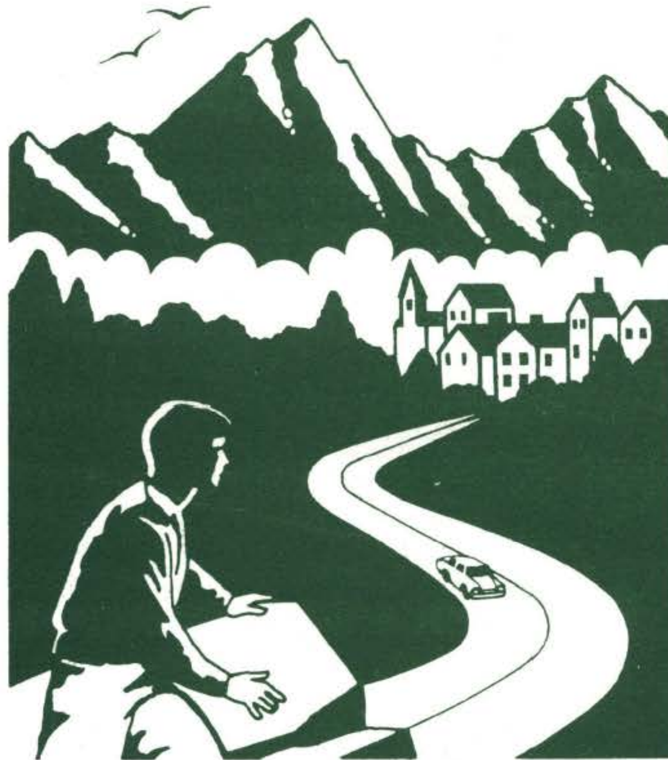
U.S. Department of Transportation

Federal Highway Administration

Final Case Study for the National Scenic Byways Study

Scenic Resource Protection Techniques and Tools



September 1990

NOTICE

This document is disseminated under the sponsorship of the U.S. Department of Transportation in the interest of information exchange. The contents of this report reflect the views of the authors who are responsible for the facts and technical data herein, as well as, the typographical and editorial accuracy of the information. The contents do not necessarily reflect the official policy of the U.S. Department of Transportation.

Final Case Study

for the

National Scenic Byways Study

SCENIC RESOURCE PROTECTION TECHNIQUES AND TOOLS

SEPTEMBER 1990

Prepared for
The Federal Highway Administration

Submitted by
Scenic America

**216 7TH STREET, SE
WASHINGTON, D.C. 20003
202-546-1100**

TABLE OF CONTENTS

EXECUTIVE SUMMARY 4

RECOMMENDATIONS 5

1. INTRODUCTION 6

2. TYPES OF SCENIC LANDSCAPE VIEWS. 7

3. DESCRIPTIONS OF SCENIC RESOURCE PROTECTION TOOLS 9

3.1 LAND ACQUISITION. 9
3.1.1 Fee Simple Acquisition 9
3.1.2 Lease-Purchase Agreements. 9
3.1.3 Bargain Sale 9
3.1.4 Donation 10
3.1.5 Land Trusts. 11
3.1.6 Revolving Funds. 12

3.2 LAND TRANSFER CONTROLS. 12
3.2.1 Purchase of Development Rights 14
3.2.2 Land Banking 15
3.2.3 Transfer of Development Rights 15
3.2.4 Deed Restrictions. 16
3.3 LAND USE CONTROLS 16
3.3.1 Conservation and Scenic Easements. 16
3.3.2 Zoning Ordinances. 18
3.3.3 Overlay Zoning 18
3.3.4 Scenic Highway Zoning Districts. 19
3.3.5 Agricultural Districts 21
3.4 LAND DEVELOPMENT CONTROLS 22
3.4.1 Subdivision Regulations. 22
3.4.2 Cluster Development. 23
3.4.3 Development Moratoria. 24
3.5 TAX INCENTIVES. 24
3.5.1 Preferential Assessments 25
3.5.2 Circuit Breaker Tax Credits. 26
3.6 PLANNING. 26
3.6.1 Comprehensive Plans. 27
3.6.2 Environmental Reviews. 28
3.6.3 Site Plan Reviews. 28
3.7 SIGN CONTROL. 38
3.7.1 Billboard Bans 30
3.7.2 Billboard Moratoria 30
3.7.3 Amortization of Nonconforming Signs 31
3.7.4 Controlling Signs Along Federal Highways . . 31
3.7.5 Local Billboard Control Tools 32
3.7.6 State Billboard Control Tools 34
3.7.7 On-Premise Sign Control. 34
3.8 VIEW PROTECTION 35
3.8.1 View Preservation Ordinances 35
3.8.2 Tree Protection Ordinances 38

3.9 VOLUNTARY APPROACHES. 38
3.9.1 Notifications Programs 39
3.9.2 Recognition Programs 40
3.9.3 Nonbinding Agreement Programs. 40

4. APPLICABILITY OF THE TOOLS 41

APPENDICES

Appendix A: Criteria for Accepting Property Gifts 43
Appendix B: Example of Scenic Easement, Petosky, MI 44
Appendix C: Example of Scenic Highway Districts Ordinance . . . 47
Charleston County, SC
Appendix D: Typical Local Government Comprehensive Plan 50

Table 1: Evaluation of Scenic Resource Protection Techniques
for Feasibility and Application 52

EXECUTIVE SUMMARY

In an effort to protect the scenic, cultural and historic resources found along designated scenic corridors, many communities have adopted a wide variety of scenic resource protection techniques. The common element among all of these techniques is the overarching principle of conservation. Communities throughout the nation are coming to recognize that places of outstanding beauty and character often occur naturally, however, these places do not remain that way without determined efforts to sustain them. Increasingly, communities are taking conscious steps to protect the scenic, cultural, and historic resources found within their boundaries.

This study identifies a range of scenic resource protection techniques now being used in support of scenic byway programs and other related resource management programs. The techniques are portrayed in a manner that informs state highway departments, local governments, and community organizations of their application in scenic byway programs. The study's analytic approach creates a framework for relating the various techniques and tools to a range of scenic environments, and to a series of applicability criteria. This framework then forms the basis of a matrix which identifies where a scenic resource protection tool might be applicable, how effective it might be in a given circumstance, what costs are involved, and what requirements are needed for its implementation.

Scenic components cross-referenced in the matrix are:

1. Foreground (scenic focal points), middleground (scenic "viewshed"), and background (panorama) scenic view types as found in the scenic environments which are consistent with the AAA's classification of scenic landscapes. These scenic environments include: Quintessential Landscape Scenery (the "best" characteristic features of scenery in a given region), Natural Landscape Features (strikingly scenic natural features), Cultural Landscapes (areas within a region that are unique compared to the general scenery in the remainder of a region), and Historic Landscapes (sites commemorating historic events or architectural features).

2. Tool applicability criteria, including its perceived effectiveness, cost to implement, time frame, administrative feasibility, legal or practical precedent, form of management, and level of government.

3. The scenic resource protection tools themselves, including the categories of Land Acquisition Approaches, Land Transfer Controls, Land Use Controls, Land Development Controls, Tax Incentives, Planning Techniques, View Protection, Sign Control, and Voluntary Approaches.

This study serves as a "primer" on scenic resource protection tools for scenic highways. Tools in each of the categories outlined above are described and placed within the application framework to allow for both an understanding of how the tool works as well as where the tool might readily be applied.

RECOMMENDATIONS

Based upon communications with successful scenic highway program administrators and polled members of the conservation community, in order to protect the scenic, historic and cultural characteristics of designated scenic highways, the following steps should be taken when developing a scenic highway program or designating new scenic highway corridors:

1) DEVELOP A CORRIDOR MANAGEMENT PLAN: Communities located along designated scenic highways and roadways should develop management plans which outline ways in which the scenic, historic and cultural characteristics of the road corridor will be maintained while accomodating new development and increased tourism. Corridor Management Plans should include:

   - visual inventory and viewshed mapping to identify important scenic, historic and cultural resources to be protected
   - identification of natural resource protection zones
   - comprehensive plans that identify future development zones
   - commerical and residential site development requirements and design guidelines
   - roadway reconstruction guidelines
   - roadway safety improvement guidelines

2) ESTABLISH A TREE PROTECTION POLICY - The clear cutting of trees immediatedly adjacent to the roadside should be prohibited along designated scenic highways. However, the clearing of vegetation to create or restore obscured scenic views should be allowed if such clearing is consistent with the objectives outlined in visual inventory identified in the Corridor Management Plan.

3) ESTABLISH VISUAL POLLUTION CONTROLS - New off-premise outdoor advertising structures (other than approved uniform motorist information signs) should be prohibited on designated scenic highways. Limitations on size, height and number of new on-premise signs should also be developed. Likewise, junkyards, gravel pits, mines, etc., within the scenic corridor viewshed should also be prohibited or buffered.

4) ESTABLISH A SYSTEM OF UNIFORM MOTORIST INFORMATION AND DIRECTIONAL SIGNAGE - A uniform motorist information system should be developed to provide tourists with needed information about services and attractions. Highly successful motorist information signage programs now exist in Maine and Vermont.

5) IDENTIFY SOURCES OF FUNDS FOR ACQUISITION OF SCENIC EASEMENTS IN KEY RESOURCE PROTECTION ZONES - In order to protect certain critical parcels within the scenic viewshed, it may be necessary to acquire scenic easements or purchase critical "gateway" parcels along the designated scenic corridor.

6) PURCHASE DEVELOPMENT RIGHTS OR SCENIC EASEMENTS AS PART OF RIGHT-OF-WAY ACQUISITION IN ROAD EXPANSION OR NEW CONSTRUCTION

1. INTRODUCTION

A scenic corridor includes much more than just the roadway pavement, right-of-way area, and adjacent roadside. Included within its boundaries are elements that make up outstanding scenic vistas as well as the facilities for enjoying them. The features found within these areas may include lakes, streams, and wetlands; striking forest lands; beautiful desert or mountain views; pastoral views and vibrant urban scenes; and cultural and historic resources. In areas of flat terrain or on high ground, the corridor may extend for miles in horizon-horizon vistas. The width of scenic corridors may narrow considerably in valleys or roadways lined with dense forests or other foliage.

The aesthetic quality of scenic corridors is easily compromised however. Strip commercial development, garish signs, billboards, poorly designed residential development, and incompatible uses such as unbuffered gravel pits, junkyards, mines and industrial facilities can irreparably mar an otherwise attractive landscape. On the other hand, a program that ensures appropriate design for commercial development, appropriate signage, buffered industrial facilities, and encourages creative residential siting can improve property values and increase tourism.

Due to the fact that many rural scenic corridors are still relatively free of development, these corridors would seem to be the easiest to protect. The aesthetic values inherent in such natural areas are readily appreciated by a broad cross-section of the community, and, in areas marked by rugged terrain, urban infrastructure is often not available. Thus, the spread of incompatible development along scenic roadway corridors is hindered by both community values and significant development constraints. However, scenic resource protection efforts can be particularly complex because scenic roadways typically cross several political boundaries, and often require regional planning approaches by communities with little such experience. Additionally, the scenic resources present in the scenic areas sometimes make them attractive to those seeking to capitalize on the unique drawing power of the region.

In an effort to protect the scenic, cultural and historic resources found along designated scenic corridors, many communities have adopted a wide variety of scenic resource protection techniques. The common element among all of these techniques is the overarching principle of <u>conservation</u>. Communities throughout the nation are coming to recognize that if today's scenic roads are going to provide tomorrow's recreational opportunities and become future tourist attractions, the scenic, cultural and historic resources found along the corridor must be protected.

As such, this study identifies a wide range of scenic resource protection techniques which can be used to support scenic byway

programs. For example, included within the study are discussions about scenic highway district ordinances now in use in Austin, TX and Charleston County, SC. Austin has enacted special regulations for roadside land along designated scenic roadways. Land use regulations depending upon the character of the roadway limit or prohibit signs, development density, heights, site design, landscaping, and road access. The Charleston County program designates corridors in which views of open landscapes must be protected, outdoor advertising is prohibited, and vegetative buffers must be preserved.

By describing these and other techniques being used to protect scenic, cultural and historic resources, and by describing the types of scenic landscape views which can be protected, this study serves to inform state highway departments, local governments, and community organizations how the scenic quality of our byways can be protected.

2. TYPES OF SCENIC LANDSCAPE VIEWS

Generally, scenic views that can be considered for protection fall into three categories: Panoramas, or "background" views, landscape scenes, or "middleground" views, and focal points or "foreground" views.

A Panorama can be characterized as a distant, broad-sweeping view that fills the periphery of a traveler's vision. Panorama's usually occur at high points on a road where foreground scenery has been reduced to provide a wide perspective. Elements of a panorama view include:

- Unique landforms
- Landforms typical to a region
- Large surface bodies of water
- Unique native vegetation
- Native vegetation typical to a region
- Typical agricultural patterns
- Unique man-made structures/patterns
- Broad color patterns

A landscape scene can be characterized as any of several views experienced at a closer distance than a panorama. Scenes typically cover a more narrow perspective of a traveler's vision, but have a long distance dimension to them. Elements of a landscape scene would include:

- Rock outcroppings
- Cliff or bluff
- Unique regional landform
- Moving water body

- Vegetation edge
- Isolated vegetation
- Mixed patterns of vegetation
- Crop patterns
- Agricultural structures and operations
- Native vegetative color
- Man-made color/patterns

A focal point or foreground view are those which are found in such a way that the viewer is drawn to them. Foreground views cover only a few degrees of the field of vision. Elements of foreground views would include:

- Edge of landforms
- Soil/rock patterns
- Unique landscape forms
- Moving water and individual water features
- Water edge
- Agricultural patterns
- Agricultural operations
- Edges of agricultural patterns
- Man-made structures
- Unique man-made structures
- Color of native vegetation
- Man-made color/patterns

3. DESCRIPTIONS OF SCENIC RESOURCE PROTECTION TOOLS

3.1 LAND ACQUISITION APPROACHES

3.1.1 Fee Simple Acquisition

In some cases, property deserving scenic protection may be acquired outright: where communities need additional parkland for public recreation, or where a property is of such outstanding scenic or historical importance that it can be adequately protected only through public ownership in "fee simple." Title of land in "fee simple" is an absolute holding of real property without any limitation to ownership.

Acquiring property, whether by purchase or through donation, is typically the most expensive way to protect it. Costs are not limited to acquisition but also involve perpetual management and maintenance, unless the property is resold or leased to others who assume those responsibilities. In some states, nonprofit organizations must pay property taxes as well, or, if they do not, there may be local sentiment against removing a property from the tax rolls.

Fee simple acquisition is not the only way to acquire property; an organization may employ a number of creative techniques and economic incentives that may make acquisition more affordable for the buyer and more attractive to a property owner. Installment purchases, for example, can distribute an outlay of funds over time, and in some cases enable a seller to spread a capital gains tax liability over several years.

3.1.2 Lease-Purchase Agreements

Lease purchase agreements are another approach to acquiring property outright. In this case, rent paid under the terms of a lease is applied toward an agreed-upon purchase price.

A lease-purchase agreement, like an option, is useful when it is necessary to act quickly when guaranteed financing is not available. A lease-purchase agreement may be attractive to an owner who is anxious both to sell and to end responsibility for maintaining a property until the sale is consummated.

3.1.3 Bargain Sale

A bargain sale, sometimes called a "donative sale," allows for the acquisition of a property partly as a purchase and partly as a gift by obtaining property at less than its

fair market value. The seller sets a price below the appraised value of the property and considers the difference to be a gift, for which a charitable income tax deduction may be claimed. The seller's compensation, therefore, is a combination of cash and a reduced tax burden.

Provisions for charitable donations contained in the Internal Revenue Code make it possible to deduct from one's income and estate the value of land, or of interests in land, which are donated to a public body or a qualified private non-profit corporation. The donation of development rights in perpetuity (that is, the granting of a "development" or "conservation" easement) qualifies for such tax treatment at the present time.

Donation of real property may be financially attractive to a landowner since he can claim a charitable deduction against his income equal to the fair market value of his gift as determined by a qualified appraiser. The owner would also avoid any capital gains tax and realtor's fee if he donated it instead of selling it.

A donor may make a full donation of his development rights, or he may sell his development rights to a public agency or charitable organization at a reduced or "bargain" price (called a bargain sale), and claim a charitable donation approximating the amount of the reduction in price. The bargain sale may be advantageous to donors who have immediate need for cash or who are unable to take full tax advantage of a donation of the complete property interest.

The Big Sur Land Trust in California used a bargain sale when a scenic 3,040-acre ranch came on the market. With a conservation-minded buyer providing the financing, the trust purchased the land at a bargain--giving the owner, a developer, a tax deduction--and immediately conveyed the property to the buyer. Before the transfer, the trust added stringent restrictions on development to the deed, plus a right of first refusal and a provision for access to the land by the University of California for educational and scientific purposes. The buyer was pleased to be able to protect an important site along a famous part of the California coast and to give the trust a boost in getting established.

3.1.4 Donation

Nonprofit organizations and local governments occasionally receive gifts of property through a donation or bequest. Organizations should encourage donors to inform them in advance of their plans for a bequest in order to assure that it is appropriate and to discuss financial arrangements for the property's maintenance and operation.

Donations with a reserved life estate, also referred to as a life tenancy, are used by individuals who wish to continue to own and live on their property until their death or the deaths of specific heirs, at which time the property is received by a nonprofit organization or government agency. The donor is eligible to deduct the value of the gift, called a "remainder interest," at the time it is made, although the recipient will not actually take control until the donor or the donor's heirs die.

A reserved life estate may present management problems, since the owner continues to occupy the property. Although the organization has the right to see the property is kept in the condition expected upon final transfer, a management agreement or conservation easement may help to prevent problems or misunderstandings by specifying the organization's expectations.

See Appendix A, "Criteria for Accepting Property Gifts," for a list of representative guidelines for receiving property as a gift.

3.1.5 Land Trusts

Land Trusts are usually established to protect areas of significant natural diversity, unique scenic quality or important recreational opportunities. Some have engaged in historic preservation or farmland protection as well. A land trust holds land and other property rights for the benefit of the public and often undertakes educational, recreational, and scientific activities.

As private organizations, land trusts have considerable flexibility in the way they can acquire property, especially in their ability to take risks and to act quickly to buy land before it is sold for development. Many, such as the Jackson Hole Land Trust of Wyoming and the Big Sur Land Trust, take care to remain neutral on community issues--as compared to the traditional activism of some environmental organizations--to guard against alienating potential donors from a cross-section of the community.

Knowing just what should be protected is an important aspect of developing a property-protection program. An environmental inventory and scenic resources inventory should form the basis of the necessary decisions. Developing a set of general criteria in advance of such decision-making can aid the organization in accepting or declining a gift and in focusing its efforts on encouraging particular owners to donate, sell, or consider some other kind of protection.

3.1.6 Revolving Funds

A revolving fund uses the strategy of keeping funds ready to use in the event that a desirable property should suddenly become available. The reserve fund is repaid once the property is sold--that is, once it is "revolved." This approach contrasts with the Land Trust, which as a nonprofit subsidiary to a "parent" organization, is usually independent and may keep some of its property indefinitely.

Revolving funds are used to purchase threatened properties which are then sold to sympathetic buyers who agree to manage, develop, or restore the properties in accordance with deed restrictions. Resale of the properties, either "as is" or with improvements, replenishes the organization's funds and allows the money to be "revolved" to new projects. Tax-exempt status from the IRS enables an organization that is operating a revolving fund to sell conservation properties without being liable for capital gains taxation.

Related to the idea of a revolving fund is "pre-acquisition" or "passthrough," an approach involving a partnership between a nonprofit organization and a government agency that ultimately will acquire a property. The nonprofit organization buys it, if possible in a bargain sale, in advance of an agency's ability to come up with the funds. The more flexible nonprofit organization can move quickly when a property comes on the market, and then cover its cost when it sells the property to the agency, which permanently protects it. National groups such as the Nature Conservancy and the Trust for Public Land have used this approach in working with park agencies, the U.S. Fish and Wildlife Service, and the U.S. Forest Service.

3.2 LAND TRANSFER CONTROLS

In response to concerns about rapid development, and reflecting a view about uncompensated restrictions on development such as exclusive agricultural zoning, many local governments have turned to the idea of acquiring less-than-fee interests in land in order to control its use.

The objectives of scenic farmland or environmental preservation may be served by removing the development rights from the bundle of rights which comprise full-fee ownership of farm property.

Fee simple ownership (the full ownership) of land may be defined as a set of interests or rights: the right to keep others off the land; the right to sell or bequeath it; the right to use it for farming, forestry, or outdoor recreation; the right to build structures on or beneath it; etc. The

right to build on or beneath the land is known as the development right or rights. They are, of course, limited by restrictions embodied in health and building codes and in whatever zoning that may exist.

The separation of development rights from the property and their is equivalent to the acquisition of an easement on the property. Thus, the acquisition of development rights can be seen as the acquisition of a development, conservation, or scenic easement. These are known as negative easements because they simply prevent the owner from doing something with his land (that is, developing it). Often the easement instrument will also specify that the holder of the easement may enter on the land to determine whether the owner is abiding by the restricting of the easement. Each easement can be tailored to the parcel it applies to, specifying just what amounts and types of development will not be allowed.

Development rights, and all other less-than-fee interests, apply specifically to each parcel of property. As such, their removal must be accomplished parcel-by-parcel and recorded with each deed. The resulting lien on the property typically "runs with the land," that is, it is binding on subsequent purchasers and can be enforced against them in perpetuity by the agency or organization which holds the development rights.

Easements can be more easily enforced if they are "appurtenant," that is if they adjoin and benefit another property of the holder of the easement. Therefore, public agencies may purchase a small parcel adjacent to land over which they hold an easement in order to meet this significant legal requirement. Easements held by owners who do not own land which is contiguous are called "easements in gross."

The value of the development rights is defined as the difference between market value of the land and its value solely for agricultural purposes. Both the absolute value of development rights and their value as a percent of market value increase as development pressure increases.

There are two basic approaches to acquiring development rights. The first is to acquire rights directly through purchase or donation. The second is to purchase the property in full fee, impose restrictions on development, and then sell or perhaps lease the land subject to the restrictions. Although the second approach involves more familiar procedures than the first, it has not been commonly used in the U.S. Purchase of development rights (PDR) is the typical approach in this country.

3.2.1 Purchase of Development Rights

This approach can be described as purchase of the right to develop from owners of specific parcels, leaving the owner all other rights of ownership. The price of the rights is the reduction in the market value of the land as a result of the removal of the development rights. The remaining value of the land is the "farm or conservation or scenic use" value.

A voluntary program for the purchase of development rights will work only if landowners are willing to sell their development rights and if the public is willing to spend the money necessary to purchase them. Incentives for landowners and for the public are, therefore, integral to all PDR programs.

For instance, farmers who wish to stop farming their land and non-farmer-owners may be less interested in selling their development rights and retaining residual ownership rights to their land. Sale of development rights may, however, prove beneficial to them also. Sale of his development rights might enable a retired farmer to continue to live in his farmhouse and be assured that his farmland will remain undeveloped. He could then rent his fields to another farmer, or sell them to a farmer who could afford a price reflecting the absence of the right to develop. The possibility of selling development rights may also be attractive to a non-farmer owner whose motive for ownership is the enjoyment of the country landscape. Such an owner, with no intention of developing his property, may be happy to exchange his development rights for cash.

Programs of purchasing development rights are not likely to be enacted and implemented unless there is strong support for the goal of preserving land which has scenic value, and the purchase of development rights is viewed as the only way to achieve the goal.

Familiar views of well-kept orchards, maturing field crops, grazing cattle, and other aspects of farming constitute a beloved landscape heritage for many people. The attachment to a farm's scenic value and cultural heritage is heightened if the farm is nearby and familiar to many voters in the jurisdiction. So also is the possibility of other types of benefits from retention of the farmland. Reasons for local support for particular projects which go beyond protection of farmland for its own sake include: maintenance of spectacular views of surrounding countryside, the addition to the town's inventory of protected open space, the use of a farm property by local sportsmen through the courtesy of the owners, and the preservation of environmentally important farms which currently produce products for local consumption. Protection

of scenic open space is an avowed purpose of virtually all PDR programs.

3.2.2 Land Banking

Land banking consists of a public body purchasing extensive areas of land at rural use values, designating some of it, such as prime farmland, for permanent resource use, selling or leasing it with restrictions on use, and selling or leasing other areas for urban development. In effect, the public acts as a large-scale real estate developer, constructs all necessary roads and utilities, and then covers its costs by selling the land at appreciated values. Since the land is all publicly owned before development, the public is able to designate the future use of all land and sell it with appropriate restrictions. Thus, it could not only prohibit development on scenic lands or prime farmlands but also provide sufficient sites for necessary urban development and provide them in locations which would be the least disruptive to scenic and agricultural values.

Land banking can have several primary benefits. The increase in land values resulting from public development decisions and investments will accrue to the public-at-large rather than to individual landowners who hold key sites, and specific sites can be put to their most appropriate use rather than to uses dictated by the costs of each site, since the costs of acquisition and development can be averaged over a broad area. A land banking program, however requires substantial funds and a long-term commitment.

Land banking has been used extensively in Europe, especially in Sweden, Denmark, and France. It has not been widely used in the United States, however.

3.2.3 Transfer of Development Rights

An innovative method of reducing the public costs of acquiring development rights is to shift the responsibility for purchasing rights from the government to private developers. Such a procedure is known as the transfer of development rights (TDR). Where in a purchase of development rights program the development rights are purchased and retired, under TDR they are purchased and used in another location.

In the classic TDR system, preservation districts and development districts are identified. Development rights are assigned to owners of land in the preservation districts in a systematic manner. However, owners of land in the preservation district are not allowed to develop, but instead may sell their development rights to owners of land in the

development districts, who may use these newly acquired development rights to build at higher densities than normally allowed by the zoning. TDR systems are intended to maintain designated land in open uses and compensate the owners of the preserved land for the loss of their right to develop it.

TDR programs generally recognize that in order for a transaction to be completed, three conditions must be met: 1) The owner of land in the preservation area must have an incentive to sell his rights for transfer rather than to exercise them by developing his land; 2) The developer must have an incentive to acquire rights rather than to build under the usual density restrictions of the existing zoning; and 3) Neighbors of the potential development must have some assurances that excessive densities will not result from the transfer.

3.2.4 Deed Restrictions

Covenants (also called deed restrictions) pertain to restrictions imposed on subsequent owners when a property is transferred, as opposed to easements, which can be created without transfer of the fee title. For organizations, covenants operate in the same fashion as easements and are commonly used with limited development and revolving funds. (An individual transferring a property to another owner can use a covenant instead of an easement to impose restriction on the use and development of a property but the covenant is generally unenforceable once the transfer dies.)

3.3 LAND USE CONTROLS

3.3.1 Conservation and Scenic Easements

The interest held by a property owner is like a "bundle" of rights, each associated with the property. Such rights include the right to farm, to extract minerals, to cut timber, and to do anything else with the property unless prohibited by law. These rights can be separated from the "dominant estate" and transferred to other parties as "less-than-fee interests." An easement is one such less-than-fee interest.

In granting an easement, an owner gives up some of the rights in a property, as specified in the deed of easement (the legally recorded document); that is, the owner agrees to certain restrictions in what could otherwise be done with the property. For example, an owner can sell to a mining company the right to extract ore or give a neighbor the right to cross a field; easements covering mineral rights and rights-of-way have been in use for centuries.

Under a scenic or conservation easement, the owner might give up all or most of the rights associated with construction on the property--often called the "development rights"--or the rights to remove vegetation or alter building exteriors. The property owner continued to experience the rewards and responsibilities of ownership, and the property can still be sold, rented, bequeathed, or otherwise transferred while subject to the easement.

Easements can be condemned--that is, purchased at appraised value without the owner's consent--a power generally available only to governmental entities and public utilities. Although condemnation is used most frequently to obtain rights-of-way, it can also be used for conservation easements.

A conservation or scenic easement is an agreement between a property owner and the holder of the easement governing treatment of the property by current and future owners. Such an agreement allows a property owner to continue owning and using a property while assuring its protection. Easements are an alternative to owning property outright or to such governmental regulation as zoning. Owning property outright may not be necessary if the owner can give it proper stewardship and if public use is not desirable; governmental regulation usually cannot be tailored to protect specific aspects of a property and cannot impose the perpetual restrictions an easement can.

Easements can protect land, buildings, or both. Although an easement may be called a "scenic," "open space," "conservation," "facade," or "historic preservation" easement, the name has more to do with the kind of property it protects than the way it works. Easements have been used extensively across the United States, to protect buildings and their settings in rural villages such as Waterford, Virginia and Harrisville, New Hampshire; scenic rural areas such as Jackson Hole, Wyoming, the Great River Road in Wisconsin, and the Big Sur coastline in California; and farmland in such places as King County, Washington, and Carroll County, Maryland.

Easements have also been used to protect such other sensitive environmental resources as watersheds, marshes, unique geological formations, and habitats for endangered species. The first conservation easement in the United States was granted more than a hundred years ago in Massachusetts. Such easements have become widespread since the early 1960s, when the IRS declared that a gift of an easement is tax-deductible.

Technically, an easement is a legally enforceable interest created by the transfer of some of the rights in the property and is recorded in local land records. Conservation

easements are called "conservation restrictions" according to the law in some states.

The value of an easement for tax purposes is usually the difference in the value of the property before and after the grant of the easement. In addition to reducing a donor's federal and state income taxes, an easement may reduce an owner's local property taxes. This varies, of course, from state to state and from one locality to another. Conservation easements can be either donated or sold. In most cases, nonprofit organizations obtain easements as donations and government agencies purchase them.

See Appendix B, for an example of a scenic easement from Petoskey, Michigan.

3.3.2 Zoning Ordinances

A zoning ordinance usually has two parts: an explanatory text and a map showing the boundaries of each zoning district. The text includes references to appropriate state enabling legislation, legal definitions, provisions for relief in certain cases, and procedures for appeal. It also includes a carefully written statement of purpose for each category of zoning, enumerating both permitted and prohibited uses. Boundaries between zones usually follow human-made borders, such as roads, or the edges of significant natural features, such as flood plains, steep slopes, or wetlands.

A basic zoning ordinance defines residential, commercial, industrial, and agricultural uses and designates specific areas for each use. Uses in each zone can be exclusive or cumulative. Exclusive-use zones allow only those uses specified by the ordinance. Unrestricted zones allowing multiple uses are possible but do not allow for more specific regulation of uses as is possible under exclusive use.

Many agricultural zones, for instance, permit non-farm activities to the extent that they are virtually holding categories for "vacant" farmland (which may have significant scenic value) until some kind of development comes along. Such a zone seldom protects farmland; it is therefore misleading to call them "agricultural zones." Most ordinances also include a "grandfather clause" that allow nonconforming uses (existing uses that do not comply with zoning ordinance) to remain where they are or to be phased out ("amortized") by a specified date or when the property is sold. Such amortization periods often apply to billboards and junkyards.

3.3.3 Overlay Zoning

Several major criticisms apply to the use of traditional zoning and subdivision regulations. First they are often inflexible. A subdivision ordinance's prescribed solutions to common design or engineering problems may be more expensive than alternatives appropriate for unique site characteristics. For instance, an ordinance may call for paved gutters for drainage. In relatively level areas, however, grassed swales allow for maximum absorption of storm-water runoff on site and may be cheaper. Applying for special exemptions, variances, or zoning changes to avoid inflexible standards is frequently cumbersome, especially for small projects, where such maneuvering can be burdensome for local property owners.

A second difficulty with zoning is that different uses are typically segregated. This does not always protect a community's character or its scenic environment. Moreover, it may often be more convenient to permit facilities such as a grocery store or veterinary clinic to locate in an agricultural area or to intersperse some multiple family housing with single family houses. In rural areas especially, with development typically scattered over some distance, traditional zoning can create seemingly arbitrary or unnecessary exclusions of uses.

Many communities today prefer to use ordinances that offer more flexibility and more land protection. Relatively new tools such as performance zoning are being used in some communities as alternatives to traditional zoning and subdivision regulations.

Local governments have used overlay zoning (sometimes called "critical area zoning") to protect certain resources found throughout the community regardless of zoning, such as steep hillsides or a scenic river. Overlay zoning does not affect the density or use regulations present under existing zoning; rather, it is superimposed over a community's various zones, creating an additional set of requirements to be met when the special resources protected by the overlay would be affected by a proposed change. Designation and protection of historic districts and sites is a kind of overlay zoning. The designation and protection of shorelands is another example.

3.3.4 Scenic Highway Districts

The basic purpose of the Scenic Highway District is to conserve and enhance the natural beauty adjacent to and along our scenic corridors in conjunction with the existing zoning classifications. Scenic districts seek to prevent unsightly developments which mar or detract from the natural beauty by exercising reasonable control over the land within the restricted areas.

Scenic districts are intended to eliminate, as much as possible, undue harshness to the eye and general chaos that could develop along roadways and to insure a pleasant view free from clutter and/or visual blight.

Scenic districts are also intended to protect and perpetuate a local community's scenic and cultural heritage.

The Planning Board and/or County Council may recommend and the County Council may adopt amendments to the zoning map and establish Scenic Highway Districts.

A scenic highway zoning district can be superimposed over the existing zoning district classifications assigned to the area. All uses normally permitted for the existing zoning category as prescribed by the ordinance continue to be permitted with the exception of prescribed limitations.

In addition to the regular criteria prescribed for a given zoning district by these or other lawful laws or regulations, basic protection criteria should be imposed upon any district selected for a Scenic Highway classification.

1. The designated area should be maintained free of off-premise outdoor advertising signs and authorized accessory signs may not be freestanding until a uniform design has have been approved.

2. Dumps established for the disposal or storage of fill, gravel, pipe, ashes, trash, rubbish, sawdust, garbage, offal, or any unsightly or offensive material should not be permitted.

3. Salvage yards, used car lots, mobile home sales, or any other activity not visually attractive should not be permitted.

4. Trees, six inches in diameter or over, or shrubs should not be destroyed, cut or removed except when cutting is necessary for the maintenance or enhancement of beautification of the district. The intention is to preserve the natural beauty of wooded areas as far as is reasonably possible.

5. General farming, including the addition or expansion of farm buildings, is normally permitted and encouraged. However, farms operated for the disposal of garbage or related materials are often prohibited.

6. New residential, commercial, and industrial uses should be carefully planned in order to retain an open land

appearance and prevent desirable views from becoming obstructed.

3.3.5 Agricultural Districts

Agricultural districts are legally recognized geographic areas whose formation is initiated by one or more farmers and approved by one or more government agencies. The districts, with their benefits and obligations, are created for fixed but renewable periods of time ranging from four to ten years. In all programs except New York's, land cannot be included in an agricultural district without the owner's written permission.

Agricultural districting programs are based on the propositions that if farmers are given incentives to join in the voluntary creation of districts of significant size where farming would be the only activity, and if they are protected against many of the factors which might otherwise make it undesirable, unprofitable, or impracticable for them to farm, they will be able to keep their land in agricultural use. The formation of an organization initiated by farmland owners that is dedicated to protecting and promoting farming in a specific geographical area will, it is hoped, strengthen the position of agriculture in the districted area and in the community as a whole.

Agricultural district programs seek to reduce conversion of farmland and may include the following elements:

A. Parcels enrolled in districts are eligible for real property tax assessment on the basis of agricultural use value as opposed to fair market value.

B. Land in districts is protected from enactment of local government ordinances that would abate farm nuisances by restricting normal farming practices.

C. Public expenditures that would promote non-farm development in agricultural districts are restricted.

D. Agencies must give consideration to alternative areas before acquiring farmland within districts, either by purchase or by eminent domain.

E. The power of public agencies to impose special assessments on districted farmland is limited where the improvements involved do not directly benefit the farm.

F. State agencies are mandated to modify their administrative regulations and procedures so as to promote the viability of farming within agricultural districts.

G. Cities are limited in their capacity to annex prime farmland.

H. Farmers are required to use sound soil and water conservation and management practices.

I. A limit is placed on the annual rate of increase of local tax levies.

J. State government compensates local governments for losses in tax revenues as a result of reduced assessments on farmland.

K. Municipalities must regulate adjacent developments so as to reduce conflicts.

L. Conversion is restricted by zoning land in agricultural districts or by requiring owners to sign agreements not to develop for the duration of the district's term.

M. State and local governments are authorized to purchase the development rights to such land and, thus, both prevent conversion and compensate owners for the loss of the land's development potential.

3.4 LAND DEVELOPMENT CONTROLS

3.4.1 Subdivision Regulations

While zoning governs the use of land in the community, including the intensity of use, subdivision regulations control the design of new development that is permitted, including functions such as traffic circulation or drainage. Specifically, a subdivision regulation sets standards for the division of larger parcels of land into smaller ones, including specifying the location of streets, open space, utilities, and other improvements.

Used in concert with a zoning ordinance, the subdivision regulation can be an important scenic conservation technique. Although the word "subdivision" is often used to apply to a housing development, subdivision regulations can apply to any division of land. In fact, subdivision regulations came about to make "platting," or legal recordation of land subdivision, more orderly.

Subdivision and subsequent development affect a community's character, its natural resources, and its public services. Good design and engineering standards mandated by subdivision regulations can go a long way to lessen the negative impacts of development, especially its visual effects, even where zoning permits intensive development. For

example, regulations can mandate that strips of natural vegetation be retained or added to create open space buffers between residential areas and agricultural land, or can encourage the planting of street trees or other vegetation that will eventually help a new development visually blend into the rural landscape.

A subdivision regulation usually contains a set of definitions, procedures for filing applications, approval procedures, design standards, and provisions for general administration.

An important part of a subdivision regulation is its performance guarantees, such as an escrow account or secured bond, which ensure that development will take place only as it was approved. The guarantees permit the community to use designated funds to complete a project in the event of any default by a developer or to correct deviations from the approved plan.

Related to subdivision regulation is the reservation of land for creation of future roads, trails, and drainage systems at the time development occurs. This is done by designating the reservations on an "official map" adopted by the local government well in advance of development. It may also be feasible to designate land for parks, schools, or other facilities such as fire stations. At the time development occurs, a developer can be required to dedicate or sell such land to the community.

3.4.2 Cluster Development

Cluster development is the grouping of buildings and lots on a small portion of a land tract, and can be an effective way to allow limited development in rural and scenic areas. One of the major impacts of standard zoning and subdivision ordinances has been the creation of sprawling developments laid out with little regard for natural, agricultural, scenic, and historic resources, with little variety in design and density, and with little open space accessible to nearby property owners or the public. Cluster development allows for more flexibility in planning and building placement.

For example, a 100-acre tract under existing land-use regulations could be divided into fifty residential lots. With a cluster development provision in the zoning ordinance, however, the developer would be able to maintain the same density of fifty units on 100 acres but offer smaller lots. The remaining land can be dedicated for agriculture through a lease with a nearby farmer, as a park under local government jurisdiction, or as a scenic or recreational open space maintained by a homeowners' association. Such development may

protect more of the original character of the environment and provide a more attractive setting than would a standard subdivision.

The developer's incentive to include these features is financial. Greater flexibility in site planning, for example, means that difficult areas for buildings can be avoided, or natural vegetation can be retained. Other advantages include the need for fewer streets and shorter utility lines--with the added long-term benefits of reduce maintenance costs for the municipality.

3.4.3 Development Moratoria

A moratorium (across-the-board restriction of development permits until a certain governmental action is completed) can buy time for a community. For example, when a community is revising its comprehensive plan or land-use controls, a moratorium helps avoid a situation where landowners rush to get permits under the old system so that they are "grandfathered," or allowed to proceed to develop under the old rules even after the new ones are in place. A moratorium may also be used to limit development temporarily in certain areas until troublesome conditions, such as traffic congestion or limited sewer capacity, are corrected.

A moratorium should not be used to postpone development indefinitely. Indefinite postponement amounts to procrastination at best, and deliberate foot-dragging at worst--and is likely to expose a community to numerous court challenges.

3.5 TAX INCENTIVES

In addition to the more permanent ways a community can protect unique properties, it is useful to examine tax incentives that, along with altruism, may encourage property owners to donate all or part of their property. Present federal tax law allows both individuals and corporations to take deductions from their taxable income for gifts of property, including easements, to a nonprofit organization designated as tax-exempt by the Internal Revenue Service or to a government agency. Individuals may deduct the value of the gift up to a certain percentage of their income and spread a sizeable deduction over several years. If the gift can be divided into stages, it may be possible to spread deductions over many years. Donating a property can also reduce the value of the donor's estate at the time estate taxes must be paid. Similar savings may be available in state taxes.

For easements, a general kind of quality control is set forth in federal tax law (section 170(h) of the Internal Revenue Code). That section refers to a "qualified

conservation purpose." Under this law, conservation purposes include the preservation of land for outdoor recreation or education, protection of "relatively natural habitat," and preservation of historically significant properties. Also a conservation purpose is served if the preservation of open space, included in farmland and forest land, creates a "significant public benefit," either for the "scenic enjoyment of the general public" or "pursuant to a clearly delineated Federal, State, or local governmental conservation policy."

3.5.1 Preferential Assessments

Under preferential assessment, eligible land is assessed for real property tax purposes at its current use value, instead of its fair market value. Eligibility conditions are usually minimal, consisting only of the requirement that the land be in agricultural or conservation-related use. Some states require that land be in those uses for a few years in order to be eligible, and that the assessor determine use value usually at a statutorily defined rate. The effect of preferential assessment is to reduce the land owner's taxes by the difference between what they would have been if based on a fair market value assessment and what they are, based on a current use value assessment.

3.5.2 Circuit Breaker Tax Credits

Several states have adopted a different approach for reducing the burden of real property taxes on farmers. Instead of making available differential assessment of farmland and thereby reducing property taxes, they authorize an eligible owner of farmland to apply some or all the property taxes on his farmland and farm structures as a tax credit against his state income tax. These programs are called "circuit breakers" because they relieve a land owner from additional real property taxes once they exceed a given percentage of his income.

For example, in Michigan, a farmer can credit the amount by which the real property taxes on his farm and farm buildings exceed 7 percent of his household income. If the credit exceeds his tax liability, he will receive a negative income tax payment for the difference. To be eligible, a farmer must meet certain requirements for acreage and gross annual income from agriculture and enter into a "farmland development rights agreement" restricting his land to agricultural use. The application or this agreement must be reviewed by the county and regional planning commissions and the soil conservation district agency and then be approved or rejected by the local governing body. Whatever the latter does, the State Land Use Agency may approve or reject the application. Land under agreement is protected against

special assessment for sewers, water, light, and non-farm drainage facilities and may not have access to these facilities unless the full assessment is paid.

The state may relinquish the agreement if it determines that development of the land is in the public interest. The landowner pays no back taxes. The landowner may request relinquishment following the same procedures as those used to create the agreement. If the request is approved, he is liable for all income tax credits received plus 6 percent compound interest. If the agreement expires according to its terms, he is liable for the last seven years of credit without interest. If an owner knowingly converts the land to an ineligible use without first going through the procedures outlined above, he may be enjoined by the state or the local governing body, and subjected to a civil penalty for actual damages, not to exceed twice the land's fair market value at the time the application for the development rights agreement was approved.

3.6 PLANNING

Planning is an essential framework for local government actions to protect scenic resources. Good planning encourages local government to consider future goals and translate them into priorities for public expenditures and the infrastructure that will support new and renewed development in the community. The task of planning is to provide foresight and overall coordination to a community's development pattern.

3.6.1 Comprehensive Plans

A comprehensive plan is a community's blueprint for the future, specifying what actions should make the community a good place in which to live, work, and visit. In other words, the plan outlines what needs to be done, and how and when to do it in an organized fashion. Sometimes called a master plan, general plan, or comprehensive development plan, it is comparable to a company's management plan with goals and objective. The written plan is one result of a continuing planning process. It is a guide to public and private decision-making in order to help a community avoid costly mistakes that might occur if no plan exists.

A good plan should respect natural, cultural, and scenic resources, consider the economic activities and needs of the community, and outline a course of action that is compatible with the community's traditions and settlement patterns. The plan should balance environmental protection and rural amenities on the one hand with needed residential, commercial, and industrial growth on the other, and should consider the public facilities and services the community will provide.

Growth should be encouraged only in those locations where the land has the capacity for development.

The plan is usually the foundation for any of the land protection and development regulations a community may exact. Some states require local governments to have an official comprehensive plan and to update it periodically. For example, in Vermont local plans expire every five years. In other states, the comprehensive plan is a legal document that is acceptable in court as evidence that a community's land-use controls are based on rational considerations.

A comprehensive plan should deal with both the near term (up to five years) and the future; some of its proposals should be capable of immediate implementation. A plan should have specific policies or recommended actions to support its lofty statements; otherwise, it will sit on a shelf, leaving the community to muddle along as it did without the plan.

The comprehensive plan is basically a report, generally in map and narrative form. The report summarizes the objectives, assumptions, and standards that guided the development of the plan's policies, and often includes a summary of the environmental inventory, which should precede the plan's preparation. Most plans include current data, future projections, and proposals concerning population size, demography, land use, economic activities, historic preservation, traffic, parks and open space, housing, utilities, and other pertinent aspects of a community's life and resources.

See Appendix D for an outline of a typical local government comprehensive plan.

3.6.2 Environmental Review

Local government environmental reviews can be an important tool in protecting natural resources and farmland. A community whose development-approval process includes an environmental review can require the developers to do an environmental assessment of the site. This review would include an inventory of scenic, conservation, and historic resources, among others, and the impacts of the proposed development on those resources. Like federal and state environmental-impact statement procedures, an environmental review does not by itself avoid adverse environmental impacts. However, it usually clarifies the choices involved, provides warning to the community that some harm to the environment can result from the development as it has been proposed, and may identify some mitigation of the worse impacts. In some instances, off-site mitigation may be considered in the environmental review process--for example, the protection of

three acres of wetland elsewhere as a trade-off for permission to develop one acre on-site in order to install utilities. Another example of off-site mitigation might be a developer's provision of road improvements, such as widening a road or upgrading an intersection, in recognition of the added traffic burdens of the new development.

3.6.3 Site Plan Reviews

Most towns eventually realize that by itself zoning is unable to ensure that new development is integrated sensitively into their community. Zoning, which regulates land-use location and density, does not address the visually important design issues which have such a significant impact upon landscapes and townscapes. Exerting a positive influence over the design and scenic impact of new developments is often essential if a town's traditional image is to be protected and reinforced.

In response to the chaos which often ultimately results from reliance solely on zoning, local governments have reacted by requiring Special Permits for some of the more obviously incompatible types of uses (e.g., gasoline stations, kennels). However, in so doing, they have often failed to provide clear guidelines to the Special Permit Granting Authority, so that petitioners, abuttors, and board members may all know the parameters of what is approvable and what is not. All too often the bylaw guidelines are so broad and unspecific that board members are almost invited to exercise their personal opinions, which can lead to arbitrary decisions.

A middle-ground approach exists, one that offers towns more comprehensive control over new developments, while reducing the danger of "unbridled discretion" exercised by boards working from inadequate bylaws which are vague, simplistic, or lack necessary detail.

The Site Plan Review is most often conducted as a modified Special Permit process. To minimize "loop-hole opportunities," local governments require this type of review for most types of non-residential uses. In order to provide facts sufficient to enable the reviewing board (and other interested parties) to fully understand the implications of the proposed development, a list of site planning characteristics is required for submission by the applicant. Consistency in site plan submission packages can ensure that all relevant information is available to the reviewing board, so that a well-informed decision may be rendered.

3.7 SIGN CONTROL

Sign control is an essential ingredient of scenic resource protection. This is because almost nothing will destroy the distinctive character of a scenic road faster than uncontrolled signs and billboards.

Nevertheless, we need signs. They give direction and needed information. Why then discuss the "sign problem"? The answer is obvious: Too often signs are misused, poorly planned, badly located and altogether too numerous.

The ideal system of sign regulation provides needed information without creating clutter, blocking scenic views, or clashing with the natural or historic character of an area. Local communities have broad legal authority to regulate signs based on safety, economic, and aesthetic considerations.

The following sections discuss the substantive issues in sign regulation, ranging from issues affecting sign location and design to such management issues as enforcement of sign regulation and control of signs that were erected legally but that do not conform to current regulations.

Sign regulations typically group signs in classifications, such as off-premise signs, "ground signs," "pole signs," and "wall signs." Just as zoning ordinances provide different rules for different uses, sign regulations often provide different rules for different classifications of signs. Understanding the similarities and differences among the groups into which signs are classified is a key to understanding sign regulations.

For regulatory purposes, signs are generally divided into two categories: on-premise signs and off-premise signs. The terms "off-premise" signs and "billboard" are frequently used interchangeably. Most local zoning regulations distinguish on-and off-premise signs either by definition or in their actual regulations.

Many communities have determined that billboards significantly degrade the landscape, create risks to traffic safety, hinder economic development and tourism, and lack the beneficial business identification purposes of on-premise signs.

Operating within the constraints of federal and state law, hundreds of communities nationwide have enacted a wide variety of effective billboard and sign control regulations. In addition, almost all successful scenic highway programs include sign regulation as a component.

The material that follows is drawn from Creating Successful Communities, "A Guidebook to Growth Management Strategies," published by The Conservation Foundation, 1990.

3.7.1 Billboard Bans

Communities are free to ban all new billboards (even along federal highways) and, depending upon state law, to require the removal of existing billboards after a reasonable grace period. Existing billboards protected by the federal Highway Beautification Act may not be removed except in conformance with the act.

Complete bans on all billboards are increasingly commonplace:

- A growing number of the nation's largest cities--including Houston, San Diego, St. Louis, Honolulu, and Denver--have banned new billboards.

- Many fast-growing Sunbelt communities have banned or strictly restricted billboards. These cities and counties include Austin, Texas; Fairfax County, Virginia; Scottsdale, Arizona; Jacksonville, Florida; Henrico County (Richmond), Virginia; and Raleigh, North Carolina.

- Major tourist destinations have banned billboards, including Virginia Beach, Virginia; Conway and Concord, New Hampshire; Sun Valley, Idaho; Hilton Head, South Carolina; Nags Head, North Carolina; Miami Beach and Boca Raton, Florida; Gatlinburg, Tennessee; Ocean City, Maryland; and Provincetown and Martha's Vineyard, Massachusetts.

- Numerous areas known for their high quality of life and ability to attract desirable, clean, and high-paying employers ban billboards. These include Boulder and Aspen Colorado; Santa Monica, Marin County, and Santa Barbara, California; Stamford Connecticut; Santa Fe, New Mexico; Oak Ridge, Tennessee; Portland, Maine; Burlington, Vermont; Chapel Hill, North Carolina; and Cambridge, Massachusetts.

- Many economically and demographically mainstream communities have banned billboards. These include: Little Rock, Arkansas; Dover, Delaware; Evanston, Illinois; Anchorage, Alaska; and Olympia, Washington. In fact, 117 cities and towns in Connecticut, 178 cities and towns in Massachusetts, and over 100 jurisdictions in California have banned billboards.

3.7.2 Billboard Moratoria

Numerous communities have found it necessary and legally defensible to impose a temporary ban on the erection of billboards while the community studies permanent billboard controls. Tucson, Arizona; Raleigh North Carolina; Denver and Colorado Springs, Colorado; Charleston, South Carolina; Little Rock, Arkansas; and Stockton, California are among the communities nationwide that have imposed billboard moratoria to allow time for evaluation of existing regulations and implementation of appropriate revisions.

A moratorium on the erection of new billboards is often essential in implementing effective billboard controls. York County, South Carolina, officials learned this lesson when they began discussing a comprehensive zoning revision without imposing a moratorium on new billboards. In the eight months that the county studied and drafted new regulations, the county experienced a billboard boom. During this period, the county issued 150 permits for new billboards, many for massive double-decked, four-sided monopoles reaching above the treeline.

3.7.3 Amortization of Nonconforming Signs

Many communities require removal of nonconforming billboards and signs through a process known as amortization. Rather than paying a landowner cash for removing potentially nuisancelike uses such as billboards and junkyards, or allowing them to continue indefinitely, many communities allow these uses to remain in existence for a number of years after enactment of a new regulation. During this period, the owner may both depreciate a sign and earn a reasonable return on the investment. At the end of the amortization period, the sign must be removed or brought into conformity. Some states, such as Indiana, New Hampshire, Ohio, Connecticut, and Tennessee, prohibit amortization; however, the majority of states allow it.

Amortization periods for signs and billboards ranging from three to ten years have been approved in many recent cases. These amortization periods appear reasonable in light of the fact that most signs are depreciated for federal tax purposes in five years or less.

3.7.4 Controlling Signs Along Federal Highways

The federal Highway Beautification Act preempts local control of billboards located within 660 feet of interstate highways or federal primary highways and visible from the highway. Most important, this law effectively prohibits amortization of billboards within federal highway corridors by requiring that owners of nonconforming billboards receive

cash payments for removal, even if amortization of nonconforming billboards is permitted by state law.

In a series of memoranda from the Department of Transportation, the department has interpreted the HBA as follows:

- o Communities may ban the erection of new billboards along federal highways;

- o Communities may limit the size, height, placement, and spacing between new billboards along federal highways;

- o Communities may impose reasonable regulations reducing the size and height of existing billboards without triggering the cash compensation requirement, if the size and height can be reduced without forcing removal of the billboard. The cash compensation requirement is "not violated if the sign's owner can do something which is not unreasonably burdensome to avoid removal of the sign." Cash compensation is not required even if the billboard company decides to remove a sign rather than comply with a new regulation.

- o Communities may remove billboards without paying cash compensation if the billboard company refuses after a reasonable time to comply with regulations reducing the size and height of billboards.

- o Communities may charge permit fees, and remove billboards without cash payment for failure to obtain a permit.

The act does not appreciably interfere with local governments that want to allow unrestricted billboards. The act permits local authorities to zone land along federal highways as commercial development, and to allow billboards within these commercial districts. The act established no federal standards for what constitutes a bona fide roadside commercial district. The absence of standards has led to widespread commercial zoning along rural highway corridors--even where commercial activity is unrealistic--to accommodate billboards in circumvention of the purposes of the act. States are free to determine what constitutes a commercial district and, in some cases, have designated all road corridors commercial. Although court decisions have invalidated such "phony zoning," the practice is difficult to police.

3.7.5 Local Billboard Control Tools

Based upon review of local programs, and recommendation of the Southern Environmental Law Center (an active billboard

control advocate), communities considering local billboard controls generally or along designated scenic corridors in particular, should evaluate the following options:

- o Billboard cap. Many communities have implemented a cap on the current number of billboards, with new construction allowed only when one or more existing billboards are removed, so long as the new billboard is no larger than the one removed. For example, Chattanooga, Tennessee, and Mobile, Alabama, require removal of an existing billboard for every new billboard erected. San Antonio, Texas, requires removal of two existing billboards for every new billboard erected.

- o Special permit criteria. Many communities permit new billboards only by conditional or special use permit and only in industrial districts. This allows a public hearing for each billboard application to ensure compatibility with surrounding uses.

- o Billboard-free districts. Communities prohibit billboards in or near (e.g., within 1,500 feet of) any historic district, residential area, downtown commercial district, neighborhood commercial district, park, scenic vista, community gateway, or similar community resource and along scenic corridors and highways. For example, Tucson, Arizona, limits billboards to 72 square feet and prohibits them completely in historic districts, along scenic streets, gateways, roads, airport approaches, and certain business districts.

- o Site-specific height limits. Communities prohibit billboards that rise above the treeline or which are on or over the roofs of buildings.

- o Annual permit fees. Communities charge fees to cover the expenses (including staff and office space costs) of processing permit applications, ensuring compliance, and maintaining a sign inventory. The Coalition for Scenic Beauty recommends a fee of at least $200 per sign structure.

- o Size, height, and spacing requirements. Communities implement size, height, and spacing limits, such as limiting billboards to 25 to 35 feet in height, and 300 to 350 square feet in size, and with spacing requirements of 1,500 to 2,000 feet between billboards on primary roads, and 1,000 to 1,500 feet between billboards on secondary roads.

- o Taxation. Communities impose special road-view taxes on billboards. The revenues from the tax may be used to

finance the acquisition and removal of nonconforming billboards, to acquire scenic easements, or for other public purposes. For example, Baldwin County, Alabama, has enacted a 10 percent gross receipts tax on billboards.

3.7.6 State Billboard Control Tools

The Southern Environmental Law Center has recommended the following state actions to control billboards along state highways:

- Prohibit new construction of billboards on all state highways, including interstate and federally funded primary highways, and all other portions of state roads not regulated by municipalities.

- Prohibit all off-premise signs and displays that are within 2,000 feet of any state or national park, wildlife refuge, recreation area, scenic area, wild and scenic river, any historic site or district listed in the National Register of Historic Places, or adjacent to any road designated as scenic.

- Revise the definition of commercial and industrial zone in the state billboard control legislation to require three actively operated and visibly commercial establishments within 800 feet of each other on the same side of the road and visible from the highway in order for an area to qualify as a commercial district along a federal highway where billboards are permitted.

- Establish a system of logo signs and visitor information centers to inform traveling motorists of businesses and services in the state, commensurate with an automatic freeze on any new sign permits on the portion of the highway with such logo signs.

3.7.7 On-Premise Sign Control

Many communities have determined that, without appropriate regulation, on-premise advertising becomes a competition to attract attention in which the largest and most garish sign wins and the community, including its business community, loses. Communities have responded to on-premise advertising with innovative and widely varying approaches. An increasing number of communities--going beyond merely imposing dimensional standards for signs--have implemented regulations to ensure that signs meet the needs of businesses and the public without degrading community appearance. Communities have found that attractive or thematic signage is good both for business and community appearance. Communities

considering local on-premise sign controls should evaluate the following options:

- **o Limit free-standing signs to one per business with a maximum height of no more than 20 feet.**
- **o Prohibit or strictly regulate "problem" signs such as portable signs, pennants, banners, streamers, and flashing or intermittent lights.**
- **o Limit shopping centers, malls, office parks, and similar large developments to one group identity sign with no free-standing separate sign for individual businesses.**
- **o Allow a size bonus for ground signs relative to free-standing pole signs.**
- **o Impose special controls in historic districts, downtown commercial districts, and pedestrian-oriented districts.**
- **o Regulate the color, lettering, style, proportion, illumination, and design to ensure compatibility with local character.**

3.8 VIEW PROTECTION

3.8.1 View Protection Ordinances

Despite the growing use of historic preservation ordinances and building design review regulations, many communities are recognizing the need to go beyond these narrowly focused efforts and take a comprehensive approach to protecting special vistas, scenic roads, and entryways--those visual characteristics that give an area a special sense of place. In some cities, this concern has been manifested in efforts to protect views of important public buildings like state capitols--Austin, Texas, and Denver, Colorado, are but two examples. In others, mountain views have spurred special regulations to limit building heights.

An increasing number of communities are recognizing that vistas add to the local sense of place and image, which, in turn, have been shown to be important in contributing to the overall quality of life and attracting new businesses.

At the same time, because driving is the leading form of outdoor recreation, there is renewed interest in creating and protecting scenic roadways and entryways to cities and towns. Some states, such as Connecticut, have adopted special legislation to allow creation of scenic rural roadways. Furthermore, some cities, like New Orleans and Houston, have undertaken concerted efforts to spruce up their entryways, which

are the community's welcome mat--not a good place for a jumble of signs, parking lots, overhead wires, and other accoutrements of urban development.

Communities rely on a combination of tools, including height and use restrictions, sign controls, and landscaping regulations, to protect scenic vistas and roadways. While crafting and implementing such programs is more complex than simply enacting a sign control ordinance by itself, the results can be very effective.

Many localities have enacted view protection ordinances in the form of height controls on commercial buildings. Pittsburgh recently adopted regulations that restrict heights of new buildings in two areas that flank the Monongahela River. The restrictions, geared to protect views of the city's riverfront, require the staggering of the height of buildings according to their distance from the river. Both San Francisco and Seattle have adopted height controls--San Francisco's being designed to Prevent shadows from being cast on public plazas and parks at certain prescribed times and Seattle's to help protect views of Elliot Bay.

Some localities have taken additional steps and more complex approaches to protecting important views, particularly from public buildings and parks. Two of the most important examples come from Denver and Austin.

Denver's mountain view ordinance, which recently withstood the trial court challenge discussed above, is designed to protect panoramic mountain views from parks and public places. Both aesthetic and economic reasons are invoked to support the ordinance. The basic approach in Denver is to create a series of overlay zones with special restrictions tailored to the area to which each applies. Thus, with respect to Cranmer Park, no structure can be higher than 5,430 feet above sea level plus one foot for each 100 feet the structure lies from a reference point within the park. In practice, apartment buildings 300 feet from the reference point and at the same base elevation could be a maximum 30 feet high. In the Capitol/Civic Center district, the ordinance creates five zones, each with its own specific height limit, designed to protect the view of the Rocky Mountains from the state capitol and the view of the capitol itself.

In concept, the Austin capitol view ordinance--designed to protect views of the state capitol building from various vantage points around town--is quite similar to the Denver ordinance. Adopted in August 1984, it was introduced in 1983 to serve aesthetic, educational, civic, and economic goals by protecting and reserving public views of the state capitol from selected

points in the city such as parks, bridges, major roads, and the like. Twenty-three view corridors were designated in 1984.

In 1984, the city of New Orleans adopted new zoning provisions to prevent further unsightly commercial strip development along major roads. The purpose of the new provisions is to provide a "superior environment and positive design image" for this historic city.

The city established an overlay district with special sign and landscaping requirements that applied to other uses as well. Some permitted uses, such as fast-food restaurants and developments of one acre or more, are made conditional uses and subject to special site plan review.

Sign regulations are also tightened. The size of any sign is linked to the amount of building frontage, the maximum area is limited to 70 feet, and the height to 25 feet or the building height, whichever is lower. No flashing signs are allowed, and rate signs must be integrated into the one detached sign allowed on a site. Nonconforming signs are subject to a three-year amortization period. Finally, special site design requirements are imposed, including perimeter and interior landscaping, landscaped setbacks, screened loading areas, and lighting restrictions.

Austin has created special controls on land located within 200 feet of designated "scenic" and "principal" roadways. It has also enacted special protective regulations for land within 1,000 feet of Route 360, known as the Capital of Texas Highway. The following special restrictions apply:

1. Scenic Roadways. No off-premises signs are allowed within a 200-foot zone on either side of road. On-premise signs are restricted to one small monument-style sign integrated into the landscaping plan. Special size and height limits apply as does a prohibition on flashing signs.

2. Principal Roadways. Only one freestanding commercial sign is permitted on each parcel; a 1,000 foot spacing requirement exists for off-premises signs.

3. Capital of Texas Highway. Only monument-style signs with maximum of two colors are allowed. Signs must be of natural color, and materials must be compatible with surrounding environment. No flashing or neon signs or internal lighting are permitted.

The city of Albuquerque has enacted similar comprehensive guidelines for development along Coors Boulevard, a principal traffic arterial, to protect views of the Sandia Mountains and

Rio Grande River Valley and to ensure quality developments. The plan defines view planes and then prohibits buildings from penetrating these view planes. Landscaping must also be designed so as not to intrude into the view planes. Other special guidelines relating to architectural design, signs, landscaping, and other site plan elements are also set forth. The plan is currently being revised due to some difficulties in applying the design guidelines, which have not been followed by all developers. The guidelines will probably be tightened into mandatory standards.

3.8.2 Tree Protection Ordinances

Trees and other greenery, which do so much to soften the rough edges of developments, buildings, and streets, are often overlooked when considering protection of scenic resources. Many citizens do not realize the scenic importance of trees until they are gone, felled by disease, neglect, or, more typically, by intensive development. Moreover, there is increasing evidence that trees contribute in many ways to a more pleasing, safer environment. They help reduce urban "heat island" effects by moderating the effects of sun, cold, and wind, and they reduce pollution. They serve as screens against noise, act to stabilize soil, and reduce erosion and run-off, besides being a haven for birds and other wildlife.

Across the United States there is a growing interest in protecting existing trees, particularly in urban areas, for both environmental and scenic purposes. A number of local governments have adopted a specific species of street tree as a community hallmark. Tallahassee, Florida, for example, is becoming known as the dogwood capital of the South for its aggressive program of planting dogwoods along streets throughout the city. Other communities have gone farther, adopting tree preservation ordinances and detailed landscaping requirements.

An emerging legal issue that has posed a significant challenge to tree protection in many areas is how to prevent an owner from clearing a site of trees before he applies for a building permit or site plan approval, thereby circumventing any restrictions. Communities are responding in several ways. Some follow the Model Land Development Code approach and include tree removal under the definition of development that must have a permit. Others enact separate regulations placing restrictions on land clearance, often as part of drainage and soil erosion control ordinances.

3.9 VOLUNTARY APPROACHES

In this section, several voluntary, private sector approaches for scenic resource protection are examined. By

combining some of these approaches with other mentioned previously, a more flexible and feasible program can be created.

Planning, zoning, and other local regulations broadly influence development and resource protection, requiring all property owners to adhere to certain standards. Agreements with property owners can supplement these regulations by focusing particular attention on specific resources on one property and the objectives of the owner. Cost, permanence, coverage, and the ability to control or encourage certain uses are all considerations to evaluate the mix of governmental regulations and private agreements.

Although most voluntary approaches are carried out by nonprofit organizations, government agencies can use them as well, particularly for notification, recognition, and nonbinding agreement programs.

Some approaches described here are "handshake" agreements; others are legally binding. Some are perpetual, while others are only temporary. The costs of implementing and administering them vary considerably. Some involve modest sums of money or no acquisition of property rights; others may require substantial expenditures and require professional assistance.

Voluntary approaches such as Notification, Recognition, and Nonbinding Agreement programs alone are not enough to insure the protection of many scenic properties over the long run. But by using these programs initially, a community-based scenic resources group may enhance its standing in the community, make first contacts with property owners, and achieve a measure of protection. As their capability and funds allow, many organizations move to more complex, binding agreements with property owners.

3.9.1 Notification Programs

A basic approach to prevent harm to important resources is a notification program. Owners who are made aware of important scenic resources on their properties are often willing to protect them once they learn of their existence. A notification program might logically follow a comprehensive scenic inventory. The community scenic protection organization simply lets the owner of a historic house, natural area, or other scenic property know of its significance and suggests that it deserves protection. Notification generally consists of a brief letter describing why the property is significant and a follow-up visit to answer questions. Publicity is not necessary, and indeed it may be undesirable. Although entailing no actual agreement, notification can be an important first step in establishing a good relationship with a property owner; this relationship may

eventually result in a permanent commitment to protecting a significant resource.

3.9.2 Recognition Programs

A Recognition Program takes notification one step further by announcing publicly that a property is significant. Recognition programs have been used by federal, state, and local governments as well as nonprofit organizations. For example, "century farms" programs established in many states honor families who have owned and farmed the same property for a hundred years or more.

Recognition programs work because they play on the pride of the owner, who would not want to lose face in the community by destroying a resource after having been praised for protecting it. Some organizations present plaques or certificates to owners of recognized properties.

Although it may not be legally necessary to have an owner agree to list a property on a roster of significant properties, it is wise to do so. Some owners might resent the fact that an organization has compiled detailed information about their properties without sharing it with them; others may not want their holdings made public. To prevent hard feelings and, more importantly, to increase the owner's awareness of the significance of the property, the organization should secure the owner's permission to list the property.

3.9.3 Nonbinding Agreement Programs

A number of state governments and nonprofit organizations operate nonbinding agreement programs for natural resources, many in association with recognition programs. Property owners agree in writing to protect specified significant features of their properties and usually receive in return a plaque or certificate that acknowledges the special nature of the property and the owner's contribution to its protection. The owner's obligation to comply is strictly voluntary. The agreements are based on mutual trust, pride of ownership, recognition and appreciation of the resource, commitment to conservation, and feelings of satisfaction that participation brings. The owner can withdraw from the program at any time with advance notice, typically thirty days, and receives no financial compensation and no tax benefits.

4. APPLICABILITY OF THE TOOLS

A guiding principle in the evaluation of scenic protection tools is the degree to which they are consistent with authorizing scenic legislation. As such, preferred alternatives would:

a. Contribute to the protection and preservation of scenic quality in a community.

b. Relate to the area's historical significance through public interpretation and preservation of historical resources.

c. Support the recommendations of the community's comprehensive plan.

d. Be consistent with the budget capabilities of the community's program.

In addition, preferred tools would:

- Be the most cost-effective means of achieving the desired level of protection; i.e., realizing the greatest degree of protection for the least expenditure of funds.

- Involve the minimum interest in private lands, where public acquisition is necessary.

- Be administratively and politically feasible, consistent with local community capabilities.

- Have high potential for fostering cooperative relationships between various levels of government and the private sector in land preservation.

In order to focus the range of possible alternatives on the array of resources most needing protection, "critical areas" can be identified for priority protection. This can be defined by a visual landscape assessment approach which includes:

- Visual absorption--how much development can a landscape absorb before it is visually compromised?

- Visual sensitivity--how sensitive is the landscape to any form of development?

- Susceptibility to development--how susceptible is an area to development because of the availability of open, flat land; access; water and sewer facilities; soil percolation, etc.?

- Visual contrast of development--what overall effect will development have when contrasted to the entire visual character of the landscape?

These four elements can help determine the "criticalness" of a given area. Using this type of assessment, scenic resources can be rated, and their criticalness compared with other areas suggested for protection in a scenic resources element of a comprehensive plan.

Appendix A: Criteria for Accepting Property Gifts

The San Juan Preservation Trust is a private, nonprofit, tax-exempt organization founded in 1979 by residents who were concerned about protecting scenic, agricultural, and ecologically important lands in the San Juan Islands in Washington State. The trust accepts gifts of land and easements under the following guidelines:

1. The area is an important undisturbed natural area, or is adjacent to an important undisturbed natural area, or is adjacent to lands under conservation easements or is adjacent to Trust-owned property.

2. The property has characteristics which should be protected from development, such as scenic open space, views of water, buffer qualities, a good soil composition, or wildlife habitat.

3. The property is visible from public lands, public roads, public parks, or from already Trust-protected lands.

4. The property has important historical or current land use activity, such as forestry management, farming, public enjoyment, aquaculture.

5. The protection of the property would enhance the quality of life for the community.

6. If the property is to be accepted for resale for the benefit of the Trust rather than for preservation, the property owner shall be fully informed of that purpose.

7. The owner shall be made aware that the property may be transferred to another qualified resident.

8. Endowment funding is necessary for the long term defense of all Trust lands. An endowment fund is established for each parcel of land accepted by the Trust. It is expected that the land donor would appreciate and participate in this essential process.

Source: <u>Saving America's Country Side</u>, National Trust for Historic Preservation

Appendix B: Example of Scenic Easement, Petoskey Michigan

SCENIC EASEMENT

THIS DEED OF A SCENIC EASEMENT, made and entered into this

day of ____________(date) by and between __________________ and ____________ whose address is __________________ ("Grantor"), and the EMMET COUNTY PARKS AND RECREATION COMMISSION, of Petoskey, Michigan, ("Grantee");

WITNESSETH:

WHEREAS, Grantor is the owner of certain real property in Emmet County, Michigan, more particularly described in Exhibit A attached hereto and incorporated by this reference (the "Property"); and

WHEREAS, the Property is located adjacent to U.S. 31 a scenic highway along the shore of Lake Michigan that is know to possess outstanding scenic values of great importance to the Grantor and the public; and

WHEREAS, Emmet County has a tourist-based economy and the scenic quality of the highways are known to attract tourists and therefore the County considers the preservation of scenic roadside areas to be an important goal; and

WHEREAS, Grantor intends that the conservation values of the Property be preserved and maintained in accordance with this scenic easement and the preservation of said Property is consistent with the comprehensive land use plan for Emmet County; and

WHEREAS, Grantee agrees by accepting this grant to honor the intentions of the Grantor stated herein and to preserve and protect scenic values of the Property in perpetuity;

NOW, THEREFORE, in condition of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of Michigan including, but not limited to, the Conservation and Historic Preservation Easement Act, MCLA 399.251 et seq., Grantor hereby conveys to Grantee a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth ("Easement").

1. Purpose. It is the purpose of this Easement to assure that the portions of the Property visible from U.S. 31 will be retained forever in its current natural, scenic, and/or open space condition and to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property. Grantor intends that this Easement will confine the use of the portions of this Property, visible from U.S. 31, to such activities as are consistent with the purpose of this Easement.

2. Rights of Grantee. To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:

(a) To preserve and protect the scenic values of the Property;

(b) To enter upon the Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; provided that such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property; and

(c) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the property that may be damaged by inconsistent activity or use.

3. Prohibited Uses. Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

A. The placement of any signs or billboards on the Property, except that signs, whose placement, number, size, and design do not significantly diminish the scenic character of the Property, may be displayed to state the name and address of the Property and the names of persons living on the Property, to advertize an on-site business activity such as a Bed and Breakfast lodging or art studio, to advertize the Property for sale or rent, and to post the Property to control unauthorized entry or use, nor shall any right for the display of billboard advertising signs be granted.

B. The accumulation of trash, refuse, junk or unsightly material on the portions of the Property visible from U.S. 31.

C. The extraction of any mineral materials from the portions of the Property visible from U.S. 31 by surface methods, nor shall any right for the removal thereof be granted.

4. Reserved Rights. Grantor reserves to themself, and to their personal representative, heirs, successors, and assigns, all rights accruing from their ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not inconsistent with the purpose of this Easement.

5. Access. No right of access by the general public to any portion of the Property is conveyed by this Easement.

6. <u>Successors</u>. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

IN WITNESS WHEREOF Grantors and Grantee have set their hands on the day and year first above written.

GRANTORS:

______________________________ ______________________________

______________________________ ______________________________

EMMET COUNTY PARKS COMMISSION

______________________________ By ____________________________
Emmet County, Commissioners

Appendix C: Example of Scenic Highway Districts Ordinance, Charleston County, South Carolina

Authorization of Scenic Highway Districts

Sec. 25.10.19 GENERALLY

The Planning Board and/or County Council may recommend and the County Council may adopt amendments to the zoning map and to the text of this ordinance establishing Scenic highway Districts, after the conditions set forth in Sec. 25.10.40 have been met. Recommendation and adoption of such amendment shall be in accordance with Article 97.40.

A scenic highway zoning district, if approved, shall be superimposed over the existing zoning district classification(s) assigned to the area. All uses normally permitted for the existing zoning category as prescribed by this ordinance shall be permitted with the exception of the limitation prescribed in Article 97.40.

Section 25.10.20 PURPOSE OF A SCENIC HIGHWAY ZONING DISTRICT

The basic purpose of the Scenic Highway district is to conserve and enhance the natural beauty adjacent to and along out County highways in conjunction with the existing zoning classification(s). The program is established to prevent unsightly developments which may tend to mar or detract from the natural beauty and to exercise such reasonable control over the land within the restricted areas as may be necessary to accomplish this objective.

Secondly, a purpose of the scenic district is to eliminate, as much as possible, undue harshness to the eye and general chaos that could develop along the roadways in Charleston County and to insure a pleasant view free from clutter and/or visual blight.

Third, to protect and perpetuate our heritage.

Sec. 97.40.50. COUNTY PLANNING BOARD STUDY

1. The Planning Board shall review that application for a Scenic Highway zoning classification in the same manner as presented herein for other amendments to this ordinance.
2. The Planning Board shall determine a map designation for the district consisting of a designation of the district and a serial number, so that each district shall be individually identified.

Sec. 97.40.60. CRITERIA FOR SCENIC HIGHWAY ZONING DISTRICT

In addition to the regular criteria prescribed for a given zoning district by these or other lawful laws or regulations, the following basic criteria shall be imposed upon any district selected for a Scenic Highway classification, permitted uses stipulated elsewhere in these regulations notwithstanding.

1. The designated area shall be maintained free of outdoor

advertising signs and authorized accessory signs may not be freestanding until a uniform design shall have been approved under Sec. 97.40.40.

2. Dumps established for the disposal or storage of fill, gravel, pipe, ashes, trash, rubbish, sawdust, garbage, offal, or any unsightly or offensive material shall not be permitted.
3. Salvage yards, used car lots, mobile home sales, or any other activity not visually attractive shall not be permitted.
4. Trees, six inches in diameter or over, or shrubs will not be destroyed, cut or removed except when cutting is necessary for the maintenance or enhancement of beautification of the district as defined under Se. 97.40.40. The intention is to preserve the natural beauty of wooded areas as far as is reasonably possible.
5. General farming including the addition or expansion of farm buildings, is normally permitted and encouraged. However, fur farming or farms operated for the disposal of garbage or related material are prohibited.
6. New residential, commercial, and industrial uses shall be carefully planned in order to retain an open land appearance and present desirable views from becoming obstructed.
7. Nonconforming uses and structures shall be governed by Article 30.50.

Sec. 97.40.70. ACTIVITIES NOT NORMALLY PERMITTED WITHIN A SCENIC HIGHWAY DISTRICT

The following categories will not normally be permitted in a Scenic Highway District; however, with natural screening (trees, shrubs, etc.), they may be permitted by obtaining a Conditional Use Permit in accordance with Article 96.40:

2,3.	Manufacturing Facilities
481.	Electric Generating Plants, Utility Substations, Transformer Banks, Overhead Transmission lines, and Above Ground Pipe Lines.
484.	Sewage Disposal
485.	Solid Waste Disposal
621.	Laundering, Dry Cleaning and Dyeing Plants
6241	Crematories
815,816.	Stockyards
6831.	Vocational and Trade Schools
7223.	Race tracks, or Courses for Autos, Motorcycles, Motorbikes, Horses, Etc.
7312.	Amusement Parks
821.	Agricultural Processing
85.	Mining, including Burrow Pits.

Sec. 97.40.75. REPORT TO COUNTY COUNCIL

The period within which the Planning Board's report shall be submitted to County Council will be 90 days from date application was submitted.

Sec. 97.40.80. ACTION BY COUNTY COUNCIL

1. Scenic Highway zoning districts application to County Council shall consist of plans, agreements, inventories (trees) and other pertinent documents submitted with the application.
2. The County Council shall review the Scenic Highway District amendment int he same manner as provided for other amendments to this ordinance.

Appendix D: Typical Local Government Comprehensive Plan

The table of contents of the comprehensive plan for Vernon, Vermont (1984 pop. 1,280), adopted by the Board of Selectmen in 1986, shows how one rural community organized its plan. Vernon's 42-page plan covers not only land use and the community's natural, recreational, cultural, and scenic resources, but also housing, transportation, economic development, and public services. Other communities might choose to include more or fewer topics, or to organize them in different ways. Note that Vernon chose to present only a small number of maps.

TOWN OF VERNON

Introductory Comments
Purpose of the Town Plan
Structure of the Town Plan
Statement of Objectives

I. Planning for Land Use and Economic Development: General Policies
   A. Capability of the Land
   B. Protection of Natural Resources
   C. Public & Private Capital Investment
   D. Planning for Growth

II. Community Profile: Specific Policies and Recommendations
   A. Population Trends and Projections
   B. Housing
   C. Transportation

III. Resource and Economic Development: Specific Policies and Recommendations
   A. Employment and Economic Base
   B. Economic Growth

IV. Natural Resources Use and Conservation: Specific Policies and Recommendations
   A. Agricultural Resources
   B. Forest Land
   C. Water Resources
   D. Wildlife Habitat
   E. Fragile Areas
   F. Flood Hazard Areas
   G. Soils
   H. Earth Resources

V. Recreational, Cultural and Scenic Resources: Specific Policies and Recommendations
   A. Public Recreational Resources
   B. Historic and Architectural Resources
   C. Scenic Resources

IV. Government Facilities and Public Utilities: Specific Policies

A. Planning for Growth
B. Public Facilities or Services Adjoining Agricultural or Forestry Lands
C. Planning for Transportation and Utility Corridors
D. Planning for Solid Waste Disposal
E. Privately Owned Facilities and Services
F. Fire and Police Protection
G. Education and Libraries
H. Health
I. Town Government Administration

VII. Town Plan Maps and Explanation

Map 1: Physical Limitations to Development
Map 2: Resource Areas and Sites
Map 3: Town Farmlands Map
Map 4: Groundwater Favorability Areas
Map 5: Vernon's Critical Deer Wintering Area
Map 6: Existing Land use in Vernon, 1985
Map 7: Land Use Plan

TABLE 1

EVALUATION OF SCENIC RESOURCE PROTECTION TECHNIQUES
FOR FEASIBILITY AND APPLICATION

Technique	Degree of Protection	Duration of Protection	Ease of Administration	Cost	Precedents
Fee Simple Acquisition (3.1.1)	Fully Protected	Permanent	On-Going Mgmt. Tied to Public	Most Expensive	Most Public Parkways
Lease-Purchase Agreements (3.1.2)	Fully Protected	Long-Term/ Permanent	Lease Term Negotiable	Expensive But Flexible	Numerous Non-Profit Groups
Bargain Sale (3.1.3)	Fully Protected	Permanent	Requires Purchase Coordination	Expensive But Good Value	Big Sur Land Trust
Donation (3.1.4)	Fully Protected	Permanent	Depends on Owner Occupancy	None to Recipient	
Land Trust (3.1.5)	Fully Protected	Permanent if Land Is Held		Value Depends on Purchase Opportunity	Jackson Hole, WY Land Trust
Revolving Fund (3.1.6)	Fully Protected	Permanent	Requires Close Timing and Coordination	Depends on Amount Available in Fund	Nature Conservancy
Purchase of Development Rights (3.2.1)	Selected Land Protected from Dvlpmnt.	Could Change with Land Sale	Requires Gov't. Program to Support It	Moderately Costly, Depending on Land Uses	King County, WA (Seattle)

Technique	Degree of Protection	Duration of Protection	Ease of Administration	Cost	Precedents
Land Banking (3.2.2)	Fully Protected	Permanent	Requires Long-Term Commitment	Requires Substantial Funding	Used in France, Sweden, Denmark
Transfer of Development Rights (3.2.3)	Selected Lands Protected From Dvlpmnt.	Could Be Changed Upon Appeal	Requires Gov't. Program to Support It	Moderate. Depends on Land Uses	Montgomery Cty, MD
Deed Restrictions (3.2.4)	Limited Protection	Control is Transferred with Owner Change	Relatively Simple	Minimal	Most local land trusts
Scenic Easements (3.3.1)	Limited Protection	On-Going	Relatively Simple	Minimal	Great River Road; Petoskey, MI
Zoning Ordinances (3.3.2)	Limited	Subject to Appeal and Frequent Change	Standard for Local Governments	No Public Sector Cost	Most Local Gov'ts.
Overlay Zoning (3.3.3)	Focused on Critical Areas	Subject to Appeal and Change	Additional Inventory Required	Minimal Extra Costs	Local Gov'ts.
Scenic Highway Districts (3.3.4)	Limited	Subject to Change	Amendment to Zoning Map	Minimal	Charleston Co.,SC
Agricultural Districts (3.3.5)	Voluntary	Depends on Pressure for Development	State or Local Gov't. Program Required	Loss of Some Tax Base	State of NY

Technique	Degree of Protection	Duration of Protection	Ease of Administration	Cost	Precedents
Subdivision Regulations (3.4.1)	Limited in Scale and Scope	At Time of Development Approval Only	Standard for Local Local Gov'ts.	No Add'l. Public Sector Costs	Most Local Gov'ts.
Cluster Development (3.4.2)	Depends on Project Design	Life of the Development	Can Be Incorporated into Local Plan	Minimal	Lincoln, MA
Development Moratoria (3.4.3)	Very Limited	Temporary Only	Minimal	No Public Cost	Many local govt's
Preferential Assessment (3.5.1)	Limited; Depends on Land Markets	Year-to-Year	Can Be Tied into the Assessment Administration	Some Lost Tax Revenues	17 states including AZ, CO, IA, MS
Circuit Breaker Tax Credit (3.5.2)	Somewhat Limited	Typically 5-7 Years	Requires Admin. Support to Tax Program	Some Lost Revenues	States of MI, WI
Comprehensive Plans (3.6.1)	Fair-Good	5 Year Planning Cycle	Part of Established Local Gov't. Process	No Add'l. Public Sector Cost	Most Local Gov'ts.
Environmental Reviews (3.6.2)	Fair	Stops Short-Term Development Impact	Part of Public Planning Process	No Add'l. Public Sector Cost	Calif. State Env. Policy Act
Sign Control Ordinances (3.7)	Good	Determined by Each Community	Part of Local Ordinances	Minimal	Most Local Govt's.
View Protection Ordinances (3.8.1)	Very Good	Determined by Each	Local Ordinance Administration	Minimal	Denver; Austin, TX

Technique	Degree of Protection	Duration of Protection	Ease of Administration	Cost	Precedents
Tree Protection Ordinances (3.8.2)	Good	Immediate Protection; Long-Term Preservation	Local Ordinance Administration	Minimial	Prince Georges County, Maryland
Notification Programs (3.9.1)	Fair	Short-Term	Simple; Voluntary	Minimal	
Recognition Programs (3.9.2)	Fair	Short-Term	Simple; Voluntary	Minimal	Local Historic Districts
Nonbinding Agreement Programs (3.9.3)	Fair; Voluntary Compliance	Short-Term	Simple; Voluntary	Minimal	

☆U.S. GOVERNMENT PRINTING OFFICE: 1991 - 518-533/21006

Publication No. FHWA-ED-90-030
HEP-23/11-90(1M)QE