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October 1994

# FOREST SERVICE

## Land Acquisitions Within the Lake Tahoe Basin







United States  
General Accounting Office  
Washington, D.C. 20548

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**Resources, Community, and  
Economic Development Division**

B-258253

October 31, 1994

The Honorable Harry Reid  
United States Senate

Dear Senator Reid:

Public Law 96-586, commonly called the Santini-Burton Act, was enacted on December 23, 1980, and authorized the sale of about 7,000 acres of federal lands located near private lands in urban areas within Clark County, Nevada, to permit more orderly development of the communities in the county. The federal lands were owned by the U.S. Department of the Interior's Bureau of Land Management. The act also required the bulk of the proceeds from the Bureau's land sales to be used for a buyout program through which the U.S. Department of Agriculture's Forest Service would purchase environmentally sensitive private lands in the Lake Tahoe Basin in an effort to stem further degradation of the lake.<sup>1</sup>

This report responds to your concerns about whether property owners in the Lake Tahoe Basin, especially those who acquired lands before December 1969—the date when the states of California and Nevada formally began to implement cooperative land-use controls to regulate development in the basin—are being treated fairly when their environmentally sensitive lands are acquired by the Forest Service under the Santini-Burton Act. More specifically, you asked us to determine the extent to which (1) the Forest Service acquired lands within the basin under the buyout program authorized by the act, (2) the classification of lands within the basin as environmentally sensitive may have adversely affected their value, and (3) the Forest Service's acquisition of environmentally sensitive lands in the basin may have involved a taking by the federal government of private property under the Fifth Amendment to the U.S. Constitution.

According to the Fifth Amendment, private property shall not be taken for public use without just compensation. Under the Fourteenth Amendment to the U.S. Constitution, this prohibition applies to state governments. In 1922, the Supreme Court recognized that a regulatory action—such as

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<sup>1</sup>Environmentally sensitive lands are lands sensitive to human occupancy and use on which development is creating, or would be expected to create, unacceptable environmental disturbance to water quality, soil, vegetation, wildlife, or cultural resources. Environmentally sensitive lands include stream environment zones, which are lands generally located within the 100-year floodplain or areas of riparian vegetation, and high-hazard lands, which are characterized by steep slopes and a fragile environmental balance or by high erosion potential.

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implementing land-use controls—may also constitute a taking that requires just compensation.<sup>2</sup>

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## Results in Brief

The Forest Service, the major landowner in the Lake Tahoe Basin, acquired 3,378 land parcels in the basin totaling almost 11,000 acres from 1982 through February 10, 1994, under the Santini-Burton Act. About 900 additional parcels, totaling about 9,000 acres, are planned for acquisition. Forest Service officials estimate that through July 1994 about \$86.5 million (including about \$7 million in grants from the state of California) had been spent to acquire lands in the basin.

The Tahoe Regional Planning Agency (TRPA)<sup>3</sup> regulates land use and the rate of development in the Lake Tahoe Basin. TRPA has assigned scores to land parcels throughout the basin on the basis of the extent to which development of the parcels would affect the environment in the basin. Parcels with low scores were considered environmentally sensitive, and their owners were prevented from immediately developing them. As a consequence, the ultimate sales price paid for some land parcels by the Forest Service was probably less than it would have been if there had been no restrictions on their development.

While TRPA's restrictions on development likely resulted in a reduction of the fair market value<sup>4</sup> of some parcels, we cannot quantify this reduction because other variables, including local building requirements and generally unfavorable economic conditions in the basin area, likely also contributed to the lower prices the Forest Service paid for some properties. However, real estate brokers and appraisers in the basin said that the potential of a parcel for development—as determined by its environmental sensitivity classification—was a major determinant of its fair market value.

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<sup>2</sup>Pennsylvania Coal Company v. Mahon, 260 U.S. 393.

<sup>3</sup>TRPA is a separate legal entity created under the Tahoe Regional Planning Compact, which was adopted by the states of California and Nevada and ratified by the Congress (P.L. 91-148, Dec. 18, 1969). An amended compact was approved by P.L. 96-551, Dec. 19, 1980. The agency was to establish environmental quality standards called thresholds and adopt and enforce a regional plan and implement ordinances that would achieve and maintain the thresholds, as well as provide opportunities for orderly growth and development.

<sup>4</sup>The Uniform Appraisal Standards for Federal Land Acquisitions (Uniform Appraisal Standards), as revised in 1992, define "fair market value" as the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would be sold by a knowledgeable owner willing but not obligated to sell to a knowledgeable purchaser who desired but was not obligated to buy.

In 1993, the Supreme Court of Nevada addressed the issue of whether TRPA's regulations result in the taking of private property without just compensation. The court held that TRPA's land-use regulations, which in some cases have caused reduced land values, did not result in the temporary taking of private property under either the Fifth or Fourteenth Amendments.<sup>5</sup> However, owners of property in the basin continue to assert that TRPA's regulations resulted in the devaluation of their properties and, in effect, constitute takings of their properties. Two cases that assert such takings are currently before the Federal Court of Appeals for the Ninth Circuit.

We do not believe that the 135 randomly selected Forest Service acquisitions that we reviewed involved takings by the federal government of private property without just compensation. The Forest Service acquired the land parcels at their fair market value as determined by independent appraisers, only from willing sellers—thus precluding involuntary takings of the properties. We estimate that about 76 percent of the time, the Forest Service paid the sellers more than the price they had paid to purchase the properties. (When we accounted for inflation-adjusted dollars, 36 percent of the sellers received more than they had spent to purchase the properties.)

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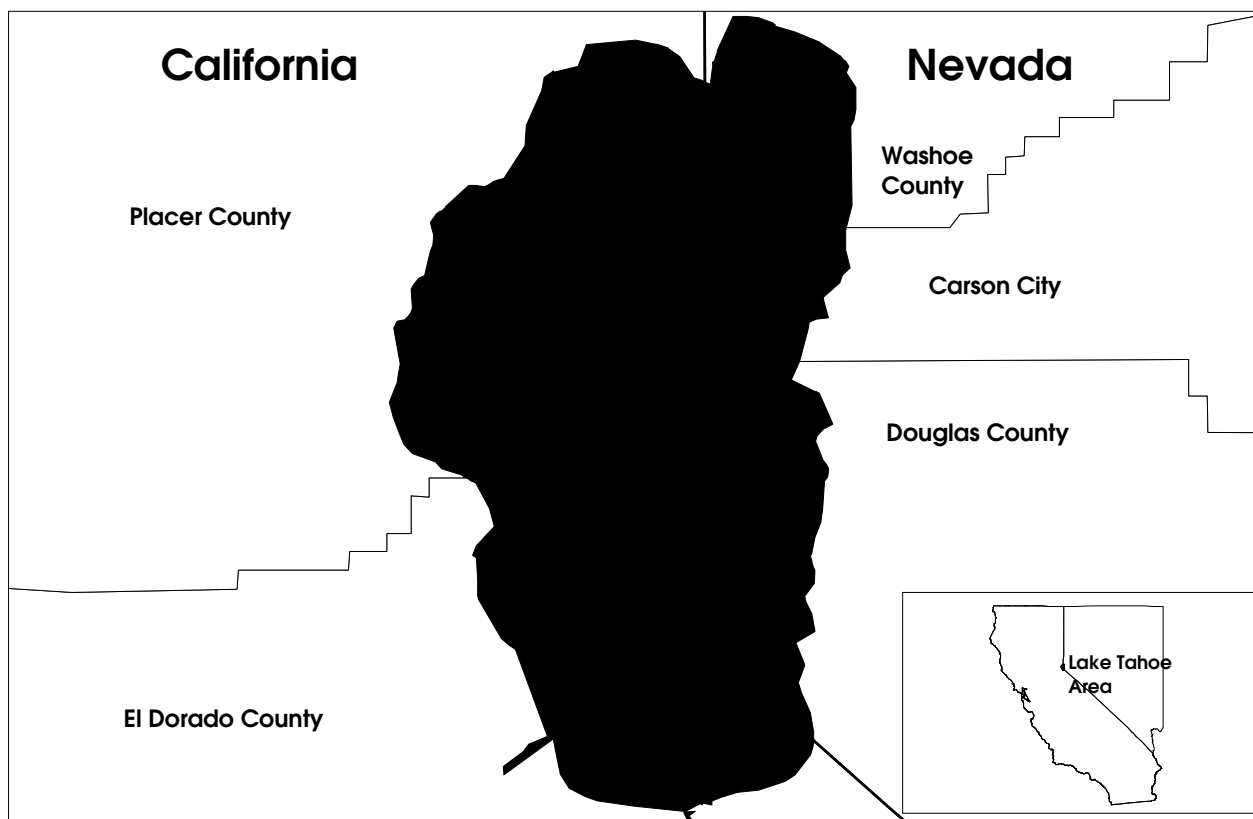
## Background

Lake Tahoe is the largest alpine lake in the Western Hemisphere, covering about 207,000 acres, and is known for its exceptional purity and clarity. It lies in the Sierra Nevada Mountains of California and Nevada. The lake, which lies two-thirds in California and one-third in Nevada (see fig. 1), has been called a national treasure. Governing bodies within the basin include the 2 states, 5 counties, and 20 local jurisdictions. The beauty of the Tahoe basin has attracted large numbers of visitors interested in recreating at the lake and people wanting to establish permanent year-round or vacation homes along its shores.

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<sup>5</sup>The regulations were imposed by TRPA, which is not a federal agency. Consequently, if there were a taking of private property, it could not be considered a federal taking in violation of the Fifth Amendment.

Figure 1: Map of the Lake Tahoe Basin



Many reports and research projects have documented the degradation of the Tahoe basin's air, water, soil, and scenic characteristics—all of which were attributed to the rapid development occurring in the basin. With this knowledge came the recognition that something would have to be done to curb future development of the basin, particularly in its most environmentally sensitive areas.

Working together to address the problems associated with the growth and activity in the basin, the legislatures in California and Nevada agreed on a Tahoe Regional Planning Compact, which was eventually ratified by the Congress in 1969. This compact, as amended by Public Law 96-551, dated December 19, 1980, stated, among other things, the following:

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- The waters of Lake Tahoe and other resources of the region were threatened with deterioration or degeneration, which was endangering the natural beauty and the economic productivity of the region.
  - The Lake Tahoe region had unique, irreplaceable environmental and ecological resources.
  - There was a public interest in protecting, preserving, and enhancing these resources for the residents of and visitors to the region.
  - To preserve the scenic beauty and outdoor recreational opportunities of the region, there was a need to ensure an equilibrium between the region's natural endowment and its man-made environment.

To carry out the provisions of the compact, TRPA was established in 1969. In an effort to, among other things, protect the basin's water and air quality, fish and wildlife, vegetation, and scenic resources and provide for high-quality recreation, TRPA regulates land use, the rate of growth, the extent to which land is covered with homes and other construction, excavation, and impacts on scenic views.

After much deliberation that occurred over several years, the Regional Plan for the Lake Tahoe Basin, which governs the long-term development of the basin, was approved in 1987 by California and Nevada and a 15-member Governing Board that oversees the administration of TRPA. TRPA's regional plan and Code of Ordinances help achieve and maintain the environmental thresholds against which all projects and activities, including those on national forest land, are measured.<sup>6</sup>

In 1987, TRPA approved the Individual Parcel Evaluation System (IPES) as the standard to be used in determining the environmental sensitivity of vacant land parcels zoned for single-family residential buildings. Before the initiation of IPES, vacant lands in the basin were evaluated under the Bailey Land Classification System, which classifies soils into seven capability classes with varying degrees of tolerance to land development. However, because the Bailey System did not evaluate individual parcels, it proved to be unsatisfactory for residential parcel owners wanting to build single-family residences and resulted in several lawsuits. As part of the consensus-building process of developing a regional plan, TRPA approved the use of IPES for determining the environmental sensitivity of such parcels.

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<sup>6</sup>Environmental thresholds are standards necessary to maintain the significant scenic, recreational, educational, scientific, or natural resources of a region or to maintain public health and safety within a region. Such standards include, but are not limited to, standards for air quality, water quality, soil conservation, vegetation preservation, and noise.

Once IPES was adopted, site evaluation teams initially visited over 10,000 vacant parcels in the Tahoe basin to assign them scores. (See app. I for the distribution and the percentage of the IPES scores of the original 10,000-plus parcels surveyed by TRPA.) A major goal of the IPES scoring process is to enable TRPA to be in a position to direct new construction to the areas that are most suitable for development from an environmental standpoint. IPES determines, among other things, which lots may be built upon, what percentage of each lot may be developed, and when the lots may be eligible for development. Among the environmental factors considered in assigning an IPES score to a parcel are its (1) potential for soil erodibility and runoff, (2) location with respect to a stream environment zone, (3) ability to revegetate, and (4) proximity to the lake.

## Universe of Properties to Be Acquired by the Forest Service Under the Santini-Burton Act

After the Santini-Burton Act was enacted, the Forest Service planned to acquire about 20,000 acres of land under the land buyout program authorized under the act. In addition, the two states that surround Lake Tahoe—California and Nevada—have buyout programs to acquire about 5,500 acres and about 600 acres, respectively, of environmentally sensitive lands in the basin. Appendix II discusses these state buyout programs in more detail.

The Forest Service considered input and guidance from local government agencies, particularly TRPA, in estimating the amount of private environmentally sensitive lands to be acquired under its buyout program. The Forest Service makes offers for properties at their fair market value as determined by independent appraisals. The offers are either accepted or rejected by property owners.

Through February 10, 1994, the Forest Service had acquired 3,378 parcels (3,183 of them by purchase agreements, including 495 that involved multiple parcels, and the remaining 195 by donations) totaling about 11,000 acres. Through July 1994, a total of about \$86.5 million (including about \$7 million in grants from California) had been spent by the Forest Service for land acquisitions and related administrative expenses. The bulk of the acquisition funds came from the proceeds of Bureau of Land Management land sales in Clark County, Nevada.<sup>7</sup> The Forest Service planned to make offers during fiscal year 1994 for about 100 additional parcels. Although the land acquisition program has slowed considerably in

<sup>7</sup>Santini-Burton Act funds represent dollars spent during different years and, therefore, having different economic values. We did not express this amount in 1994 dollars because Forest Service officials at the Lake Tahoe Basin Management Unit do not maintain documentation on the amount spent by year for property acquisition.



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the past few years, the Forest Service hopes to purchase 900 additional parcels totaling about 9,000 acres (including the 100 parcels planned for acquisition in 1994).

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## TRPA's Land Classification Affects Fair Market Value of Tahoe Basin Properties

The issue of fair market value has caused much concern for many property owners in the Tahoe basin. One of the keys to a property's fair market value is its potential for development. Since 1989, single-family residential parcels within the basin have been evaluated under the IPES process to determine their potential for development.

The Forest Service must offer fair market value for land purchased under the Santini-Burton Act buyout program. Independent appraisers who evaluate land parcels within the basin for the Forest Service consider a parcel's IPES score as one of the most critical determinants of the parcel's appraised value. For the 135 acquisitions reviewed, the Forest Service required independent appraisals and paid the resulting estimated fair market value for each of the properties.

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## Development Potential Influences Fair Market Value

The numerical IPES score that is assigned to a parcel in the Tahoe basin is an important consideration in the determination of the parcel's fair market value. This score can range in value from 0 to 1,140. Originally, it was established that a parcel with an IPES score of 726 or higher would immediately be eligible for development, while a parcel with a low IPES score would not immediately be eligible. Whereas the market value of a property with a high IPES score would likely be increased, the market value of a property with a low IPES score would likely be diminished. Real estate brokers in the basin told us that in California, for example, a lot that cannot be developed has about one-fourth to one-third the fair market value of a lot that can be developed.

Appraisal reports we reviewed support this contention. Many appraisals prepared for the Forest Service show that the fair market value of a property was based to a great extent on its potential for development. One appraisal report, which included an analysis of 19 lots in Washoe County, Nevada, stated, for example, that "residential lots suffering from development constraints would have a value of from 33 percent to 80 percent of their value assuming that they could be developed without undue delay."

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The fair market value determination required for a Forest Service acquisition under the Santini-Burton Act must be made by an independent appraiser, where practicable, on the basis of comparable sales at the time of acquisition. Comparable sales are sales that are similar in time, location, type of property, and intended use after sale. They are used to determine that the price paid fairly represents the property's value. In determining the comparability of other property sales, the appraiser must also consider the utilities, services, and facilities associated with the properties being compared.

Determining the fair market value of land parcels in the Tahoe basin has been difficult. Because opportunities for development in the basin have been limited over the past several years, data on relatively few sales are available for comparison. Thus, appraisers often must use other evidence to arrive at a property's fair market value. Other evidence that may be considered includes the view afforded by the property; its relation to points of interest or importance; the price at which the property was bought (if recent enough to reflect on the current value of the property); expert opinion on the property's value; the uses for which it is available, which are affected by, among other things, its IPES score and the amount of the parcel that can be covered with a home, a driveway, etc.; and the cost of any improvements (if they increase the property's value). According to Forest Service officials, appraisers are not to add taxes, interest, and other expenses incurred by the landowner to the property's last sale price to arrive at the current fair market value.

The issue of defining "fair market value" as it pertains to the Santini-Burton Act has come under scrutiny by the Forest Service. Of concern to Forest Service officials at the Lake Tahoe Basin Management Unit was the following statement in the act.

"Any change after the date of the enactment of this Act in the value of any property to be acquired under this section shall not be taken into account for purposes of determining the fair market value of such property to the extent that such change is attributable to the enactment of this Act."

Questions arose as to whether this language was intended to exclude consideration of changes in such areas as zoning, ownership of development rights, number of units allowed per acre, or restrictions on lot coverage—any one of which could significantly affect a property's valuation.

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In response, Management Unit officials were advised by Forest Service regional officials and by the Department of Agriculture's Office of the General Counsel that the intent of the wording in the Santini-Burton Act was to negate any change in the value of the land resulting only from the act itself. We were told that the language cited did not refer to any legislation, zoning ordinance, or restriction imposed by a local agency that was not a direct result of the act. Therefore, according to the regional and Office of the General Counsel officials, independent appraisers evaluating land parcels for the Forest Service should consider a parcel's numerical IPES score in the normal valuation process.

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## GAO Analyzed a Sample of Forest Service Purchases in the Basin

The Forest Service began acquiring land under the Santini-Burton Act in 1982. We reviewed 135 randomly selected land purchases from the 2,688 purchases of individual parcels made by the Forest Service from 1982 through February 10, 1994.<sup>8</sup> We found that, for each of the 135 purchases, an appraisal had been performed and the Forest Service had paid the resulting estimated appraised fair market value for each parcel.

Although we reviewed appraisal reports when available, we did not review the qualifications of the appraisers or determine whether standard appraisal requirements had been followed. However, the Department of Agriculture's Office of Inspector General is reviewing Forest Service land purchases nationwide, including some made through the Santini-Burton buyout program. This review will include determinations as to whether (1) appraisals conform with federal regulations and (2) appraisers possess proper qualifications.

Sufficient data were available in 115 of the 135 cases we reviewed for us to determine the difference between the sellers' costs to obtain the parcels and the prices paid by the Forest Service for them. Thus, our estimates apply to an estimated 2,256 of the 2,688 individual land purchases made by the Forest Service since 1982. We calculated that the Forest Service paid an average acquisition price of about \$23,600 for these 2,256 parcels. The prices of our sampled parcels ranged from \$1,000 to \$187,000, and the parcels ranged in size from 0.05 acre to 12.7 acres. The prior owners in our sample had held their properties for periods of less than 1 year to over 30 years.

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<sup>8</sup>Because we sampled land purchases, each estimate used in this report has a margin of error. See app. IV for a discussion of our sampling procedures and the margins of error for estimates in the report.

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Overall, we estimate that almost 76 percent of the time, those selling property to the Forest Service received more for their land than they had paid for it. For the parcels in our sample, the differences ranged from \$250 to \$120,500. In almost 22 percent of the cases, the owners received less for their land than they had paid for it. The differences ranged from \$500 to \$35,000. We estimate that for fewer than 3 percent<sup>9</sup> of the purchases, the Forest Service paid the owners the same amounts that the owners had paid for the parcels.

The above calculations do not account for any inflation that might have occurred over the time that the owners held their properties, which would have reduced the purchasing power of the dollar between the dates that the owners purchased the parcels and the dates that they sold the parcels to the Forest Service. Our analyses showed that when inflation was factored in, about 36 percent of the owners received more than they had spent to acquire the properties. The increases ranged from \$245 to \$107,810. The remaining 64 percent of the owners received less for their properties from the Forest Service than they had spent. The decreases in value ranged from \$462 to \$53,200.

Developed in response to your concerns about property owners who acquired their lands prior to December 1969—the date of the original Tahoe Regional Planning Compact—table 1 shows the experiences of owners we sampled who acquired their parcels before and after that date. The table includes both the unadjusted and inflation-adjusted number and percentage of owners we reviewed who received more than, less than, or the same amount from the Forest Service as they paid for their parcels.

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<sup>9</sup>Because of the small sample size or other characteristics of the sample results, this estimate must be qualified. See table IV.1 for further details.

**Table 1: Number and Percent of Tahoe Property Sales for Which Forest Service Purchase Price Was Greater Than, Less Than, or the Same as Owner's Purchase Price—Unadjusted and Adjusted for Inflation**

	Number without adjusting for inflation	Percent	Number adjusting for inflation	Percent
<b>Property acquired before December 1969</b>				
Forest Service price greater than owner's cost	18	90 <sup>a</sup>	5	25
Forest Service price less than owner's cost	1	5 <sup>a</sup>	15	75
Forest Service price same as owner's cost	1	5 <sup>a</sup>	0	0
<b>Total</b>	<b>20</b>	<b>100</b>	<b>20</b>	<b>100</b>
<b>Property acquired after December 1969</b>				
Forest Service price greater than owner's cost	69	73	36	39
Forest Service price less than owner's cost	23	24	57	61
Forest Service price same as owner's cost	2	2 <sup>a</sup>	0	0
<b>Total</b>	<b>94</b>	<b>99</b>	<b>93</b>	<b>100</b>
<b>Property acquired before and after December 1969</b>				
Forest Service price greater than owner's cost	87	76	41	36
Forest Service price less than owner's cost	25	22	72	64
Forest Service price same as owner's cost	3	3 <sup>a</sup>	0	0
<b>Total</b>	<b>115<sup>b</sup></b>	<b>101</b>	<b>113<sup>c</sup></b>	<b>100</b>

Note: Information required for our analyses was not available for all sampled cases. Therefore, our analyses do not represent all 2,688 land purchases. See table IV.1 for the estimated number of land purchases to which these analyses apply.

<sup>a</sup>Because of the small sample size or other characteristics of the sample results, these results must be qualified. See table IV.1 for further details.

<sup>b</sup>We could not determine whether one property was acquired before or after December 1969; therefore, our calculations for the pre-and post-December 1969 acquisitions do not equal the total acquisitions.

<sup>c</sup>The total number of cases dealt with under the "inflation-adjusted" column is smaller than that under the "unadjusted" column because certain information required to compute the adjusted amount was not available.

As shown in table 1, we estimate that of the property owners who had acquired their parcels before December 1969, 5 percent<sup>10</sup> received less than they had originally paid for the parcels. (When inflation is factored into the calculation, an estimated 75 percent of these owners received less than they had paid.) We estimate that of the owners who had acquired their parcels after December 1969, about 24 percent received less from the Forest Service than they had paid. (When inflation is considered, an estimated 61 percent received less than they had paid.)

Although the estimates in table 1 reflect the effect of inflation over the period in which properties were held before being sold to the Forest Service, our calculations do not consider other possible costs incurred by property owners during this period. Such costs include finance charges, property taxes, community association fees, and sewer hookup fees. These other costs could be important from an investment standpoint for these owners. However, the fact that some owners might receive less from the Forest Service than they had invested in their properties was addressed by former Representative Phillip Burton, one of the coauthors of the Santini-Burton Act, who stated that

“... this legislation was never intended to indemnify those owners from all risks they might have accrued when they chose to invest in such property.”

Appendix III provides details on the location, size, purchase dates, and purchase price of the 135 transactions reviewed.

## The Forest Service Did Not Take Private Property

We do not believe that any of the 135 randomly selected Forest Service acquisitions reviewed involved takings by the federal government of private property without just compensation. Rather, the Forest Service purchased the properties from willing sellers for their fair market value at the time of purchase as determined by independent appraisers. TRPA's land-use regulations probably contributed toward the Forest Service's paying some property owners less for their parcels than would have been the case had no restrictions been placed on the properties' development. However, in one instance, the Nevada Supreme Court ruled, in 1993, that TRPA's regulations do not constitute a temporary taking of property for which just compensation must be paid under the U.S. Constitution.<sup>11</sup>

<sup>10</sup>Because of the small sample size or other characteristics of the sample results, this estimate must be qualified. See Table IV.1 for further details.

<sup>11</sup>*Kelly v. Tahoe Regional Planning Agency*, 855 P.2d 1027 (Nev. 1993).

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Nonetheless, many owners of property in the basin continue to assert that TRPA's land-use controls result in takings of their private property.

The determination as to whether specific land-use controls, such as zoning ordinances, which limit the permissible uses of private property, result in a compensable government taking of private property will generally depend on the facts of the particular cases rather than the application of a set formula. However, courts will consider certain factors, including whether the land-use controls substantially advance a legitimate government interest and whether owners have been deprived of all economically viable use of their properties.

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## The Forest Service Purchased Properties for Fair Market Value

The taking of private property for public use by the federal government is addressed under the Fifth Amendment to the U.S. Constitution, which states that “. . . private property [shall not] be taken for public use, without just compensation.” This prohibition is made applicable to state actions affecting private property through the due process clause of the Fourteenth Amendment to the U.S. Constitution and is applicable to a bistate agency, such as TRPA. The Fourteenth Amendment provides that a state may not “deprive any person of life, liberty, or property, without due process of law; . . .” The acquisition of property without just compensation is considered a deprivation of property without the due process of law.

Both the federal government and state governments regularly exercise the power of “eminent domain.” This power is exercised through the use of court condemnation procedures and refers to these governments’ sovereign right to take private property for public purposes and uses without the consent of the owner upon the payment of just compensation. Governments have also acted short of condemnation to limit the permissible uses of property by statute, regulation, and administrative actions. If these limitations are sufficiently severe, they also may amount to a taking of property under the Fifth and Fourteenth Amendments and may lead to an “inverse condemnation”<sup>12</sup> court action seeking the payment of just compensation.

When a government purchases private property at its fair market value at the time of sale, the purchase is not considered to be a taking. The private

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<sup>12</sup>“Inverse condemnation” is an action brought by a property owner seeking just compensation for land taken for a public use when the taker, a government (or a private entity having the power of eminent domain), does not intend to bring eminent domain proceedings. Such an action may be brought when the government denies there is any taking.

party is not compelled to sell the property but voluntarily decides to do so after considering the different opportunities for the property, including its retention or sale to someone else. In the 135 Santini-Burton Act transactions we reviewed, the Forest Service did not take properties from owners. The Forest Service bought the properties from owners in arms-length transactions, without any compulsion, at the present fair market value as determined by independent real estate appraisers.

## TRPA's Land-Use Restrictions Are the Subject of Court Suits

Several recent court cases have addressed the issue of whether TRPA's land-use restrictions constitute a taking of private property for which compensation must be paid under the Fifth and Fourteenth amendments. In Kelly v. TRPA, which involved a plan to develop 39 lots in three stages, the owner claimed that TRPA's land-use restrictions constituted a taking because they restrained development on 7 of the lots. The Nevada Supreme Court concluded that TRPA's land-use controls did not constitute a temporary taking.

The Nevada Supreme Court described what the U.S. Supreme Court requires a plaintiff to show in order to establish that land-use restrictions, such as those imposed by TRPA, amount to a compensable temporary taking of private property.<sup>13</sup> Each case involves an ad hoc factual inquiry to determine whether (1) the land-use controls substantially advance a legitimate government interest and (2) the owner has been deprived of all economically viable use of the property. In determining the latter, three factors must be considered, including (1) the economic impact of the land-use restrictions, (2) the interference of these restrictions with the owner's reasonable investment-backed expectations, and (3) the character of the government's action.

The Nevada Supreme Court concluded that TRPA's regulations advanced a legitimate government interest—the protection of the Lake Tahoe Basin, which is a national treasure. The court also concluded that the land-use restrictions did not deprive Mr. Kelly of all economically viable use of his land. The court pointed out that the lots as a whole remained a valuable asset, since only seven lots were affected by TRPA's regulations. Of these seven, only four are presently precluded from development, and these parcels are expected to be eligible in a few years.

<sup>13</sup>The plaintiff's assertion that the Supreme Court's decision in Lucas v. South Carolina Coastal Council, 112 S. Ct. 2886 (1992) governed was rejected on the basis that Lucas involved a permanent rather than a temporary taking of property. In Lucas, the governmental action prohibited any permanent structure on Lucas's residential lots.



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The court also concluded that the owner's investment expectations had been met. At the time he purchased the plots, Mr. Kelly was aware of potential development restrictions in the Lake Tahoe area. Also, his land was worth considerably more than he had paid for it. Furthermore, the court considered that TRPA's regulations benefited not only the public but also Mr. Kelly himself because, without environmental land-use controls, his lots would diminish in value over time.

The taking issue is also presently the subject of two pending federal court cases. The first of these cases—Tahoe Sierra Preservation Council, et al. v. TRPA, et. al—consolidates identical cases brought originally in the federal district courts of Nevada and California. The Federal Court of Appeals for the Ninth Circuit recently decided to return the case to the federal district court for consideration of the taking issue. The suit asserts that TRPA has violated the civil rights of landowners under federal law by enacting regulations restricting the use of their property. However, TRPA has subsequently petitioned the Ninth Circuit Court for a rehearing of its case. In the second case—Suitum v. TRPA, et al.—a landowner is claiming that TRPA's IPES constitutes a taking, that is, an inverse condemnation. The case has been appealed to the Ninth Circuit Court following the federal district court's dismissal of the case on the ground that the plaintiff did not exhaust her administrative remedies before bringing suit.

These cases do not settle the question under what circumstances, if any, TRPA's regulations could result in a taking of property. The U.S. Supreme Court's most recent decision on whether local land-use controls result in a taking is in Dolan v. City of Tigard, 129 L. Ed. 2d 304 (1994). Quoting from one of its earlier decisions, the Supreme Court noted that "Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change. . . ." Thus, a decline in property values resulting from state or local regulation does not automatically result in a taking of private property.

In Dolan, the Supreme Court described a two-part inquiry for determining whether state or local land-use regulation results in a taking of private property that requires the payment of just compensation. A court first must determine whether there is an essential connection between the legitimate public interest and the prescribed governmental regulatory action. Second, if there is such a connection, the court must determine whether the degree of regulation is reasonably related to the projected impact of the landowner's use of the property. Under what circumstances,

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if any, TRPA's regulations may constitute a taking of private property will depend on the facts involved in future court cases.

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## Environmentally Sensitive Lands Retain Value

It appears that the numerical IPES score or the Bailey Land Classification System rating of land in the Lake Tahoe Basin may be the most critical factor in an appraiser's valuation of a parcel. In this regard, the Nevada Supreme Court has concluded that TRPA has based IPES on solid scientific principles and that it has rationally and evenly applied the scoring system.

Although TRPA's land-use restrictions probably diminished the fair market value of some Tahoe basin properties, the assignment of an IPES score categorizing a parcel as currently not developable (originally, an IPES score of 725 or less) does not forever preclude the parcel's development. TRPA may, on an annual basis, adjust the minimum IPES eligibility score in any of the counties surrounding the basin, thus rendering as immediately developable some parcels previously considered undevelopable.

However, TRPA will not make such an adjustment unless it finds, among other things, that a local jurisdiction has satisfactory programs in place for monitoring water quality and inspecting projects for compliance with monitoring standards. During our review, TRPA found that Douglas and Washoe counties in Nevada met its adjustment criteria and lowered the IPES threshold scores from 726 to 709 and 695, respectively. This finding made numerous additional parcels in these two counties immediately eligible for development and presumably increased their fair market value.

Even land parcels in the basin receiving very low IPES scores retain some economic value because they are generally assigned some area of allowed surface coverage (the square footage of the parcel that may be covered by any impervious surface—such as a dwelling—that does not permit vegetation to grow or precipitation to reach the ground). This surface coverage allowance may be transferred to other currently developable lots in the same watershed. In addition, in both 1993 and 1994, TRPA authorized up to 30 owners of undevelopable lots to receive TRPA building allocations. While these owners are not currently allowed to build on their lots, the allocations may be transferred to other lots that are developable according to their IPES scores but do not have one of TRPA's limited annual building allocations. The owners of the parcels that are developable according to their IPES scores can then proceed to build on the lots. The allocations have sometimes commanded substantial prices.

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We could not quantify the effect of the IPES score on a parcel's fair market value because other factors must be considered. These include (1) a generally unfavorable economic situation in the Lake Tahoe Basin during the 1980s and early 1990s, (2) numerous environmental constraints on any type of development within the basin, and (3) local building requirements and/or restrictions. However, as explained above, we determined that even parcels with low IPES scores remained valuable assets. As the IPES threshold is lowered over time, some parcels' value could increase.

Nonetheless, many Tahoe basin property owners, hoping for reasonable returns on their investments in their properties, have expressed disappointment as property values in many cases have gone down, rather than up. However, as the Nevada Supreme Court noted (in the recent Kelly case), as early as 1966, even before the 1969 Tahoe Regional Planning Compact was entered into by the states of California and Nevada and ratified by the Congress, property owners were on notice about the two states' concerns about the rapid development in the basin and the adverse impacts on the area's environment associated with the development. Thus, since at least 1969, the property owners should have had some expectation of the future implementation of restrictions on growth in the basin.

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## Agency Comments

Although we did not obtain written agency comments on a draft of this report, we discussed the results of our work with the Forest Supervisor of the Lake Tahoe Basin Management Unit and its land and realty specialists and with the Executive Director and the Deputy Director, TRPA, and incorporated their comments where appropriate. These officials generally agreed with the facts presented in the report.

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We conducted our review between December 1993 and August 1994 in accordance with generally accepted government auditing standards. We interviewed and/or obtained information from Forest Service officials at the agency's headquarters in Washington, D.C.; Region 5 office in San Francisco, California; and Lake Tahoe Basin Management Unit in South Lake Tahoe, California. This Management Unit administers the Santini-Burton Act land acquisitions in the entire Lake Tahoe Basin. Also, we reviewed a sample of 135 randomly selected case files for Forest Service Santini-Burton Act land purchases and interviewed numerous persons familiar with property transactions in the basin. Appendix IV contains more details on our objectives, scope, and methodology.

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As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after the date of this letter. At that time, we will send copies to the Secretary of Agriculture and the Chief of the Forest Service. We will make copies available to others on request. Please contact me at (202) 512-7756 if you or your staff have any questions. Major contributors to this report are listed in appendix V.

Sincerely yours,

A handwritten signature in black ink that reads "James Duffus III". The signature is written in a cursive style, with the first name "James" being the most prominent. The "III" is written in a stylized, slightly italicized font.

James Duffus III  
Director, Natural Resources  
Management Issues

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**Abbreviations**

GAO	General Accounting Office
IPES	Individual Parcel Evaluation System
TRPA	Tahoe Regional Planning Agency

# Distribution and Percent of IPES Scores, June 1988

Table I.1 shows the initial distribution of IPES scores for over 10,000 parcels in the Lake Tahoe Basin. IPES scores range from 0 to 1,140. The lower the IPES score, the more environmentally sensitive the parcel was deemed to be and the less likely it would become available for immediate development. Originally, parcels with scores of 725 or below were deemed environmentally sensitive and therefore were not generally available for immediate development. However, some environmentally sensitive parcels were allowed to be built on if the property owners paid mitigation fees. And, as previously mentioned, upon finding that Washoe and Douglas counties in Nevada had met TRPA’s criteria for lowering the IPES threshold scores, TRPA lowered the threshold scores in the two counties to 695 and 709, respectively. Thus, more than 50 parcels in these counties previously considered undevelopable became eligible for immediate development.

Table I.1: Distribution of Original IPES Scores, June 1988

IPES score range	Number of parcels	Percent
0	884	8.5
1-300	52	0.5
301-400	83	0.8
401-500	281	2.7
501-600	707	6.8
601-700	1,456	14.0
701-800	2,652	25.5
801-900	2,683	25.8
901-1,000	1,435	13.8
Over 1,000	166	1.6
<b>Total</b>	<b>10,399</b>	<b>100.0</b>

Note: In December 1988, subsequent to the above scoring of parcels in the Tahoe basin, TRPA’s Governing Board established the developable IPES threshold score at 726 or higher. We did not recompute the distribution of parcels that had IPES scores above and below 725 because of the amount of time involved in making such an analysis.

Source: Harrison Appraisal, Inc.



# Land Buyout Programs in California and Nevada

In addition to the Forest Service's Santini-Burton Act land purchase program, programs exist in California and Nevada for acquiring environmentally sensitive lands in the basin. The states' programs are briefly described below.

## California Tahoe Conservancy Land Acquisition Program

On the California side of Lake Tahoe, the California Tahoe Conservancy administers a land buyout program that is similar to the Forest Service's Santini-Burton Act program in that it acquires environmentally sensitive properties at the current fair market value. The California program is financed by an \$85 million state bond sale. Under the program, the first parcel was acquired in 1986. At the time of our review, the average price paid for parcels acquired under the program was about \$11,200. The acquisition costs ranged from \$250 for a small parcel to about \$2.8 million for a 36-acre parcel, a portion of which bordered the lake. Through August 1994, about 4,600 of the originally planned 5,500 acres had been acquired.

## Nevada Land Acquisition Program

In November 1986, the voters of Nevada approved a \$31 million bond issue for acquiring environmentally sensitive property and funding erosion-control projects on the Nevada side of Lake Tahoe. The first parcel was obtained under the program in 1987. While the Forest Service, under its buyout program, must pay the current fair market value for property it acquires in the Tahoe basin, the act governing Nevada's land acquisitions mandates that the state acquire property at the greater of the current fair market value or the value existing either on July 1, 1980, or on the date the property was acquired after July 1, 1980. Because land prices in the basin peaked around 1980 and have dropped considerably since that date, the state would rarely have purchased land for the current fair market value.

The Nevada Department of Conservation and Natural Resources, Division of State Lands, estimated that—through August 1994—the average purchase price for the 491 parcels in the basin that the state had purchased was about \$51,800, excluding survey and appraisal fees. The purchase prices of the acquired parcels ranged from \$3,000 to \$375,000 for single-parcel acquisitions. The 491 parcels, which cost about \$25 million, totaled about 200 acres, or one-third of the program's 600-acre acquisition goal.

# Information on 135 Forest Service Land Acquisitions in the Lake Tahoe Basin Sampled by GAO

Table III.1 provides information on the 135 cases GAO sampled of land purchases by the Forest Service within the Lake Tahoe Basin. The table is followed by more detailed discussion of three of the cases.

**Table III.1: Forest Service Purchases in the Lake Tahoe Basin Sampled by GAO**

Sample parcel	Parcel location (county)	Parcel size (acres)	Prior sale date	Prior sale price <sup>a</sup>	Forest Service purchase date	Forest Service purchase price	Price difference <sup>b</sup>	Price ratio <sup>c</sup>	Prior sale real price <sup>d</sup>	Price difference in real dollars <sup>be</sup>
1	Douglas	0.45	2/79	\$45,000	9/86	\$17,500	(\$27,500)	1.50	\$67,500	(\$50,000)
2	Douglas	0.34	10/77	23,000	12/86	17,000	(6,000)	1.81	41,630	(24,630)
3	Douglas	0.31	12/78	39,000	4/88	40,500	1,500	1.81	70,590	(30,090)
4	Douglas	0.33	10/68	f	12/86	12,750	f	3.15	f	f
5	Douglas	0.30	8/69	f	8/87	27,500	f	3.10	f	f
6	Douglas	0.31	8/70	8,000	12/89	40,500	32,500	3.20	25,600	14,900
7	Douglas	3.01	10/62	f	10/84	55,000	f	3.44	f	f
8	Douglas	0.36	7/74	4,000	10/87	22,000	18,000	2.30	9,200	12,800
9	Douglas	1.66	7/77	11,500	4/85	31,250	19,750	1.78	20,470	10,780
10	Douglas	0.80	4/76	20,000	4/85	31,250	11,250	1.89	37,800	(6,550)
11	Douglas	3.58	5/80	47,429	5/83	55,000	7,571	1.21	57,389	(2,389)
12	Douglas	0.73	9/82	6,000	11/86	11,840	5,840	1.14	6,840	5,000
13	Douglas	0.26	3/69	9,000	3/86	14,500	5,500	2.99	26,910	(12,410)
14	Douglas	0.18	8/77	19,500	4/86	16,000	(3,500)	1.81	35,295	(19,295)
15	Douglas	0.35	8/82	65,012	8/87	47,000	(18,012)	1.18	76,714	(29,714)
16	Douglas	0.22	1/78	33,000	7/85	30,000	(3,000)	1.65	54,450	(24,450)
17	Douglas	0.32	7/78	20,000	6/85	25,000	5,000	1.65	33,000	(8,000)
18	Douglas	0.33	9/64	8,000	3/88	45,000	37,000	3.82	30,560	14,440
19	Douglas	0.24	11/82	21,000	6/85	19,750	(1,250)	1.12	23,520	(3,770)
20	Douglas	0.22	12/84	1,800	4/85	7,000	5,200	1.04	1,872	5,128
21	Douglas	0.46	5/80	34,000	12/87	31,500	(2,500)	1.38	46,920	(15,420)
22	Douglas	0.05	3/88	6,600	6/88	10,000	3,400	1.00	6,600	3,400
23	El Dorado	0.30	7/72	3,500	6/90	12,000	8,500	3.13	10,955	1,045
24	El Dorado	0.21	11/79	f	11/83	1,000	f	1.37	f	f
25	El Dorado	0.30	11/79	f	11/83	14,000	f	1.37	f	f
26	El Dorado	0.22	9/79	7,500	11/93	5,000	(2,500)	1.99	14,925	(9,925)
27	El Dorado	0.27	8/75	8,500	5/83	15,000	6,500	1.85	15,725	(725)
28	El Dorado	0.34	4/77	7,500	7/85	6,000	(1,500)	1.78	13,350	(7,350)
29	El Dorado	0.33	f	7,500	10/86	7,000	(500)	f	f	f
30	El Dorado	0.23	3/82	12,281	4/84	8,000	(4,281)	1.08	13,263	(5,263)
31	El Dorado	0.23	8/74	7,000	9/86	8,500	1,500	2.22	15,540	(7,040)

(continued)

**Appendix III  
Information on 135 Forest Service Land  
Acquisitions in the Lake Tahoe Basin  
Sampled by GAO**

<b>Sample parcel</b>	<b>Parcel location (county)</b>	<b>Parcel size (acres)</b>	<b>Prior sale date</b>	<b>Prior sale price<sup>a</sup></b>	<b>Forest Service purchase date</b>	<b>Forest Service purchase price</b>	<b>Price difference<sup>b</sup></b>	<b>Price ratio<sup>c</sup></b>	<b>Prior sale real price<sup>d</sup></b>	<b>Price difference in real dollars<sup>be</sup></b>
32	El Dorado	0.23	6/71	6,000	7/86	8,500	2,500	2.71	16,260	(7,760)
33	El Dorado	0.22	5/76	6,500	8/87	6,000	(500)	2.00	13,000	(7,000)
34	El Dorado	0.57	6/77	0	10/84	17,000	17,000	1.71	0	17,000
35	El Dorado	0.23	8/78	19,000	6/84	18,000	(1,000)	1.59	30,210	(12,210)
36	El Dorado	0.39	7/79	500	10/86	1,000	500	1.51	755	245
37	El Dorado	0.40	6/79	29,500	11/84	20,000	(9,500)	1.43	42,185	(22,185)
38	El Dorado	1.26	10/70	15,000	8/83	14,000	(1,000)	2.57	38,550	(24,550)
39	El Dorado	0.24	10/78	8,000	5/83	7,000	(1,000)	1.53	12,240	(5,240)
40	El Dorado	0.28	10/70	5,500	6/83	7,000	1,500	2.57	14,135	(7,135)
41	El Dorado	0.17	9/67	3,500	7/83	9,000	5,500	2.98	10,430	(1,430)
42	El Dorado	0.47	6/66	6,000	3/84	18,000	12,000	3.21	19,260	(1,260)
43	El Dorado	0.23	f	f	8/89	5,000	f	f	f	f
44	El Dorado	0.23	10/70	5,000	5/89	7,250	2,250	3.20	16,000	(8,750)
45	El Dorado	0.32	12/77	7,000	5/89	7,250	250	2.01	14,070	(6,820)
46	El Dorado	0.26	4/71	4,000	10/89	5,000	1,000	3.06	12,240	(7,240)
47	El Dorado	0.77	f	f	7/87	10,000	f	f	f	f
48	El Dorado	0.48	8/68	7,500	9/85	10,500	3,000	3.09	23,175	(12,675)
49	El Dorado	0.63	6/82	8,000	10/89	8,000	0	1.29	10,320	(2,320)
50	El Dorado	0.26	9/68	6,000	8/85	6,000	0	3.09	18,540	(12,540)
51	El Dorado	0.20	3/76	2,000	3/87	3,500	1,500	2.00	4,000	(500)
52	El Dorado	0.14	7/76	4,500	8/85	5,200	700	1.89	8,505	(3,305)
53	El Dorado	0.26	f	f	8/90	5,000	f	f	f	f
54	El Dorado	0.25	10/69	6,500	1/84	10,000	3,500	2.83	18,395	(8,395)
55	El Dorado	0.24	7/81	0	11/93	6,000	6,000	1.59	0	6,000
56	El Dorado	0.17	10/69	6,000	8/90	7,000	1,000	3.56	21,360	(14,360)
57	El Dorado	0.18	9/69	5,500	3/93	7,500	2,000	3.94	21,670	(14,170)
58	El Dorado	0.48	11/79	6,000	10/93	14,000	8,000	1.99	11,940	2,060
59	El Dorado	1.60	9/65	6,500	2/84	22,000	15,500	3.30	21,450	550
60	El Dorado	0.58	2/69	5,000	6/83	16,000	11,000	2.71	13,550	2,450
61	El Dorado	0.31	11/85	7,000	4/89	10,000	3,000	1.15	8,050	1,950
62	El Dorado	0.43	1/68	3,000	5/85	12,000	9,000	3.09	9,270	2,730
63	El Dorado	0.44	1/63	f	9/92	13,500	f	4.58	f	f
64	El Dorado	0.41	8/78	16,000	3/86	11,000	(5,000)	1.68	26,880	(15,880)
65	El Dorado	0.42	8/58	12,500	7/85	18,000	5,500	3.72	46,500	(28,500)
66	El Dorado	0.26	9/67	8,000	10/86	7,000	(1,000)	3.28	26,240	(19,240)
67	El Dorado	0.26	11/76	6,000	6/83	8,500	2,500	1.75	10,500	(2,000)

(continued)

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68	El Dorado	1.25	5/78	16,000	11/89	20,000	4,000	1.90	30,400	(10,400)
69	El Dorado	0.31	1/68	6,500	7/93	13,000	6,500	4.15	26,975	(13,975)
70	El Dorado	0.19	11/79	5,000	2/84	20,000	15,000	1.43	7,150	12,850
71	El Dorado	0.25	8/60	f	12/91	8,000	f	4.60	f	f
72	El Dorado	0.24	10/67	6,000	11/88	8,000	2,000	3.54	21,240	(13,240)
73	El Dorado	0.23	1/83	f	11/85	5,200	f	1.08	f	f
74	El Dorado	0.26	7/74	5,000	6/89	5,000	0	2.52	12,600	(7,600)
75	El Dorado	8.71	5/86	f	3/89	9,613	f	1.13	f	f
76	El Dorado	0.56	5/73	2,500	8/90	10,000	7,500	2.94	7,350	2,650
77	El Dorado	0.23	2/62	f	8/86	4,000	f	3.63	f	f
78	El Dorado	0.24	11/74	6,000	8/86	4,000	(2,000)	2.22	13,320	(9,320)
79	El Dorado	0.24	12/73	4,000	11/88	6,000	2,000	2.66	10,640	(4,640)
80	El Dorado	0.48	8/79	10,500	2/84	14,000	3,500	1.43	15,015	(1,015)
81	El Dorado	0.55	10/74	5,500	7/89	5,000	(500)	2.52	13,860	(8,860)
82	El Dorado	0.96	3/80	f	6/83	21,600	f	1.21	f	f
83	El Dorado	0.65	7/78	14,000	1/84	18,000	4,000	1.59	22,260	(4,260)
84	El Dorado	0.35	7/70	8,000	10/86	11,500	3,500	2.82	22,560	(11,060)
85	El Dorado	0.29	7/70	8,000	1/87	11,500	3,500	2.93	23,440	(11,940)
86	El Dorado	0.28	6/76	13,000	6/85	6,000	(7,000)	1.89	24,570	(18,570)
87	Placer	0.23	1/81	f	12/89	20,000	f	1.36	f	f
88	Placer	0.92	8/78	6,027	3/87	33,000	26,973	1.74	10,487	22,513
89	Placer	0.25	10/77	8,000	8/87	12,500	4,500	1.88	15,040	(2,540)
90	Placer	0.48	4/74	5,000	9/87	12,000	7,000	2.30	11,500	500
91	Placer	12.70	2/77	f	9/84	41,000	f	1.72	f	f
92	Placer	0.26	7/77	6,000	7/90	12,000	6,000	2.16	12,960	(960)
93	Placer	0.23	4/66	f	12/89	10,000	f	3.83	f	f
94	Placer	0.25	8/77	6,000	9/91	8,000	2,000	2.25	13,500	(5,500)
95	Placer	0.22	11/69	8,500	11/88	20,000	11,500	3.22	27,370	(7,370)
96	Placer	0.25	10/79	11,000	12/88	20,000	9,000	1.63	17,930	2,070
97	Placer	0.33	1/75	9,500	12/83	21,000	11,500	1.85	17,575	3,425
98	Washoe	0.60	f	f	1/87	28,000	f	f	f	f
99	Washoe	0.16	2/82	17,800	3/89	22,500	4,700	1.29	22,962	(462)
100	Washoe	0.69	7/78	35,000	12/87	35,750	750	1.74	60,900	(25,150)
101	Washoe	0.28	9/76	6,426	5/90	25,000	18,574	2.30	14,780	10,220
102	Washoe	0.26	10/69	9,500	1/89	26,000	16,500	3.38	32,110	(6,110)
103	Washoe	0.14	8/79	31,000	1/89	29,000	(2,000)	1.71	53,010	(24,010)

(continued)

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104	Washoe	0.18	7/86	16,360	1/89	30,000	13,640	1.13	18,487	11,513
105	Washoe	0.37	1/75	8,000	12/87	19,500	11,500	2.11	16,880	2,620
106	Washoe	0.32	8/78	26,500	8/83	37,000	10,500	1.53	40,545	(3,545)
107	Washoe	0.72	3/80	70,000	7/84	35,000	(35,000)	1.26	88,200	(53,200)
108	Washoe	0.25	10/76	12,000	1/88	57,500	45,500	2.08	24,960	32,540
109	Washoe	1.11	9/75	7,164	1/88	36,000	28,836	2.20	15,761	20,239
110	Washoe	0.24	9/78	25,850	11/89	30,000	4,150	1.90	49,115	(19,115)
111	Washoe	2.00	3/80	<sup>f</sup>	2/84	45,000	<sup>f</sup>	1.26	<sup>f</sup>	<sup>f</sup>
112	Washoe	1.02	1/76	18,500	12/87	122,500	104,000	2.00	37,000	85,500
113	Washoe	0.05	5/89	9,000	10/90	40,000	31,000	1.05	9,450	30,550
114	Washoe	0.34	1/70	16,000	11/88	75,000	59,000	3.05	48,800	26,200
115	Washoe	0.40	4/82	34,000	11/88	30,000	(4,000)	1.23	41,820	(11,820)
116	Washoe	0.58	7/85	93,724	10/87	187,000	93,276	1.06	99,347	87,653
117	Washoe	0.93	5/78	23,250	7/83	25,000	1,750	1.53	35,573	(10,573)
118	Washoe	0.51	3/78	25,739	11/87	30,000	4,261	1.74	44,786	(14,786)
119	Washoe	0.13	12/87	<25,000	7/89	25,000	>1	1.09	<sup>f</sup>	<sup>f</sup>
120	Washoe	0.24	8/78	25,000	4/89	35,000	10,000	1.90	47,500	(12,500)
121	Washoe	0.38	12/85	17,664	1/88	32,500	14,836	1.01	18,180	14,320
122	Washoe	0.33	3/69	7,000	1/87	16,500	9,500	3.10	21,700	(5,200)
123	Washoe	0.18	10/78	25,000	10/89	29,000	4,000	1.90	47,500	(18,500)
124	Washoe	0.48	6/81	1,000	5/88	19,500	18,500	1.30	1,300	18,200
125	Washoe	0.34	4/85	14,953	5/88	31,500	16,547	1.01	15,103	16,397
126	Washoe	0.44	4/87	50,000	9/88	45,000	(5,000)	1.04	52,000	(7,000)
127	Washoe	0.66	10/74	17,815	11/87	65,000	47,185	2.30	40,975	24,026
128	Washoe	0.90	11/75	6,740	12/86	30,000	23,260	2.04	13,750	16,250
129	Washoe	0.33	8/77	15,000	8/83	25,000	10,000	1.64	24,600	400
130	Washoe	0.22	5/78	20,000	3/88	31,000	11,000	1.81	36,200	(5,200)
131	Washoe	0.30	6/71	7,000	1/88	31,000	24,000	2.92	20,440	10,560
132	Washoe	0.30	7/76	7,000	12/87	31,000	24,000	2.00	14,000	17,000
133	Washoe	1.00	6/64	4,500	6/88	125,000	120,500	3.82	17,190	107,810
134	Washoe	0.50	7/87	50,000	2/88	57,500	7,500	1.04	52,000	5,500
135	Washoe	0.12	5/63	<sup>f</sup>	6/89	3,600	<sup>f</sup>	4.05	<sup>f</sup>	<sup>f</sup>

(Table notes on next page)

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**Appendix III**  
**Information on 135 Forest Service Land**  
**Acquisitions in the Lake Tahoe Basin**  
**Sampled by GAO**

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<sup>a</sup>On the basis of transfer taxes paid on the property by the most recent owner, the actual sale price could be as much as \$499 lower.

<sup>b</sup>This figure does not include other costs that may have been incurred by landowners during the time they held the property such as property taxes, finance charges, community association fees, and sewer hookup charges.

<sup>c</sup>The price ratio is computed by dividing the consumer price index for the year the Forest Service acquired the property by the consumer price index for the year in which the property owner bought the property. A value of 2.0, for example, would show that the price level in the economy was twice as high when the owner sold the property as it was when he or she bought it.

<sup>d</sup>The prior sale real price adjusts for inflation by expressing that price in dollars of the year that the Forest Service acquired the property. We calculate this value by multiplying the nominal prior sale price by the price ratio.

<sup>e</sup>The price difference in real dollars measures the difference between the Forest Service's purchase price and the real, or inflation-adjusted, price that the landowner paid to acquire the property (prior sale price). Because the Forest Service acquired these properties in different years, the differences shown in this column are not comparable.

<sup>f</sup>Information was not available.

The following examples from the 135 Forest Service purchases listed above depict instances in which property owners received under the Forest Service's Santini-Burton Act program more than, less than, or the same amount as they originally invested in the properties.

- A 0.25-acre parcel in Washoe County, Nevada, which had been purchased by its owner in October 1976 for \$12,000, was sold to the Forest Service in January 1988 for \$57,500, which was the parcel's fair market value, as determined by an independent appraisal. Without considering other costs that might have been incurred while the owner held the parcel, this owner received \$45,500 more than his original investment. However, when inflation is factored into the calculation, the price difference amounted to an increase of \$32,540.
- A 0.72-acre parcel in Washoe County, Nevada, for which a limited partnership paid \$70,000 in March 1980, was sold to the Forest Service in July 1984 for \$35,000. This was the parcel's fair market value at that time, according to an independent appraisal—a \$35,000 decrease if other costs the partnership may have incurred are ignored. When inflation is factored into the calculation, the price difference amounted to a decrease of \$53,200. A representative of the partnership was advised by TRPA that because the parcel was located in a very fragile stream environment zone, there was virtually no chance that the partnership would be allowed to build any kind of structure on the property. The partnership had invested in the property in the hope that it would eventually be able to build a single-family residence for resale.

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**Appendix III**  
**Information on 135 Forest Service Land**  
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- A 0.26-acre parcel in El Dorado County, California, which had been purchased by its owners in July 1974 for \$5,000, was sold to the Forest Service in June 1989 for \$5,000—the parcel’s fair market value, according to an appraisal. The parcel was considered very environmentally sensitive because of a stream that traversed a portion of the parcel. After holding this property for almost 15 years, the owners received the same amount for the property as they had originally invested. When inflation is factored into the calculation, the price difference amounted to a decrease of \$7,600.

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# Objectives, Scope, and Methodology

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Concerned that property owners in the Lake Tahoe Basin were not being treated fairly when their land was acquired by the Forest Service, Senator Harry Reid asked us to evaluate the Forest Service's land buyout program under the Santini-Burton Act. Specifically, he asked that we determine (1) the extent to which the Forest Service had acquired properties in the basin under the act, (2) whether the classification of lands within the basin as environmentally sensitive may have adversely affected their values, and (3) the extent to which the circumstances surrounding the buyout program might involve issues related to a taking by the federal government of private property under the Fifth Amendment to the U.S. Constitution.

Officials of the Forest Service's Lake Tahoe Basin Management Unit helped us develop the universe of land acquisitions in the basin. They provided us with the universe of all Forest Service land acquisitions under the act from October 12, 1982, to February 10, 1994, which totaled 3,378 parcels. After deleting parcels that had been donated (195) and consolidating multiparcel purchases (495), we were left with a universe of 2,688 parcels, which represented Forest Service acquisitions through individual purchase agreements.

To determine the extent to which TRPA regulations may have affected the value of properties acquired by the Forest Service in the basin, we randomly sampled 135 of the 2,688 Forest Service purchases under the act. (See app. III.) Because the Forest Service could not locate two files, we chose the next two cases in our random number listing and included them in our review. Since we used a sample (called a probability sample) of Forest Service land purchases to develop our estimates, each estimate has a measurable precision, or a sampling error, which may be expressed as a plus or a minus figure. A sampling error indicates how closely we can reproduce from a sample the results that we would obtain if we took a complete count of the universe using the same measurement methods. By adding the sampling error to and subtracting it from the estimate, we can develop upper and lower bounds for each estimate. This range is called a confidence interval. Sampling errors and confidence intervals are stated at a certain confidence level—in this case, 95 percent. A confidence interval at the 95-percent confidence level means that in 95 of 100 instances, our sampling procedure would produce a confidence interval containing the universe value we were estimating.

Table IV.1 provides estimates used in the report and their 95-percent confidence intervals.



**Appendix IV**  
**Objectives, Scope, and Methodology**

**Table IV.1: Confidence Intervals for Estimates Made From Forest Service Land Purchases Sampled by GAO**

Item description	Estimate <sup>a</sup>	95-percent confidence interval
Average purchase price <sup>b</sup>	\$23,600	\$19,163 to \$28,037
Percentage of Forest Service purchases at greater than owners' purchase costs (unadjusted for inflation) <sup>b</sup>	76	68 to 83
Percentage of Forest Service purchases at less than owners' purchase costs (unadjusted for inflation) <sup>b</sup>	22	14 to 29
Percentage of Forest Service purchases equal to owners' purchase costs (unadjusted for inflation) <sup>b</sup>	3	-0 <sup>d</sup> to 5 <sup>d</sup>
Percentage of owners who acquired property before Dec. 1969 that received more than their purchase cost (unadjusted for inflation) <sup>c</sup>	90	77 <sup>d</sup> to 103 <sup>d</sup>
Percentage of owners who acquired property before Dec. 1969 that received less than their purchase cost (unadjusted for inflation) <sup>c</sup>	5	-5 <sup>d</sup> to 15 <sup>d</sup>
Percentage of owners who acquired property before Dec. 1969 that received the same as their purchase cost (unadjusted for inflation) <sup>c</sup>	5	-5 <sup>d</sup> to 15 <sup>d</sup>
Percentage of owners who acquired property after Dec. 1969 that received more than their purchase cost (unadjusted for inflation) <sup>e</sup>	73	65 to 82
Percentage of owners who acquired property after Dec. 1969 that received less than their purchase cost (unadjusted for inflation) <sup>e</sup>	24	16 to 33
Percentage of owners who acquired property after Dec. 1969 that received the same as their purchase cost (unadjusted for inflation) <sup>e</sup>	2	-1 <sup>d</sup> to 5 <sup>d</sup>
Percentage of Forest Service purchases at greater than owners' purchase costs (adjusted for inflation) <sup>f</sup>	36	28 to 45
Percentage of Forest Service purchases at less than owners' purchase costs (adjusted for inflation) <sup>f</sup>	64	55 to 72
Percentage of Forest Service purchases equal to owners' purchase costs (adjusted for inflation) <sup>f</sup>	0	We were unable to compute sampling errors because we did not observe any variation in our sample.

(continued)

**Appendix IV**  
**Objectives, Scope, and Methodology**

<b>Item description</b>	<b>Estimate<sup>a</sup></b>	<b>95-percent confidence interval</b>
Percentage of owners who acquired property before Dec. 1969 that received more than their purchase cost (adjusted for inflation) <sup>c</sup>	25	6 to 44
Percentage of owners who acquired property before Dec. 1969 that received less than their purchase cost (adjusted for inflation) <sup>c</sup>	75	56 to 94
Percentage of owners who acquired property before Dec. 1969 that received the same as their purchase cost (adjusted for inflation) <sup>c</sup>	0	We were unable to compute sampling errors because we did not observe any variation in our sample.
Percentage of owners who acquired property after Dec. 1969 that received more than their purchase cost (adjusted for inflation) <sup>g</sup>	39	29 to 48
Percentage of owners who acquired property after Dec. 1969 that received less than their purchase cost (adjusted for inflation) <sup>g</sup>	61	52 to 71
Percentage of owners who acquired property after Dec. 1969 that received the same as their purchase cost (adjusted for inflation) <sup>g</sup>	0	We were unable to compute sampling errors because we did not observe any variation in our sample.

<sup>a</sup>Percents may not total 100 because of rounding.

<sup>b</sup>Estimates apply to between 2,095 and 2,418 of the 2,688 individual land acquisitions at the 95-percent confidence level.

<sup>c</sup>Estimates apply to between 237 and 548 of the 2,688 individual land acquisitions at the 95-percent confidence level.

<sup>d</sup>Sampling error computations are not exact because of the small sample size or other characteristics of the sample results.

<sup>e</sup>Estimates apply to between 1,640 and 2,049 of the 2,688 individual land acquisitions at the 95-percent confidence level.

<sup>f</sup>Estimates apply to between 2,050 and 2,384 of the 2,688 individual land acquisitions at the 95-percent confidence level.

<sup>g</sup>Estimates apply to between 1,619 and 2,030 of the 2,688 individual land acquisitions at the 95-percent confidence level.

As agreed with Senator Reid's office, we did not try to isolate the impact of the TRPA regulatory actions from other factors that may have impacted property values. To isolate the impact of any one such factor would have been very difficult and time-consuming. Also, we used the consumer price index as a measure of inflation when comparing the prices paid to owners

by the Forest Service with the inflation-adjusted prices they had paid to acquire the properties.

To develop information on the extent to which the activities of the Forest Service in the Lake Tahoe Basin might involve implications of takings under the Fifth Amendment to the U.S. Constitution, we reviewed previous cases involving claims of takings by government entities and other documentation and spoke with attorneys involved in takings cases in the basin.

During our review, we also contacted numerous basin property owners and officials, including lawyers, real estate agents, developers, environmentalists, and present and former TRPA employees from California and Nevada who were aware of and/or had personal experiences with the development of properties in the basin. Where appropriate, their comments are included in this report.

We conducted our review between December 1993 and August 1994 in accordance with generally accepted government auditing standards.

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