

"Drake's Beach Estates," Point Reyes National Seashore

## The Story Of Point Reyes Parks For Fun And Profit:

**POLLY ROBERTS**

As everybody knows, the owner of land has complete dominion thereof. Within minor whom the courts later described as an "ardent subdivider." bought two large parcels within strongly supported the Seashore. The new Supervisors and their allies proceeded to

Service from the evil subdividers. Or so it appeared. They offered the Park Service a quitclaim deed to a 50-foot-wide strip along one side of their property, neatly cutting off Mr. Bonelli's road. Since the Balboa Avenue Improvement Project could not condemn federal land, it would be check, mate, game and match.

There was a catch to this offer, however. In return for the strip, Dr. Heims wanted assurance that he could still cash in on the development value of *his* land when the Park Service bought it. Conservation begins at home.

James E. Cole, the Park Service's Point Reyes Project Manager, found himself in a pickle. He wanted to spoil Mr. Bonelli's game. But Dr. Heims' condition would multiply the Park Service's Point Reyes acquisition costs just as effectively. So Mr. Cole waved the quitclaim deed under Mr. Bonelli's nose, inducing him to give up his road project, but did not actually file the deed.

Meanwhile, however, Dr. Heims had written his old friend California Senator Thomas Kuchel in Washington, explaining his offer. Mr. Kuchel, in turn, wrote Park Service Director Conrad Wirth. In June 1963, Mrs. Heims phoned Assistant Director Donald E. Lee long distance, offering the ranch for a "favorable" price. Otherwise, she said, they might have to sell to developers. Mr. Lee offered a slightly lower price which she accepted. On July 18, 1963, Secretary of Interior Stuart Udall announced the first land purchase at Point Reyes. The Park Service had acquired the entire 1135-acre Heims ranch for \$850,000 dollars: \$51,200 for the buildings, and \$798,000 for the land.

James Cole had a fit. Park Service rules specified that the first purchases should be land needed for development of park facilities or immediate public use; the Heims ranch fell into neither category. Furthermore, only 18 days earlier the Park Service had set a \$200,000 limit for parcel acquisitions. Worst of all, the full "fair market value" of the Heims' land had been appraised just a year earlier at only \$204,356. Mr. Cole, for his pains, was promptly transferred from the area, whereupon he retired. Dr. Heims, old

As everybody knows, the owner of land has complete dominion thereof. Within minor limits imposed by zoning and nuisance laws, he may do anything he wants with the land, bar anyone from crossing it, and reap from it any profits he can. As late as the 18th century, he could charge tolls on public roads crossing his property; in the 20th Century he can extort similar compensation for other public uses of his land. The public has one power, and one power only: to buy him out. The price the public must pay is a major limit on the amount of land we save for wilderness, parks, seashores, and recreation areas.\*

By law, we pay "fair market value" for land. But what is that? The history of Point Reyes National Seashore suggests that we taxpayers pay with one hand "fair market value" in compensation for gifts we unwittingly bestow with the other.

### *The First Proposal; The First Developer*

In June 1957, the National Park Service published plans for a proposed National Seashore at Point Reyes, a 60,000-acre peninsula of unusual geological and ecological value 35 miles north of San Francisco. A few wealthy "hobby" ranchers kept beef and dairy cattle — and a herd of white deer — on the land.

The Park Service put acquisition costs between \$6 and \$11 million. But despite conservationist agitation, Congress failed to authorize the Seashore in 1959, 1960, and 1961.

The delay nearly proved fatal. In 1959, Benjamin P. Bonelli, a San Rafael lawyer,

\* "A Report on Recreation Land Price Escalation" by the US Interior Department's Bureau of Outdoor Recreation in 1967 estimated that the federal government would need at least \$3,588 million for projected recreational land acquisitions for 1968 through 1977, while only \$987 million would be available from the Land and Water Conservation Fund. (The Fund consists of something under \$100 million annually in funds from concession rentals and entrance fees from National Parks, boat licences, duck stamps, etc., earmarked for park land acquisition.)

whom the courts later described as an "ardent subdivider," bought two large parcels within the proposed Seashore. One parcel, on the shore of Drake's Bay (where Sir Francis Drake supposedly landed in 1579) he dubbed "Drake's Beach Estates." He carved part of it up into tiny lots, which he commenced selling off for upwards of \$10,000 each.

Not, despite the inviting title, that Mr. Bonelli expected anyone to build his dream cottage amid the whimbrels and ruddy turnstones. Similar subdivisions have etched themselves into the country's most scenic areas for years. The subdivider may claim he's selling vacation homesites; in fact he's selling speculative lots — as confirmed by the virtual absence of houses on the more than one million acres thus subdivided in California alone.

A subdivider in another proposed park, the Delaware Water Gap National Recreation Area, even placed newspaper ads reading "How YOU Can Make Money at Blue Mountain Lakes . . . Persons purchasing land now may expect to earn a profit between their purchase price and the 'fair market value' which the Government may pay at time of acquisition." Needless to say, the subdivider usually takes the buyer to the cleaners.

Ironically, Mr. Bonelli's venture at Drake's Beach Estates probably got the government off dead center on acquiring Pt. Reyes land. In mid-1962, Undersecretary of Interior James K. Carr showed President Kennedy an aerial photo of Point Reyes. There, smack in the middle of the proposed Seashore, was the unmistakable bulldozed grid of a subdivision. "That son of a bitch can't do that to us," Mr. Kennedy exclaimed. Prodded by the President, Congress finally passed the bill, which Mr. Kennedy signed September 13, 1962. It authorized \$14 million for acquisition of the 53,000-acre Seashore.

Meanwhile Mr. Bonelli had unveiled a new plan to hack up his other parcel, 468 acres on the slopes of Inverness Ridge, into a subdivision to be called "Drakes Bay Pines." His neighbors on the Ridge also planned to subdivide.

### *Moves and Countermoves*

But a conservationist tide had swept into office a new Marin County Board of Supervisors, which, unlike the old Board,

strongly supported the Seashore. The new Supervisors and their allies proceeded to make things tough for Mr. Bonelli to build a road up to county standards to his subdivision. And it just so happened that the only route the Board would approve ran across the land of Dr. and Mrs. Edward H. Heims, "ardent conservationists." Dr. and Mrs. Heims supported the proposed Seashore, and refused to sell Bonelli a right-of-way. (Drake's Beach Estates, at the end of a pot-holed jeep track, had been approved by the defeated Board.)

Mr. Bonelli had another string to his bow, however. Under California law, landowners in an area can by majority vote form an assessment district to tax themselves for an improvement such as a road. Mr. Bonelli and the other landowners outvoted the Heimses, and on July 31, 1962, formed the Balboa Avenue and Extension Road Improvement Project, a public agency with the power of condemnation. The new agency promptly began surveying the proposed right-of-way. So long as the road plans conformed to County standards, public officials had no power to stop it.

The Park Service panicked. As Lawrence Merriam, Western Regional Director, urgently cabled headquarters, the road would "accelerate expensive development and thus raise United States acquisition costs materially." Mr. Merriam did not mean that people would actually build. Rather, he meant that the road would make the charade of development more convincing to a condemnation jury. For when the government condemns land for a park or other purpose — and it must condemn if the owner refuses to sell at a reasonable price — the owner may demand a jury trial to determine the price. Juries, which rarely understand land appraisal techniques, predictably fall for claims of fabulous development potential. The closer development looks to reality, the more the jury will award. Even worse, once the government has paid a high ransom for one parcel, that price sets the standard for the "fair market value" of nearby land. Thus, the subdividers threatened to skyjack land prices at Point Reyes.

At this point, Dr. and Mrs. Heims, the conservationists, stepped in to rescue the Park

pains, was promptly transferred from the area, whereupon he retired. Dr. Heims, old and ill, committed suicide in 1964.

### *The Prices Escalate*

The Heims purchase indeed paved the way to higher prices at Point Reyes — although it had already become clear that the \$14 million authorization would not suffice. For example, on October 3, 1963, the Park Service acquired Bear Valley, 7714 acres for \$5,752,000, or \$742 an acre. Bear Valley had sold in 1949 for \$65 an acre. By the end of 1963, the Park Service had spent \$10.5 million for only 13,000 acres. 40,000 acres remained to be purchased, growing more expensive with each year's delay. In 1966, Congress raised the ceiling to \$19,135,000. And still the prices soared.

Benjamin Bonelli didn't suffer much. In fact, the second park purchase, on September 4, 1963, was Drake's Beach Estates, 1000 acres for \$1,925,000. A neat profit for a little timely bulldozing, but Bonelli was not content. He sued on behalf of a 150 to 210-acre — depending on the tide line — sand spit attached to his property, Limantour Spit. Although it might appear to the untutored eye that the sea-washed sand could not support a pretzel stand, Bonelli knew it would be worth \$1.6 million as a beach resort. The Park Service insisted that the spit did not even belong to Bonelli, since wave action had attached it to his property after the issue of the original land patent in 1886.

The results are instructive. First, in 1966, a judge, ruled that the original patent was mistaken; the spit belonged to Mr. Bonelli. In 1969, Mr. Bonelli's parade of Berkeley professors and other blue-ribbon experts convinced a jury that the spit had a fair market value of \$700,000. Interest swelled the total close to \$1 million. Not bad for zero work, zero foresight, skill or energy and zero investment — unless you count over \$100,000 litigation expenses. (The Park Service has appealed.)

The Heims' and Mr. Bonelli's accomplishments had not gone unnoted. In May, 1966, Land Investors Research Co. — Gordon Pusser, President; Webster Otis, Vice President — bought the 2536-acre Pierce Ranch at the northern tip of the peninsula.

Land Investors Research, proclaims *Landmark*, the firm's glossy publication, deals in "carefully selected land investments with high potentials for appreciation," offerings its high tax bracket clients, "a substantial tax shelter in a leveraged investment."

The very existence of such an outfit sheds further light on the high price of land at Point Reyes and elsewhere. Loopholes in the federal and state income tax laws make real estate the paramount tax shelter: The owner pays no taxes on the increased value of land until he sells it, then pays only the capital gains tax of 25 percent, or no tax at all if he uses the proceeds to buy more land within the year. This accounts for the "Reagan Effect": multi-millionaires who regularly show up broke at income tax time. Since the rich can in this way store up money tax-free, they will pay a premium for land.

Tax shelter inflation explains the deal Land Investors Research made for the Pierce Ranch. LIR paid \$1.7 million for the land with the following intriguing arrangement: The first five years' payments were designated pre-paid interest, entirely tax deductible; the mortgage itself was to be paid off over 20 years, starting five years after purchase. This arrangement shrank the actual costs to Land Investors Research clients far below \$1.7 million. In fact, LIR promptly filed — and lost — a claim that, owing to the mode of payment, the land should be valued for property taxes at only \$800,000. LIR then demanded \$7 million for the land from the Park Service, and with an eye to the inevitable condemnation jury, commenced selling some nearby land it owned to subsidiaries at inflated prices. Vice President Webster Otis also hinted that property taxes might soon force it to subdivide into — oh horrors — 4500 lots.

Another key parcel, the Lake Ranch, had been purchased in 1963 by William Sweet for something around \$1.5 million. Mr. Sweet apparently hoped to trade it for choice federal land elsewhere. In 1969, the trade deals having fallen through, he also turned up the heat. A November 1969 handout by Save Our Seashore described the situation thus:

"Surveyors and roadbuilders have been laying out forty acre tracts on the 2500 acre

paid is very low by national standards) might have forced him to deal with the Park Service sooner and at a lower price. Sweet actually did sell six lots for \$2000 to \$3500 an acre to his brother Donald and to business associates — part of the show for the potential condemnation jury.

In April, 1970, by which time the Park Service had spent \$17 of its \$19 million authorization on 22,543 acres, a massive campaign by conservationists induced Congress to raise the ceiling to \$57.5 million. Shortly thereafter, to the infinite relief of the jury-shy Park Service, Mr. Sweet settled for a modest \$3.5 million. As part of the deal he repurchased the lots he had sold.

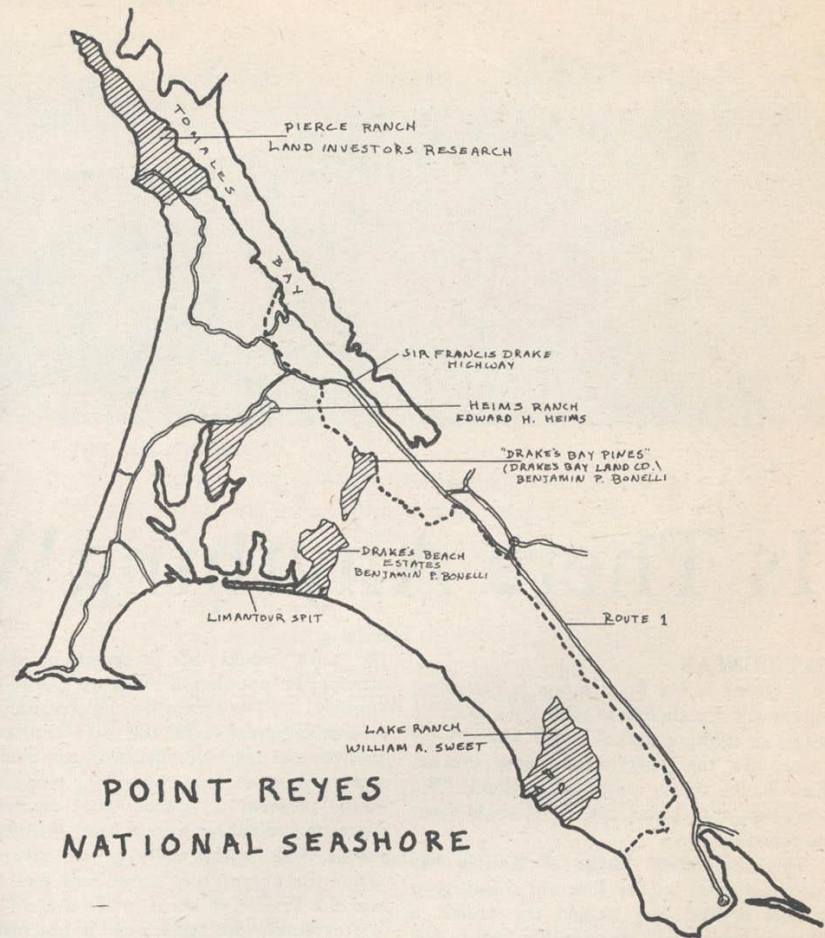
Mr. Bonelli, in the meantime, had been suing the government on behalf of his 468-acre "Drakes Bay Pines" subdivision which the Park Service had cut off by purchasing the Heims ranch. Mr. Bonelli had paid about \$164,000 for the land in 1960. In 1972, a jury awarded him \$600,000, plus interest bringing the total close to \$1 million. The Heims family had not saved the government much money.

As of September, 1972, only about 20 acres still remain to be acquired at Point Reyes, although juries have yet to administer the *coup-de-grace* to several condemnation suits, including Land Investors Research's Pierce Ranch. The Chief of Land Acquisitions for the Western Region, John Ritchie, estimates that when Point Reyes is completed, it will have cost \$51 to \$52 million dollars, more than four times the original estimates. That is \$40 million dollars that can not be used for the Redwoods or the Everglades.

### Tax Reforms, Land Reforms and Conservation

What can we learn from the Point Reyes fiasco?

First, note that all the landowners, whether subdividers, conservationists, tax shelter artists, or ranchers, want everything they can get for their lands. A sacrifice is not even tax deductible. Nor has morality anything to do with it. Call them sturdy homeowners or villainous speculators, it makes no difference: any landowner who values land more highly in



— whether or not the Park Service intends to buy — because when the public gives title to land to private individuals, the public gives landowners a right to publicly created values. As John Stuart Mill said of landowners, "They grow richer, as it were in their sleep, without working, risking, or economizing."

In fact, title to land is but one of many publicly granted "rights." Other included

Our inability to regulate private use of public licenses leaves two alternatives: take away public licenses altogether, as the socialist countries do, or take the windfalls out of them. Certain more questionable "rights," like farm subsidies, *should* just be eliminated. But in general, the second alternative is both more efficient economically

"Surveyors and roadbuilders have been laying out forty acre tracts on the 2500 acre Lake Ranch, and this land will go on the market any day. The ranch is considered to be the gem of the entire National Seashore. Unless acquired, the loss of this land will tend to split the proposed Seashore. William A. Sweet, the Oregon rancher who owns the Lake Ranch, has waited seven years for the government to buy his property, but he says that he can no longer afford to pay \$22,000 a year in property taxes."

Mr. Sweet's claim that taxes forced him to subdivide deserves examination. Conservationists have fallen for the same line from many landowners.

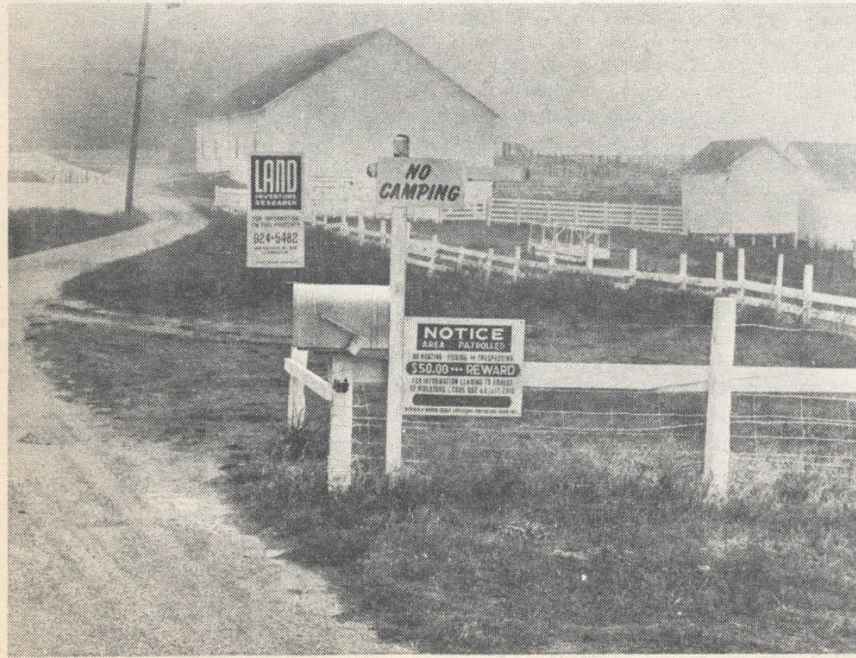
In reality, Sweet's desire to subdivide — in order to impress a condemnation jury — ensured his high taxes, not vice versa. He could easily have shrunk his taxes by signing over his subdivision rights to the Park Service or to a private organization like the Nature Conservancy. But then he could not have claimed that the land was worth \$6 million — \$2400 an acre — for development. As a matter of fact, higher taxes (the one-half percent he

villainous speculators, it makes no difference: any landowner who values land more highly in expectation of future price increases is speculating. To condemn speculation is to condemn rational behavior.

Second, note that the Park Service shelled out most of those millions not because the land had any real development value, but because the landowners — abetted by generous juries — had the government over a barrel. In other words, the public decision to buy created the land values for which the public then had to pay.

The argument goes further. Look at Limantour Spit. Why does a million dollars of public money now depend on the accuracy of government surveyors in 1886, when President James Buchanan granted the original patent of Rancho Punta de los Reyes — for nothing — to one Andrew Randall of Monterey? Even if the Spit really does belong to Mr. Bonelli and really can be developed, why must the public pay for a value derived from no skill or effort of Mr. Bonelli's, value derived from a public craving for beach bungalows? Mr. Bonelli can make his killing

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In fact, title to land is but one of many publicly-granted "rights." Others include a radio or TV license (the right to use a portion of the electromagnetic spectrum), an airline route or a railroad right-of-way (the right to carry freight or passengers between two points), a utility monopoly (the right to supply electricity, gas, water, or telephone in a certain territory), a taxi medallion (the right to pick up fares on city streets), a liquor license (the right to sell liquor "on the premises"), a farm subsidy (the right to payment for not growing crops on a piece of land), or an oil import quota (the right to sell oil in a certain section of the US). Or the right to pollute, whether granted under the proposed 1899 Refuse Act licensing scheme, or simply grabbed by powerful industries. The value of all these, and hundreds more publicly-conceded rights, does not arise from the endeavors of the owners, but from the needs and actions of others, including public agencies like the Park Service. In theory at least, the public grants all these licenses to advance the public interest.

But that is exactly what the conservation ethic recognizes: land is a public trust, not a disposable private good like a Kleenex. The conservation ethic, in short, has a solid basis in economics. Since title to land is a gift from the public, the public has the right to insist that landowners use their land in the public interest. Hence, conservationists advocate planning. Planning means the public deprives landowners — without compensation — of profitable "rights" like the right to develop. The public requires from them certain minimal standards of performance. For example, had the Marin County Board of Supervisors had the power to refuse Bonelli his subdivision, Point Reyes would probably have cost less than half what it eventually did. Unfortunately, planning has generally proved ineffective at restricting "rights" or requiring performance — for the same reason that regulatory agencies can not compel the media to provide high-quality public service programming, the railroads to run modern fast passenger trains, Ma Bell to keep the wires untangled, or Detroit to build clean engines. In each case, the lucky recipients of public gifts stand to make such windfall profits that they will find a way around any restrictions mere humans can devise.

and more consistent with American notions of individual freedom. To get rid of windfalls we need tax reforms.

There are several kinds of tax reform which conservationists should support. Income tax reform: Eliminate all those loopholes which permit the wealthy to avoid taxes by investing in land, or big corporations to squirrel away profits behind development-oriented "depletion allowances" or "accelerated depreciation." Property tax reform: Consolidate tax districts to eliminate low-tax "havens" for industry and the wealthy, abolish special favors for certain classes of property owners (e.g. — large rural landowners under laws intended to "save" open space), modernize and equalize assessment practices — many assessors greatly overassess small homeowners and underassess large landowners. Assess landowners a stiff tax on their increased land value when the public grants them a zoning increase (an expanded license). In fact, by applying a property tax to the publicly created value of rights like title to land, the public returns those values directly to the public treasury. With the windfalls gone, landowners will no longer have an incentive to thwart planning.

The Conservation ethic does not, after all, merely express the opinion of a bunch of elitists. Rather, the conservation ethic coincides exactly with basic principles of economic and social justice. The same reforms which further the conservation cause by taking the windfalls out of private property make taxes more equitable and redistribute wealth. The ethic of property rights, by contrast, means at its core that persons of property, the rich, have a right to extort money from the rest of society. The story of Point Reyes merely shows up that extortion at its crassest. Conservationists therefore should ally themselves more closely with groups such as minorities and labor unions seeking fundamental reforms in the economic structure. Until such reforms become a reality, conservationists can count themselves lucky to have at least saved Point Reyes. We won't get much more.

*Most of the data on Point Reyes were collected by Jim McFeely of the Nader Task Force on Land Use in California*