United States Department of the Interior

FISH AND WILDLIFE SERVICE

Rhode Island National Wildlife Refuge Complex
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The Fish and Wildlife Service and the Town of Charlestown have enjoyed a long history of working together in management of the Ninigret National Wildlife Refuge and Ninigret Town Park over the past 33 years. We have made improvements on our respective lands for the benefit of both the natural resources and in making recreational opportunities available to the community. It is both rare and beneficial to have a place where people can experience both the recreational facilities promoted by the Town and to also enjoy the Refuge where natural resources take precedence. By continuing to work together, we will be able to further enhance this opportunity, and to meet our respective goals for these lands.

The attached summary provides an overview of how our working relationship with the Town came to be, starting with transfer of lands to the Town and the Service from the former Charlestown Naval Auxiliary landing field.

/s/ Charles E. Vandemoer

CHARLES E. VANDEMOER
Refuge Manager
Rhode Island National Wildlife Refuge Complex

Managing Ninigret Town Park
Compatibly with the Ninigret National Wildlife Refuge

Introduction

In 1973 the U. S. Navy announced a realignment of Naval bases in Rhode Island, and found that the Charlestown Naval Auxiliary Landing Field (CNALF) was excess to their needs. Consequently, the U. S. General Services Administration (GSA) initiated the process of determining the disposition of this federal property.

This effort culminated with the Town of Charlestown (Town) and the U.S. Fish and Wildlife Service (Service) now owning portions of the CNALF (Figure 1). Town property was acquired in two parcels, one 182 acre (approx.) parcel transferred directly to the Town from GSA, and another 55 acre parcel purchased from GSA. Collectively, the two parcels are now referred to as Ninigret Town Park (Park).

The Service manages remaining portions of the former CNALF as part of the National Wildlife Refuge System, Ninigret National Wildlife Refuge (Refuge), and includes lands originally transferred to the Environmental Protection Agency (EPA) by GSA. GSA made transfer of lands to the Town subject to an obligation that subsequent uses on Town property be consistent with management of the Refuge.

Disposal of Surplus Lands to the Town.

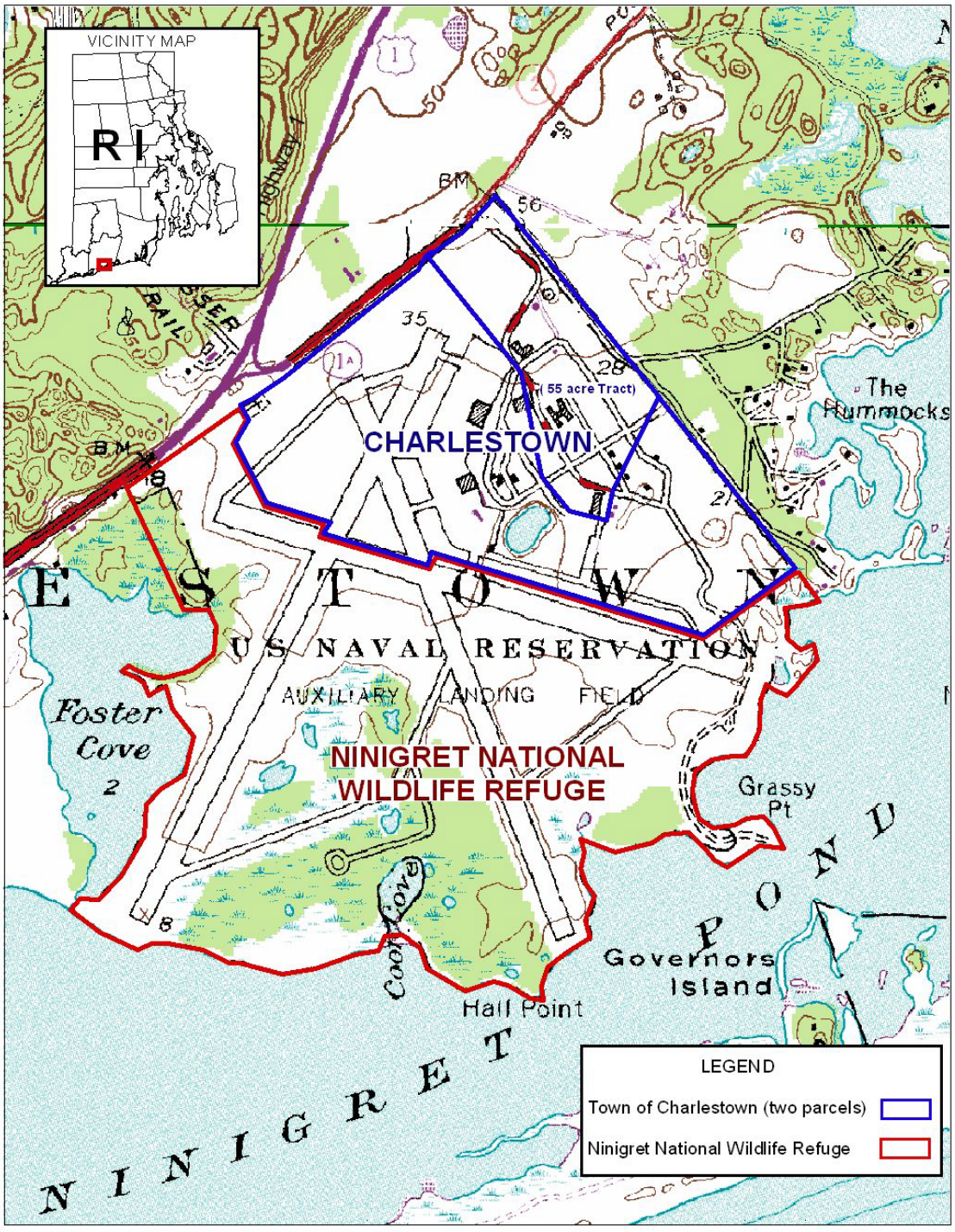
With declaration that CNALF was excess GSA acted under authority of the Federal Property and Administrative Services Act of 1949 (63 Stat. 377, as amended; "FPAS") to determine the disposition of property. GSA completed an Environmental Impact Statement (GSA 1979a) to evaluate various alternative actions, and issued a Decision Paper which documented the decision and rationale for transfer of CNALF lands, including statements of how these lands were to be managed (GSA 1979b, see Appendix A). This process was completed consistent with the National Environmental Policy Act (42 U.S.C. 4321 et seq.).

The Decision Paper issued by then Acting GSA Administrator Paul E. Goulding allowed for transferring portions of CNALF to (a) EPA for purposes of environmental research (60 acres), (b) the United States Department of the Interior for management of lands as a part of the National Wildlife Refuge System (307 acres) under the Fish and Wildlife Coordination Act (16 U.S.C. 667b), and (c) 237 acres to the Town for "passive" recreation purposes (GSA 1979b).

Acting Administrator Goulding stated his decision thusly:

> "ACCORDINGLY, after analyzing the record on this matter and pursuant to my authority under the circumstance, for the reasons set forth in this decision document, I hereby approve the transfer of 307 acres to the Department of the Interior for the benefit of wildlife and waterfowl to be managed in its natural state and to be administered as a portion of the National Wildlife Refuge System; 60 acres to the Environmental Protection Agency for its Environmental Research Laboratory in the interest of furthering research related to the waters of Foster Cove and Ninigret Pond, such use not to be inconsistent with the use of the 307 acres by the Fish and Wildlife Service; and the remaining 237 acres to be disposed of, if possible, to the Town of Charlestown to be used substantially in accordance with its proposal as set forth in the FEIS as alternative 5. Such use is not to be inconsistent with the use of the other 367 acres transferred to the Department of the Interior and the Environmental Protection Agency."

Figure 1. Current Land Ownership Patterns within the former Charlestown Naval Auxiliary Landing Field.



U. S. Fish and Wildlife Service
Rhode Island National Wildlife Refuge Complex
50 Bend Road, Charlestown, RI 02813

Based on RIGIS Data. Land lines approximate

This decision by GSA was subsequently challenged in United States District Court by the New England Power Company, who desired to construct a Nuclear Power Plant on the property (New England Power Co. v Goulding, No. 79-1889; No 79-1953; GPO 2012), with the Town entering as an intervener in support of GSA. In the Court Opinion regarding this challenge (see Appendix B), Judge Green discussed the legality of transferring lands to the Town, and found that the Acting Administrator's decision was appropriate since the Town's proposal "further effectuated the federal uses " of the remaining portions of CNALF as a wildlife preserve and for environmental research. Judge Green cited 40 U.S.C. 484 (k) (2), which states that the Secretary may transfer surplus property "when it will promote the most effective use of the property consistent with the purposes of this part or if having a lease is otherwise in the best interest of the United States, as determined by the Secretary".

The interpretation that lands transferred to the Town should be managed consistent with adjoining federal lands was cited by Koslowski (1982) in the May 1982 Law Review which states that "the remainder of the lands [referring to the Town land] was to be used in a manner consistent with the conservation purposes of the federal tracts".

Recognition by Town to Manage Park Consistent with the National Wildlife Refuge

Following the court decision, the obligation of the Town to manage lands consistent with the refuge was reiterated on several occasions. In February of 1980 the Town had been in discussions with GSA regarding alternative uses of the property, including light commercial activity. In a letter from J.W. O'Connell, Director of the Real Property Division for GSA to the Town of Charlestown, GSA stated that GSA would entertain any uses for the Town Park – as long as they were compatible with the adjacent National Wildlife Refuge (Sun 1980). In an interview given to the Chariho Times, Mr. James Buckley, Assistant Commissioner with GSA, indicated that some commercial or industrial uses may be found compatible with the refuge (Chariho times 1980).

In a meeting held on August 29, 1979 at the Charlestown Town Hall, several representatives, including Town staff, discussed how the former CNALF would be managed. In that meeting, Town officials recognized that any common boundary with the Refuge would have to be kept in passive recreation (USFWS files 1979).

In a letter to Deputy Regional Director Ashe of the Service from Town Council members dated February 7, 1980 (see Appendix C), the Town indicates that, based on consultation with the Attorneys whom represented the town throughout the litigation and Town staff who had developed the proposal wrote:

> "….that the integrity of Mr. Gouldings decision must be upheld", and that "…we intend to act in accordance with the obligations outlined in the Goulding decision, which clearly states that the 172 acres is to provide a buffer for the Fish and Wildlife Refuge, and is to be used for recreational uses".

The Service reviewed the proposed plans submitted by the Town in 1980 to the Heritage Conservation and Recreation Service and found them to be compatible with the Refuge (USFWS files). This plan developed by the Town included areas of site seeding and re-vegetation with the purpose of speeding up plant succession "especially in the area adjacent to the U.S. Fish and Wildlife Service, to act as a buffer for conservation" (Town 1980). Submission of Park plans was made a requirement as per the deed transferring these lands to the Town (Appendix D).

In 1981 and 1982, the Town was discussing alternative uses of the Park. Local media reported federal agency workshops were to be held with the Town, and included statements that any uses must be

compatible with the Refuge (Sun 1981). In discussing what concession activities could take place in the Park, the Town evaluated some proposed uses which were discarded because they were not compatible with Refuge needs (Sun 1982).

Other federal agencies have recognized that there was an obligation to manage the Park consistent with the Refuge. In 1983 the Town entered into partnership with the U.S. Department of Agriculture, Soil Conservation Service (SCS) to improve a small pond (now referred to as Little Nini pond) in the Park for swimming and other recreational uses. In the Environmental Assessment and Finding of No Significant Impact completed by SCS related to creating improvements on the Town lands (USDA 1983), the agency states:

> "According to the Agreement which transferred Ninigret Park to the Town of Charlestown, future use of the area must be compatible with the abutting 376 acres Ninigret National Wildlife Refuge managed by the U.S. Department of the Interior, Fish and Wildlife Service. The town has reviewed several alternatives with the U.S. Department of the Interior-Fish & Wildlife Service and has selected a management and development plan agreeable to both."

A record of coordination with the Town to insure that activates on the Park remained compatible with the Refuge exists. In a letter dated August 5 1985 from Refuge Manger Blair to Town Park Commissioner Bliven, Mr. Blair makes it clear that while it is the goal of the Service to" accommodate all compatible activities on the park" that action had to be taken by the Town to eliminate incompatible uses.

In a formal letter on Town letterhead dated May 1, 1985 to a model airplane group who had been using the Park, Mr. George Bliven, Park Commissioner, reiterated the fact that any activity on the property of the Town of Charlestown must not impact the federal wildlife refuge. Related to this activity, Service records indicate that that the Town and the Service conducted joint law enforcement actions relative to this obligation when Town Police and a Refuge Law Enforcement Officer ordered the cessation of model airplane flights (USFWS Refuge files 1985).

In 2000 a decision was made by the Town to provide a vegetative buffer along the Refuge boundary for purposes of buffering the refuge and a historical cemetery from recreational uses on the Park (Andres personal communication, USFWS files 2000).

Town proposed actions on the Park have been generally consistent with the obligation that Park uses are compatible with the Refuge, including requesting permission for fireworks (granted), effectuating land exchanges for the benefit of Park activities, sharing of event calendars, and agreement to provide buffers adjacent to the refuge on Park property (USFWS Files).

Summary

The records indicate that requiring the Town to manage the Park consistent with uses of the adjacent federal parcels was very much a part of the rational for allowing the transfer in order to meet Federal requirements to emphasize the use of federal lands in FAPAS. This expectation was specifically stated in the decision to allow the transfer of property, and this requirement had been cited in the courts opinion upholding the land transfer and determining the legality of transferring lands to the Town. The Town had recognized and accepted this obligation, and there has been a long history of interactions with the Town which demonstrates intent to adhere to this requirement.

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APPENDIX A

U.S. GENERAL SERVICES ADMININSTRATION

DECISION PAPER

ON

DISPOSAL OF THE NAVAL AUXILARY LAND FIELD

AT CHARLESTOWN, RI

DECISION PAPER

DISPOSAL OF THE
NAVAL AUXILIARY LANDING FIELD
AT CHARLESTOWN, RHODE ISLAND

Paul E. Goulding
Acting Administrator of
General Services
June 20, 1979

I. THE ISSUE

The decision before me is the determination of the disposition of the Naval Auxiliary Landing Field (NALF) at Charlestown, Rhode Island. A decision must be made which weighs the socio-economic and environmental benefits to be derived from any of the potential uses. The Final Environmental Impact Statement filed on January 29, 1979 identifies 18 alternative use proposals for the subject property. Eleven discrete alternative use proposals were derived from considerations of the general qualities of the Charlestown site and the unique circumstances surrounding the transfer of ownership of Federal lands. Six of these alternatives relate to issues which are subjects of concern in our generation and will probably remain so for generations to come. At least three proposed uses mesh the site with systems or networks of regional or national significance. Six proposals reflect concern over the exigious economic conditions in the state of Rhode Island. Five proposals center on the preservation and management of specific historical, archeological, or ecological features of the site. Combination of one or more of 10 of these use proposals and a required consideration of a "take no action" comprise the 18 alternative uses before me.

These proposals are outlined in detail in Chapter 3 of the Final EIS. they are as follows:

Discrete Alternative Use Proposals

No. 1 Environmental Protection Agency (EPA)
EPA is interested in 60 acres in order to study the effects of pollution upon a salt water pond and marshland ecology system.

No. 2 Fish and Wildlife Service (FWS)
FWS is requesting transfer of 367 acres to manage the land in a natural state for benefit of migratory waterfowl as part of the National Wildlife Refuge System.

No. 3 State of Rhode Island
State requests entire site; 500-575 acres for possible construction of nuclear plant and 25-50 acres for the town of Charlestown municipal center.

No. 4 The Narragansett Electric and New England Power Companies
Requesting entire site for mixed use; 349 acres for nuclear power plant; 200 acres conservation; and 55 acres for town of Charlestown.

No. 5 Town of Charlestown
Mixed use of 55 acres for municipal administration and services, 182 acres for passive recreation, 367 acres for research/preservation.

No. 6 Narragansett Tribe
300 to 604 acres as a full-service health and education center, a museum, a historical village.

No. 7 The Arnold Family
160 acres (formerly owned by the Arnold Family) for farming and large lot summer residences.

No. 8 YMCA of Westerly - Pawcatuck
YMCA requests 100 acres for use as a campground and recreation area.

No. 9 Rhode Island Committee on Energy
Desires the entire site for mixed use: 14 acres for Indian reserve; 350 acres for preservation; 60 acres for research; 20 acres for low cost residential development; 50 acres municipal use; 55 acres retail-commercial; 55 acres for light industrial.

No. 10 Mixed Use Development
A private investor, Battery Associates, requests entire site: 434 acres residential; 100 acres recreation; 20 acres for commercial development; and 50 acres for municipal administrative.

Combination Use Proposals

No. 11 Combination of U.S. Environmental Protection Agency; U.S. Department of Interior, Fish and Wildlife Service; Town of Charlestown; and RICE.

No. 12 Combination of U.S. Environmental Protection Agency; U.S. Department of Interior, Fish and Wildlife Service; Narragansett Tribe of Indians, Inc.

No. 13 Combination of U.S. Environmental Protection Agency; Narragansett Tribe of Indians, Inc.; and the Arnold Family.

No. 14 Combination of Mixed Residential (Battery Associates) and the Arnold Family.

No. 15 Combination of U.S. Environmental Protection Agency and the New England Power Company or State of Rhode Island.

No. 16 Coastal Resources Management Council - Recreation
Entire site with 277 acres active recreation, 277 acres passive recreation, and town of Charlestown administrative center 50 acres.

No. 17 Coastal Resources Management Council - Industrial
200 acres for research and recreation, 154 acres for warehousing, 200 acres for light industrial, and 50 acres for town center.

No. 18 NO ACTION.

II. BACKGROUND

The history of the proposed disposal of the Charlestown Naval Auxiliary Landing Field (NALF) dates back to April 1973 when the Navy informed the House and Senate Armed Services Committee that it planned a major realignment of Navy bases in Rhode Island and that it would no longer need some 2,595 acres then owned by the Navy in Rhode Island. Included in this 2,595 acres was the Charlestown NALF totalling 604 acres. The disposal action was to be subject to the preservation and recapture of runways and adjoining parking areas in case of a national emergency. In October 1973, the Navy publicly announced its realignment decision triggering the excess property transfer/disposal process for Federal properties as set forth in the Federal Property and Administrative Services Act of 1949.

In November 1973, GSA used the basic information in this announcement, and the description of the property to screen the property against the needs of other Federal agencies. Federal agencies were notified of the availability of the property through a "Fourteen Day Screening Letter."

Thereafter, the Navy formally reported the property to GSA as being excess to Navy needs in February 1974. At that time, the property was described as being composed of three parcels: (1) the Naval Air Station at Quonset Point, (1,900 acres) (2) Hope Island, located just off Quonset Point, (90 acres), and (3) the landing field at Charlestown, located south of Quonset Point, (604 acres). On April 18, 1974, GSA accepted the excess property for disposal and on April 26, 1974 declared

it to be surplus. On May 1, 1974, a notice of availability was thereupon circulated to non-federal public agencies as prescribed by the Federal Property and Administrative Services Act of 1949 and implementing regulations.

In response to the notice, GSA received formal expressions of interest to acquire the NALF by the State of Rhode Island, the Town of Charlestown, Providence College, and the Narragansett Tribe of Indians. In addition, two Federal agencies, the Department of Interior's Fish and Wildlife Service and the Environmental Protection Agency, expressed interest in the NALF land in response to such notice as did the Narragensett Electric Company. The Narragensett Electric Company request, dated May 6, 1974, stated the Company's desire to negotiate for the sale of the landing field as a site for a nuclear-power electrical generating plant. The request recited a Presidential memorandum which directed that, to the extent practicable, Federal surplus real property was to be made available for energy producing facilities. GSA officials subsequently met with the electric company to discuss the sale of the landing field.

On May 23, 1974, GSA received a request from the Fish and Wildlife Service of the Department of the Interior for 367 acres of the landing field which was determined to be of high value for migratory waterfowl and other wildlife. The request was submitted late because the Federal screening notice circulated in November 1973 had not identified the landing field as being part of the property at Quonset Point, as had the surplus notice of availability circulated in May 1974.

Another request for the property, dated June 17, 1974, was received from the Department of Health, Education, and Welfare on behalf of the Narragansett Indian Tribe which requested the use of the land for health and education purposes. The request noted that a plan for future use would not be ready for submission until July 31, 1974. This plan was never submitted, and the Department of HEW withdrew its request on February 27, 1975.

During the summer and early fall of 1974, GSA officials explored possible sale of the NALF to the State of Rhode Island, the Town of Charlestown, and/or Narragansett Electric for use as a nuclear power plant and other compatible uses. Agreement in principle was reached whereby the town would purchase approximately 50 acres of the land for its use and the Narragansett Electric Company would purchase the remainder of the tract. On October 30, Narragansett Electric Company submitted an offer to purchase the NALF at $6,000 per acre. Pursuant to the terms of the contractual offer, Narragansett was obligated to obtain the various construction and environmental clearances. If unsuccessful in keeping a specific timetable established in the agreement, the property was to revert automatically to GSA and the agreement to terminate.

The Government Activities Subcommittee of the House Committee on Government Operations opposed the proposed sale and notified GSA of its opposition. Certain private citizens objected to the proposed sale of the landing field for use as a nuclear power plant and filed suit in the

U.S. District Court for the District of Rhode Island to enjoin the sale alleging violations of the Federal Property and Administrative Services Act of 1949 and the National Environmental Policy Act (NEPA). In July 1975, the court dismissed the suit insofar as it pertained to issues involving alleged violations of the Federal Property and Administrative Services Act of 1949, but directed GSA to prepare an environmental impact statement that would consider all reasonable alternative uses of the property pursuant to Section 102(2)(C) of NEPA. The court extended the restraining order barring GSA from taking any further action to dispose of the NALF until the Final EIS could be filed.

Following the court's decision GSA circulated a new disposal notice describing the NALF property and soliciting expressions of interest. Responses were received from 20 organizations and individuals. GSA repeated the notice process approximately one year later to verify the continued interest of parties which had earlier expressed interest in the properties and to determine whether there were any additional organizations or individuals interested in acquiring a portion or all of the NALF property. Eleven organizations and individuals responded to this second notice. The list of the organizations and individuals are contained in Volume II, Chapter III, of the Final Environmental Impact Statement filed by GSA.

Based on the expressions of interest and potential use of the property, GSA's EIS study team undertook an in-depth review of the proposals that had been received by GSA. The ultimate result was the

production and consideration of the 18 alternative use proposals. Public hearings were held by GSA on the proposals and materials contained in the Draft EIS. Public hearings were held June 7 and June 8, 1978, in Providence, Rhode Island at the University of Rhode Island, Extension School-Providence, and in Charlestown, Rhode Island at the Charlestown Elementary School to solicit public testimony relative to the 18 proposals and the material contained in the Environmental Impact Statement. Responses to the substantive comments raised during the commenting period and at the public hearings were written and included in the text of the final EIS which was published and issued January 29, 1979.

III. DECISION PROCESS

In final preparation to develop this decision, I have read the entire 3-volume Final Environmental Impact Statement, reviewed all of the correspondence which has been received since the printing of the final EIS, personally inspected the site, requested and received answers to my questions, both substantive and legal, from GSA staff, and considered recommendatons and other background papers from the Federal Property Resources Service. The documents which comprise the full record are available for public scrutiny.

In addition, I am a lifelong resident of the state of Rhode Island. I am familiar with the Charlestown area and am sensitive to the sentiments of the citizens.

IV. DECISION

I have examined each of the 18 alternatives in light of GSA's statutory authority, the impacts of each proposed alternative, both adverse and beneficial, the unavoidable adverse impacts which could result, and measures available to neutralize or mitigate adverse impacts. I have attempted to assess accurately public sentiment relative to the proposed alternatives. This has been done in a thorough examination by myself and by staff review and recommendations. All decisions, of course, must be made against a backdrop of the national policies influencing governmental choice.

The Federal Property and Administrative Services Act of 1949 charges the Administrator of General Services with promoting maximum utilization of excess property by executive agencies and disposing of property no longer required to meet the program needs of Federal agencies.

Real property may be transferred from one agency to another when it is no longer required by the holding agency. Under normal procedures, the General Services Administration (GSA) screens excess property against the program needs of other Federal agencies and, if the property is needed by an agency, transfers it to that agency. Property excess to the needs of all Federal agencies is considered surplus. Surplus real property is offered to State and local governments and to eligible nonprofit organizations for a wide variety of public purposes including health, education, park and recreation, historic monuments, airports and other uses at a public benefit discount allowance. Surplus real property is also made available to State and local governments by negotiated sale

based on the fair market value. If none of these entities has a requirement for the property, it is offered to the public through the sealed bid method of sale. In any case, such competition as is feasible is required by statute for the sale of surplus property. If, at any time before disposal, a Federal agency has a valid program requirement for all or part of the property, such property can be removed from the surplus classification and transferred to that agency.

The Federal Property and Administrative Services Act of 1949, which authorizes me to make this decision, contains a preference for promoting the maximum utilization of Federal property by executive agencies of the Federal government. While recognizing that the Act gives me full authority to choose any of the alternatives described in the EIS, as well as any others, I have not found evidence which convinces me that any of the non-Federal alternatives mentioned should overcome this preference. Accordingly, I have decided that the property should be utilized by the Fish and Wildlife Service (Alternative No. 2) and the Environmental Protection Agency (Alternative No. 1)

It is my decision to transfer 307 acres requested by the Fish and Wildlife Service of the Department of Interior pursuant to the Fish and Wildlife Coordination Act (16 U.S.C. 667b), for the benefit of wildlife and waterfowl to be managed in its natural state and to be administered as a portion of the National Wildlife Refuge System. The Charlestown Naval Auxiliary Landing Field is situated in a unique ecological area with a long history of migratory waterfowl use on the East Coast flyway.

It is a resource with exceptionally high value for shellfish and other wildlife. The southerly portion of the property to be transferred contains nearly 2 miles of shoreline on Ninigret Pond, as well as wetlands along the shore. Included in the property are lands considered as waterfowl nesting cover and buffer to protect the nesting.

I believe this decision is consonant with the basic provisions of the Federal Property and Administrative Services Act of 1949 in its promotion of the maximum utilization of excess property by executive agencies and with the purposes of the national migratory bird management program. It protects and maintains valuable and irreplaceable wetland ecological systems in accordance with the policies set forth in Executive Orders 11988 and 11990, which were part of President Carter's Environmental message of May 23, 1977, and aids in the fulfillment of United States Treaty obligations with Canada for the protection and enhancement of migratory waterfowl. The decision will enhance the wildlife management network so important to present and future generations of our citizens. Within a five mile radius of the NALF site are state and privately owned wildlife management areas which include the Indian Cedar Swamp Wildlife Management Area, Burlingame State Park, Rhode Island Audubon Society's Kimball Wildlife Refuge, U.S. Fish and Wildlife Service land around Trustom Pond, the Ninigret National Wildlife Refuge, the Ninigret Conservation Area, and the Moonstone Waterfowl Refuge.

Concurrently, I am approving the transfer of the sixty acres of property requested by the United States Environmental Protection Agency

for its Environmental Research Laboratory located in Narragansett, Rhode Island (ERL-N) in interest of furthering research related to the waters of Foster Cove and the Ninigret Pond. My approval would concentrate the ERL-N's land holdings along the shorefront areas of Foster Cove and the southwesterly corner of the site between Foster Cove and Coon Cove. This area, which is protected from oceanic physical stresses, will reportedly permit a rare opportunity to carry out research in a confined area. The site has previously been utilized for investigation and research by universities and private research groups. This investigation and research will dovetail with the proposed ERL-N studies. Moreover, land ownership surrounding the Ninigret Pond area is an additional factor in this proposal. Government control over portions of the barrier beach between Ninigret Pond and Block Island Sound and the Charlestown NALF will serve to limit interferences with the gathering of accurate baseline ecological data. ERL-N's use of the site will not involve any construction or modification of existing terrain, and therefore, will be entirely compatible with the Fish and Wildlife Service use. FWS use and the EPA living laboratory use will be subject to their mutual convenience and agreement.

This decision has been one of the most difficult I have ever had to make. The sheer volume of documentation is sufficient to make the decision difficult. The complexity of the environmental, economic, social and legal aspects involved in this decision is illustrated by the fact that the EIS considers no less than 18 alternatives and analyzes each one of them. The decision involves a longstanding, controversial,

and emotionally intense situation, the genesis of which predates the initial court hearing in December 1974. I realize that the decision cannot be made without alienating or disappointing one or more interests. Sincere and interested private persons and Government officials are in disagreement as to the best use of the property. Perhaps the most gratifying aspect of the this process is the knowledge that whichever of the alternatives had been selected, it would in some way be construed as a positive contribution to our society.

After this use there remain 237 acres of the property. The disposal of the remainder of the property must be consistent with my decision that the property be used as a wildlife preserve. I am, therefore, directing the Commissioner of the Federal Property Resources Service (FPRS) to enter into discussions with the town of Charlestown for the purpose of disposing of the remaining property to the town for use in accordance with its proposal set forth in the FEIS as Alternative 5. There is little substantive difference between the town's plan of use for general open space purposes and this decision; the town desires to hold approximately the same 367 acres for wildlife preservation. The town plan proposes 182 acres for recreation which would serve as a further buffer zone for the wildlife preserve, since the town's plan calls for passive forms of recreation as well as active forms not requiring extensive facilities in this acreage.

The plans developed by the town have been subject to change over the years. It is the plan set forth in the FEIS which I am choosing because of its compatibility with the transfer of the major portions of

the area to the FWS. By this decision, it is my intent to specifically precluding disposal of this remaining 237 acres for the construction of any large facility such as the proposed nuclear power plant.

V. CONSIDERATION OF OTHER ALTERNATIVES

The Federal Property and Administrative Services Act of 1949 requires that sales of surplus real property be made by publicly advertising for bids, except for specified exceptions (40 U.S.C. 484(e)(3). The specific exceptions which would permit the Administrator to negotiate the disposal of real property with private parties are: (1) the value of the property is under $1,000; (2) bid prices, after advertising therefor, are not reasonable or have not been independently arrived at in open competition; or (3) the character or condition of the property or unusual circumstances makes it impractical to advertise publicly for competitive bids and the fair market value of the property and other satisfactory terms of disposal can be obtained by negotiation.

None of these exceptions exists here. The property is valued greater than $1,000; the property has not been publicly advertised for sale; and, neither the character, nor the condition of the property, or any unusual circumstances exist that would make it impractical to advertise publicly for bids. Consequently, there is no authority to permit a negotiated sale of the property to Narragensett Electric Company.

The identical reason would preclude negotiation with the YMCA, the Rhode Island Committee on Energy, Battery Associates, and the Arnold

Family for the property in question, or for that matter, with any private party.

No such finding would be required, however, with respect to the proposed alternative of conveying the property directly to the Narragansett Tribe of Indians, Inc., for education purposes. As a condition of sale to the Tribe at a public benefit discount, an application would have to be filed with the Department of Health, Education and Welfare (HEW). HEW, if it approves the application, then requests assignment of the property from GSA. GSA reviews the request to determine if such an assignment is feasible. As I have noted previously, HEW has withdrawn its request for assignment of the property and a formal application has not been submitted.

More specifically, in relation to those alternatives which have received extensive publicity and which are of concern to the citizens of the town of Charlestown, the State of Rhode Island and Southern New England, aside from the statutory provisions which would preclude negotiation with a private party under these circumstances, there are additional reasons which are sufficient in my mind for rejection of certain of the alternatives presented in the Final Environmental Impact Statement.

The most controversial alternative is the Narragansett Electric Company proposal for the construction of the nuclear power electrical

generating facility which would require the acquisition of all 604 acres. In reviewing factors in the Narragansett Electric Company proposal, in terms of the energy requirements of the State and the Southern New England region, it is a proposal which promotes the development of regional energy self-sufficiency. We are cognizant of the fact that today, approximately 90% of all electric power consumed in Rhode Island is generated outside the state. I do not, however, see the rejection of this alternative as precluding alternative solutions to this problem. I am not making a decision for or against nuclear power but rather, rejecting the proposal as a use for this particular site which is rich in natural beauty and unique values as precious as energy.

Secondly, I am aware of the referendum in which a majority of the local residents voted against the proposed facility. Except in cases of public health and national defense, I would be most reluctant to impose a project of this magnitude on a community against the wishes expressed by the electorate.

The Final Environmental Impact Statement notes the often-stated uncertainties as to the future of nuclear power itself, the problems involved in disposal of generated radioactive waste, the adequacy of emergency plans and the attendant problems of decommissioning the facility once the normal plant operation period has transpired. The issues are serious ones which seek technological and national energy

policy solutions, I would not presume to use this particular decision as a statement of confidence or showing of a lack of faith that solutions will not be available for any or all of these problems which may or may not exist in the future.

The Final Environmental Impact Statement contains projections which demonstrate a negative effect on the environmental values of this unique ecological resource which could perhaps not be sustained by this property without permanent damage. The increase in total environmental burden during the construction and operation will not be positive. Further, a protracted construction period will have a negative effect on the town of Charlestown which does not have the municipal services to handle such an influx of people and machines.

It is incontrovertible that large scale construction of any plant will add population to the town which it is not only not equipped to handle, but which will forever adversely change that quality of life in this small rural community. It would also adversely impact a resource which is rapidly becoming very scarce, a refuge of natural beauty, harmony and quiet.

The proposal relating to the request of the Narragansett Tribe of Indians would require a minimum of 300 acres. After the conveyance of 367 acres to the Fish and Wildlife Service and the Environmental Protection Agency, there would appear to be insufficient land remaining to satisfy this request. This request for transfer, while for a non-federal use, has the color of Federal use. The application for the property would have to be approved by the Department of Health,

Education and Welfare prior to its submission to GSA. Moreover, the project would have to have actual and not prospective funding, and, in terms of the requested parcels, the request would have to be revised downward in terms of the acreage requirements.

Frankly, I doubt that the procedural hurdles, which might have been overcome in 1975, can be satisfied today. But, in the event they can, I am directing that this proposal is the one to be considered in the event the town of Charlestown becomes unable or unwilling to take all or a portion of the remaining 237 acres.

No. 3. The State of Rhode Island. The State earlier expressed interest in acquiring the entire site using 500-575 acres to explore the feasibility of nuclear power plant construction and 25-50 acres for the town of Charlestown municipal center. The botton line of this proposal is that it is speculative. The state presently has no definitive plans for acquisition and development of the property. It might put a nuclear power plant on the land in a couple of years; but if it should choose not to do this, it would have free rein to utilize the property in a manner which is unknown at this time. There are other meritorious proposals which are not speculative. To decide in favor of this plan would in the particular circumstances of this case be abdicating the responsibilty placed in me by the Property Act to direct the disposition of this Federal property.

This proposal includes some 25-50 acres for the town of Charlestown, and my decision provides for the potential disposal of at least that amount of land to the town.

No. 7. The Arnold Family. The Arnold Family is requesting 160 acres (formerly owned by family) to be used for farming and subsequent gradual subdivision and development into large-lot summer residences. Since former owners are unable to receive a priority or price preference, under existing law, in reacquiring former holdings, acquisition of the 160 acres could only be accomplished by submitting the high bid at a public sale, an alternative that is far down the list of priorities of consideration expressed in the law, especially in view of the other meritorious proposals. As mentioned above, there is no authority under the circumstances to permit a negotiated sale of the property to a private party.

No. 8. The Young Mens' Christian Association (YMCA) of Westerly-Pawcatuck.

The YMCA wishes to acquire 100 acres for camping and recreation use. As with the Arnold Family proposal, the YMCA could only acquire the desired property by submitting the high bid at a competitive public sale, since there is no authority under the circumstances to permit a negotiated sale of the property to a private party.

No. 9. The Rhode Island Committee on Energy (RICE). The RICE which brought suit against the Government in December 1974 over the proposed sale of the property, is a nonprofit public interest group concerned with the development of alternative energy sources. RICE has no

priority of consideration pursuant to our operating authority similar to that of Federal or local public bodies in acquiring surplus property. Its proposal contemplates multiuse, including wildlife, education and research, industry, municipal, residential, commercial, and Native American preserve. There is substantial local opposition to this proposal. It is not a viable alternative without appropriate Federal, State, and local sponsorship and support. Also, there is no authority under the circumstances to permit a negotiated sale of the property to a private party.

No. 10. Mixed Use Development. Mixed residential proposal is by Battery Associates a private land development group in Chevy Chase, Maryland, and would only be viable in the event of a public sale. It does not conform with State and city development plans. There is much local opposition. Also, there is no authority under the circumstances to permit a negotiated sale of the property to a private party.

No. 11. Combination of Environmental Protection Agency (1), Fish, and Wildlife Service (2), town of Charlestown (5), and RICE (9).

The proposed disposal of RICE suffers from the objections mentioned in No. 9 above. Combined usage, while feasible in a broad speculative manner, provides no clearly discernable benefit from an environmental or economical standpoint. Additionally, there are certain procedural steps which GSA must follow in the disposal of real property that greatly reduce any possibility of combined Federal, State, and private combination.

No. 12. Combination of EPA, Fish and Wildlife, and Narragansett Tribe.

Having chosen the EPA and FWS portions of this alternative for the reasons mentioned above, I believe that the proposal of the town of Charlestown better coordinates with this choice then the proposal of the Narragansett Tribe. However, as I have mentioned, should the town be unable or unwilling to take the remaining land and the tribe be able to overcome the hurdles in its path, consideration shall be given to the proposal of the tribe.

No. 13. Combination of EPA, Narragansett Tribe and the Arnold Family.

As mentioned above, negotiated sales under the circumstances to private parties is precluded.

No. 14. Arnold Family and Mixed Use Development. Negotiated sales to private parties are precluded under the circumstances.

No. 15. Combination of EPA and State of Rhode Island or Power Company.

Having rejected alternatives 3 and 4 above, the decision includes the 60 acres for EPA.

No. 16. Coastal Resources Management Council - Recreation. This is a generic proposal with no specific organization or individual sponsor.

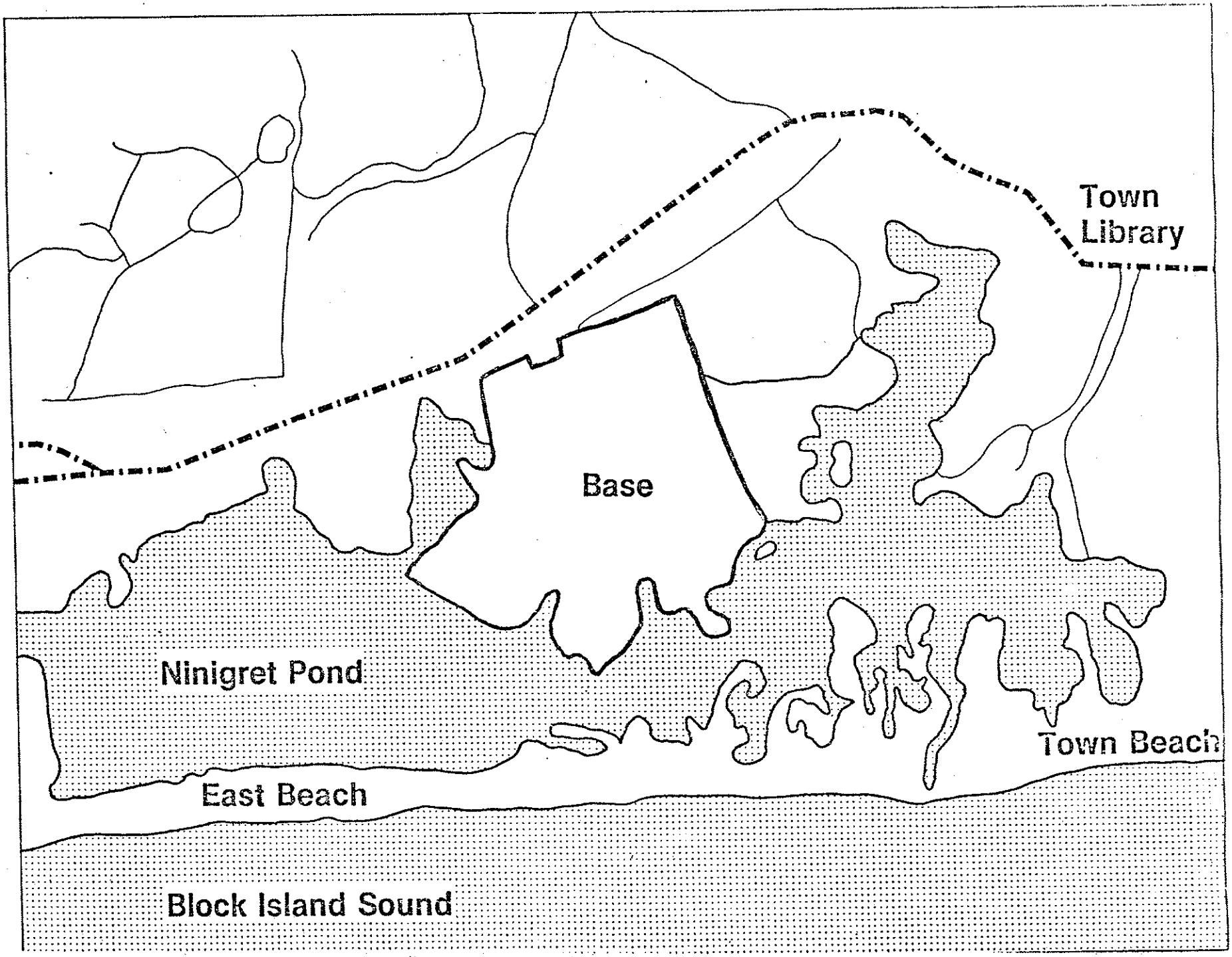
No. 17. Coastal Resources Management Council - Industrial. This is a generic proposal with no specific organization or individual sponsor.

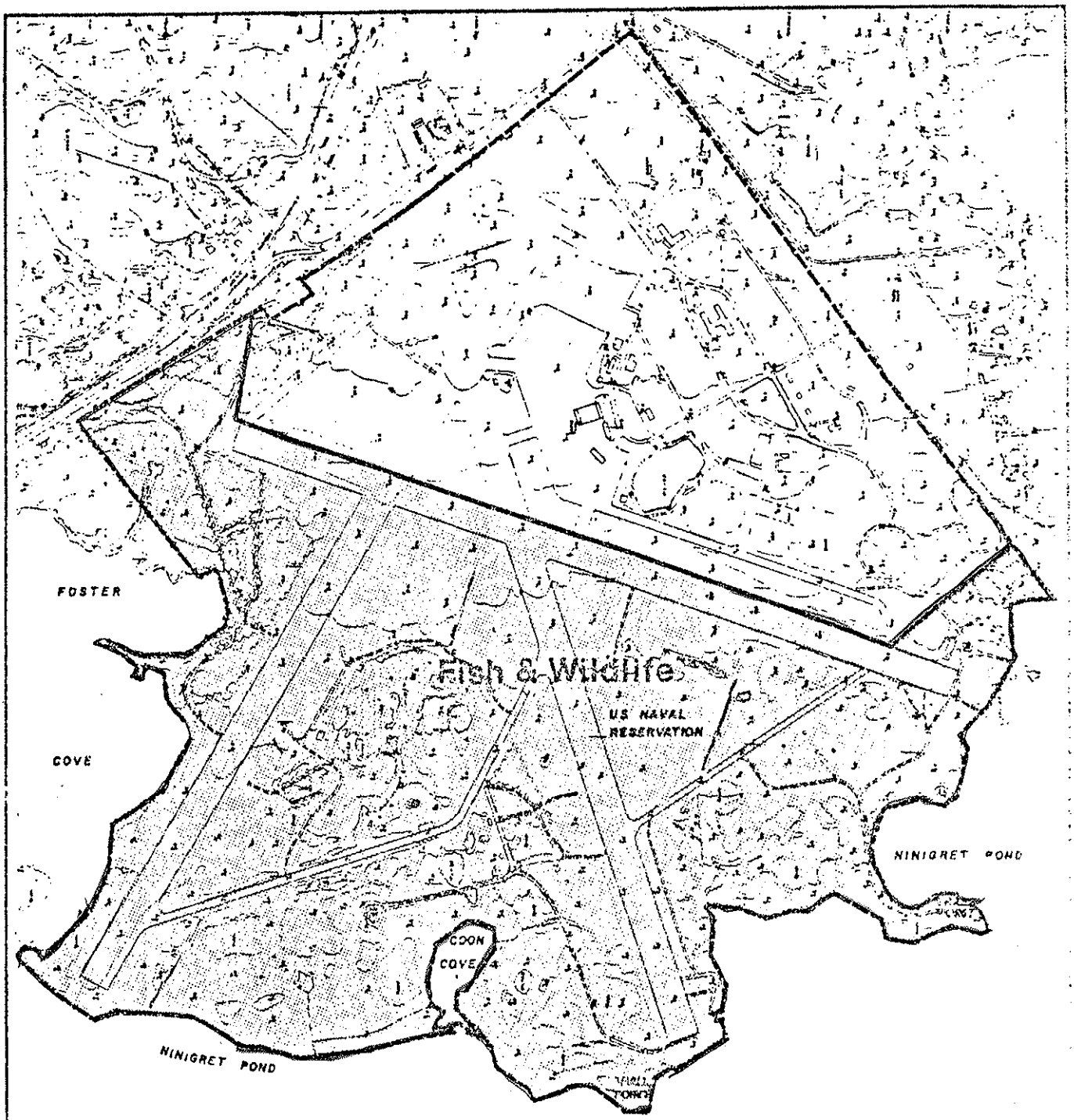
No. 18. NO ACTION. I reject this alternative because no action can be more damaging than a wrong decision. To postpone this decision and let someone else make it would be irresponsible on my part because of my extensive knowledge of the area. The sword of Damocles has been held over the town of Charlestown for a long time. It is time to make a decision.

ACCORDINGLY, after analyzing the record on this matter and pursuant to my authority under the circumstances, for the reasons set forth in this decision document, I hereby approve the transfer of 307 acres to the Department of Interior for the benefit of wildlife and waterfowl to be managed in its natural state and to be administered as a portion of the National Wildlife Refuge System; 60 acres to the Environmental Protection Agency for its Environmental Research Laboratory in the interest of furthering research related to the waters of Foster Cove and Ninigret Pond, such use not be be inconsistent with the use of the 307 acres by the Fish and Wildlife Service; and the remaining 237 acres to be disposed of, if possible, to the town of Charlestown to be used substantially in accordance with its proposal as set forth in the FEIS as Alternative 5. Such use is not to be inconsistent with the use of the other 367 acres transferred to the Department of the Interior and the Environmental Protection Agency.

Paul E. Goulding
Acting Administrator

Dated: June 20, 1979


Town
Library
Base
Ninigret Pond
Town Beach
East Beach
Block Island Sound



Naval Auxiliary Landing Field
Charlestown, Washington County, R.I.

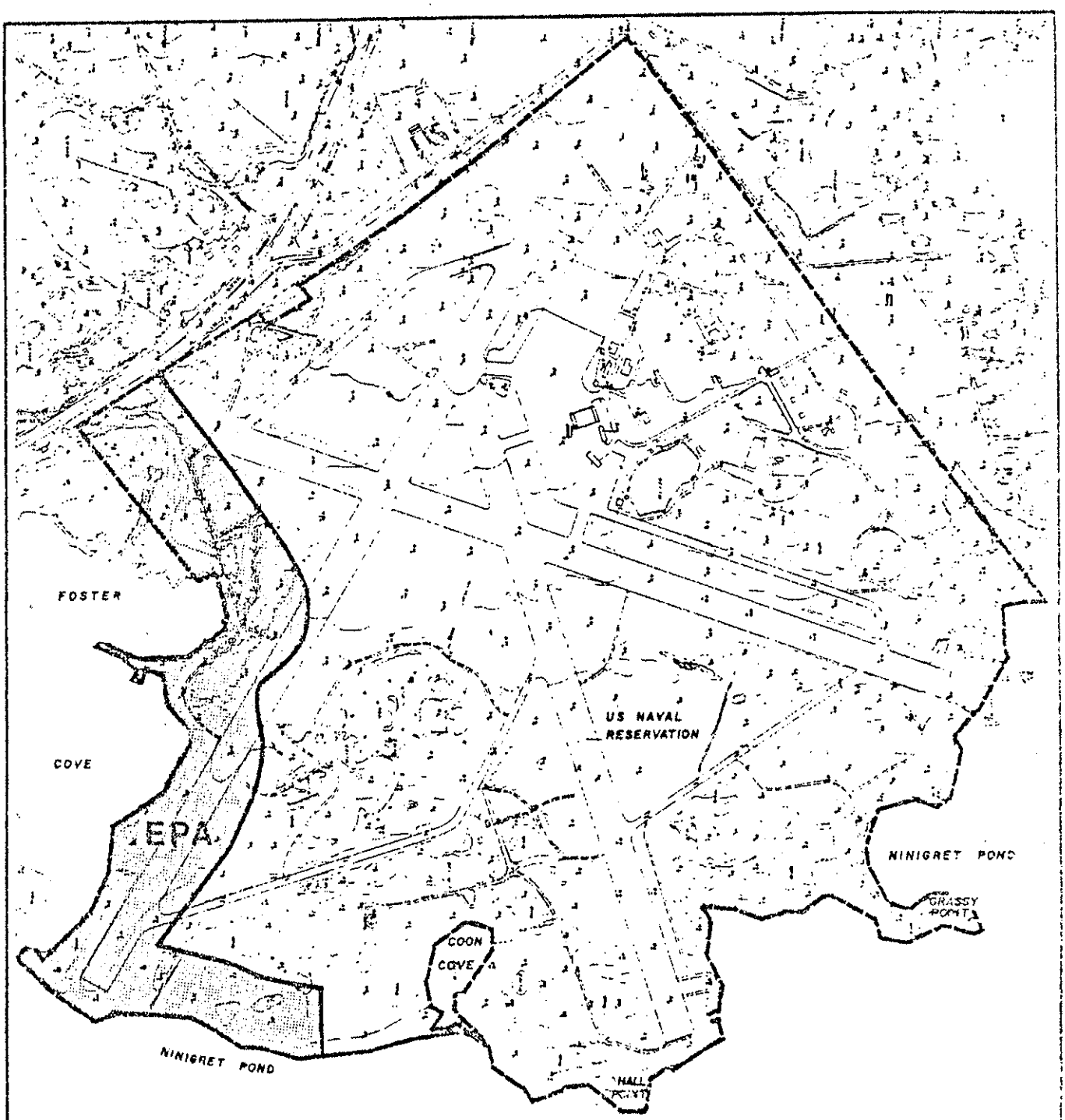
ENVIRONMENTAL IMPACT STATEMENT

scale: 1:2400 0 200 1000 ft.

USDI-Fish & Wildlife: 367 Acres

ALTERNATIVE 2

EXHIBIT III-B-3



Naval Auxiliary Landing Field
Charlestown, Washington County, R.I.

ENVIRONMENTAL IMPACT STATEMENT

scale: 1:2400 0 200 1000 ft.

US EPA: 60 acres

ALTERNATIVE 1

EXHIBIT III-B-1

APPENDIX B

UNITED STATES DISTRICT COURT

OPINION

NEW ENGLAND POWER CO. INC. V. GOULDING

486 F.Supp. 18 (1979)

NEW ENGLAND POWER COMPANY et al., Plaintiffs,
v.
Paul GOULDING et al., Defendants, Town of Charlestown, Defendant-Interventor.

Civ. A. No. 79-1889.

United States District Court, District of Columbia.

December 4, 1979.

Charles A. Patrizia, Washington, D. C., for plaintiffs.

Lawrence R. Liebesman, Dept. of Justice, for defendants.

19*19 Karin Sheldon, Atty., Washington, D. C., for intervenor.

MEMORANDUM OPINION

JUNE L. GREEN, District Judge.

This matter is currently before the Court on defendants' motion for summary judgment and plaintiffs' opposition thereto. Plaintiffs, the New England Power Co. and the Narragansett Electric Co., seek to overturn a decision by the former Acting Administrator of the General Services Administration (GSA), Paul Goulding, disposing of a 604 acre parcel of federal property known as the Naval Auxiliary Landing Field (NALF) located in Charlestown, Rhode Island. Plaintiffs, who seek to use part of the property to construct a nuclear power plant, claim that the transfer of 307 acres to the Department of Interior (DOI), 60 acres to the Environmental Protection Agency (EPA), and 237 acres to the town of Charlestown, Rhode Island, violates the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 *et seq.*, 4331 *et seq.*, the Federal Property and Administrative Services Act (FPAS), 40 U.S.C. § 471 *et seq.*, GSA regulations implementing the FPAS, and the Administrative Procedure Act, 5 U.S.C. § 704 *et seq.* In addition, plaintiffs claim that Acting Administrator Goulding was biased. Following a hearing for preliminary injunctive relief on August 17, 1979, the Court concluded that plaintiffs had failed to demonstrate a substantial likelihood of success on the merits. Upon further consideration of the papers submitted by the parties and the entire record herein, the Court concludes for the reasons set forth below that defendants' motion for summary judgment filed pursuant to Fed. R.Civ.P. 56 must be granted and that this action must be dismissed.

Background

This case arises out of plaintiffs' efforts to obtain the NALF which was declared excess to the needs of the Navy in 1973. In 1974 and 1975, GSA attempted to negotiate a private sale of the property to NEPCO for use as the site for a nuclear power plant. GSA's action was enjoined by the United States District Court in Providence, Rhode Island, which held that NEPA required the preparation of an environmental impact statement before the property could be transferred to NEPCO. Pursuant to the Court's order, GSA prepared a draft environmental impact statement which discussed eighteen separate proposals for use of

the property submitted by interested parties. After comments were received on the draft, a final environmental impact statement was issued on January 29, 1979. Acting Administrator Goulding then reviewed the EIS and the correspondence received since the issuance of the EIS. He analyzed all of the alternatives and concluded that the FPAS required that a total of 367 acres be transferred to DOI and EPA, and that the remaining land should be disposed of in a way which would be consistent with the uses of the DOI and EPA. He therefore decided that the balance of the property should be sold to the town of Charlestown for municipal, administrative and recreational purposes. This action ensued.

Discussion

Plaintiffs' primary complaint with regard to NEPA is that the EIS failed to consider adequately a proposal for joint use of the property by plaintiffs and the DOI. A review of the EIS reveals, however, that approximately 150 pages were devoted to analyzing the environmental effects of a nuclear power plant and an additional two pages discussed plaintiffs' proposal for joint use. Thus the only question is whether NEPA requires more. The Court concludes that it does not.

In the recent case of *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 551, 98 S.Ct. 1197, 1215, 55 L.Ed.2d 460 (1978), the Supreme Court held that NEPA does not require an exhaustive analysis of every conceivable alternative put forth by interested parties. NEPA only requires an EIS to contain information "sufficient to permit a reasoned choice of alternatives so far as environmental aspects are concerned." *NRDC v. Morton*, 148 U.S.App. 20*20 D.C. 5, 14, 458 F.2d 827, 836 (D.C. Cir. 1972). In addition, the adequacy of an EIS must be judged on the basis of a "reasonableness" standard.

The EIS in this case satisfied these standards. Plaintiffs do not suggest that the analysis of the impact of its nuclear power plant proposal is inadequate. Rather, they argue that the detailed analysis on the water, soil, plant and animal resources in the area of the plant must be redone to accommodate plaintiffs' interest in sharing the property with DOI. NEPA simply does not require this. *See Vermont Yankee, supra*, 435 U.S. at 551, 98 S.Ct. at 1215. Thus the Court concludes that the decisionmaker had sufficient information from which to make a reasoned choice as to whether 120 acres of the NALF should be used for a nuclear power plant.

Similarly, plaintiffs' claims regarding the Administrative Procedure Act are equally unfounded. As noted in the Court's opinion denying the preliminary injunction, the scope of judicial review is limited to determining whether the agency has presented a rational basis for its decision and whether it has "demonstrably . . . given reasoned consideration to the issues, and has reached a result which rationally flows from its conclusions." *Sierra Club v. EPA*, 176 U.S.App.D.C. 335, 345, 540 F.2d 1114, 1124 (D.C. Cir. 1976). The record reflects that at the time the Acting Administrator rendered his decision he had the views of all interested parties before him, including plaintiffs'. His decision paper demonstrates the consideration given to plaintiffs' proposal and points out the ecological factors militating against any major construction project at the site. The paper also analyzes the proposals submitted by DOI, EPA and the town of Charlestown and the basis for transferring the property to each of them. Thus, the record establishes that the Administrator evaluated the alternatives and presented a rational basis for his decision in accordance with the requirements of the APA.

Plaintiffs' claims under the FPAS must also fail. In this regard, plaintiffs complain of the manner of disposal of the property under the Act and GSA regulations.

It is clear that the FPAS establishes a federal preference for disposal of the property. To this end GSA and all other federal agencies are required to make excess property available to other federal agencies to meet their needs before they give consideration to disposing of the property to non-federal bodies.[1] In this case

DOI and EPA applied for transfer of the NALF and explained the uses to which they would put the property in order to fulfill their statutory responsibilities. The record reflects that the Acting Administrator evaluated and accepted the representations of the federal agencies as to their needs. Indeed plaintiffs have not suggested that the needs of DOI and EPA are not legitimate.

Therefore, the only issue is whether the decision to dispose of the remaining or surplus[2] property to the town of Charlestown was an appropriate exercise of the discretion vested in the Administrator under the Act and applicable GSA regulations.

In 1970, Congress enacted the provision under which the Town is to receive the 182 acre parcel, 40 U.S.C. § 484(k)(2). In so doing, Congress emphasized both the value of making surplus property available to local governments for park and recreation purposes and the fact that the GSA had the 21*21 discretion to decide whether the land should be used for those purposes. H.R.Rep.No. 91-1225, 91st Cong., 2d Sess., *reprinted in* 1970 U.S.Code Cong. & Admin.News, pp. 4300, 4304.

The final question here, then is how much weight GSA must give to the Town of Charlestown's request for the 182 and 55 acre parcels. The answer, as stated in the legislative history quoted above, is that the decision is within the sound discretion of the Administrator, but that Congress has indicated, through the passage of 40 U.S.C. 484(k)(2) and through the structure of § 484 itself that the Administrator is to give particular attention to the conservation and recreation values and to the needs and requests of state and local governments.

The Acting Administrator correctly ruled that the 367 acres will be transferred to EPA and Interior for wildlife conservation purposes. Having done so, he added further weight to the Town's claim, since the Town's proposed uses are particularly consistent with the activities to be carried out by EPA and Interior.

Thus, plaintiffs' claim that the Administrator violated the FPAS and GSA regulations pertaining to the optimum use of the property is refuted by the decision itself. In accordance with the terms of the FPAS, Acting Administrator Goulding gave the needs of the federal agencies priority. In the exercise of the discretion vested in him by the Act he considered and decided that the Town of Charlestown's proposal further effectuated the federal uses.

Finally, plaintiffs seek to probe the mind of the decisionmaker to determine if he was biased. This claim is based on Goulding's personal familiarity with his home state of Rhode Island and his having campaigned for Senate from Rhode Island three years earlier on an anti-nuclear power platform.

The standard that applies in determining whether a decisionmaker is biased is set out in *Environmental Defense Fund v. Corps of Engineers*, 470 F.2d 289 (8th Cir. 1972), in which the Court upheld the validity of an environmental impact statement despite the fact that officials responsible for preparing the statement had stated that the dam in question would be built. Rejecting the bias claim, the Court held that

> The test of compliance with § 102, then, is one of good faith objectivity rather than subjective impartiality.

Id.. at 296. Similarly, in *Carolina Environmental Study Group v. U. S.*, 166 U.S.App. D.C. 416, 510 F.2d 796 (D.C. Cir. 1975), this Circuit held:

> Agencies are required to consider in good faith, and to objectively evaluate, arguments presented to them; agency officials, however, need not be subjectively impartial.

Id. at 421, 510 F.2d at 801.

In this case, the decision itself shows a thorough consideration of all of the arguments, including those made by NEPCO, and it reflects an objective evaluation of the alternatives. There is nothing to indicate that the Acting Administrator was in any way wedded to his earlier campaign statement now that he was in a completely different position with specific statutory duties. Agency officials are "assumed to be men of good conscience and intellectual discipline, capable of judging a particular controversy fairly on the basis of its own circumstances." *Withrow v. Larkin*, 421 U.S. 35, 55, 95 S.Ct. 1456, 1468, 43 L.Ed.2d 712 (1975).

NEPCO had not offered any evidence which would rebut the presumption of good faith accorded the Administrator's decision. Goulding's position three years earlier or his familiarity with voter sentiment in Rhode Island is, in the Court's view, legally insufficient to uphold a claim of bias which would merit overturning this action.

Accordingly, for the foregoing reasons, the Court concludes that defendants' motion for summary judgment must be granted. An appropriate order is entered herewith.

[1] 40 U.S.C. § 483 provides in pertinent part:

(a) In order to minimize expenditures for property, the Administrator (of GSA) shall prescribe policies and methods to promote the maximum utilization of excess property by executive agencies, and he shall provide for the transfer of excess property among Federal agencies . . .

* * * * * *

(c) Each executive agency shall, as far as practicable, . . . (2) transfer excess property under its control to other Federal agencies . . .

[2] 40 U.S.C. § 472 provides:

(g) The term "surplus property" means any excess property not required for the needs and the discharge of the responsibilities of all Federal agencies, as determined by the Administrator.

APPENDIX C

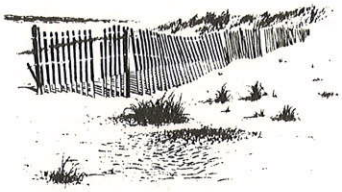
NOTIFICATION OF INTENT

MAMANGEMENT OF TOWN PARK CONSISTENT WITH

THE NATIONAL WILDLIFE REFUGE

TOWN OF CHARLESTOWN

Cora Burrows
~~ELIZABETH WALL~~
TOWN CLERK
CLERK OF PROBATE COURT



P. O. BOX 372
CHARLESTOWN
RHODE ISLAND 02813
401/364-7718

TOWN OF CHARLESTOWN

February 7, 1980

United States Department of the Interior
Fish and Wildlife Service
One Gateway Center, Suite 700
Newton Corner, Massachusetts, 02158

Attention: Mr. William Ashe

Re: Charlestown Naval
Auxiliary Landing Field

Dear Mr. Ashe:

As you are aware, there is currently some serious controversy over the uses to which the Town of Charlestown can apply the acreage awarded it under Acting GSA Director Goulding's decision.

This is to notify you that after consultation with the Washington attorneys who represented the Town throughout the NEPCO application process, and with our consultant planner who prepared the Town's application to Heritage Conservation and Recreation Service, it is our opinion, as the majority of the Charlestown Town Council, that the integrity of Mr. Goulding's decision must be upheld in this matter as it was in the Federal appeals process and that the Town's requisition of 172 acres for recreational purposes through Heritage Conservation and Recreational Service should proceed.

We want to assure your office that we intend to act in accordance with the requirements outlined in the Goulding decision, which clearly states that the 172 acres is to provide a buffer for the Fish and Wildlife Service refuge, and is to be used for recreational purposes.

Very truly yours,

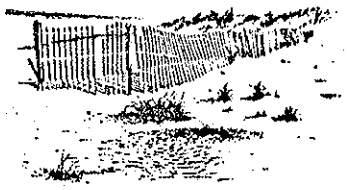
Gilbert K. Mook

Charles Jacques

Patricia C. Quigley

PCQ:s

ELIZABETH WALL
TOWN CLERK
CLERK OF PROBATE COURT



P. O. BOX 372
CHARLESTOWN
RHODE ISLAND 02813
401/364-7718

TOWN OF CHARLESTOWN

February 7, 1980

General Services Administration
Real Properties Division
John W. McCormack
Post Office and Courthouse
Boston, Massachusetts 02109

Attn: L. F. Bretta, Regional Administrator

Rea Charlestown Naval Auxiliary Landing Field

Dear Mr. Bretta:

In light of the apparent controversy and confusion over the disposal of 237 acres to the Town of Charlestown under acting GSA Administrator Goulding's decision, we, as the majority of the Charlestown Town Council, should like to go on record with your office as supporting the original plan which is now before the Heritage Conservation and Recreational Division of the Department of the Interior.

It is our feeling after consultation with our Washington attorneys who represented the Town in the NEPCO appeals process, that Goulding's intent for the Town's portion of the property was clearly outlined in the decision and that to challenge the decision by attempting to purchase the land for commercial and/or industrial use would put the Town in a position where the proposed use is in conflict with the uses which the Fish and Wildlife Service intends for its land.

Very truly yours,

Gilbert K. Mook

Charles Jacques

Patricia C. Quigley

CC: J. W. O'Connell,
Real Properties Director
Pat Vaccarro

APPENDIX D

LAND EVIDENCE RECORD

TRANSFERING SURPLUS FEDERAL LANDS

TO

THE TOWN OF CHARLESTOWN

File

CORRECTIVE QUITCLAIM DEED

The UNITED STATES OF AMERICA, hereinafter referred to as Grantor, acting by and through the Regional Director, Northeast Region, Heritage Conservation and Recreation Service, with offices at the Federal Building, Room 9310, 600 Arch Street, Philadelphia, Pennsylvania, pursuant to authority delegated by the Secretary of the Interior, and as authorized by the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, and particularly as amended by Public Law 91-485 (84 Stat. 1084), and regulations and orders promulgated thereunder, for and in consideration of the use and maintenance of the property herein conveyed exclusively for public park or public recreation purposes in perpetuity by the Town of Charlestown, Rhode Island, hereinafter referred to as Grantee, does hereby remise, release and quitclaim to Grantee, its successors and assigns, subject to the reservations, exceptions, restrictions, conditions and covenants hereinafter set forth, all right, title and interest of the Grantor in and to the following described property situated in the County of Washington, State of Rhode Island, and more particularly described as follows:

BEGINNING at a Rhode Island Highway Bound located in the southeasterly line of Rhode Island 1-A, said bound being further located a distance of 1,116 feet, more or less, southwesterly from the entrance road to the T.L. Arnold Estate 'Arnolda';

THENCE RUNNING NORTH 50°-06' -19" EAST, along the southeasterly line of said Rhode Island Route 1-A, a distance of 110.20 feet to a Rhode Island Highway Bound marking the beginning of a circular curve having a radius of 4638.10 feet;

THENCE running northeasterly, along the southeasterly line of said Rhode Island Route 1-A, on the arc of said curve and deflecting to the left, a distance of 191.54 feet to the most

northerly corner of the parcel of land herein conveyed;

THENCE turning and running SOUTH 38°-28'-22" EAST, a distance of 1,293.99 feet to a point;

THENCE running SOUTH 15°-00'-12" EAST, a distance of 1,000.93 feet to a point;

THENCE running SOUTH 32°-17'-02" EAST, a distance of 300.11 feet to a point;

THENCE running SOUTH 75°-35'-35" EAST, a distance of 374.80 feet to a point;

THENCE running NORTH 17°-15'-15" EAST, a distance of 330.46 feet to a point;

THENCE running NORTH 24°-43'-11" EAST, a distance of 870.04 feet to a point in the southwesterly boundary line of land now or formerly of the T.L. Arnold Estate, with the last six mentioned courses being bounded by other land, now or formerly of the General Service Administration;

THENCE running SOUTH 38°-30'-56" EAST, bounded northeasterly by said Arnold Estate, a distance of 2,021.65 feet to a standard USF&WS aluminum monument marked "21 COR. 9, 1979";

THENCE running SOUTH 70°-16'-16" WEST, bounded southerly by land now or formerly of Louise Gaddes, a distance of 32.41 feet to a standard USF&WS aluminum monument marked "6 COR. 7, 1979";

THENCE running SOUTH 55°-16'-58" WEST, a distance of 977.38 feet to a standard USF&WS aluminum monument marked "5 COR. 6, 1979";

THENCE running NORTH 73°-33'-27" WEST, along the northerly edge of the EAST-WEST RUNWAY, a distance of 4450.72 feet to a standard USF&WS aluminum monument marked "4 COR. 5, 1979" at the northwest corner of said runway;

THENCE running NORTH 17°-08'-08" EAST, A DISTANCE OF 703.29 feet to a corner in a stone wall;

THENCE running NORTH 54°-34'-49" EAST, a distance of 296.89 feet to a corner in a stone wall;

THENCE running NORTH 32°-33'-12" WEST, along said stone

wall, in part, a distance of 106.50 feet to a standard USF&WS aluminum monument marked "14 COR. 15, 1979" set in the southeasterly line of Rhode Island Route 1-A;

THENCE running NORTH 50°-59'-39" EAST, along the easterly line of said Rhode Island 1-A, a distance of 848.46 feet to a standard USF&WS aluminum monument marked "15 COR. 16, 1979";

THENCE running NORTH 49°-03'-01" EAST, along the southeasterly line of said Rhode Island Route 1-A, a distance of 680.77 feet to the point and place of BEGINNING.

The property herein conveyed contains 172.4 acres of land, more or less, and was formerly a portion of the Naval Auxilary Landing Field under the administrative jurisdiction of the Naval Facilities Engineering Command, an agency of the United States Government.

TOGETHER WITH the appurtenances and improvements thereon, and all the estate and rights of the Grantor in and to said premises.

SUBJECT TO any and all outstanding reservations, easements and rights-of-way, recorded and unrecorded, for public roads, railroads, pipe-lines, drainage ditches, sewer mains and lines, and public utilities affecting the property herein conveyed.

TO HAVE AND TO HOLD the above premises, subject to the easements, reservations, exceptions, restrictions, conditions, and covenants herein enumerated and set forth, unto the Grantee, its successors and assigns, forever.

There are excepted from this conveyance and reserved to the Grantor all oil, gas, and other minerals in, under, and upon the lands herein conveyed, together with the right to enter upon the land for the purpose of mining and removing the same.

There is further excepted from this conveyance and reserved to the Grantor an easement and right-of-way for the United States Fish and Wildlife Service and its assigns to enter and cross the herein granted premises. The entrance shall be through the to-be-constructed entrance from State Route 1-A and the right-of-way shall be along and over any constructed or existing roads through the granted premises. This right-of-way is reserved in connection with management of the Charlestown unit of the Ninigret National Wildlife Refuge and for the purpose of providing access to said refuge unit.

Pursuant to authority contained in the Federal Property and Administrative Services Act of 1949, as amended, and applicable

rules, regulations and orders promulgated thereunder, the General Services Administration determined the property to be surplus to the needs of the United States of America and assigned the property to the Department of the Interior for conveyance to Grantee.

It is understood and agreed by and between the Grantor and Grantee, and Grantee by acceptance of this deed does acknowledge that it fully understands the terms and conditions set forth herein and does further covenant and agree for itself, and its successors and assigns, forever, as follows:

1. The property shall be used and maintained exclusively for the public purposes for which it was conveyed in perpetuity as set forth in the program of utilization and plan contained in Grantee's application submitted by Grantee on October 20, 1979 as amended by letter with attachments dated February 7, 1980, which program and plan may be amended from time to time at the request of either the Grantor or Grantee, with the written concurrence of the other party, and such amendments shall be added to and become a part of the original application.

2. Prior to undertaking any construction activities within the area conveyed, the Grantee agrees to conduct a reconnaissance archeological survey to determine the presence and disposition of archeological resources within the areas to be disturbed, and to devise a program to eliminate or minimize the impact of construction upon such resources should they be found. All workscopes for survey and mitigation activities, and all reports produced as a result of such activities shall be reviewed and approved by the Rhode Island State Historic Preservation Officer. Survey and mitigation activities undertaken in compliance with this condition shall be conducted in accordance with the standards published in 36 CFR Part 66: Recovery of Scientific, Prehistoric, Historic and Archeological Data: Methods, Standards and Reporting Requirements.

3. The Grantee shall, within six months of the date of this deed, erect and maintain a permanent sign or marker near the

point of principal access to the conveyed area indicating that the property is a park or recreational area and has been acquired from the Federal Government for use by the general public.

4. The property shall not be sold, leased, assigned, or otherwise disposed of except to another eligible governmental agency that the Secretary of the Interior agrees in writing can assure the continued use and maintenance of the property for public park or public recreational purposes subject to the same terms and conditions in the original instrument of conveyance. However, nothing in this provision shall preclude the Grantee from providing related recreational facilities and services compatible with the approved application, through concession agreements entered into with third parties, provided prior concurrence to such agreements is obtained in writing from the Secretary of the Interior.

5. From the date of this conveyance, the Grantee, its successors and assigns, shall submit biennial reports to the Secretary of the Interior setting forth the use made of the property during the preceding two-year period, and other pertinent data establishing its continuous use for the purposes set forth above, for ten consecutive reports and as further determined by the Secretary of the Interior.

6. If, at any time, the United States of America shall determine that the premises herein conveyed, or any part thereof, are needed for the national defense, all right, title and interest in and to said premises or part thereof determined to be necessary to such national defense, shall revert to and become the property of the United States of America.

7. The Grantee further covenants and agrees for itself, its successors and assigns, to comply with the requirements of Public Law 90-480 (82 Stat. 718), the Architectural Barriers Act of 1968, as amended by Public Law 91-205 of 1970 (84 Stat. 49) and regulations and orders promulgated thereunder, to assure that development of facilities on the property makes such facilities accessible to the physically handicapped; and, further assure in

accordance with Public Law 93-112, the Rehabilitation Act of 1973 (87 Stat. 394) that no otherwise qualified handicapped individual shall, solely by reason of his or her handicap, be excluded from the participation in, be denied benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.

8. The Grantee further covenants and agrees to comply with the 1977 Amendments to the Federal Water Pollution Control Act (Clean Water Act of 1977), Executive Order 11988 (May 24, 1977) for Floodplain Management and Executive Order 11990 (May 24, 1977) for Protection of Wetlands where said Amendments and Orders are applicable to the property herein conveyed. In particular, Grantee agrees that the property herein conveyed shall be subject to any use restrictions issued under said Amendments and Orders.

9. As part of the consideration for this deed, the Grantee covenants and agrees for itself, its successors and assigns, that: (1) the program for or in connection with which this deed is made will be conducted in compliance with, and the Grantee, its successors and assigns, will comply with all requirements imposed by or pursuant to the regulations of the Department of the Interior as in effect on the date of this deed (43 C.F.R. Part 17) issued under the provisions of Title VI of the Civil Rights Act of 1964; (2) this covenant shall be subject in all respects to the provisions of said regulations; (3) the Grantee, its successors and assigns, will promptly take and continue to take such action as may be necessary to effectuate this covenant; (4) the United States shall have the right to seek judicial enforcement of this covenant; and (5) the Grantee, its successors and assigns, will: (a) obtain from each other person (any legal entity) who, through contractual or other arrangements with the Grantee, its successors or assigns, is authorized to provide services or benefits under said program, a written agreement pursuant to which such other persons shall, with respect to the services or benefits which he is authorized to provide, undertake for himself the same obligations as those imposed upon the

Grantee, its successors and assigns, by this covenant, and (b) furnish a copy of such agreement to the Secretary of the Interior or his successor; and that this covenant shall run with the land hereby conveyed, and shall, in any event, without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity for the benefit of and in favor of the Grantor and enforceable by the Grantor against the Grantee, its successors and assigns.

10. In the event there is a breach of any of the conditions and covenants herein contained by the Grantee, its successors and assigns, whether caused by the legal or other inability of the Grantee, its successors and assigns, to perform said conditions and covenants, or otherwise, all right, title and interest in and to the said premises shall revert to and become the property of the Grantor at its option which, in addition to all other remedies for such breach, shall have the right of entry upon said premises, and the Grantee, its successors and assigns, shall forfeit all right, title and interest in said premises and in any and all of the tenements, hereditaments and appurtenances thereunto belonging; provided, however, that the failure of the Secretary of the Interior to require in any one or more instances complete performance of any of the conditions or covenants shall not be construed as a waiver or relinquishment of such future performance, but the obligation of the Grantee, its successors and assigns, with respect to such future performance shall continue in full force and effect:

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name and on its behalf this 22 day of May, 1979.

UNITED STATES OF AMERICA

By _____
Regional Director
Northeast Region
Heritage Conservation and Recreation Service
Room 9310, Federal Building
600 Arch Street
Philadelphia, Pennsylvania 19106

State of Pennsylvania)
) ss
County of Philadelphia)

On this 22nd day of May, 1981, before me, the subscriber, personally appeared Robert W. McIntosh Jr., to me known and known to me to be the Regional Director, Northeast Region, Heritage Conservation and Recreation Service, of the United States Department of the Interior, a governmental agency of the United States of America, with offices at the Federal Building, Room 9310, 600 Arch Street, Philadelphia, Pennsylvania, and known to me to be the same person described in and who executed the foregoing instrument as such Regional Director aforesaid, as the act and deed of the United States of America, for and on behalf of the Secretary of the Interior, duly designated, empowered and authorized so to do by said Secretary, and he acknowledged that he executed the foregoing instrument for and on behalf of the United States of America, for the purposes and uses therein described.

Carol Ann Kropp
NOTARY PUBLIC

My Commission expires:
CAROL ANN KROPP
Notary Public, Phila., Phila. Co.
My Commission Expires Oct. 13, 1983

The foregoing conveyance is hereby accepted and the undersigned agrees, by this acceptance, to assume and be bound by all the obligations, conditions, covenants and agreements therein contained.

TOWN OF CHARLESTOWN, RHODE ISLAND

By John Hartley

Title President, Town Council

STATE OF RHODE ISLAND)
) ss
County of WASHINGTON)

On this the 8th day of June, 1981, before me, Cora F. Burrows, the undersigned officer, personally appeared John Hartley, of the State of Rhode Island, known to me to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for thepur poses therein contained.

In witness whereof, I have hereunto set my hand and official seal.

Cora F. Burrows
Notary Public
Title

My Commission Expires

6/30/01