

Excerpted from GAO Testimony in March 2004

National Heritage Areas Do Not Appear to Have Affected Individual Property Rights

National heritage areas do not appear to have affected private property rights, although private property rights advocates have raised a number of concerns about the potential effects of heritage areas on property owners' rights and land use. These advocates are concerned that heritage areas may be allowed to acquire or otherwise impose federal controls on nonfederal lands. However, the designating legislation and the management plans of some areas explicitly place limits on the areas' ability to affect private property rights and use. In this regard, eight areas' designating legislation stated that the federal government cannot impose zoning or land use controls on the heritage areas. Moreover, in some cases, the legislation included explicit assurances that the areas would not affect the rights of private property owners. For example, the legislation creating 13 of the 24 heritage areas stated that the area's managing entity cannot interfere with any person's rights with respect to private property or have authority over local zoning ordinances or land use planning. While management entities of heritage areas are allowed to receive or purchase real property from a willing seller, under their designating legislation, most areas are prohibited from using appropriated funds for this purpose.⁴ In addition, the designating legislation for five heritage areas requires them to convey the property to an appropriate public or private land managing agency.

As a further protection of property rights, the management plans of some heritage areas deny the managing entity authority to influence zoning or land use. For example, at least six management plans state that the managing entities have no authority over local zoning laws or land use regulations. However, most of the management plans state that local governments' participation will be crucial to the success of the heritage area and encourage local governments to implement land use policies that are consistent with the plan. Some plans offer to aid local government planning activities through information sharing or technical or financial assistance to achieve their cooperation. Property rights advocates are concerned that such provisions give heritage areas an opportunity to indirectly influence zoning and land use planning, which could restrict owners' use of their property. Some of the management plans state the need to develop strong partnerships with private landowners or recommend that management entities enter into cooperative agreements with landowners for any actions that include private property. Despite concerns about private property rights, officials at the 24 heritage areas, Park Service headquarters and regional staff working with these areas, and representatives of six national property rights groups that we contacted were unable to provide us with a single example of a heritage area directly affecting—positively or negatively—private property values or use.