

INTERAGENCY COMMITTEE FOR OUTDOOR RECREATION
TUMWATER, WASHINGTON

CONFERENCE CALL

11:00 a.m.

DECEMBER 30, 1976

Executive Committee; Micaela Brostrom
 Helen Engle
 Warren Bishop (substituting for Mr. Bulley who was not
 available)
 Charles Murphy, A.G.
With: Stan Francis, Admin.
SUBJ: Little Spokane River Project, St. George's School Property,
 "Deed of Right...."

Mr. Francis outlined the situation as explained in his memorandum to the members of the IAC Executive Committee dated December 27, 1976 (attached). (Mr. Bishop had not received the memoranda and was asked to substitute for Mr. Bulley at 8:30 a.m., Dec. 30th.)

Mr. Murphy then outlined his opinion as presented in his memorandum (attached).

Mr. Bishop asked if the decision being requested (to delete the "escape clause" from the "Deed of Right to Use Land for Public Recreation Purposes") could be rendered by the Executive Committee without full IAC Committee approval. Mr. Murphy replied he felt the Exec. Committee could take this action, but that he had wanted to alert the Administrator and Committee to the fact that they might be deleting a clause which could have later repercussions should there be attempt for conversion of use of the land in future years. He stated it was legally permissible to change the language in the IAC "Deed of Right..." as described by Mr. Francis, but such a strict restraint on alienation could be deemed void at some time in the future and there might then be no explicit or express remedy, i.e., the substitution of land of equal or greater value. However, he stated there would be other remedies available through legal processes.

Memorandum stated the modification being requested would strengthen the intent and premise that the land should be held in its present state for the purposes for which it was purchased; chances that Spokane County would attempt to convert are very small; St. George's property is the key property for the entire Little Spokane River project, and the School had modified its original positions and is willing to accept the change in language for donation/sale of the St. George's School property.

Mrs. Engle noted that the Committee had approved the project; that it was the #1 priority in Sept. 1976 funding session; and the Committee should, therefore, move it along as quickly as possible. It was also noted that the Committee may in the future receive other applications of this nature and should have through its Executive Committee the authority to approve concepts and/or changes of this type.

Mr. Francis noted that Nature Conservancy and the St. George's School attorney were all advised and in agreement as to the modification being requested.

Mrs. Brostrom suggested changing the language by adding wording to make it clear that "no conversion" could take place. It was consensus this was not necessary, that the matter had been adequately taken care of in the modification and will be tied into the agreement and deed. Mr. Murphy stated the language being proposed

for incorporation would specifically prohibit inconsistent uses concerning the public's right to use the land for public recreation purposes. Action of the Committee thru the Executive Committee could be described as having been administratively approved consistent with the action taken at the September, 1976 meeting when the project was approved -- and the Interagency Committee members as a whole could confirm the action of the Executive Committee for the official records at the April 25-26, 1977 IAC meeting.

IT WAS THE CONSENSUS THAT:

1. The modification to the "Deed of Right...." deleting the "escape clause" be approved by the Committee.
2. Action of the Executive Committee in approving the modification should come before the full Interagency Committee for confirmation in April at the IAC meeting.
3. The Administrator to notify all parties concerned of the action taken thru the Executive Committee.
4. The above insures acquisition of the St. George's School Property within the necessary time frame.

S. E. FRANCIS, Administrator

Peg Frazier
Admin. Sec.



December 27, 1976

MEMORANDUM

TO: Members, IAC Executive Committee
Micaela Brostrom; W. A. Bulley; Helen Engle

FROM: Stanley E. Francis, Administrator, IAC

SUBJ: Little Spokane River Project - Spokane County
Conference Call - December 30, 1976, Thursday

The acquisition of the St. George's School property on the Little Spokane River was approved by the IAC at its September 1976 meeting. Since that time, the acquisition has been actively pursued by both The Nature Conservancy and Spokane County. However, a problem has arisen regarding the strong desire of St. George's School to have placed in the deed to The Nature Conservancy restrictive language which is not acceptable to BOR, IAC or Spokane County. In brief summary, this original language stated that the land shall forever be held as a nature preserve, for scientific, educational, and aesthetic purposes.

This problem surfaced at the time The Nature Conservancy sent Spokane County a copy of its "Right of Re-entry" language. BOR has indicated by letter that this language will preclude LWCF participation. In subsequent conversations and correspondence with Ken Margolis and Spencer Beebe of The Nature Conservancy, and its attorney William Appel, St. George's School attorney, Fred Gilbert; Maury Lundy, Northwest Regional Director of BOR; and Sam Angove, Director, Spokane County Parks and Recreation, I have determined that we all have the same basic intent -- to keep the St. George's School property in its present natural state and protect it from future encroachment. The problem is how to accomplish this in a manner acceptable to all parties.

We are presently all in accord that a "clean" deed from St. George's School to The Nature Conservancy -- and from The Nature Conservancy to Spokane County with no restrictions placed within it, is the best way and acceptable to all parties, provided that the IAC "Deed of Right to Use Land for Public Recreation Purposes", which must be executed by Spokane County and recorded as a condition of receiving the grand-in-aid funds, can be modified by deleting the "escape clause". This clause provides for the possibility of conversion to a use other than that for which it was purchased, and states that if such a conversion occurs, lands of equal or greater value and opportunity must be substituted. St. George's School's donation and sale are predicated on this deletion.

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Daniel J. Evans, Governor

Adele B. Anderson, Chairman

Micaela Brostrom

PARTICIPATING AGENCIES

Department of Commerce and

Economic Development

John A. Biggs, Director

Department of Ecology

John A. Biggs, Director

Department of Fisheries

Donald W. Moos, Director

Department of Game

Ralph W. Larson, Director

Department of Highways

W. A. Bulley, Director

Department of Natural

Resources

Bert L. Cole, Commissioner

of Public Lands

State Parks and Recreation

Commission

Charles H. Odgaard, Director

CITIZEN MEMBERS

Adele B. Anderson, Ph.D., Walla Walla

Warren A. Bishop, Pullman

Micaela Brostrom, Seattle

Helen Engle, Tacoma

Michael K. Rosa, Seattle

Peter Wyman

Spokane

ADMINISTRATOR

Stanley E. Francis

Administratively, I find I am in accord with the deletion of this language for it strengthens the premise for which the land was acquired by foreclosing the opportunity for Spokane County to convert by use, lease or sale at any time in the future.

In recognition of possible legal ramifications, I requested an opinion of our Assistant Attorney General, Mr. Charles Murphy, on the viability of such an approach, and whether my administrative authority was such that I could proceed to consummate the acquisition either with or without IAC Committee approval.

Basically his opinion is that it is legally permissible to change the language in the IAC "Deed of Right...." to reflect and accommodate the St. George's School desire. However, he raises the cautionary point that such a strict restraint on alienation could be deemed void at some time in the future, and that there would then be no explicit or express remedy, i.e., substitution of land of equal or greater value, etc. However, other remedies would be available through the legal processes.

In discussing this further with him, his position is one that it can be done legally; however, the IAC should consider carefully the fact that the County would not be giving the State and the public the traditional obligation to substitute like property in the event of a future conversion.

After careful consideration of all the material at hand, it is my recommendation that the IAC "Deed of Right...." be modified by deleting the "escape valve" language. This recommendation is based on:

1. It can be done legally.
2. The modification strengthens the intent and premise that the land should be held in its present state for the purposes for which it was purchased.
3. There are other means of mitigation in the event of conversion through the various legal processes.
4. The chances that Spokane County would attempt to convert to other uses or allow encroachment are very small.
5. The St. George's property is the key property for the entire Little Spokane River project.
6. The St. George's School has modified its original position and is willing to accept the revised language of the "Deed of Right...."; but the donation/sale of the St. George's School property is based on this modified language.

Under the circumstances, with the closing of the acquisition resting on this point and awaiting its resolution, I feel it imperative that the IAC Executive Committee consider my recommendation, the reasons for it, and provide direction to me to allow for my taking an authoritative position. As such I have attached all pertinent

Members, IAC Executive Committee
(Brostrom, Bulley; Engle)

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December 27, 1976

correspondence to this memorandum, and have asked that a Conference Call be set for Thursday, December 30, 1976, at a time convenient to all parties -- members of the Executive Committee, Charles Murphy, and myself.

SEF

SEF:mmf

cc: G. Moore

Chas. Murphy, A.G.

Encls:

Spencer Beebe ltr., The Nature Conservancy 11-29-76
to Sam Angove, Spokane County
Right of Re-Entry form
Plaque Language
M. Lundy, BOR, Seattle ltr. to Spencer Beebe 12-9-76
S. Francis, IAC, ltr. to Fred Gilbert, Spokane 12-13-76
Deed of Right to Use Land for Public Recreation Purposes - form
Fred Gilbert ltr., S. Francis - December 17, 1976
Memo to Chas. Murphy, S. Francis - December 15, 1976
Opinion of Chas. Murphy, A.G. to S. Francis, December 22, 1976

M E M O R A N D U M

December 22, 1976

TO: Stan Francis, Administrator, IAC

FROM: Charles F. Murphy, Assistant Attorney General

SUBJECT: Little Spokane River Project (77-036A)
St. George School--Nature Conservancy

Pursuant to your recent memo, I have had occasion to examine the supplied materials respecting the desire of the St. George School to alter somewhat the customary deed of right to use the land for public recreation purposes.

The alteration as reflected in your documents would basically appear to eliminate any consensual basis for IAC, or its successors, to approve the substitution of equivalent property for recreational purposes whenever an inconsistent use occurs.

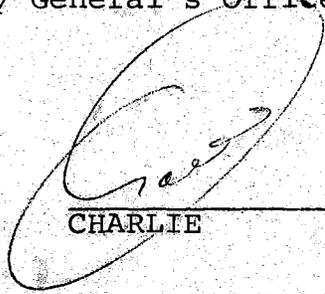
Certainly, such an amendment would, as you have correctly pointed out, go to narrow or diminish the apparent freedom of use by the receiving entity, here, Spokane County. Although the research I have undertaken on this type of issue produced very little authority, I have noted that our state follows the majority principle in real property of treating as contrary to public policy restraints on alienation. Accordingly, it would seem that if ever actually litigated it could very well be such a strict restraint on the alienation would be deemed to be void. Thus, the St. George School would, perhaps, be the one to suffer primarily. Unfortunately, the one to suffer secondarily, may well be IAC and the public since by elimination of the substitution element, the properties intended for public recreational purposes may at some distant point in the future be devoted to another use without any express obligation to substitute like property for recreational purposes. See Gladstone Mountain Mining Co. v. Tweedell, 132 Wash. 441 (1925). See, also, Corpus Juris Secundum, Property, Section 13 B, Restraints Against Alienation; and 61 Am. Juris 2d, Perpetuities, etc., Section 93, III, Restraints on Alienation and Use.

Stan Francis
December 21, 1976
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In summary, it is my particular view that the desire of St. George School to wholly limit the particular use of these properties may not be in an ultimate sense legally sustainable. Nevertheless, if such an element is the only way to get the property in the public domain, perhaps it should be acquiesced in.

Perhaps, too, such point should be balanced against the notion that the county is really not supplying IAC and the public the traditional obligation to substitute like property in the event of a future conversion. The IAC may wish to examine this detail very carefully before approving this proposal.

I trust these remarks will be of some assistance. You are reminded that they represent only the personal views of the undersigned and are not to be construed as an official Attorney General's Office Opinion.



CHARLIE

CFM:jb