

APPENDIX "D"
Scenic Easement*

What is a Scenic Easement?

When a conservation easement includes the goal of preserving desirable views of an area, it is said to have a scenic conservation purpose. If preservation of scenic resources is the sole purpose of the conservation easement, it may be referred to as a scenic conservation easement or simply a scenic easement.

The precise title and scope, however, can vary depending on the authorizing law of the state in which it is created and the relevance of any particular resource protection program. Regardless of title, the federal Uniform Conservation Easement Act expressly allows conservation easements that retain or protect natural, scenic, or open-space values of real property. As of 2000, the laws of at least 24 states expressly allowed conservation easements that protected scenic values, with many more allowing them as part of common law practice.

Overlap with Other Conservation Goals: The Mixed-Purpose Easement

Scenic protection is a popular conservation goal in and of itself. Scenic views and roads were among the conservation values expressly protected by 56 percent of land trusts examined in one recent study. The goal of scenic protection, however, often overlaps with other popular conservation goals such as protection of open space, wildlife habitat, forests, or wetlands. Given the overlap, many conservation easements are drafted not as single-purpose scenic easements but as mixed-purpose easements. This approach has the benefit of ensuring that if a conservation easement fails to qualify for scenic purposes under the Internal Revenue Service's definition, it can still be supported under the definition of another permitted conservation value.

Nevertheless, there are drawbacks to creating a mixed-purpose conservation easement when a sole-purpose scenic easement would suffice. Mixed-purpose easements are often more complex and difficult to understand. The tendency to list every possible applicable value can occasionally lead to an inadequate description of some values. If mixed-purpose conservation easements are viewed as nothing more than a litany of conservation values borrowed from boilerplate language, a reviewing judge may consider some values less

important and interpret a related prohibition accordingly. This problem is exacerbated if the activities prohibited on the property do not logically follow or connect to convincing conservation values. To avoid this danger, it may be advisable to rely on the simplicity of a single-purpose scenic easement when that is, in fact, the sole or primary value the landowner seeks to protect.

The Role of Scenic Easements in Comprehensive Scenic Protection Programs

Scenic easements are one tool among many used by both government and non-governmental organizations to protect the visual environment. The federal government traditionally has been at the forefront of scenic protection, but states and local governments have also enacted many important measures. Since the 1960s, a number of new national programs have authorized and funded a variety of approaches to protect the beauty of designated highways, rivers, trails, and other recreational areas. Many states have created similar programs, often modeled on their federal counterparts. Organizations at both the federal and state level tend to rely on a combination of regulation, land acquisition, and conservation easements to meet their goals.

Local governments, in contrast, generally have much less funding available for land acquisition. Instead, they tend to rely on land use regulations (e.g., zoning) and strategic uses of capital improvements programs to reach their scenic protection goals. For example, a local government might create a zoning overlay district restricting tall buildings in a scenic corridor, or it might withhold extension of public infrastructure into sensitive viewsheds in order to discourage development.

Non-governmental organizations involved in scenic protection, including land trusts, may collaborate to support one or more of these governmental programs, or may choose to work independently by making targeted land acquisitions. The decision by any of these organizations to use scenic easements, as opposed to another approach, is generally made on a case-by-case basis.

** The above article was taken, in its entirety, from the website <http://www.scenic.org/easements> by Scenic America. For strategies, case studies as well as information on the Scenic America organization, visit their website at <http://www.scenic.org/>.*

Appendix "D" **Scenic Easement**

As noted on the Scenic America website, two books worth reading...

Getting in Right in the Right-of-Way: A Citizen's Guide to Context Sensitive Solutions

Scenic America has been a leader for many years in promotion context-sensitive highway design. *Getting it Right in the Right-of-Way* includes information on community involvement in transportation planning, advises citizens on planning strategies for working with state highway engineers, provides basics road design vocabulary and information on federal laws that support context sensitive solutions, and gives helpful case studies. Scenic America, 2000. 24 pages.

Scenic Easements: A Tool to Conserve America the Beautiful

Intended to promote scenic conservation by encouraging the routine inclusion of scenic protection in general purpose conservation easements, as well as the establishment of stand-alone scenic easements. With this publication, Scenic America hopes to ensure that the best possible information on scenic protection through easements is available to landowners; land trusts; and federal, state, and local agencies. To this end, the *Scenic Easements Action Guide* provides a history of their use, reviews types of scenic resources currently protected by easements, and discusses special considerations for drafting scenic easements. NOTE: *Scenic Easements: A Tool to Conserve America the Beautiful* is not intended to be a comprehensive guide on technical aspects of conservation easements. Readers who wish to draft any type of easement should consult the *Conservation Easement Handbook* (2nd edition, 2005) and other resources available from the Land Trust Alliance (www.lta.org) and the Trust for Public Land (www.tpl.org). Scenic America, 2005. 20 pages.

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