

power to condemn the fee interest in any land within the recreation area. The only specific limitation on the Secretary's power is contained in subsection (e), which limits the Secretary's right to condemn property for easements for access to public property to not more than 5 percent of all private property in the area.

Subsection (c) authorizes the Secretary to acquire scenic easements, but it does not limit the Secretary's authority to such acquisitions. I would guess that this was the purpose of section 5—to limit the property acquired to scenic easements and that property which is actually required for easements for access to public property. I would also assume that the regulations which the Secretary is authorized to issue governing the use of privately owned property, under subsection (b), are intended to cover only situations where acquisition of a scenic easement is not appropriate. In other words, I doubt that the sponsors of the bill contemplate that these regulations would absolutely prohibit a use of the land, such as a residential development. Such a prohibition may deprive land of a substantial portion of its value, and certainly zoning ordinances which flatly prohibit the highest and best use of land constitute a "taking", for which the owner must be compensated. I hope that if such a prohibition is desired for an area, that the bill's sponsors expect the Secretary to acquire a scenic easement. The bill does not make this clear, however.

Senator CHURCH. At that point, are you satisfied that the testimony this morning clarifies that point? Because we dwelt on that at considerable length.

Mr. BRECKENRIDGE. I think that the testimony this morning, Senator, certainly did clarify a lot of the points which I am covering at this point. The only reason for my reiterating and running the risk of imposing on your time is to further emphasize the necessity of verification, if not through the bill, then certainly in the legislative history which has been done this morning.

Senator CHURCH. Yes. I think, too, that this point ought to be made clear in the record, Mr. Chairman, that accompanies the bill, so that there is no ambiguity on this score.

Mr. BRECKENRIDGE. Later in my testimony I will submit, and will not read, a proposed revision of section 5, which I would hope that you would want to consider if you think it is necessary.

Subsection (b) refers to review of regulations pursuant to sections 7 and 8 of the Administrative Procedure Act. In view of the fact that a thorough revision of that act is proposed in S. 158, on which hearings have been held, I wonder if a specific reference to sections of the present act is necessary, or if it may create confusion in the future.

Another question relating to such regulations is when they should be subject to court review. My attorneys tell me that the problem of "ripeness for judicial review" is a difficult one, and it is often impossible to secure court review of regulations until after they have been violated, which could create serious problems of administration here. As an example, regulations might be promulgated prohibiting any subdivision of a large area. Clearly such a regulation will substantially reduce the value of land which might otherwise have been subdivided. Such a flat prohibition amounts to a "taking" of property, for which the Constitution requires compensation. Yet there is a large and respectable body of case law which suggests that an affected landowner may not challenge the validity of such a regulation until