wetlands in the northern section plus wetlands and a buffer zone in the southern section. The alternative actions ranged from no purchase to fee purchase and/or conservation easements on nearly 19,000 acres.

The Service sent the draft to appropriate parties and considered their comments. The major opposition to the proposal came from landowners who would be affected by the refuge.

In the final environmental impact statement, dated August 29, 1980, the Service presented justification for the proposed refuge, which said in part:

"Threats to the fish and wildlife resources of the Virginia-North Carolina Outer Banks and adjacent estuarine areas have led the Service to propose protection through acquisition of certain areas of the Outer Banks. These threats have come about as a result of intensive efforts to develop the Currituck Outer Banks for recreational, second home or retirement home use.

"Direct threats to the biological resources are occurring from physical displacement of species and habitat by homesites, open landfills intruding into wetlands, finger canal construction, linear road construction, and dune disturbance."

REFUGE COST ESTIMATE
NEEDS REVISION

The Service prepared a present-value estimate of \$63.1 million as of January 1979 for full-fee acquisition of land for the proposed refuge. The estimate was then escalated to a future value of \$94.0 million considering 12-percent escalation during a 5-year acquisition period. We have developed adjustments (see app. I) based on the factors discussed below that indicate a future-value cost estimate as much as 41 percent less than the Service's estimate.

Unreliable data

The Service used county property transfer tax stamp amounts on selected recorded sales of lots within and near the proposed refuge area to establish values. The rate in Currituck County is \$1-per-\$1,000 paid--thus, a deed bearing a \$5-tax stamp indicates a \$5,000 sales price. Most of the lots in the proposed refuge area, however, were sold on land contract, a process that gives the buyer possession but not title until all installments are paid. When title passes, the deed is recorded and transfer taxes paid based on the original purchase price. Since a considerable period of time may elapse between the sale and recording of the deed, the tax stamp amount paid would not necessarily reflect the property value when the deed is recorded.

Further, the Service valued lots three to five blocks from the ocean at higher values than comparable lots sold more recently by the developer.

The refuge project team leader stated that data used is not as reliable as that which would be presented in a detailed appraisal. However, he said that the data used for the Service study was the most reliable available and was adequate for the gross cost estimates presented in the study.

We believe the Department should not use information known to be unreliable in preparing the refuge cost estimate. We believe the estimate should be revised before any requests relating to the proposed refuge are submitted to the Congress.

Escalation rate and acquisition period will affect costs

The Service used a 12-percent annual escalation rate for a 5-year anticipated acquisition period, which would increase the present value of \$63.1 million to a future value of \$94.0 million. The acquisition costs could be higher or lower if individual parcel acquisitions occur at a rate other than that anticipated by the Service or if the general property escalation rate is other than 12 percent.

Roads and streets not considered

The Service did not consider the cost of subdivision streets and roads in the northern section. These are owned by the developers, and the Service would have to acquire them if all other lands were acquired.

Inconsistencies

The Service developed cost estimates for each of the alternative actions as well as the proposed action. We found inconsistencies among the options in land classification, values, and number of lots. For example, 257 acres in one tract were valued at \$514,000 for the proposed action and at \$1,012,000 in an alternative action. A Service appraiser who did much of the work preparing the refuge cost estimate explained that the Service used more precise data when estimating the cost of the alternative action.

The Department said that the 257 acres constitute the total proposal under one alternative, but only part of a 418-acre acquisition that included higher valued lands under another alternative. The Department also said that feasibility cost study data is not always precise and that such inconsistencies will be negated once a definite boundary is established and detailed appraisals are made of particular tracts.

We believe however, that lots should be valued the same under each alternative.

The Nature Conservancy 1/ tracts overstated

The Conservancy has offered to sell two tracts to the Service at the Conservancy's cost of \$4 million plus administrative costs of about \$100,000. The Service estimated that these tracts have a fair market value of about \$13.6 million and included the latter figure as part of the refuge cost estimate.

The refuge project leader said that because of public commitments made by the Nature Conservancy to the Service, the Service will most likely obtain the Conservancy's property at a much lower figure than estimated in the study. The Department said that requirements are placed on the Service for estimating and displaying the full market value of the property for revenue sharing and other Government accounting purposes. This would hold true even if the properties were donated.

We believe, however, that an offer by the owner should be used as a basis for the estimate because it is the most precise figure available.

Condition and potential use of land could affect costs

Consultants for Currituck County estimated that up to two-thirds of the lots in the Currituck Outer Banks could not be developed without creating serious water contamination and public health problems. Further, access to the Outer Banks is limited; access via the northern route has been curtailed since 1972. The only other access route is from the south and could add as much as 100 miles for a one-way trip.

These potential pollution and health problems and limited access may affect the value of the land and could result in such land appreciating more slowly than land not subject to these problems. The draft and final environmental impact statements discussed these problems, but they did not appear to be reflected in the Service's cost estimate.

Refuge administration costs not identified

The Service recognized in the final environmental impact statement that major staffing would be needed to provide adequate service to the public. The Service further recognized that when

1/ The Nature Conservancy is a private, nonprofit conservation organization that helps conserve examples of each type of the varied ecological components and natural areas in the United States.

the refuge was fully operational, an administrative/maintenance facility would be needed on the mainland close to centers of public activities. However, the statement did not identify any costs for these needs.

Easement projections

The Service recognized that certain tracts probably could be protected through conservation easements. It believed these easements could be obtained for 35 percent of the fee-purchase costs and estimated that such easements could result in a present-value reduction of \$6.5 million and nearly a \$10 million future-value reduction in acquisition costs. The Service estimate included a reduction of \$2.3 million for easements on wetlands, which we believe can be protected by various laws concerning the environment, enforceable by State and Federal agencies. (See following section.) The other \$4.2 million reduction was based on the Service's opinion as to which tract owners would accept easements.

Our discussions with a major developer and a representative of the owner of several tracts indicated that the Service may have erred in estimating which tracts could be protected by acquiring easements. For example, the Service classified tracts owned by the developer as probable for easement, but the developer told us that he would not accept an easement. The representative of the owner of several tracts said that the owner would accept easements although the Service indicated he would not. The refuge project team leader believes a reliable estimate can only be made once the Service has started acquisition action.

PROTECTION OF WETLANDS WITHOUT ACQUIRING THEM

The Service's proposal includes acquiring wetlands at a cost of \$4.7 million. We believe the wetlands could be protected under laws and regulations already in effect, without the Service having to acquire them. This would reduce the refuge cost by \$4.7 million.

The Corps of Engineers is responsible for regulating certain activities that affect navigable waters, including wetlands.

Section 10 of the Rivers and Harbors Act of 1899 makes it unlawful, without a Corps permit,

"* * * to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port, roadstead, haven, harbor, canal, lake, harbor of refuge, or inclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, * * *."

The regulations implementing this act require the Corps of Engineers to consider the environmental impacts of such activities before issuing permits for them.

The Corps is also responsible under section 404 of the Clean Water Act for issuing or denying permits for the discharge of dredged or fill materials into navigable waters at specified disposal sites. Through its review and permit process, it can evaluate proposed activities, issue or deny permits, and inspect permitted work for compliance.

The Environmental Protection Agency also has regulatory responsibilities relating to wetlands. The Clean Water Act requires a permit from the agency for point discharges that could affect the quality of navigable waters. Further, section 404(c) of the Clean Water Act authorizes the Administrator of the Environmental Protection Agency to put any area off limits to discharges of dredged or fill material and to veto any section 404 permit issued by the Corps of Engineers

"whenever, [the Administrator] determines * * * that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreation areas."

The Corps advised us that, to the best of its knowledge, the Agency has invoked its section 404(c) veto authority in only one instance and that case has not been resolved.

In addition, section 401 of the Clean Water Act requires an applicant for a Federal permit to conduct any activity that may result in any discharge into navigable waters to obtain certification from the appropriate State that any such discharge will comply with discharge limitations under the act.

The chief of the regulatory functions branch of the Corps said that no permit could be granted if a State denied a State permit required for the activity. The State of North Carolina has strict requirements under its Coastal Area Management Act of 1972 for granting permits. Before a permit can be issued, an extensive investigation must be made, public hearings held, and the application circulated among State agencies having purview or experience relevant to the matter.

The body of State and Federal law that can control wetlands development would make it difficult for applicants to obtain permits for dredging and filling in the proposed refuge if Federal or State agencies object. To the extent that any proposal for dredging or filling, is found to violate water quality standards

or not to be in the public interest, the wetlands would be protected from that particular threat. Although these laws and regulations could be used to provide a substantial degree of protection at the relatively small cost of administering them, they would not provide the absolute degree of protection available with acquisition.

The Corps of Engineers' regulatory enforcement officer in Wilmington, North Carolina, told us that the Corps could police certain activities in the wetlands but this would not guarantee preservation because: (1) harmful activities on adjacent uplands cannot be regulated and (2) the Corps lacks sufficient resources to police violations. The chief of the regulatory functions branch in the Office of the Chief of Engineers in Washington further advised us that the regulatory authority of the Corps limits its ability to preserve the wetlands because a public interest decision could be made to allow filling or other alteration of the wetlands.

We recognize these limits to the Corps' ability to protect the wetlands under existing laws and regulations. However, we believe the Service should work with the Corps to protect the wetlands without having to acquire them.

IMPACT OF THE REFUGE

In its draft and final environmental impact statements, the Service recognized the impact of establishing the refuge, including an adverse socioeconomic impact on private landowners. Also, ownership of lands by the Service would remove them from the county tax rolls. However, refuge revenue-sharing payments to the county would partially mitigate the loss of both present and potential tax revenues. According to the Service, taxes collected by the county in 1978 for the proposed wildlife refuge area totaled \$214,600. Under Federal ownership, refuge revenue-sharing payments would be between \$363,000 and \$577,500 for the 5-year period beginning in 1981. This amount will increase every 5 years.

A primary socioeconomic impact would be the loss of private ownership of about 3,211 tracts of land of which about 157 are improved with homes. To reduce hardships to residents and seasonal occupants, the Service proposes to offer permanent residents and their children life-use of their property. Payment for the property would be based on life expectancy of the owner and would be reduced by 1 percent for each year of use. Use of the residence by children of the owner would not be computed in the payment. Seasonal residents would be offered up to 25 years use of their property, computed at the same 1-percent rate. The Service would take control of the property on termination of the life-use.

The Service also proposed compatible-use as another alternative to purchasing. Under this concept, residents would be permitted to continue to own their homes and leave them to their heirs, provided the uses of the property remain compatible with the objective of the refuge. The Service would have to define incompatible use.

In its written comments, the Department of the Interior said that the Service considered, but rejected early in the decision process, a compatible-use alternative that would have intermixed private ownerships with Service ownership. The Department said that this alternative was rejected due to the disruptions to wildlife habitats and species and the limitations such an alternative would place on resource management and public programs. However, under the life-use option, there would continue to be private residents and therefore the Service would face the same management problems as under compatible use.

At our request, the Outer Banks Civic League asked permanent and seasonal residents if they would accept life-use, use-reservation, or compatible-use under conditions compatible with protection of adjacent Federal land and water. The league said that the residents responded overwhelmingly against alternatives under any conditions, preferring to enjoy their property without restrictions.

CONCLUSIONS AND RECOMMENDATIONS

The Service appears to have followed the established procedures for proposing a wildlife refuge. However, its cost estimate for the Currituck Outer Banks National Wildlife Refuge is uncertain and should be revised. Further, the Service should work with the Corps of Engineers in developing an alternate land-use strategy for wetlands.

We recommend that the Secretaries of the Interior and the Army develop a cooperative agreement by which the Corps of Engineers could protect the wetlands without the Service having to acquire full title to such lands.

We also recommend that the Secretary require the Service to revise its cost estimate for the refuge considering the factors discussed in pages 4 to 7 of this letter and provide the revised estimate to the Congress when requesting appropriations for the refuge.

AGENCY COMMENTS AND OUR EVALUATION

The Fish and Wildlife Service disagreed (see app. III) with our recommendation that its estimate should be revised. It said that a gross estimate of land cost (within 15-percent accuracy) is considered adequate to analyze various alternatives and to

determine if congressional sanction should be sought and that it believed the projected costs met that test. The Department also said that further refinement of land cost will be made if the project is authorized.

The Service also challenged the factors cited in the report that indicated the need to revise the refuge cost estimate.

Appendix I explains the reasons for our adjustments. We believe the future-value cost could be as much as 41 percent less than the Service's estimate. We recognize that any estimate prepared without a full scale real estate appraisal will possibly differ from the final cost. The Congress should have available, however, the most accurate estimate possible to decide whether the refuge proposal should be approved. We believe the data presented in this report will help the Service develop a more accurate estimate and that our recommendation that the estimate be revised is appropriate.

The Department did not comment on our recommendation that it work with the Corps of Engineers to develop a cooperative agreement whereby the Corps could protect the wetlands.

The Corps of Engineers said (see app. II) that we had made incorrect assumptions about section 404 of the Clean Water Act of 1977, as amended. We revised the section on protecting the wetlands by using existing laws to reflect additional information provided by the Corps.

IMPACT OF FEDERAL LAND ACQUISITION MORATORIUM

The President's economic recovery program proposes a moratorium on Federal land acquisition, and the fiscal year 1982 proposed level of funding for Federal land acquisition is limited to the amount necessary to close out current court awards, emergency land acquisition efforts, and administration. Should the moratorium be accepted by the Congress, the Service would be unable to establish the refuge as proposed.

In our December 14, 1979, report ("The Federal Drive to Acquire Private Lands Should be Reassessed," CED-80-14) we pointed out that the Federal Government had no overall policy on how much land it should protect, own, and acquire. Federal agencies have followed the general practice of acquiring as much land as possible regardless of need, alternative land control methods, and impacts on private land owners. Consequently, lands have been purchased that were not essential to achieving project objectives and before planning how the land was to be used and managed. We, therefore, agree that there should be a moratorium on Federal land acquisition until an overall policy is developed.

Under existing Federal environmental protection laws, discussed on pages 7 to 9, the Service could take action to protect some of the proposed refuge area, such as the wetlands, during the moratorium. Also, if the Nature Conservancy retains its tracts during this period, that area would be protected.

The moratorium could affect State and local governments' plans. Instead of refuge revenue sharing, the county would face the problem of financing services (water, sewage treatment, fire protection, etc.) to this remote area should the area continue to be developed. On the other hand, if the area does develop, the county will have additional real estate tax revenues to finance services. However, limited access and sanitation problems might discourage development.

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As arranged with your offices, unless you publicly announce its contents earlier, we plan no further distribution of the report until 30 days from the date of the report. At that time, we will send copies to interested parties and make copies available to others upon request.



Henry Eschwege
Director

C o n t e n t s

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III	Letter dated February 26, 1981, from the Acting Deputy Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior	10

ADJUSTMENTS TO SERVICE ESTIMATE

	<u>Full fee estimate</u>		
	<u>Present value</u>	<u>Escalation</u>	<u>Future value</u>
	----- (millions) -----		
<u>LAND COST</u>			
Service estimate:	\$63.1	\$30.9	\$94.0
Adjustments			
Unreliable data (notes a & g)	(5.4)	(2.4)	(7.8)
Roads and streets (note b)	0.8	0.4	1.2
Inconsistencies (note c)	3.3	1.5	4.8
Nature Conser- vancy land (note d)	(9.5)	(4.3)	(13.8)
Protection by existing laws (note e)	(4.7)	(2.1)	(6.8)
Easements (note f)	(4.6)	(2.1)	(6.7)
Escalation on land that may not be developable (note h) (Service pre- sent value estimate is \$18.5 million)	_____	<u>(9.4)</u>	<u>(9.4)</u>
Adjusted land cost	<u>\$43.0</u>	<u>\$12.5</u>	<u>\$55.5</u>

ANNUAL RECURRING COSTS

(thousands)

Refuge revenue sharing Service estimate in FY 1986	\$705.4
Adjustment (note i)	<u>(289.1)</u>
Adjusted refuge revenue sharing (note i)	<u>\$416.3</u>

Note: Notes to this appendix are on the next page.

Notesa. Unreliable data

In its sales search, the Service selected recorded sales of lots in subdivisions within and near the project. Using tax stamps as recorded on deeds at the county court house, it established values for individual lots.

Most of the lots in the proposed refuge area, however, were sold on land contract, a process that gives the buyer possession but not title until all installments are paid. When title passes, the deed is recorded and transfer taxes paid based on the original purchase price. Since a considerable period of time may elapse between the sale and recording of the deed, the tax stamp amount paid would not necessarily reflect the property value when the deed is recorded.

After recording sale values, the Service classified lots as front, center, lagoon, or rear. Lots on the ocean were classified as front lots; the four rows of lots immediately behind the front lots were called center lots; lots on some canals were lagoon lots; and all others were called rear lots. Values assigned through the sales search were assigned to the lots. The descending valuation was front, lagoon, center, and rear. The developer, on the other hand, classified lots as ocean front, semiocean front, and rear. The semi-ocean front lots were those one row behind the ocean front lots. The developer's records generally supported the Service's estimates for front and rear lots and the Service's estimates for center lots were compatible with semi-ocean lot values. All other lots were close to the Service's estimates for rear lots. We therefore adjusted three rows of center lots and all lagoon lots to rear lot value. This reduced the estimate by \$5.4 million.

b. Roads and streets

Within each subdivision are roads dividing groups of lots. According to maps, the roads are 60 feet wide. We estimate that these roads constitute 276 acres, of which 9 are improved. The roads have not been dedicated to the county and are therefore owned by the developer and would have to be purchased by the Service. Using acreage value, as determined by the Service, and improvement costs, as determined by the developer, we estimate the value to be \$0.8 million. The estimate would increase by that amount.

c. Inconsistencies

The Service originally made an estimate for the proposed action and later made estimates for the alternative actions discussed in the environmental impact statement. Different Service employees were involved. We noted that certain land was not classified the same for the proposed action as it was for one of the other alternatives because more precise measurements of each type of land were

made. As a result, several tracts of land were valued \$3.3 million higher for the other alternative than for the proposed action. We feel that the alternative estimate is more accurate and the proposed action estimate should be increased by that amount.

d. The Nature Conservancy Land

Records show that the Nature Conservancy purchased the Swan Island and Monkey Island tracts for \$4.0 million. At a public hearing, the executive vice president of the Conservancy agreed to sell these tracts to the Service at Conservancy cost plus a fee of about \$0.1 million. Yet, the Service valued these tracts at \$13.6 million. This overstated the estimate by \$9.5 million.

e. Protection by existing laws

Wetlands in the project area were valued by the Service at \$4.7 million. We believe this land could be protected through reliance on existing environmental laws at a cost of administering the laws. The estimate could be reduced by \$4.7 million. (See p. 7.)

f. Easements

The Service prepared a separate estimate considering protection of unplatted land through the offering of conservation easements. It showed a present-value estimate of \$56.6 million and a future-value estimate of \$84.2 million. The present-value estimate included a reduction from the full-fee estimate of \$2.3 million for wetlands and \$4.2 million for other land. Wetlands could be protected by reliance on existing laws. We disagree somewhat with the reduction for easements on other lands based on our discussions with the developer and land owners. The use of easements will reduce the full-fee estimate by \$4.6 million.

g. Escalation on adjustments

Considering escalation at 12 percent for 5 years, our adjustments to the present value estimates will result in corresponding adjustments to escalation.

h. Escalation on land that may not be developable

Land valued at \$18.5 million may not be developable because of serious potable water contamination and related health problems. This land, therefore, may not appreciate in value. Accordingly the escalation would be reduced by \$9.4 million.

i. Refuge revenue sharing costs

Annual refuge revenue sharing costs are based on 0.75 percent of the appraised value and increase every 5 years based on a reappraisal by the Service. The reappraisal will be performed in much the same manner as the appraisal just before acquisition.

Platted land will be appraised as such even though owned by the Service and not subject to development. The Service, in its final environmental impact statement, estimated that the annual costs for the 5 years beginning in fiscal year 1986 would be \$705,375 (0.75 percent of the \$94.0 million future-value estimate). Using our adjusted future-value estimate of \$55.5 million, the annual refuge revenue sharing cost beginning in fiscal year 1986 will be about \$416,250 (0.75 percent of \$55.5 million).

The Service did not show the annual cost for the fiscal year 1981-85 period. Based on the Service's fiscal year 1981 future-value estimate, the estimated annual cost for those years would be \$577,500 (0.75 percent of \$77.0 million). Our adjusted fiscal year 1981 future-value estimate is \$48.4 million, resulting in an estimated annual refuge revenue sharing cost of \$363,000 (0.75 percent of \$48.4 million).



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, D.C. 20310

REPLY TO
ATTENTION OF

24 FEB 1981

Mr. Henry Eschwege
Director, Community and
Economic Development Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Eschwege:

This is in reply to your letter of January 12, 1981, to the Secretary of Defense regarding your draft report on "Cost Estimate For The Currituck Outer Banks National Wildlife Refuge Needs Revision," GAO Code 143410, OSD Case #5593.

During the review of this report, we noted several incorrect assumptions regarding the Corps of Engineers Section 404 program. In particular, statements in your report indicated that this program was a wetlands protection act and could also be used as a land use planning tool. This opinion is out of character with Congressional intent and the management philosophy behind the Corps Section 404 program. The implementation of Section 404 has developed into a public interest review process which balances the benefits of the proposed project against the possible detriments. The protection of wetlands as a productive and valuable public resource is an aspect of this public review process. However, the purpose behind this process is not the development of an alternate land use strategy for wetlands. The primary purpose is to arrive at a decision which best reflects the consideration of all aspects of the public interest.

In order to better communicate these concerns to your staff, meetings were held on January 28 and 30, 1981, to discuss the Corps Section 404 program. It was agreed that your report did not accurately discuss this program and that the paragraph, "Protection of Wetlands by the Corps of Engineers," on page 7 should be revised. The revision (Enclosure 1) correctly describes the Corps program. The Conclusion and Recommendation Section must also reflect these changes.

24 FEB '98

Mr. Henry Eschwege

Additional comments on specific pages and paragraphs of your report are in Enclosure 2.

Sincerely,



Edward Lee Rogers

Acting Assistant Secretary of the Army
(Civil Works)

2 Encl
as

PROTECTION OF WETLANDS BY USING EXISTING LAWS

- Department of Interior policy provides that alternative protection strategies may involve various types of direct or indirect Federal actions. Interior agencies should consider various alternatives including:

- Coordination and consistency of existing Federal or federally assisted programs with management and protection objectives, and,
- Implementation of Federal, State, or local regulatory authorities.

The Corps of Engineers' regulatory enforcement officer, in Wilmington, North Carolina, told us that the Corps could regulate certain activities in the wetlands but such would not guarantee preservation because: (1) harmful activities on adjacent uplands cannot be regulated and (2) the Corps lacks sufficient resources to police violations. The Chief of the Regulatory Functions Branch in the Office of the Chief of Engineers in Washington further advised that the regulatory authorities of the Corps limit the ability to preserve the wetlands because a public interest decision could be made to allow filling or other alteration of the wetland.

The Service plans to acquire by full fee acquisition and/or grant conservation easements on buffer zones above all wetlands. Thus, access to wetlands would be extremely difficult for dredging and filling activities.

Under regulations already in effect, the Fish and Wildlife Service could police the wetlands and report any violations to the Corps for action.

Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403) makes it unlawful without an Army Corps of Engineers permit "...to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of...within the limits of any breakwater, or of the channel of any navigable water of the United States,...." The regulations implementing this Act require the Corps of Engineers to consider the environmental impacts of such activities before issuing permits therefor.

The U.S. Army Corps of Engineers has the responsibility for regulating certain activities that affect wetlands and navigable waters. Under section 404 of the Clean Water Act, as amended in 1977 (33 U.S.C. 1151), the Corps is authorized to issue or deny permits for the discharge of dredged or fill materials into navigable waters at specified disposal sites. Through its review and permitting process, it can evaluate proposed activities, issue or deny permits, and inspect permitted work for compliance.

It also has the responsibility and power to stop unpermitted work and to recommend legal action against violators of the River and Harbor Act (33 U.S.C. 401 and 42 U.S.C. 1962), and the Clean Water Act of 1977 (33 U.S.C. 1251).

The Clean Water Act of 1977 gives the U.S. Environmental Protection Agency (section 301) authority to deny applications for point source discharges in these waters that could affect the quality of the water. Further, section 404(c) of the Clean Water Act authorizes the Administrator of EPA to put wetland areas off limits to discharges of dredged or fill material and to veto the issuance of any 404 permit by the Corps of Engineers "whenever he determines, . . . that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas." To the best of our knowledge, EPA has only invoked its section 404(c) veto authority in one instance and that case has not been resolved.

Section 401 of the Act also gives the State the same authority and requires those who build or operate facilities which result in any discharge into navigable waters to obtain a certificate from the State. Section 401 prohibits the Corps from issuing any permit involving a discharge until the State has issued or waived certification. Furthermore, Corps officials said no permit could be granted if a state denied a state permit required for the activity. The State of North Carolina has strict requirements under its Coastal Area Management Act of 1972 for the granting of permits. Before a permit can be given an extensive investigation must be made, public hearings held, and the application must be circulated among state agencies that have purview or experience relevant to the matter.

This body of State and Federal laws all influence wetlands development and will make it difficult to obtain permits for dredging and filling in these wetlands. To the extent that any proposal, if dredging or filling, is found to violate water quality standards or is found not to be in the public interest, then the wetlands will be protected from that particular threat. Accordingly, the regulatory programs will provide a substantial degree of protection at the relatively minor cost of administering these programs but will not, of course, provide the absolute degree of preservation available by easement, at a cost of \$4.7 million.

[GAO COMMENT: The report has been revised to reflect the Corps' proposed language.]

ADDITIONAL COMMENTS ON GAO DRAFT REPORT
"COST ESTIMATE FOR THE CURRITUCK OUTER
BANKS NATIONAL WILDLIFE REFUGE NEEDS REVISION"

1. Page 6, para. 1. With respect to the item "Title Insurance," the statements there are inaccurate. Although it is true that the cost for the title insurance feature of a title insurance contract or a title insurance policy is 20-25 percent, in order to get the insurance, you must first order a title opinion. As a practical matter, we cannot get a title opinion without getting title insurance, nor can we get title insurance without getting a title opinion. We therefore would delete that paragraph on title insurance completely.

[GAO COMMENT: We disagree with the Corps' comment that our statement is inaccurate, although we recognize the practical difficulties discussed by the Corps. We have deleted the section on title insurance, however, because a Department of Justice study, presently being conducted, should help resolve these difficulties.]

2. Page 7, para. 1. With respect to the section on easements, we concur with the project team leader that a reliable estimate as to the savings in cost of easement vs. fee can only be made after acquisition has begun and also we would add that the exact language of the easement must be known before any estimate of a reduction in cost can be made. In some instances it can cost as much as 90% or more of the fee value to acquire an easement. ◦

[GAO COMMENT: We were consistent with the Service's procedures in computing the cost of easements.]



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

Mr. Henry Eschwege
Director, Community and Economic
Development Division
U.S. General Accounting Office
Washington, D.C. 20548

February 26, 1981

Dear Mr. Eschwege:

In response to your request of January 12, 1981, we have reviewed your proposed report to Senator Jesse Helms and Representative G. William Whitehurst entitled "Cost Estimates for the Currituck Outer Banks National Wildlife Refuge Needs Revision." This was in response to their request that GAO determine if, in the preparation of its proposal for a national wildlife refuge on the Currituck Outer Banks in North Carolina, the U.S. Fish and Wildlife Service followed:

- (1) the requirements of the National Environmental Policy Act (NEPA), and
- (2) its own regulations and established procedures in proposing and recommending this refuge.

Your group analyzed and evaluated the Service's actions and process in the preparation of the Currituck Outer Banks Environmental Impact Statement. Your report established that the Service:

- ° did comply with the procedural requirements of NEPA
- ° did comply with its own regulations, policies and procedures
- ° did operate within the mandates of its legislated and executive responsibilities

Your report concludes that the Service's estimate of land costs was uncertain and should be revised. We would disagree with you in the need for further refinement of the data at this time. Since the purpose of the Environmental Impact Statement preparation was to analyze various protection strategies for the Currituck Outer Banks and to determine if Congressional sanction for a project should be sought, a gross estimate of land cost (15 percent accuracy) is considered adequate to guide such a decision. We believe the projected costs meet that test. Further refinement of land cost will be made if the project is authorized. As a matter of practice, to assure that the government offers fair market value for lands purchased, a full scale real estate appraisal is made before any acquisition can occur. Those questions raised by your review team would be addressed at that time.

We believe that the Service's objectivity in preparing the cost estimate merits commendation. Most Federal agencies have been charged with underestimating costs when promoting their projects. Whereas you indicate these estimates may be too high, most of the public comment has indicated the estimates may be too low.

[GAO COMMENT: In view of the President's goal to reduce Federal spending, we believe the Service should provide the Congress with an estimate as accurate as possible. The Congress should then be in a better position to determine the merits of the proposed wild-life refuge in relation to the costs. This is especially critical because the President has also proposed a moratorium on Federal land acquisition.]

We have added appendix I to the report, which shows adjustments that would decrease the Service estimate by about 41 percent, considerably more than the 15-percent allowance referred to by the Service. Although there is certainly room for disagreement, we believe the difference is significant enough to require a revision before submitting a request to the Congress.]

In summation, we are pleased that the Fish and Wildlife Service's efforts were found to be in compliance with existing laws, policies and regulations.

However, we suggest your proposed report be modified to recognize the preliminary nature of land cost estimates.

Enclosed are specific comments by the Fish and Wildlife Service on your proposed report. We appreciate the opportunity to comment on the report prior to its completion.

Sincerely,



Enclosure

Acting Deputy Assistant Secretary for
Fish and Wildlife and Parks

Fish and Wildlife Service Comments on
 GAO's Proposed Report "Cost Estimates
 for the Currituck Outer Banks
 National Wildlife Refuge Needs Revision"

Page 1, 3rd Paragraph, Line 1

"The Service generally adhered to . . . requirements of the National Environmental Protection Act . . ." The citation should be National Environmental Policy Act of 1969.

Page 1, 4th Paragraph, Line 5

"The Outer Banks are . . ."
 This line should be read -
 "The Currituck Outer Banks are . . ."

Page 2, 5th Paragraph should read:

The Service assigned study of the Currituck Outer Banks area to its Region 5 Office, Newton Corner, Massachusetts. A project team leader under the direction of the Regional Director, was responsible for development of the refuge proposal and preparation of the decision documents.

[GAO COMMENT: The report has been revised to reflect the above three comments.]

Page 4, Last 2 Paragraphs

Unreliable Data

A sampling of the data relied upon in the Cost Estimate has been taken for the years 1972 to 1980. The following 98 resales have been observed among approximately 1,050 properties.

<u>Year Observed</u>	<u>Numbers of Resales Observed</u>	<u>Avg. Annual rate of Value Change</u>
1973	7	+ 1%
1974	7	+65%
1975	9	+12%
1976	7	+13%
1977	10	+14%
1978	29	+12%
1979	27	+ 6%
1980	2	+12%

Years 1978 and forward include resales of resales. The stamps on these second and third generation recordations have been given weight in land value estimates. The Service has not accepted transfer tax stamp amounts as exclusive indications of value but acknowledges this as one of the number of sources considered.

The cost estimate is not an appraisal. The preliminary nature of the estimate precludes the inspection and verification of its many parts.

[GAO COMMENT: Resale values were considered by the Service, but the Currituck County Recorder of Deeds informed us that property transfer tax stamps do not necessarily indicate land value. The main reason for our adjustment was the improper valuation of a number of lots three to five blocks from the ocean. The Service valued these lots higher than comparable lots sold by the developer. We have revised the report and appendix I to reflect the Service's comments on resales and to show the main reason for the adjustment.]

Page 5, 3rd Paragraph

Escalation and Acquisition Period

Land value trends observed in the sale and resale markets support the 12 percent annual escalation rate. See above item for results of current sampling of data.

Page 5, 4th Paragraph

Road and Street Value

The value of roads and streets is considered and included within the extent to which they enhance the value of lands and/or lots to which they abut and therefore afford access. Any residual rights may be acquired for \$1.00 to clear title.

[GAO COMMENT: The roads and streets have not been dedicated to the county; they are owned by the developer. If the Service acquires all lots on these streets, it would still not own the streets and roads and would have to purchase them from the developer.]

Page 5, 5th Paragraph

Inconsistencies

Differing values for the 257-acre piece of marsh and bufferland stem from the fact that this acreage constitutes (1) the total proposal under one alternative; and (2) part of a 418-acre taking that includes higher valued lands under another and other alternatives; and also (3) feasibility cost study data is not always precise. Such inconsistencies will be negated once a definite boundary has been established and detailed appraisals are made of particular tracts.

[GAO COMMENT: We believe lots should be valued the same under each alternative.]

Page 6, 1st ParagraphThe Nature Conservancy Tract

Although the Service will probably be able to acquire (via partial donation) The Nature Conservancy tracts at a considerable savings, this cannot be entirely depended upon at this premature date. The actual acquisition cost would be covered under an appropriation request at a later date. Therefore, the fair market value of the property is a more appropriate figure to use at this point in planning.

[GAO COMMENT: We believe an offer by the owner should be used as a basis for the estimate because this method of valuation is much more precise than a valuation based on a sales search.]

Page 6, 4th ParagraphCondition and Potential Use of Land

The potential pollution and health problems and limited access are long-standing (negative) attributes which have been weighed in the real estate market by buyers and sellers against the (positive) attributes of these lands. Prices and price trends reflect the market's changing perception of value after the weighing process.

[GAO COMMENT: Although sales data may show that undevelopable lots were selling at the same amount as other lots, strict enforcement of the State's septic sanitation codes by the county and the more recent curtailment of access would tend to prevent appreciation of lots that cannot be developed. In our adjustments for these lots, we accepted the present value as established by the Service (considering other adjustments as discussed), but we did not provide for escalation in the determination of future value.]

Page 6Title Insurance

Until the Department of Justice directs to the contrary, title insurance is considered to be a part of the indirect costs of the proposed acquisition.

[GAO COMMENT: We have deleted the section on title insurance because a Department of Justice study, presently being conducted, should provide information on how the Federal Government can better handle the title insurance issue.]

Page 6, 6th ParagraphRefuge Administration

". . . The Statement did not identify any cost for (administration) needs."

The Service recognizes costs will be incurred in administration and development of a refuge. As mentioned in both the Draft and Final EIS's, these costs will be displayed in a subsequent refuge planning document.

Page 7, 3rd ParagraphProtection of Wetlands by Corps of Engineers

Statement incorrect. May be attributed to some other source but not to project team leader. Project team leader states he would have no way of knowing how many violations have been reported or what actions resulted, however, he agrees the situation mentioned does exist in some locations. GAO investigators did state, however, that they had talked to staff and reviewed the files of the Corps of Engineers, Wilmington District, which has record of all applications and/or violations in their district. It would be helpful if GAO displayed their findings on the difficulties the Corps experiences in enforcing wetland violations such as found with the finger-canal development on the Outer Banks.

[GAO COMMENT: The quote attributed to the project team leader has been deleted from the report. The report was also revised to reflect additional information obtained from officials in the Corps' headquarters regulatory functions branch.]

Page 9, Last Paragraph

Correct 2nd and succeeding sentences to read as follows:

"To reduce hardships to residents and seasonal occupants, the Service proposes to offer permanent residents and their children life-use of their property. Payment for the property would be based on life expectancy of the owner and would be reduced by one percent for each year of use. Use of the residence by children of the owner would not be computed in the payment. Seasonal residents would be offered up to 25 years use of their property, computed at the same one percent rate. The Service would take control of the property on termination of the life-uses."

[GAO COMMENT: The report has been revised to reflect this comment.]

Page 10, 2nd Paragraph

Insert - "The Service considered, but rejected early in the decision process, a compatible use alternative which would have intermixed private ownerships with Service ownership. The reasons stated by the Service for rejecting this alternative were the disruptions to wildlife habitats and species, and the limitations such an alternative would place on resource management and public programs."

[GAO COMMENT: We believe the disruptions and limitations discussed for compatible use are equally applicable to the life-use option. We have, however, revised the report to reflect the Service's comments.]

Page 8, 3rd ParagraphProject Team Leader Comments

The implication is that the project leader agreed with information presented by GAO staff regarding lack of reliability of cost data used in Service easements. Such is not the case. The project leader agrees that data used does not have the same reliability as that which would be presented in a detailed appraisal of individual ownerships. However, the data used for the Service study was the most reliable available and was adequate for the gross cost estimates which were presented in the study. In regard to inconsistencies, a reasoned approach to any market study will always reveal inconsistencies in the market data but these do not alter the data analysis as long as they are recognized as they were in this study. The project leader states that because of public commitments made by The Nature Conservancy to the Service, the Service will most likely obtain their ownerships at a much lower figure than estimated in the study. However, requirements are placed on the Service for estimating and displaying the full market value of the property for revenue sharing and other government accounting purposes. This would hold true even if the properties were donated.

[GAO COMMENT: This section has been deleted and project team leader comments have been incorporated in other report sections. The report has been revised to reflect these comments.]

Fish and Wildlife Service Conclusion

We are pleased to note that GAO has found the FWS followed its regulations and established policies in the review which was requested by Senator Helms and Representative Whitehurst.

GAO has questioned the validity of the FWS Cost Estimate. Figures presented by the FWS are a reasonable first estimate of value and will be more detailed upon project approval. This is a factor which always has to be dealt with in sequential process of Federal land acquisition. The continuing review from within our agency and by the general public as we proceed from a general proposal to a specific land purchase assures that the public is aware of the wise expenditures of their dollars while still guaranteeing the rights of the individual being affected.

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