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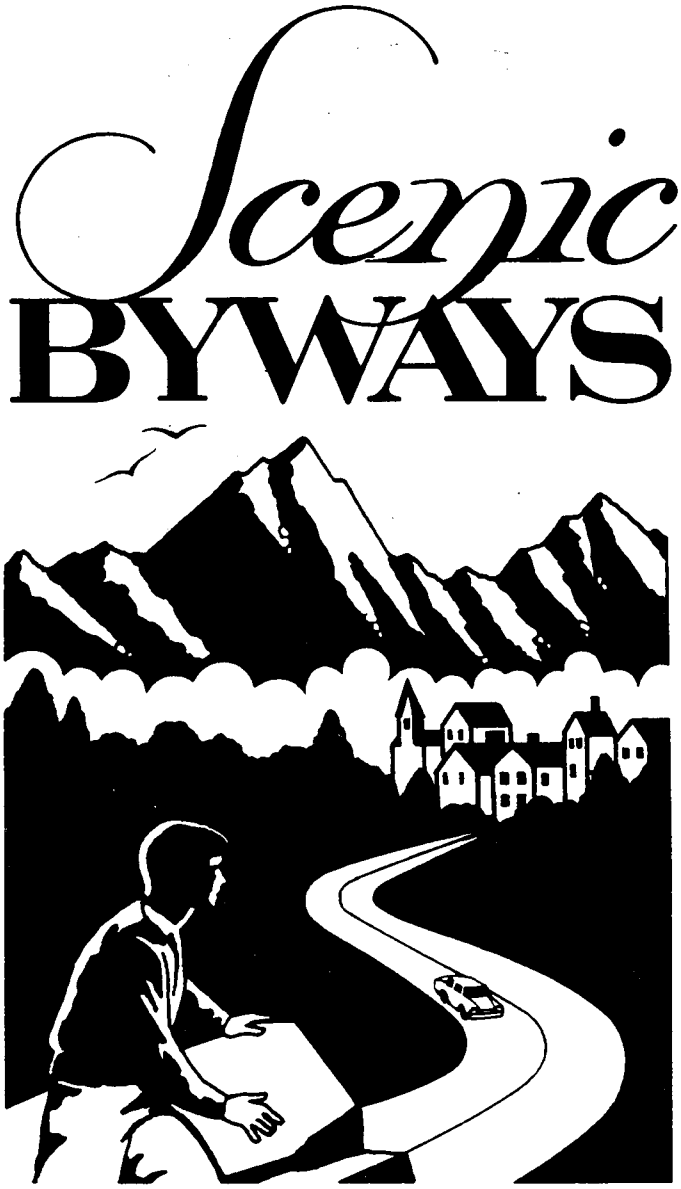
Federal Highway Administration

Final Case Study for the National Scenic Byways Study

Protection Techniques for Scenic Byways: Four Case Studies



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Final Case Study

for the

National Scenic Byways Study

PROTECTION TECHNIQUES for SCENIC BYWAYS: FOUR CASE STUDIES

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Prepared for

The Federal Highway Administration

Submitted by

The National Trust for Historic Preservation

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EXECUTIVE SUMMARY

This study of the techniques used to protect scenic byways is part of the Federal Highway Administration's comprehensive feasibility study of a national system of scenic byways. Its focus is on the historic qualities of byways that complement or contribute to natural scenic qualities. Through case studies of four highways, the techniques that have been used to protect scenic and historic byways are documented and analyzed. The efficacy of the techniques is evaluated over time, and specific recommendations for the protection of scenic byways are made.

The techniques that have been used to protect scenic byway corridors range from fee-simple acquisition of land to designating a road as scenic. Like fee-simple ownership, easements are a strong protective technique. Comprehensive planning and zoning ordinances, especially those that incorporate a highway corridor overlay district, can be effective techniques. Less effective are public policy statements, tax incentives, and local initiative. All have been used with varying degrees of long-term success.

Scenic byways have been designated through both federal and state systems. The National Park Service (NPS) created some of the first U.S. scenic highways. The U.S. Forest Service (USFS) and the Bureau of Land Management (BLM) both have systems of designated scenic highways. A number of states also have scenic highway systems, although their designation criteria and protection techniques vary widely.

This study focuses on four highways: NPS's Blue Ridge Parkway; Idaho Route 75, a state designated byway within the Sawtooth National Recreation Area (SNRA), Sawtooth National Forest;

Virginia's Route 5 between Richmond and Williamsburg; and Route J40 in Van Buren County, Iowa.

The Blue Ridge Parkway, a 470-mile roadway joining the Shenandoah National Park in Virginia and the Great Smoky Mountains National Park in North Carolina and Tennessee, was created in 1936. Although its principal resource is natural scenic vistas, the Parkway also exhibits and interprets aspects of early mountain life and, in itself, is a historic resource. It is protected largely by federal ownership of some 77,000 acres of adjacent lands. The Blue Ridge Parkway represents one of the first and most widespread uses of scenic easements for road protection, with over 2,000 acres of easements acquired. Although they were loosely written and have resulted in management difficulties over the years, the easements have, for the most part, served their purpose well. Threats to the Blue Ridge Parkway come principally from the private lands adjacent to the park, where land-use controls are weak to nonexistent. These private lands represent a challenge to future public-private protection efforts.

Idaho's Route 75 through the Sawtooth National Recreation Area (SNRA) provides vistas to magnificent snow-capped mountains as well as valleys where ranching and small towns tell of the settlement of the West. It is protected largely by federal ownership, although over 18,500 acres are also protected by scenic easements, acquired during the 1970s when the SNRA was created. Approximately 10% of the land in the SNRA remains in private hands. USFS has developed a management plan for easement lands and private lands within the SNRA and has worked actively with the local communities on compatible development plans. Although USFS has condemned one uncooperative community through eminent domain and has had difficulty with others, for the most part protection of Route 75 has been successful.

Route 5 between Richmond and Williamsburg was designated a Virginia Byway in 1975. Joining the state capital with the colonial capital by way of the James River plantations, the Route 5 corridor is rich with sites and structures of colonial history. Although all the five jurisdictions through which the byway passes have had comprehensive planning and zoning ordinances since designation, these tools protect the road with different degrees of effectiveness. The areas nearest to Richmond and Williamsburg have experienced considerable commercial and residential development, and--except for the most remote portion of the road--the scenic qualities of the historic highway are threatened. The "greenbelt" policies of some of the counties have not provided an adequate buffer. Route 5 represents a major challenge to state and local authorities to prevent further deterioration of a nationally significant byway corridor.

Route J-40 in Van Buren County, Iowa is not a designated scenic highway but has been protected and promoted through local initiative. Running along the Des Moines River and joining several river communities with National Register historic districts, J-40 has been promoted by local organizations for an annual bike ride, scenic drive, and tourist route. Although J-40 has not yet been threatened with adverse development, the communities of Van Buren County are working on a comprehensive plan and, perhaps, future zoning ordinance that will protect their historic districts and the road.

Overall, evidence from the four case studies suggests that the most effective protection techniques for scenic highway corridors are fee-simple ownership of the land and scenic easements. These provide the greatest land-use control. Short of these relatively more expensive techniques, strong zoning ordinances with highway corridor overlay districts can provide protection. Highway corridor overlay districts specify architectural guidelines,

setbacks, height limitations, signage, vegetation control, and other design details for a specified road corridor that supersede other zoning restrictions. Local incentive can also be effective in protecting scenic and historic resources, as Route 5 and Route J-40 illustrate; however, the greater the development pressure, the less effective they are.

The National Trust for Historic Preservation recommends:

1. Congress should enact a program to create a national system of Scenic and Historic Byways. Federal funds should be available to states and federal agencies that participate in the system. The national program will also provide uniform signage and promotion of designated scenic and historic roads.

2. States would participate in the national system voluntarily and would be responsible for administering their own scenic and historic byway programs under national policy guidance. State departments of transportation would work with state departments of historic preservation and departments of natural resources to administer the program.

3. Minimum federal standards for Scenic and Historic Byways should be developed as a state-federal cooperative effort, with the participation of the National Governors Association, AASHTO, the National Trust for Historic Preservation, and the Department of Transportation. These standards should apply to both designation criteria and minimum protection standards.

4. Participating states should designate a scenic and historic byway <u>only</u> if and when a local management plan is in place for the entire area relevant to the byway under consideration. The management plan should be based upon a comprehensive survey of the scenic and historic attributes of the area and should include identification and documentation of all sites eligible for listing in the National Register of Historic

Places and for state or local historic designation. The management plan must, at a minimum, provide specific mechanisms for protection of the resources of the byway. Most commonly this would be done through comprehensive planning and a zoning ordinance. The National Trust strongly recommends the protection technique of a highway corridor overlay district. This supplements a zoning ordinance and addresses protection of historic sites, setbacks, height limitations, vegetation controls, signage, and similar specific concerns for a defined byway corridor. The overlay district may be combined with the use of easements or fee-simple acquisition to protect sites or vistas of particular importance.

5. Participating states must develop criteria and a process for de-designating scenic and historic byways if the resources of the corridor are compromised or destroyed.

6. Funding for the National Scenic and Historic Byway system may be structured either as a categorical set-aside or as an incentive program, for example, so that state participation would ensure a higher percent of federal highway funding. Scenic and Historic Byway funds could be applied toward acquisition in fee simple and easements of property of open space, natural, or historical significance; toward state planning and planning grants to local governments; toward the administration of the byway program and enforcement of its protection plan; and toward promotion and interpretation of designated byways.

7. A National Scenic and Historic Byway Center should be established to develop and provide educational and training assistance to state and local officials who administer scenic byway programs. The Center would serve as a clearinghouse for information on the various programs undertaken by federal agencies, state and local governments, nonprofit organizations, and others.

PROTECTION TECHNIQUES FOR SCENIC BYWAYS:
FOUR CASE STUDIES

I. INTRODUCTION

This study of the techniques used to protect scenic highways is part of the Federal Highway Administration's (FHwA's) comprehensive feasibility study of a national scenic byways system. More than 20 studies have been undertaken, each with its own particular focus. This study by the National Trust for Historic Preservation is focused on the techniques currently being used to protect the scenic and historic resources along scenic highways. Our particular interest is on the historic qualities of scenic highways--as opposed to strictly scenic qualities--and the methods available to protect them.

One of the reasons that highways are designated "scenic" is the presence of historic resources that contribute to or complement natural scenic qualities. The Natchez Trace Parkway, for example, one of America's best known scenic highways, runs from Nashville, Tenn., approximately 450 miles south along the Mississippi River to Natchez, Miss., and is bounded by resources that tell of the region's rich history--from Indian travels and colonial exploration to ante-bellum settlement. The historic resources attract tourists, but increasing tourism can threaten the very qualities that were the reason for a road's scenic designation. Thus, designated highways must have protection techniques in place that will preserve their historic and scenic resources. Without such protection, scenic designation may ultimately destroy the resources for which the designation occurred.

The techniques available to protect scenic highways and other resources such as historic districts and scenic rivers cover a wide range: from fee-simple ownership of the land and resources

to ordinances which prohibit certain types of land use to grass-roots efforts to enhance roadside beauty. Ideally, the most effective protection techniques, in the long run, are holistic, giving consideration to the entire highway and all its resources as a unit. One type of holistic approach to protection would be public ownership of a highway corridor; another might be a regional planning effort where local jurisdictions survey the resources of the highway corridor, identify those eligible for the National Register of Historic Places and those of particular local significance, and make provisions for their protection. The most effective protection techniques should consider in advance the impact of tourism, so that future use of the highway corridor will not impair its scenic and historic quality. Such consideration should not preclude opportunities for tourist-related development but should establish a process for orderly and coordinated land-use change.

This study examines protection techniques that are actually in use along scenic highways and evaluates their success in preserving historic and scenic resources. The study was structured according to the following basic tasks:

- Identify Historic Preservation Techniques - identify and describe the major protection techniques along scenic byways;
- Provide Examples of Use of Techniques - document the use of the techniques through specific examples, from one to three examples of each technique;
- Determine Which Techniques Were Effective - gather data on the efficacy of the techniques in terms of resource protection, promotion of tourism, and safety; most of the data sources are persons responsible for designating, planning, and overseeing the scenic highways; and
- Write Report - write a draft report focused on case studies.

The methodology applied to the above tasks was, first, to identify the major protection techniques and then select from three to five scenic highways which represent the range of those techniques. Then, the history of the designation and protection of each highway was to be studied in detail. Finally, through comparative analysis, the relative strength of each protection technique, as observed across the highways, was to be identified and, from this analysis, recommendations were to be made.

The following criteria guided the selection of the highways for case study:

- The highways were selected from at least two U.S. Census regions; they represented different geographical areas;
- At least one federally protected highway, at least one state-designated highway and at least one undesignated highway were selected;
- Each highway demonstrates more than one protection technique;
- At least one highway is within driving distance of Washington, D.C., so that the research team could visit it; all the selected highways are familiar to at least one member of the research team;
- At least two of the highways are places where tourism is actively promoted; and
- All the selected highways are historic, i.e., have historic resources and/or a historic landscape to be protected.

Based on these criteria, four scenic highways were selected, as follows:

- The Blue Ridge Parkway (National Park Service), in Virginia and North Carolina;
- Route 75, Sawtooth National Recreation Area in the Sawtooth National Forest, Idaho;

- Route 5, connecting Richmond and Williamsburg, Virginia; and
- Route J40, in Van Buren County, Iowa.

The roads represent four geographic areas of the country. Two of them--The Blue Ridge Parkway and Route 5 in Virginia--were close enough to be visited by the research team. The Blue Ridge Parkway is federally protected; Route 75 in Idaho is a state-designated road but protected federally; Route 5 in Virginia is state-designated but protected by local jurisdictions; and Route J40 in Iowa is not formally designated but is protected through local efforts. Initial investigations suggested that the four highways selected illustrate the range of protection techniques available.

A comprehensive list of questions to be asked about each scenic highway was developed. The questions covered a description and history of the roads, the protection techniques in place and a history of their development and use, and changes in the roads since designation, in terms of development, tourism, and threats to historic and scenic resources. A list of these questions is found in Appendix A.

II. OVERVIEW OF PROTECTION TECHNIQUES

There are a variety of techniques used to protect scenic and historic resources--along a roadway, along a river, or within a district. These techniques can be arranged along a continuum from the most protective to the least protective, and will be discussed in that order (Figure 1). Some of the techniques overlap or are used in combination with one another; some of the techniques take many different forms. This discussion is intended simply as an introduction and overview to protection techniques; a detailed discussion of them can be found in Stokes, et al., Saving America's Countryside. (1)

Fee-Simple Ownership

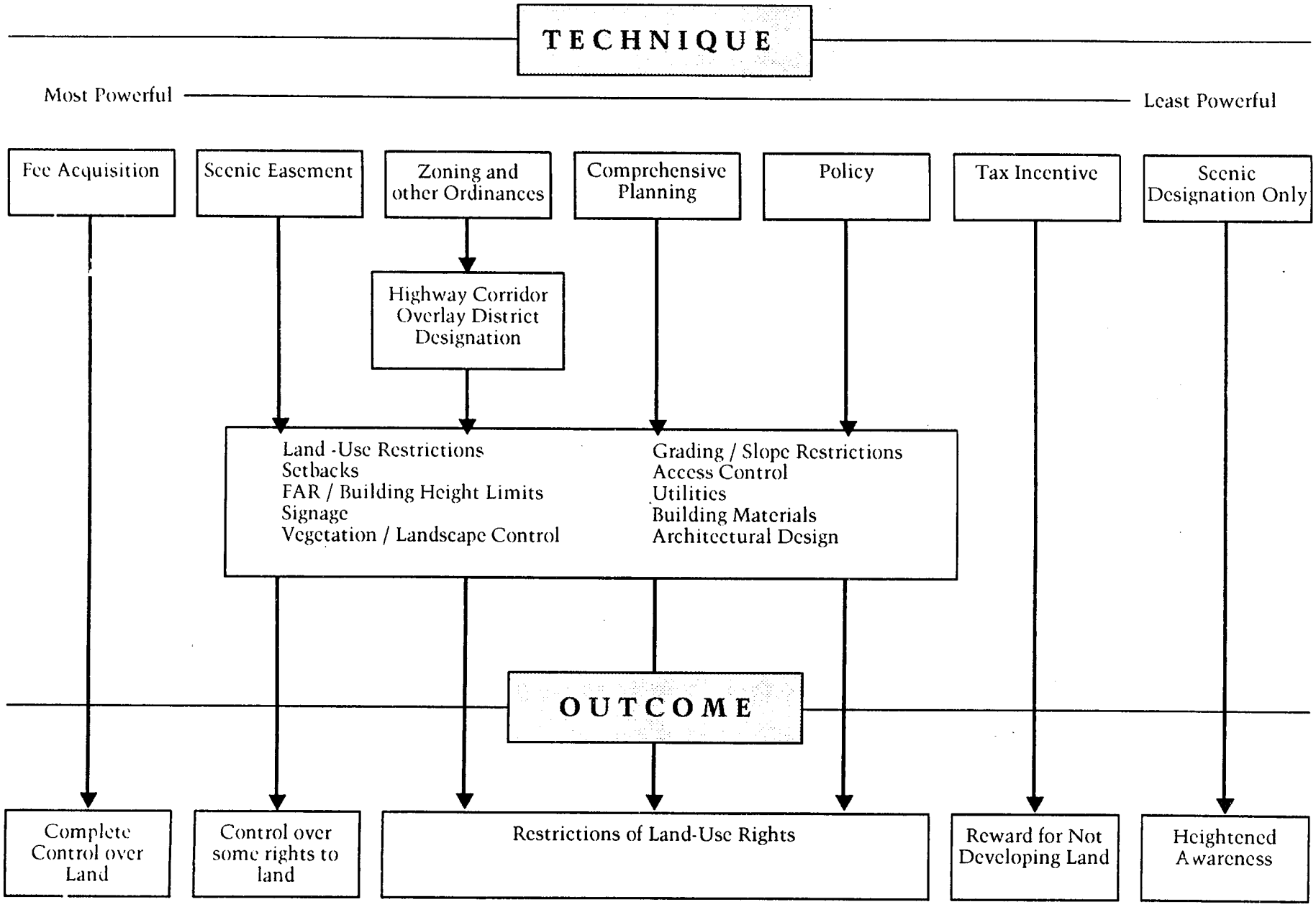
The surest way to protect scenic or historic resources is to own them outright. With fee-simple title to the land and resources, one has all rights to the land that are available--that is, that are not specifically restricted by a governmental entity. The federal government owns outright most of the land in our national parks and and much of the land in our national forests. Some states, cities, and counties own historic sites and parks outright. There are numerous organizations and land trusts, such as the Trust for Public Land and the Conservation Fund, that acquire land in fee simple and then transfer it to a governmental entity or a community. In Nantucket, Mass., the Land Bank Commission protects land exclusively by acquiring property outright.

Scenic or Conservation Easements

A scenic, conservation, or historic easement is the acquisition of certain limited rights to, or interests in, real property; essentially it is an agreement between the owner of the property and the holder of the easement that the land will be restricted from certain specified uses that might compromise its scenic, historic, or other designated qualities. That is, the owner conveys certain rights with an easement: for example, the right to develop the land commercially, to erect signs, or to cut trees.

Scenic easements were first used in the United States in the 1880s to help protect Olmstead-designed parkways in the Boston area. (2) They were used on a large scale by NPS in the 1930s to help protect the Blue Ridge Parkway and the Natchez Trace Parkway. Today they are acquired by numerous conservation and historic preservation organizations to limit development on property that is scenic or historic. Notable examples include the Big Sur Land Trust that has acquired many easements to

FIGURE 1
CONTINUUM OF RESOURCE PROTECTION TECHNIQUES



protect Highway 1 along the California Pacific Coast and the Waterford Foundation that acquired over 40 easements in Waterford, Va., and turned them over to the National Trust for Historic Preservation, the Virginia Division of Historic Landmarks, and the Virginia Outdoors Foundation. (3)

Zoning and Other Ordinances

A zoning ordinance is a set of rules enacted by a local jurisdiction to guide land use and development. It usually consists of two parts: a zoning map and the ordinance. The zoning map divides a given governmental area into land-use zones, each of which has certain development guidelines, as specified in the ordinance.

Zoning originated in the U.S. to separate residential from industrial land uses. Today, most zoning ordinances have at least five separate categories of land use: residential, commercial, industrial, institutional, and open space. Where these zones occur on a zoning map should reflect environmental, historical, economic, and social constraints. Within each zone, various construction and development restrictions are specified, such as minimum lot size, set-backs from property lines, building heights, floor-area ratios, signage, slope restrictions, and access. Zoning ordinances range from the very specific and restrictive to the very lenient. Some local governments have separate ordinances for signage, junkyards, subdivisions, and other aspects of development.

Zoning ordinances may also contain special zones called "overlay zones" which are applied to specific areas for specific purposes. Common overlay zones are highway corridor overlay zones and historic district overlay zones. Within these zones, special restrictions apply to all land, regardless of how it is otherwise zoned. For example, along a scenic highway corridor, signage may be unusually limited in its height, size, and proximity to the

road. In a historic district, all building construction or renovation may have to meet certain architectural and environmental guidelines.

The technique of zoning is only as strong as the original wisdom with which it was written and the will to enforce it. Applications to rezone land for different uses must be weighed against forces of change and the original zoning map. In many rezonings, political dynamics prevail.

Comprehensive Planning

Zoning ordinances are usually prepared as enactments of comprehensive plans. (In fact, courts have upheld strict zoning only when it is used in conjunction with a comprehensive plan.) Such plans are blueprints for the future, maps of the land as citizens would like it to be. Comprehensive plans project future expectations onto the land, hoping to anticipate change.

Comprehensive plans may include a historic preservation plan, based on a survey of historic resources. However, by themselves, comprehensive plans are not a strong tool for protection of scenic or historic resources. They contain no inherent mechanism to enforce purely conceptual ideals; they function only as guidelines. For that reason, comprehensive plans rely on strong zoning ordinances and/or citizen activism for operation. Perhaps most important, comprehensive plans must be continuously reviewed for their relevance to unanticipated change. Only with frequent updates can they function effectively as maps of the future.

Policy Statements

A governmental entity may issue a policy statement dealing with land use or land development that provides a measure of protection for scenic or historic resources. This policy may not be incorporated in a comprehensive plan or zoning ordinance, but can be effective in some instances. For example, a recognition

by a local government that a certain roadway is historically important may engender enough citizen support to protect it. Wisconsin's Rustic Roads system operates under this assumption. Policy statements may also work in conjunction with other ordinances to enforce or strengthen them through the decision-making process.

Federal Review and Planning Procedures

Through the passage of the National Historic Preservation Act of 1966, the federal government established a procedure for identifying and assessing the effect of federal actions on historic resources. The Section 106 process, as it is called, provides a mechanism for all federal agencies to notify the State Historic Preservation Officer when a site listed in, or eligible for listing in, the National Register of Historic Places will be affected by a federal undertaking, so that avoidance of adverse effect can be developed and enacted. Currently, bills are pending in Congress to strengthen the Section 106 process.

Tax Incentives

Some states and local jurisdictions have passed laws which provide a reduction in tax rates for land retained in an undeveloped, or open-space, condition. These laws offer an incentive not to develop, particularly in environmentally or culturally sensitive areas. For example, Virginia legislation allows local governments to authorize taxation of certain types of land--agricultural, forest, and open-space--on the basis of their use, not fair-market value. In 1988, amendments to the Code of Virginia permitted lands to qualify for open space with a minimum of two acres provided they are adjacent to a scenic river or Virginia byway. (4)

However, in many instances, these tax incentives are not an operational protection tool. Although wealthy landowners may be eager to pay lower tax rates to keep their property in open

space, local jurisdictions may be unwilling to lower their tax base. On the other hand, poorer landowners, although they may benefit from tax relief, are often reluctant to relinquish the future opportunity to develop their land.

Other tax incentives can benefit the preservation of historic properties along scenic corridors. The federal rehabilitation tax credit offers a direct offset to taxes on non-passive income equal to 20% of the cost of rehabilitating a historic building. In addition, numerous states allow a reduction in taxes on the cost of rehabilitation of historic buildings. In Oregon, for example, the tax-assessed value of National Register properties is frozen for 15 years. Colorado recently passed legislation to allow 20% of the rehabilitation cost of historic property--whether commercial or owner-occupied--as a tax credit against the state income tax. Currently, 20 states follow one of these two tax-incentive approaches to protection.

Local Initiative

In the absence of strong institutional protection techniques, local citizen initiatives may work well to protect scenic and historic resources. In fact, even with institutional protection, a citizenry which cares deeply about protecting its environment can be very effective. Local initiatives include clean-up campaigns, tree-planting and other beautification events, publicity campaigns to heighten awareness, as well as fund raising, lobbying, and politicking actively to promote scenic preservation. Mike Barylsky, responsible for New York State's Scenic Road program, maintains that, regardless of zoning ordinances and management plans, local citizen interest is the single-most important protection technique for scenic highways in New York. (5)

Local nonprofit historic preservation and land conservation organizations typically take the lead in local initiative. The

National Trust for Historic Preservation works with many of these organizations through various means. The National Main Street Center provides technical assistance and training to local groups in working to preserve and, at the same time, revitalize their downtowns. Today over 400 communities are officially affiliated with Main Street programs. The National Trust Heritage Tourism program is working with communities in four pilot states to heighten awareness of historic resources to the travel industry and to help the preservation community understand the value of tourism through educational programs, resource materials, and presentations. Finally, the National Trust sponsors national workshops on Preservation Leadership Training to strengthen such organizations. Among the topics covered at these workshops is writing, enacting, and enforcing preservation ordinances.

Scenic Designation Only

As discussed earlier, most states with formal scenic byway programs have no mechanisms in place to protect the roads. However, scenic designation is usually accompanied by special signage and, in this regard, heightens public awareness of the roads' special qualities. In addition, state designation may also result in increased promotion of the roads as tourist attractions; several states--such as Tennessee and Utah--have published brochures advertising their scenic highways. Although designation is not strictly a protection technique, it may be considered a trigger for protection.

III. OVERVIEW OF SCENIC BYWAYS

What qualifies for and what constitutes a scenic byway vary widely. Although the concept of a scenic byway is readily understood, the types of landscapes they traverse and the types of resources they present to the traveler range from rugged snow-capped mountain ranges to historic farm and village settings. In

addition, the ways that scenic roads are designated and protected vary. Designation of a road as a scenic highway can be done by a federal agency, a state, a county, or some other entity. Protection of a scenic highway can range from public fee ownership of a highway corridor to nothing more than labeling the road as scenic. Although there are numerous roads or parkways that local jurisdictions label scenic or that the public considers scenic--such as the Taconic Parkway in New York--this overview focuses on highways that have been formally designated by a federal agency or a state.

FEDERAL SCENIC HIGHWAY SYSTEMS

The three largest federal land-management agencies--the Bureau of Land Management (BLM), the U.S. Forest Service (USFS), and the National Park Service (NPS)--all have scenic highways within their boundaries. The National Park Service has the longest history with scenic highways; USFS and BLM have recently created systems of scenic roadways.

The National Park Service

Parkways constitute a special type of unit of the National Park system. A parkway is a highway for recreational passenger car traffic with a wide right-of-way that insulates the roadway from abutting private property, minimizes intersections and access points, and protects natural scenic values. The first NPS parkways were developed in the 1930s, most notably Skyline Drive in the Shenandoah National Park, the Blue Ridge Parkway, and the Natchez Trace Parkway. Today there are nine parkways in the NPS system, four of which are in or around Washington, D.C.

The U.S. Forest Service

USFS created its scenic highway program in 1988, designating roads that are within the boundaries of national forests in 30 states. As of April 1990, USFS had a system of 65 designated scenic highways, totaling 3,451 miles, ranging from 5 miles to

122 miles in length. This system is dynamic, with more mileage added each year. The USFS roads are protected principally by federal ownership of the forests through which they pass, and in some cases by scenic easement as well.

Bureau of Land Management

BLM has recently developed and promoted a system of scenic roads in 11 western states called Back Country Byways. As of March 1990, 34 roads had been designated but, like the USFS system, the BLM system is dynamic, and the number of roads is changing. Back Country Byways are classified into four types, depending on the surface and general conditions of travel, but most require trucks or 4-wheel drive vehicles. BLM is currently conducting a national contest to select designs for interpretive kiosks to be placed along all Back Country Byways and other sites. Design submissions are due by September 1, 1990.

STATE-DESIGNATED SCENIC HIGHWAYS

A number of states have formal scenic byway programs authorized by legislation and based on published standards and procedures. In addition, some states have no formal scenic highway program but have designated a road or some roads as scenic, usually as part of a special program or initiative. Roughly 2/5 of the states have no designated scenic byways (other than what may be on federally managed land).

In general, state scenic byway programs designate roads that have scenic values and/or historic or cultural resources. Arizona, for example, has a program for "Parkways, Historic and Scenic Roads." Virginia Byways have aesthetic or cultural value and lead to or are within areas of "historical, natural or recreational significance." Connecticut's scenic roads may pass through agricultural land, afford natural vistas, or abut land on which is located a structure listed in the National Register of

Historic Places. However, no state program isolates historic byways for special promotion or protection.

Of the states that have formal scenic byway programs, the procedures for and implications of scenic designation vary considerably. In some states, such as California, Wisconsin, and Virginia, designation of scenic highways is initiated at the local level; a county or city petitions the state highway department to make the designation. In other states, such as Maine, Tennessee, and Utah, the roads are nominated for designation by a state-level planning board or committee. In some states, scenic designation means little in the way of protection; in others, roads are not designated scenic unless there is assurance that the local jurisdictions through which the road passes have a plan in place to protect it.

In Wisconsin, for example, scenic highways are called Rustic Roads. They are two-lane roads with a low volume of traffic; they are county or local access roads. Rustic Roads are so designated by local initiative. There are 55 such roads, with between six and seven added to the system annually. The only statutory restriction placed on such roads is a maximum speed limit of 45 mph. Although the state has guidelines for Rustic Road protection, they are very general. Local jurisdictions are encouraged to protect the natural, scenic, and historic character of the roads, but are wholly responsible for their protection. The state provides Rustic Road signage, but no additional funding.

Tennessee has recently designated a system of scenic highways which is intended to provide a travel alternative to the Interstate system in linking places of scenic and cultural or historic significance across the state. Along these highways, billboards, outdoor advertizing, and junkyards are prohibited.

Beyond these measures, protection is left up to the local jurisdictions and is not reviewed or monitored by the state.

In some states, scenic highways are protected through local management plans which are reviewed or approved by the state. For example, in Arizona, the presence of local zoning is one of the main criteria for designating a scenic road. If zoning is not in place, the Arizona Department of Transportation (ADOT) recommends "design review overlay zoning" for the highway corridor. In addition, ADOT has oversight authority on development that occurs along scenic highways and reviews all construction permits. A scenic designation does not stop new construction but it does assure that new construction is undertaken sensitively.

California has one of the strongest scenic highway designation programs. Although the local jurisdiction takes the lead in designating a scenic road, the state Department of Transportation (Caltrans) works with the local jurisdiction on a plan to assure road protection. Ideally, the protection plan includes zoning for a 2,000-foot corridor and addresses land use, billboard controls, planning for underground utilities, and landscaping. For example, Ventura County protects Highway 33, a state-designated scenic highway, through a Scenic Highway Protection Overlay Zone, the requirements and restrictions of which are detailed in the zoning ordinance. All development along the road--which includes grading more than 1,000 square feet of ground or removing native vegetation--must be approved by permit.

Few states appear to have acquired land beyond the right-of-way or to have acquired easements for protecting scenic highways. Two exceptions are noted here. In Washington, as part of the discretionary funding from the National Highway Beautification Act of 1965, the state acquired land in both fee-simple and in easements for scenic strips along designated roads. Land was

also taken by condemnation along SR 97 near Lake Chelan strictly for scenic protection. In New Hampshire, which does not have a formal scenic byway program, land and easements have both been acquired, also with funding from the National Highway Beautification Act, for road protection in nine locations throughout the state.

IV. CASE STUDIES

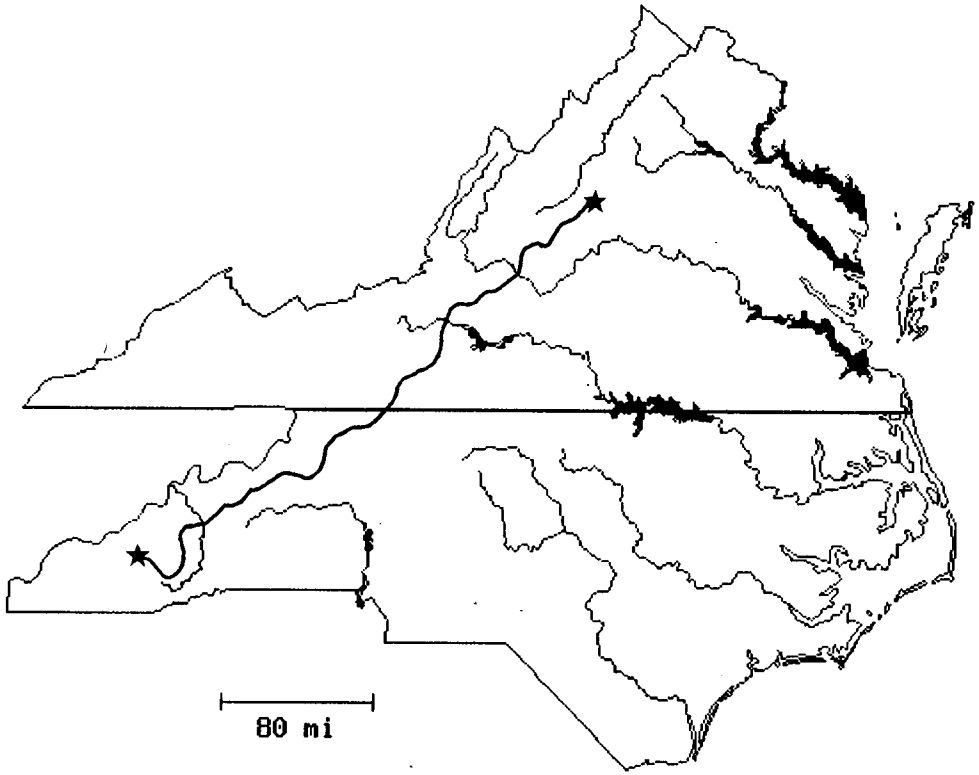
THE BLUE RIDGE PARKWAY

The Establishment of the Blue Ridge Parkway

The Blue Ridge Parkway is a 470-mile federal highway linking Shenandoah National Park in Virginia with the Great Smoky Mountains National Park in North Carolina and Tennessee (Figure 2). As a logical extension of Skyline Drive in the Shenandoah Park, the Blue Ridge Parkway was formally proposed early in Franklin D. Roosevelt's first administration. Virginia Senator Harry F. Byrd is usually credited with the original idea for the Parkway. (6) Funding for land acquisition for the Parkway was authorized in 1933 under the National Industrial Recovery Act. Acquisition was to be undertaken by Virginia and North Carolina and the land turned over to the National Park Service for management. Acquisition began early in 1935; actual construction began in September 1935, and formal authorization of the park occurred in 1936. Although portions of the road opened in 1939, the Blue Ridge Parkway was not fully complete until 1987 when a final link in North Carolina was constructed.

NPS developed the idea of a "parkway" to be a special kind of national park. For recreational passenger travel, it was to afford the visitor a scenic, leisurely drive through a wide right-of-way--uninterruped by intersections, access points, billboards, commercialism, or unpleasant views. (7) To create such a drive in the Blue Ridge, NPS determined that the states should acquire, on average, 125 acres in fee-simple and 25 acres

FIGURE 2
THE BLUE RIDGE PARKWAY
VIRGINIA AND NORTH CAROLINA



in scenic easement per one mile of parkway. This formula was not a limitation on the size of the park, but a limit on what the states were obligated to acquire. Altogether, Virginia acquired 14,200 acres of land in fee simple and North Carolina, 22,500 acres. Virginia acquired 947 acres of scenic easements and North Carolina, 1,115 acres.

For the most part, the parkway was constructed along the ridge lines of the Blue Ridge and other mountain ranges, at an average elevation of 3,000 feet. The topography is rough, with spectacular views of the adjacent valleys and distant mountains. During the 1930s, much of the parkway land was occupied by farming communities engaged in subsistence agriculture and small-scale marketing of local produce. Most families in these communities sold their land willingly to the states. A large portion of the parkway right-of-way, however, passed within or near the boundaries of national forests that were being created or enlarged during the same period of time: the George Washington and Jefferson National Forests in Virginia and the Pisgah and Nantahala National Forests in North Carolina. Today, approximately 40% of the Blue Ridge Parkway is located adjacent to these forests.

From the beginning, the plan for the Blue Ridge Parkway incorporated private agricultural operations on park and adjacent land. Realizing that NPS could not possibly afford to acquire all the land within the viewshed of the park and recognizing the important contribution of mountain agriculture to the culture and appearance of the area, NPS chose to acquire a portion of scenic easements that permitted agricultural practices. The agency also allowed active farming to continue under lease, special use permit, or letter of agreement. Today, some 4,500 acres of land along the parkway are farmed under these arrangements. (8)

NPS also intended that the parkway incorporate and reflect a sense of the mountain culture that prevailed before land acquisition. Thus, NPS made deliberate efforts not to destroy buildings and other structures that represented important components of that culture. For example, near the Peaks of Otter in Virginia, NPS acquired and preserved the Johnson family farm as an example of a mountain homestead. Mabry Mill, located about 60 miles south of Roanoke, is an operating grist mill and mountain industrial complex restored by NPS. Altogether, there are 280 wayside exhibits along the parkway route that interpret historic, cultural, and environmental resources.

The Blue Ridge Parkway's 1988 Land Protection Plan (LPP) recognizes several types of land use within the park, including historic zones, of which there are approximately 2,220 acres. Included are resources listed in or eligible for the National Register and other historic places worthy of protection and interpretation. (9)

In addition, the Blue Ridge Parkway itself is a historic resource. Large portions of it are over 50 years old; it was the first of its kind of federal parkway and an exemplary New Deal work project. Four Civilian Conservation Corps camps were employed in the construction of the Parkway and related facilities; the Resettlement Administration was involved in several projects acquiring land and relocating mountain families along the road. However, the Blue Ridge Parkway is not listed in the National Register. The prevailing sentiment in NPS is that such listing could limit the agency's management flexibility. (10) The landscape architect of the Blue Ridge Parkway expressed the idea, however, that if being in the National Register would prevent the Federal Highway Administration from directing NPS to make certain road improvements--such as striping the outside

margins of the Parkway--he would gladly see the nomination go forward. (11)

The Blue Ridge is a classic example of a scenic highway: the quintessential American parkway. Relative to other types of scenic highways, it is well protected and well promoted. With its long history, it provides an excellent example of how protection techniques work over a long period of time.

Changes in The Blue Ridge Parkway Over Time

Although the Blue Ridge Parkway was essentially established by 1940, acquisition of land and easements by Virginia and North Carolina continued for many years. The last deed of state-acquired property was conveyed to NPS in 1975. (12) Since 1940, NPS has occasionally acquired land on its own and has converted easements to fee-simple ownership. Some USFS lands have been transferred to NPS, and significant donations of property have occurred, most notably, the Moses H. Cone estate in North Carolina, the Julian Price Memorial Park, and the Linville Falls Recreation Area.

Since the Parkway was opened for travel in 1939, visitation has increased dramatically. Comparable figures have been kept since 1957. In that year, slightly over 5 million visitations occurred; in 1989, that figure rose to over 21 million. (13) Over the years, NPS constructed four facilities for overnight lodging on the Parkway: Rocky Knob Cabins--former CCC cabins converted in the 1940s, Bluffs Lodge (1950), Pisgah Inn (1963), and Peaks of Otter Lodge (1964). Since 1978, revenues from all concessions along the Parkway--lodgings, restaurants, and gift shops--have doubled. (14)

The greatest changes to the Blue Ridge Parkway have occurred adjacent to its boundaries in the surrounding counties. In the

1960s, second-home subdivision and related development increased dramatically across much of the Southern Appalachians. Along the Parkway, most of this development occurred in North Carolina. Watauga and Avery Counties, in particular, were heavily developed. Hugh Morton, whose family owned some 16,000 acres of land that NPS had tried many times to acquire, transformed Grandfather Mountain into a recreational complex that included condominiums, single-family homes, a lake, golf course, and swinging bridge. Sugar Mountain, Beech Mountain, and Seven Devils are other examples of resorts with golf courses, lakes, ski slopes and subdivisions of single-family homes near the Blue Ridge Parkway. Some development has occurred in the foreground of the viewshed from the Parkway. South of Roanoke, for example, wooded stretches of roadway are occasionally punctuated by subdivisions located only a few hundred yards from the road with no buffer of trees or other vegetation.

Protection of The Blue Ridge Parkway

The boundaries of The Blue Ridge Parkway include over 87,000 acres of land. Of this, the National Park Service owns some 77,000 in fee-simple title and just under 1,300 acres in scenic easements. Although most of the park acreage was acquired between 1936 and 1940, NPS has continued to acquire, exchange, or receive in donation lands for the Parkway; the legislation authorizing the park specifies no upper limit to its size.

The Blue Ridge Parkway represents a pioneer example of the use of scenic easements to protect a roadway. For that reason, this report focuses on easements. Most of them have been in place for 50 years or more and, thus, their success can be evaluated over a long period of time.

Most easements were acquired during the early years of the park; none has been acquired recently. In the 1930s and early 1940s, NPS paid between $15 and $30 per acre for easements versus about

$40 per acre for fee title. (15) The easements are distributed unevenly down the Parkway length, being clustered in areas where the park is bounded by private, instead of national-forest, land. Most are located between Roanoke, Va., and Blowing Rock, N.C. In recent decades, the total acreage of easements has been reduced by about one-half through exchange or conversion to fee-simple ownership.

The easements themselves differ by state. North Carolina used one easement document that specified the following restrictions: the landowner could not erect "buildings, pole lines and structures" except for "farm or residential purposes" (new commercial or industrial construction was specifically prohibited); no "mature or stable trees or shrubs" could be removed or destroyed without NPS consent; no "dump of ashes, trash, sawdust or any unsightly ... material" could be placed on the land; and no "sign, billboard or advertisement" could be displayed (except for a small sale sign). (16)

The park easements in Virginia took two forms. In one, prepared in 1936, the owner is restricted from erecting "any buildings, pole, pole line or other structure;" from constructing "any private drive or road;" from removing, breaking, injuring, or destroying "any trees or plants or shrubbery;" and from displaying "any sign, billboard or advertisement." (17) The restrictiveness of this easement--such that not even a dwelling could be built--was modified by legislation in 1938 that created another easement document. The later easement allowed erecting buildings for farm or residential purposes, constructing a drive or road <u>with the consent of the grantee</u> (NPS), removing or cutting mature trees <u>with the consent of the grantee</u> (NPS), removing seedling trees, and displaying one small sale sign. (18) In other words, this easement was similar to the easement in North Carolina. (Copies of the North Carolina easement and both Virginia easements are in Appendix B.)

Easement violations have presented significant management challenges over the years for NPS. For the most part, it is the responsibility of individual rangers to be familiar with the easements in their districts and to police them for violations. In some cases, they have prevented timber from being cut before having to resort to legal action. In at least two cases, homes were under construction before the rangers discovered them. In one case, NPS staff were able to screen the house from the Parkway with trees; in another, construction was stopped and the owner persuaded to exchange the land on which he was building for other NPS property. (19)

Over the years, the wording and terms of the easements have been tested many times. Most of the contests have concerned the definition of "mature and stable trees." Only two cases have gone to court, however--both decided in favor of NPS. One case occurred in 1949 in Wilkes County, N.C., where a landowner proposed to cut 24 trees, each 8 inches or more in diameter. A U.S. district judge upheld the validity of the easement and found that trees of that size are considered merchantable timber and, therefore, not the acceptable "seedling shrubbery" the owner was permitted to remove. (20)

Except for the strict Virginia version, the easements often put NPS in the difficult position of consenting to a request for construction or tree harvesting. Determining if and when to give consent has been a problem. In part because of the challenges to easements experienced over the years, legislation was passed in 1961 which allowed NPS to exchange lands and interests in lands on the Blue Ridge and Natchez Trace Parkways (75 Stat. 196). Thus, if an owner proposed to build a house or road, NPS could deny the request but offer instead to exchange fee-title land on which the construction could occur for the land under easement. The land offered in exchange may be part of the easement (for

example, a portion of the property that is most distant from the road) or another piece of park property.

Exchange has been the principal means by which conflicts over easement language have been resolved. Although, according to legal opinion, NPS cannot flatly deny a request for permission to construct a farm or residential building, NPS policy has been not to give permission but to persuade the owner to exchange land instead. In a 1972 memorandum to Blue Ridge staff, the park superintendent argued that

> ...permission must be extended to everyone or withheld entirely in order to escape accusation of favoritism or prejudice. Otherwise, the owner of the underlying fee will demand the opportunity to use his land to the best advantage of his interests irrespective of the Parkway. We may try to justify permission in one place and refusal in another, but these judgments can always be assailed and discredited by a determined landowner appealing to an audience far removed from the lands involved. (21)

The policy of denial of any and all permission to build structures or harvest mature timber is still in practice today. In fact, National Trust staff on site at the Blue Ridge listened to a member of NPS staff citing the policy to another staff member who had received a request from a landowner to build a house in an easement.

Evaluation of Protection Techniques Along The Blue Ridge Parkway

More than 40% of The Blue Ridge Parkway's length is adjacent to or within the boundaries of four national forests. Here, a very wide corridor is protected by federal ownership; the vistas are generally of unbroken forests and forested slopes. In addition, there are several areas along the Parkway, such as recreation areas, that have wider-than-average rights-of-way and, thus, maximum protection. However, along more than half the Parkway corridor, the right-of-way averages only 800 feet. Here, both

scenic easements and the narrowness of the park have proved inadequate to protect the Parkway viewshed.

In a paper on scenic easements prepared by NPS Lands staff in 1974, the Blue Ridge Parkway example was used to argue the inadequacy of easements as a protection technique. From a management perspective, scenic easements were found to cost much more to administer than the difference between fee-title ownership and the easement. In the words of Lands staff,

> The experience of the Blue Ridge Parkway is that scenic easements are not workable, have not been a success, and that lands vital for scenic protection would have been better acquired in fee and then leased for agricultural purposes. On this parkway, they have created persistent management problems and have created ill will with landowners. (22)

Have scenic easements protected the scenery over time? That is another question. In some cases, the easement land itself has changed in 50 years--say, from a field to a young forest. No one has yet permanently violated an easement; some kind of resolution has been reached between NPS staff and the landowners. Most easements appear to be intact. In that sense, they have worked. However, most easement land does not appear to be any more or less <u>scenic</u> than the land protected by fee ownership. That is, easements are randomly located along the Parkway, mixed in with fee-title land. In some locations, the easements are in the immediate foreground of the viewshed; in others, they are several hundred yards back from the road. In fact, scenic easements were acquired principally not for their inherent scenery or for the scenery they protected, but rather because they were all the landowner was willing to sell and/or they satisfied part of the quota of 25 acres of easement per mile of Parkway to be acquired.

In the 1930s, there was no clear articulation of what specific scenery the easements were to protect. However, NPS has

significantly modernized its approach to and use of easements. In March 1986, a new chapter on easements was added to The Planning Process Guideline, NPS-2. These easement guidelines address the various purposes, cost-effectiveness, and management of easements and provide specific instructions on how to structure and when to use them. The current NPS easement guidelines are, in fact, a model for public and private easement acquisition and management.

In its 1988 Land Protection Plan, NPS identifies 2,641 acres of land still to be acquired in scenic easement (as opposed to 2,392 acres to be acquired in fee-simple). Scenic easement lands are those where it is "desirable that the land remain in its present use and be perpetuated as a rural cultural or natural landscape." (23) Thus, NPS has by no means given up on easements. However, in recent decades no easements have been acquired on the Blue Ridge Parkway. NPS has offered to buy several times, but no one has been willing to sell.

In many cases, the scenery beyond the easements and lands acquired has changed. Unfortunately, very few of the counties adjacent to the Parkway have effective land-use controls in place. Of the 29 counties bordering the Parkway, 26 have comprehensive plans but only 8 have zoning ordinances. Seventeen of the counties have subdivision regulations. (24) More Virginia counties have developed land-use controls than the North Carolina counties. However, North Carolina did pass the Mountain Ridge Protection Act in 1983 which restricts the construction of structures on ridge tops over 3,000 feet in elevation. In addition, North Carolina's Erosion and Sedimentation Control Act of 1976 requires that plans must be approved by the Department of Natural Resources and Community Development for any land disturbance of over one acre.

The Blue Ridge Parkway 1988 LPP states that NPS will "seek cooperative agreements with local governmental units for the purpose of exchanging information regarding county land-use plans" and will work with the counties to encourage planning and zoning favorable to the Parkway's protection. (25) To date, however, cooperative agreements have not been formalized, and NPS must rely on the goodwill of the counties and the vigilance of its rangers to protect the lands outside Parkway boundaries.

One promising option for future protection of lands adjacent to the Blue Ridge Parkway is the National Heritage Conservation Act (NHCA) of 1990. Expected to be introduced in Congress this year, NHCA provides mechanisms to plan additional protection of nationally significant heritage resources, such as NPS units, National Historic Landmarks, or National Natural Landmarks. Among such mechanisms are Heritage Protection Strategies, whereby NPS staff, state and local government, and private-sector neighbors of threatened national parks work together on protection strategies. The draft bill authorizes funding for state and local government participation. Thus, upon passage of NHCA, funds could be made available for Blue Ridge Parkway staff and representatives of the adjacent counties to work cooperatively on land protection plans for the Parkway viewshed.

In summary, the Blue Ridge Parkway represents one of the supreme American scenic byways with extensive federal protection and one of the earliest applications of easements to protect scenic resources. For the most part, the Parkway has retained its visual and cultural integrity and has been highly successful in attracting visitors. However, like many other national parks and heritage resources, the Blue Ridge Parkway is threatened today with neighboring development that challenges NPS to form federal-state-local and public-private partnerships for full scenic protection.

ROUTE 75, THE SAWTOOTH NATIONAL RECREATION AREA, IDAHO

Route 75 and Its Scenic Designation

Scenic Route 75 was created by the state of Idaho in 1974 to help maintain the scenic character of the Sawtooth National Recreation Area (SNRA) in the Sawtooth National Forest. The 756,000-acre SNRA was designated by Congress in 1972 in response to growing public interest in the conservation and protection of scenic and natural areas for recreational purposes. The U.S. Forest Service manages the area for recreation within the context of "preserving the pastoral, historic, natural and wildlife values" of the land. (26).

USFS worked with the Idaho State Department of Transportation to create scenic Route 75 from a portion of U.S. Highway 93. The presence of truck traffic along U.S. 93 between Shoshone and Challis in the north threatened the character of the SNRA and became too great for the towns of Hailey and Ketchum to manage. Rather than being expanded, the SNRA portion of the road was made into a scenic highway to control the traffic flow; U.S. 93 was rerouted to bypass the SNRA. Scenic Highway 75 is a paved two-lane road with many curves, scenic overlooks, and spectacular mountain views. Its designation as a scenic highway means that the road provides travelers recreational and scenic opportunities rather than a fast route through the SNRA. (Scenic road designation in Idaho in and of itself places no restriction on the roads; protection is left up to the local jurisdictions through which the road passes, in this case, USFS.)

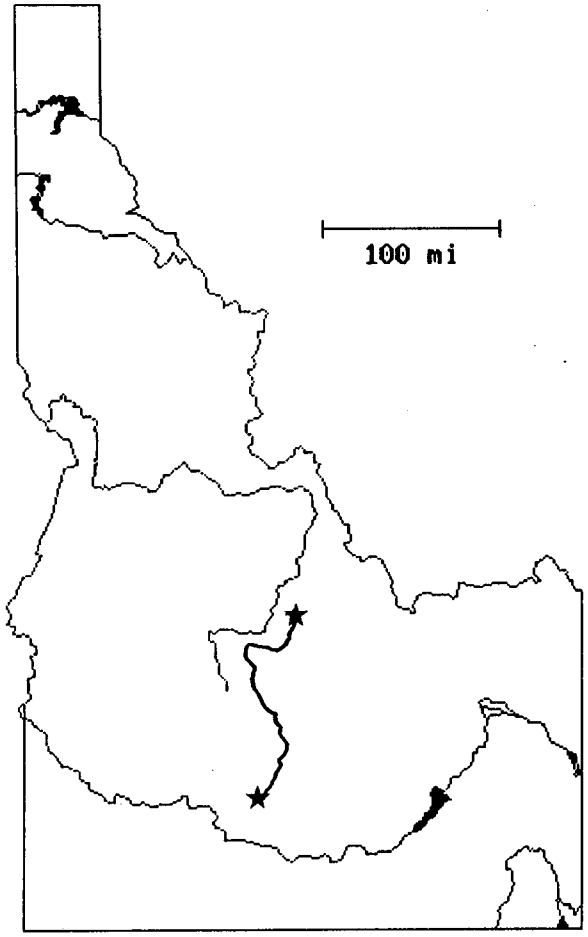
The Sawtooth Scenic Road originates outside the town of Shoshone about 50 miles south of the entrance to the SNRA (Figure 3). About 5 miles north of Ketchum, the road enters the SNRA and travels a northwest path through the Boulder and Smokey Mountain ranges. The road continues over the 8,701' Galena Summit, crosses the headwaters of the Salmon River, and proceeds north

through the town of Sawtooth City and into the Sawtooth Valley. The road passes through the Sawtooth Mountains on the west and the White Cloud Mountains on the east. The SNRA Wilderness area is located within the Sawtooth Mountain Range on the western side of Highway 75. The road follows the path of the Salmon River north through the Sawtooth Valley into the town of Stanley, turns east and proceeds along the northern boundary of the SNRA and through the White Cloud Mountains. Following the path of the Salmon River, the scenic highway exits the SNRA and continues eastward some 15 miles to the town of Challis, where the scenic designation ends. The scenic route runs a total length of 90 miles through the SNRA.

When the SNRA was created in 1972, 25,423 acres were held in private ownership. Congressional legislation provided funding for the Forest Service to purchase lands and development rights for all privately held lands. Since 1974, USFS has purchased 3,325 acres in fee-simple and 18,656 acres in easements. Thus, approximately 90% of private lands now have some level of protection in place.

Ownership of lands within the viewshed of the scenic highway 75 is distributed between the federal government and private landholders. The federal lands are used for natural habitats and trails, administrative facilities for the Forest Service, and access routes to camp grounds, summer homes, and roads. The majority of the privately-held lands are used for cattle grazing and ranching. Most of the private landholdings are located along the stretch of Route 75 between the towns of Sawtooth City and Stanley. Here, the private ranchlands range from 500 to 3,750 acres in size. These large ranches operate year-round. Short 90-day growing seasons and economies of scale make it difficult for smaller ranches to operate profitably.

FIGURE 3
ROUTE 75
SAWTOOTH NATIONAL RECREATION AREA, IDAHO



Historic and cultural resources along the scenic highway reflect the history of the Sawtooth Valley and the development of the American West. Three National Register sites are located along Scenic Highway 75 and all are located on Forest Service lands. The Valley Creek Ranger Station, built in 1933 as a Civilian Conservation Corps project, houses a museum operated by the Sawtooth Historical Association. The ranger station is owned by the Forest Service and managed as an historic site, though there is no management plan in effect yet for the facility. Interpretive signs mark the site from the highway. The Redfish Rock Shelter district, about one mile from highway 75, encompasses archeological sites that identify prehistoric habitation dating from over 10,000 years ago. The area was excavated in 1971 and artifacts are on display in the nearby Redfish Rock Visitors Center. A series of interpretive signs discuss the archeology and history of the site. The remains of old Sawtooth City, an 1870s gold rush and mining town, are identified by signs along hiking trails and from the highway. Directional signs, however, are not in place. Plans are underway by USFS to survey the site but actual data recovery has not begun. The Forest Service fears that providing directions to the site could lead to vandalism.

Other historic sites along highway 75 which are not listed on the NR include the Pole Creek Ranger Cabin and cemeteries near Galena and Stanley. The Pole Creek Ranger Cabin is the oldest Forest Service cabin in the SNRA. Dating from 1915, the site has been restored and interpretive trail and roadway signs identify the structure. The cemeteries in the vicinity of Galena and Stanley date from the 1870s, the height of mining activity in the area. Various remains from Indian sites, homesteads, ranchlands, and ghost towns are found in the SNRA, and a few ranches dating from the 1930s are still operational. USFS is trying to purchase a livery barn near the town of Stanley where westward-bound

travelers changed horses. Also in Stanley, the late-19th-century Sawtooth Hotel (privately-owned) has been rehabilitated and is open to the public. The Sawtooth National Forest employs one full-time cultural archeologist, and cultural resource surveys of the area are being conducted.

Route 75 is an example of how state designation and federal landownership work together to protect a scenic highway. Its protection is similar to numerous other scenic highways on western lands with widespread--but intermittent--federal landownership. It is also one of the classic examples of the use of easements by a federal agency to protect a cultural landscape.

Changes in Route 75 Since Designation

Relatively little change has occurred to the road since its designation. Route 75 remains a two-lane paved roadway with many scenic turnouts and vistas. Most of the traffic along the road occurs in the summer, though the area has now become a year-round resort. Traffic has increased from a yearly average of 380 vehicles a day in 1967 to 1,074 in 1989. (27) Tourism traffic has increased, due, in part, to promotional campaigns by the Idaho State Department of Tourism. Until 1988, USFS and the Tourism Department did not coordinate promotional literature; now, they do. USFS has cassette recordings to guide travelers along the scenic road which discuss the history of the region and the roadway.

Land use along the roadway has changed in response to economic conditions. More and more second homes are being built on private lands along the roadway, and their presence threatens the pastoral character of the SNRA. The growth is not expected to decrease. As more people move to the area, traffic and other infrastructure problems are expected to rise.

Protection Techniques Along Route 75

Fee acquisition is one protection technique in the SNRA. Since 1974, the Forest Service has spent $12,169,818 on fee-simple negotiated cases and $4,470,849 on fee-simple condemnation cases. (28) The condemnation cases involved the acquisition of the town of Obsidian, which consisted of trailer homes, a post office, grocery store, and airport. The community would not adhere to design suggestions by USFS, so the agency acquired the town outright. This acquisition involved 48 condemnation cases, most of which were settled out of court. (29) Today, the area is an open meadow.

The most widespread protection technique in use along Route 75 is scenic easements. Since 1974, the Forest Service has spent $30 million on scenic easements. The agency has over 78 easements affecting 18,656 acres (some 75% of the private lands originally in the SNRA). When its acquisition plan is fully implemented, USFS expects to have 21,000-22,000 acres under easement.

USFS has issued regulations and has developed a comprehensive management plan to control the "use, subdivision and development" of lands within the SNRA. (30) All private lands in the SNRA are classified into one of four land-use categories: designated community, agricultural, residential, and commercial. Easements have been written to reflect the regulations and the general management plan for each classification.

The majority of private landholdings along Route 75 in the SNRA are agricultural, and the majority of easements apply to agricultural land. An agricultural classification requires that structures on the land must be used for ranching or dude ranching purposes. The design of the buildings must be "ranch type" in character and constructed of log or other "rustic" materials. Minimum setbacks apply, and fences and other construction must

harmonize with the "western ranching atmosphere." (31) Signs identifying the property are limited in size, and advertising signs are not allowed. Subdivision of the land is prohibited.

Designated communities are defined by USFS as "populated areas divided into lots, blocks, and streets, ... , containing residences and commercial establishments, providing goods and services, and retaining the atmosphere of a western frontier ranch-type town." (32) Sawtooth City, Stanley, and Lower Stanley are the only designated communities within the SNRA; all border scenic highway 75, and are exclusively in private ownership with no easements. They are recreation, residential, and tourist-oriented towns.

USFS has worked with each of these communities to create development plans compatible with agency design standards. The standards for such communities include two-story height restrictions, minimum frontage and set-back requirements, use of specific lumber types and native stone, use of nonreflective roofs, use of earth-tone paints or stains "common to the area," and construction of new steps and sidewalks out of wood materials. Other restrictions limit the land area that existing and new structures can occupy on a single lot, allow for only one single-family dwelling per lot, and require minimum size requirements for residential structures. Enforcement of the design standards are the responsibility of appropriate city or county officials. Ultimately, USFS has the right of eminent domain over the communities but, for financial and political reasons, prefers not to exercise this right.

Although USFS has met with strong opposition to developing design standards, community development plans have now been finalized for Stanley and Sawtooth City. The agency's relationship with the townspeople is gradually improving as more oldtimers leave the SNRA through the course of natural events. In Sawtooth City

and Stanley, the Forest Service has noticed a marked improvement in enforcement of design guidelines by city and county officials. The agency attributes this primarily to more progressive city administrations that see the advantages of adhering to design standards. These communities depend on summer tourist dollars for their livelihood; city officials have begun to recognize that an attractive, scenic town can encourage tourist trade. New USFS personnel with more effective public relations and negotiation skills are also contributing to improved cooperation between the federal agency and the communities.

With the private land-use regulations, there is a voluntary certification process by which landowners and prospective landowners may have their plans for the property approved by USFS. If the plans conform with USFS general management plans, the agency issues a certificate protecting the landowner from USFS acquisition as long as the landowner abides by the regulations. If the landowner violates the terms of the certification, the certificate is revoked, and the land may be subject to USFS acquisition/condemnation procedures. As of June 1990, 374 certifications had been processed.

USFS is also working with the Trust for Public Lands (TPL) to protect and preserve lands along the scenic highway. TPL has acquired several easements for the SNRA. In 1983, TPL acquired an easement on 1,781 acres of ranch land for $3 million and conveyed it to USFS. In 1985, TPL assisted in the negotiation and settlement of an 11-year-old dispute over a scenic easement on 20 acres; TPL acquired the easement for $185,000 and conveyed it to the SNRA. Most recently, TPL is working with the Forest Service to negotiate an easement on the Stanley Airport. The Stanley Airport is owned by a Las Vegas, Nev., businessman who will not agree to USFS easements on his property. The Forest Service has asked TPL to purchase the land with the understanding that USFS will purchase easements to the land to limit its use as an

airport. TPL will then donate ownership to the state department of aeronautics. The state will receive the fee payments and keep the airport. Negotiations over the easement are on-going. (33)

Evaluation of Protection Techniques on Route 75

Resource protection along Route 75 has had mixed results. The natural and pastoral scenes typical of the area in the 1900-1930s are giving way to economic and development pressures of the 1990s. Small-size ranches are continuing to fail because of changes in the economy. Only very large-scale ranches are profitable. The lifestyle of the small rancher is gradually disappearing from the landscape.

Though USFS has easement protection for lands privately held, the easement program has had "its ups and downs." (34) Part of the problem with easements is that USFS has never clearly defined the scenic resource qualities the agency is trying to protect. USFS did not conduct a cultural resource assessment or landscape survey as the basis for the SNRA land acquisition plan. In addition, the type of easements in place are negative and somewhat general. They limit types of development and use and offer vague restrictions on style and design. USFS would like to change future easements to be more restrictive in their design and development criteria. Scenic easements have been successful in protecting the scenery of the SNRA; however, as they are written, there is often room for debate.

Problems with the easement program generally do not arise with the original landowners, but with subsequent owners or prospective purchasers who disagree with USFS interpretation. Since enactment of the SNRA legislation in the early 1970s, many of the original owners of ranch lands have sold their properties. New landowners are dissatisfied with the restrictions and try to fight them in court. They wish to develop agricultural or residential lands as subdivisions which are not allowed under

USFS classification of these landholdings. The SNRA is experiencing rapid land inflation as more people purchase land to build second homes. Civil lawsuits have even been filed against realtors by unhappy landowners.

Two cases involving the interpretation of scenic easements have gone to court. One, involving a ranch that a new owner planned to develop as a subdivision, was settled in a compromise ruling. The other involved an overhead irrigation system that the owner wished to install on a ranch that bordered both sides of Route 75. Although such a system was allowed in the deed, USFS believed it impaired the scenic values of the SNRA; the judge upheld the USFS position and validated the easement. (35) In spite of USFS's relative success in court cases, the time and costs invested were considerable.

Other protection techniques along Route 75 have been less effective. Although USFS has worked with the designated communities of Stanley, Lower Stanley, and Sawtooth City to develop ordinances and zoning restrictions, it has had less success at the county level. The two counties in the SNRA that have private landholdings have little or no zoning. Blaine County, through which the southern part of the scenic highway 75 passes, has a comprehensive plan, but enforcement of zoning restrictions can be spotty. In neighboring Custer County, there is no zoning, and, according to USFS, "there never will be." (36) Traditionally, officials in both counties have resented federal interference in their local dealings, but Custer County has "no interest" in working with USFS to develop ordinances. Though the Forest Service ultimately has condemnation authority in cases of gross violations of its design standards, agency officials believe that over time cooperation will improve at the county level, but very slowly.

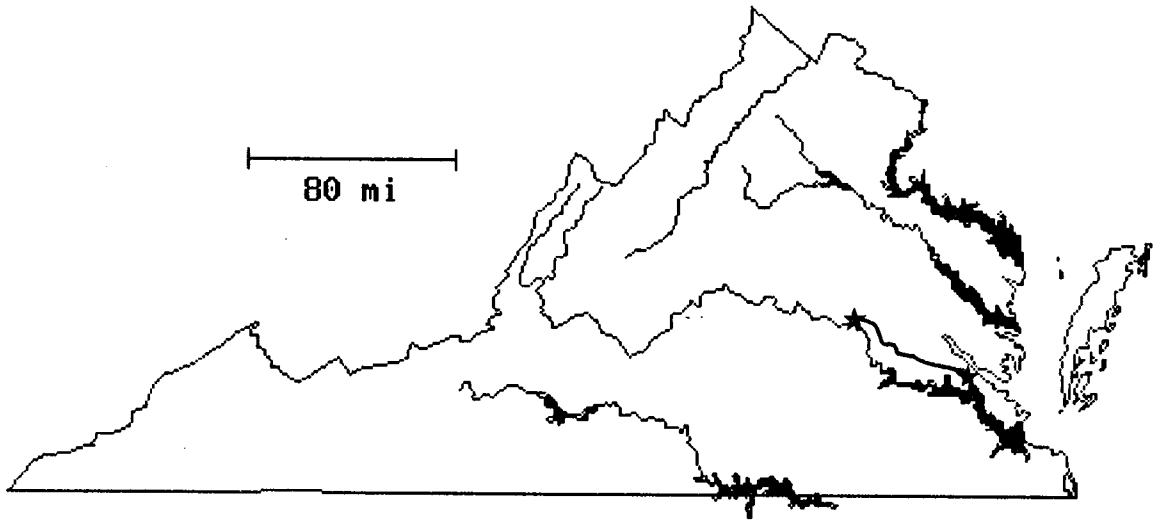
ROUTE 5, RICHMOND TO WILLIAMSBURG, VIRGINIA

Route 5 and Its Scenic Designation

Virginia's Route 5, a two-lane road which runs 54 miles from the state capital of Richmond to the colonial capital of Williamsburg, was designated a scenic highway in August 1975 (Figure 4). Its designation was largely the effort of one person, Jean Gibbons, a life-long resident of Henrico County. After successfully opposing a rezoning for an auto shredder along Route 5 in the early 1970s, Jean Gibbons was appointed to an ad hoc committee to look into the designation of the road as a scenic highway. In 1966 Virginia had passed a bill authorizing the State Highway Commission to designate any Virginia road a Virginia byway or a scenic byway. (The former is a state road through an area of scenic, cultural, or historical importance; the latter is a scenic road already within the boundaries of a protected corridor, such as the Blue Ridge Parkway.) Jean Gibbons and others believed Route 5 was eminently qualified to be designated a Virginia byway. (37)

Route 5 is possibly the second oldest road in America, linking Virginia's first settlement area near Jamestown with the interior. Running just north of the James River on the peninsula between the York and James Rivers, the road is lined with numerous 17th- and 18th-century plantations. These include Shirley, Edgewood, Berkeley, Belle Air, Sherwood Forest, and Evelynton. Along the road are historic churches and homes, a county courthouse dating from 1730, and many historic sites, including the site where Thomas Jefferson was married. North and south of the James River between Richmond and Williamsburg, there are 75 properties or sites that have been registered as historic landmarks by the Virginia Historic Landmarks Commission. (38) Just north of Route 5 is the Greensprings National Historic Site operated by the National Park Service as a unit of the Colonial National Historical Park which includes Jamestown and the Yorktown Battlefield. Greensprings is a 190-acre tract on which

FIGURE 4
ROUTE 5
RICHMOND TO WILLIAMSBURG, VIRGINIA



are the foundations of a plantation dating from the 1640s which belonged to the royal colonial governors of Virginia. Except for the sections of road within and on the outskirts of Richmond and Williamsburg, Route 5 runs mostly through dense forest and open fields, affording the traveler cool shades, pleasant meadows, and wide vistas alike.

The colonial plantations along Route 5 are all in private ownership, and most are open to visitors year-round. At least two of them--Piney Grove (in the National Register) and North Bend--have been converted to bed and breakfast inns. Along with other sites in Jamestown and Williamsburg, the plantations are promoted in at least two tourist brochures. One, "Historic Landmarks Along the Lower James River," is published by the Lower James River Association. The other, "Great Historic Plantations and Points of Interest Along the James River," is printed by Berkeley Plantation.

Route 5 is within five jurisdictions: the city of Richmond, Henrico County, Charles City County, James City County, and the city of Williamsburg. Although its entire length has scenic designation, for simplicity, this study focuses only on the three counties listed above, not the two cities (Richmond and Williamsburg are already developed with a mix of land use). Henrico County is part of suburban Richmond, with residential and commercial development spreading outward and down Route 5. James City County includes part of suburban Williamsburg, with subdivisions and shopping centers leapfrogging along the road to the west of that city. Only the middle jurisdiction, Charles City County, is untouched by suburbanization. Still largely agricultural, Charles City County literally has no towns; it is "rural residential," and most of its labor force commutes to Richmond, Henrico County, or Williamsburg for employment.

The estimated 1990 population of the three counties is 260,700. Henrico County's population is about 215,000; James City County's is about 38,500; and Charles City County's is about 7,200. James City County is growing rapidly--at the rate of almost 70% in the last decade; whereas, Henrico has grown 19% (less than 2% per year) and Charles City County by only 7% (less than 1% a year) over the same period. The demographics and economies of the three counties reflect the fact that development is encroaching both from Richmond and from Williamsburg, transforming the quiet, riverine peninsula from a predominantly black, agricultural society to a white, suburban one.

When Route 5 was designated a Virginia byway 15 years ago, the state required that all the jurisdictions through which it passed support the designation. At first Charles City County did not want the Virginia byway. As the only east-west road through the rural county, Route 5 is integral to the area's economic life. (Although both Route 60 and Interstate 64 connect Richmond and Williamsburg to the north of Route 5, neither of these is in Charles City County.) Residents feared they would be unable to drive tractors along the road and wanted to keep development opportunities open. Eventually, the county supervisors were persuaded that the byway designation would not prohibit traffic or development, and Charles City County cast its vote along with the other jurisdictions to name Route 5 as the state's second Virginia byway. (Route 193 in Fairfax County was Virginia's first.)

Route 5 is an example of a state-designated scenic byway unusually rich in historic resources. State designation has done virtually nothing to protect or promote the road; protection has been the responsibility of the local jurisdictions through which the road passes. In the 15 years since the road was designated, local planning and zoning have not been adequate to protect its

scenic qualities. Route 5 is an example of a scenic road currently under threat and presents opportunities to take creative and aggressive protective action.

Changes in Route 5 Since Designation

In the 15 years since Route 5 was designated a Virginia byway, dramatic changes have occurred to some parts of the road and few changes to others. Residential and commercial development have spread along the highway from both Richmond and Williamsburg, but Charles City County remains relatively unchanged.

For the most part, the road has remained two lanes. However, within VDOT, there is discussion of adding two more lanes at some indefinite future time. (39) In Henrico County, Interstate 295, the circumferential highway around Richmond, has been partially completed; at present it deadends at Route 5, but will soon cross ovet it and carry traffic to the south across the James River. Here, Route 5 has already been widened to four lanes, and the intersection may prove to be a catalyst to new development.

Changes in traffic on Route 5 since byway designation vary along its length. Near Richmond, traffic increases have been much less dramatic than the increases near Williamsburg. Traffic on the easternmost link of Route 5, leading into the city of Williamsburg, increased by a factor of four between 1977 and 1989. In Charles City County, traffic almost tripled over the same time period. Whereas, in Henrico County, for the same period traffic increased by half that amount. (40) In addition, residents have noticed a distinct increase in truck traffic on Route 5, particularly trucks from Anheiser Busch near Williamsburg which cross the James River to Hopewell.

Changes in tourism along Route 5 are difficult to gauge. Although the state collects hotel occupancy figures, there are no hotels in Charles City County, where the majority of the tourist

sites are located. However, the owner of Evelynton Plantation has gathered local tourism figures for 1988 and 1989. The six James River plantations in the county received a total of 125,490 visitors in 1988 and 143,000 in 1989, an increase of 14%. (41)

Protection Techniques Along Route 5

When Virginia designates a Virginia byway, it places blue signs with the state bird and flower (cardinal and dogwood) identifying the road. Beyond that, the state provides no specific byway enhancement or protection. Several Virginia laws provide indirect protection for a byway: for example, the Junkyard Law and the Litter Control Act. These provide mechanisms for local governments to require setbacks for junkyards and to heighten awareness of litter control. In addition, several state laws enable local jurisdictions or organizations to enact tax incentives for open space or to acquire easements. However, the legislation is enabling only; the action must be taken by a local entity. Jean Gibbons remembers that after Route 5 was designated, litter was collected and the grass was mowed, but these beautification efforts have been discontinued. (42)

In designating byways, Virgina gives preference to roads in juridictions that have protection mechanisms--such as planning and zoning--already in place. Henrico County, Charles City County, and James City County each has a comprehensive plan and a zoning ordinance, but each treats Route 5 in a different way. There is no regional, cooperative approach to protecting the scenic road. Furthermore, in the face of development pressures, the counties' protection techniques have failed to protect the corridor. At least two local non-profit organizations have emerged in response to threats along Route 5, and another non-profit has been created to oversee a variety of land-use issues along the James River.

The techniques that the three counties have in place to protect Route 5 as a Virginia byway--a special entity unto itself--are summarized as follows.

Henrico County	None
Charles City County	100' setback in all zones
James City County	Greenbelt "policy" which guides negotiations on proffers.

In Henrico County, the comprehensive plan makes no specific provision for Route 5 as an entity to be protected. In addition, Henrico County's zoning ordinance does not directly address environmental concerns. There are no minimum setback requirements (except in the residential townhouse district) and no incentives to preserve the natural landscape in the open-space requirements. Henrico County's sign regulations, which are part of the zoning ordinance, also provide little protection of the scenic qualities of Route 5. Although the ordinance addresses the dimensions of signs in the various districts, it does not address the number of signs or their placement on an individual lot. (43)

Although Charles City County originally opposed the designation of Route 5 as a Virginia byway, its zoning ordinance has provided more protection for the road than the neighboring jurisdictions. All the land along Route 5 is zoned agricultural (A-1), which allows a number of land uses. However, in all zoning districts in Charles City County, there is a mandatory setback of 100 feet along the length of Route 5. The setback does not apply to signage. The county's sign regulations limit the number and size of signs but not their placement.

Charles City County is currently in the process of adopting a new comprehensive plan and will subsequently redraft its zoning

ordinance. The draft plan (prepared with the help of the Richmond District Planning Commission) explicitly provides for the protection of Route 5. In the draft plan, the whole area between the James River and 1,000 feet north of Route 5 is labeled a Preservation and Planned Development (PPD) district, where future development is restricted to Planned Unit Developments (PUDs) or low-density residential subdivisions. The corridor of Route 5 is an overlay district labeled a "Greenbelt," with a suggested setback requirement of 300 feet from the center line of the road.

According to Charles City County planner Bill Britton, the purpose of the Greenbelt overlay district is not to prohibit commercial development along Route 5 but to plan for its sensitive placement. (44) However, as in 1975, county residents are leery of potential restrictions on development. At a public hearing on May 8, 1990, some 600 citizens listened to presentations on the plan. All who spoke opposed the plan; no one spoke in its favor. As a result, the county's nine-member planning commission is working to modify the plan. Several compromise protection techniques may emerge. For example, the county may make the agricultural zone very restrictive, so that various uses would require rezoning and, through the rezoning process, proffers could be extracted to preserve the Route 5 corridor. A likely compromise will be a voluntary greenbelt easement of 150 feet. (45)

James City County already has a similar protection mechanism in place. The comprehensive plan of James City County directly addresses Route 5 as a "greenbelt" area and thus provides conceptual protection of the road. The greenbelt policy, amended in 1987, defines a greenbelt to include "woodland or other vegetation to screen development, [and] open areas for scenic vistas." The preferred width of a greenbelt is 150 feet from the edge of the future road right-of-way.

The James City County zoning ordinance does not directly incorporate the greenbelt concept. The Route 5 corridor is primarily zoned agricultural (A-1) but near Williamsburg, substantial acreage is zoned for business. Although considerable development has already occurred here, approximately 80 acres of commercially zoned land remain to be developed. (46) The greenbelt policy is generally considered when one applies for rezoning or a special use permit; a greenbelt setback becomes a proffer, or condition of development. James City County also has a signage ordinance which addresses both the size and location of signs but not their design. And, as with Henrico County and Charles City County, the ordinance gives no recognition or special treatment to signage along Route 5 as a Virginia byway.

Beyond the public measures available through the comprehensive plans and zoning ordinances of Henrico, Charles City, and James City counties, several private efforts have emerged in recent years to protect the resources along Route 5. The owners of both Berkeley and Westover plantations have donated preservation easements to the Virginia Department of Historic Resources. Although the easements do not directly front on Route 5, they protect 114 acres and 636 acres respectively of historic property very near the road. (47)

In James City County, a group called the Historic Route 5 Association was formed in 1988 principally to oppose the large subdivisions being proposed along the road between Route 199 and the Chickahominy River. Developers, rezoning tracts of land of some 1,500 and 5,000 acres, proffered to widen Route 5 to four lanes. Although the association has been successful in reducing and deferring some development along the corridor, the threat of the road widening remains. (48)

In Henrico County, a group called the Varina Beautification Committee formed in 1988 when Interstate 295, the circumferential highway around Richmond, was constructed to intersect with Route 5. The committee's interest was in camaflauging the wide-open cloverleaf with vegetation, to ease the transition from Interstate to Virginia byway. They sold $13,500 worth of pledges for 408 trees to be planted in honor, or in memory, of a designated person. A landscape plan was developed, the money was turned over to VDOT, and a ceremony was held to celebrate the planting. (49)

Since then, the Beautification Committee has achieved the status of county planning watchdog, recognized as such by the planning commission and consulted on various rezoning cases. Using the tool of moral persuasion, the committee has had mixed success. In one case, in which land was being rezoned for a bank, the committee was able to persuade the builder to use a colonial design, a substantial setback, and landscaping. (Henrico County's zoning ordinance would not have achieved these results.) In another case, in which land was being rezoned for a residential subdivision, the committee represented the local residents who wanted lots no smaller than one acre. The developer, believing that to be unreasonable, withdrew from negotiations but was able to achieve the zoning he desired. The subdivision is being constructed with quarter-acre lots and, in the committee's opinion, with insufficient setback from Route 5. (50)

The Lower James River Association, a non-profit organization also exists to keep watch over Route 5. Although its purpose is to work for the protection of the whole James River watershed and its focus is chiefly environmental, the association has lent support to local organizations concerned about Route 5. Currently, the Lower James River Association is completing a

comprehensive study of the plans and zoning ordinances of the five jurisdictions through which the road passes. This study will make detailed recommendations on ways to improve the protection of the byway corridor.

Evaluation of Protection Techniques

Virginia's program of scenic byway designation was one of the first developed and is one of the few that gives preference to roads with local protection mechanisms in place. Yet Virginia has done nothing to promote its byways as tourist destinations and relies on local jurisdictions to protect the resources along scenic roads. Some counties and cities have done better than others. Fairfax County's comprehensive plan and zoning ordinance have restricted development along Route 193, designated in 1974, almost exclusively to low-density residential and parkland. However, in Nelson County--which has two Virginia byways designated in 1976--neither the plan nor zoning ordinance has special provisions to protect the roads. The current county commissioner reports that, since substantial development had already occurred along the roads prior to 1976, recent boards of supervisors have been reluctant to turn down requests for uses that were already present. (51)

As far as VDOT is concerned, the Virginia byway designation has no influence on alterations that the road may require because of traffic or safety. If traffic counts or accident rates suggest that the road must be widened or straigtened, it will be. In Fairfax County, for example, Route 193 has been widened and leveled in several places in direct defiance of the provisions of the county's planning and zoning along the road. Only in one area along Route 193, a National Register district, was the county able to influence VDOT's road modification designs.

Along Route 5, the protection techniques that have been employed by Henrico, Charles City, and James City counties have not

prevented the spread of commercial development and residential subdivisions from Richmond and Williamsburg. Henrico County's comprehensive plan and zoning ordinance do not recognize Route 5 as an entity to be protected in a special way. Although James City County has a greenbelt policy, it has not provided an adequate buffer for large-scale development and has had negligible impact on properties already zoned for commercial use.

James City County has experienced two major rezonings along Route 5 within the last two years in which the greenbelt policy has been tested. One of these involved a 1,400-acre tract of agricultural land on the north side of Route 5 near Greensprings National Historical Site, which developers wanted to rezone to R-4, Residential Planned Community. One of the proffers of Greensprings Plantation, Inc., addresses the greenbelt:

> The Owner shall designate a 150-foot greenbelt buffer along the Property's Route 5 frontage (exclusive of right-of-way dedicated herein for future improvement of Route 5 to a four-lane divided highway)....The "Greenbelt" buffers shall be undisturbed and exclusive of any lots, except for approved utilities, drainage improvements, jogging/nature trails, community entrance roads ... and signage.... (52)

Although the developer is ostensibly honoring the greenbelt concept, he is also offering right-of-way for, and thus facilitating, road widening. In addition, the "greenbelt" between the right-of-way and development could legitimately be removed of trees--accommodating utility lines, drainage ditches, and jogging trails. It could <u>appear</u> not to be a greenbelt at all.

In Charles City County, where most of the historic and scenic resources remain, protection techniques for Route 5 have not yet been tested. The lack of sewer and water and the remoteness of the area have, so far, discouraged development. In addition, several large tracts of land in Charles City County along Route 5

are held by plantation owners, and this landownership pattern has to some extent prevented development. Redrafting the comprehensive plan of the county has brought the jurisdiction face-to-face with the issue of road protection. Charles City County is in a position to take proactive measures to ensure that the resources of the roadway will not be lost. However, the forces opposing road protection are very strong; it is likely that the new comprehensive plan will be a compromise measure, like the greenbelt policy of James City County.

Delegate George Grayson from Williamsburg has sponsored a joint resolution of the Virginia House and Senate requiring VDOT to study protection techniques in the Route 5 corridor. The study is to focus on such issues as eliminating truck traffic and preventing road widening. Two citizen representatives from each of the five Route 5 jurisdictions will participate in the study, which is to be completed by the end of September 1990.

ROUTE J40, VAN BUREN COUNTY, IOWA

Description of J-40, Van Buren County, Iowa

Highway J-40 is a two-lane country road in extreme southeastern Iowa. It runs roughly east-west approximately 60 miles between West Point in Lee County and Bloomfield in Davis County (Figure 5). The most scenic part of the road is in the middle, in Van Buren County, where J-40 connects a series of villages and parklands along the Des Moines River. Here, local initiative has restored and promoted the historic resources of the riverboat villages and has drawn widespread attention to the beauties and bounties of the scenic road that connects them.

The villages of Van Buren County were settled in the 1830s and 1840s and prospered in the 1850s, when riverboat travel was the chief means of transportation. They contain structures from the late nineteenth and early twentieth centuries. Two of the

villages--Bentonsport and Bonaparte--are National Register Historic Districts. Bentonsport and the tiny village of Vernon directly south of it were listed in the National Register of Historic Places in 1972; Bonaparte, in 1989. Among the most noted historic resources in the villages are the Mason House--a restored riverboat inn dating from 1846, the Bonaparte Retreat restaurant in Bonaparte--a restored 1878 grist mill, and the 1899 Hotel Manning in Keosauqua.

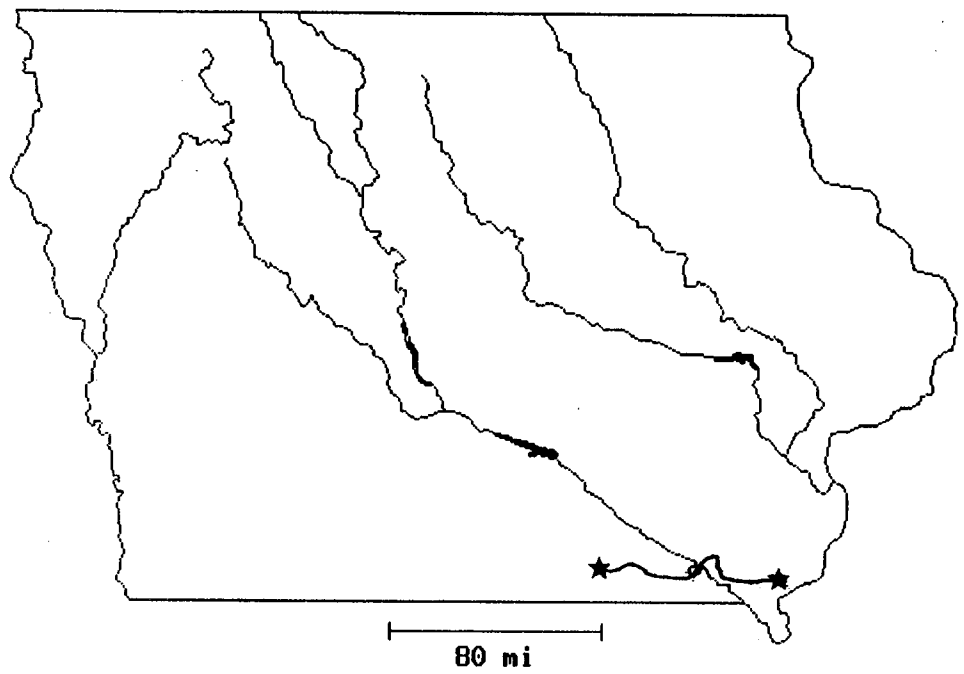
Route J-40 connects the most historic towns along the river and, in fact, is one of the oldest roads in Iowa. (53) In Van Buren County, there are no stop lights. The towns are small: Keosauqua, the county seat, has only slightly over 1,000 people; Bonaparte has 500, and Bentonsport, 35. There are no fast-food restaurants in the county. Between the towns are farms and woodlands and vistas of the Des Moines River. The area is peaceful, with a quiet beauty that takes the visitor back 100 years.

Iowa does not currently have a scenic highway program but is in the process of developing criteria for designating scenic roads in the future. Thus, J-40 has no specific state designation. However, the road is directly used to help promote the scenic and historic resources of Van Buren County. The villages along the road have cooperated in an effort to revitalize their main streets and to attract tourists to the region. J-40 is an example of a scenic road that is promoted and protected strictly by local initiative; it is also an example of a road that, with increased attention and tourism, will need stronger protection techniques in the future.

Protection Techniques Along J-40

Highway J-40 is not protected by local government in any direct, formal way. Although the individual villages have comprehensive plans, Van Buren County has neither a comprehensive plan nor a

FIGURE 5
ROUTE J40
VAN BUREN COUNTY, IOWA



zoning ordinance. However, the villages along the road are working actively to restore and promote their historic resources, and the road itself is incorporated into that promotion. Citizen care and concern for the road are, so far, adequate protection.

Restoration efforts along J-40 have been underway, in one form or another, since the 1950s. The first major effort was the restoration of Mason House, a Georgian hotel, which has operated since 1980 as a bed and breakfast inn. (54) This restoration sparked community interest, and throughout the years sporadic attempts have been made to promote the historic towns along the river. The Van Buren Development Association was formed in the late 1960s to promote economic development of the region, but later split into two factions, one of which emphasized tourism, the other, industry. The association was reorganized in January 1987 as The Villages of Van Buren, Inc., a non-profit corporation devoted to tourism as well as retail and industrial development. This organization has been instrumental in sparking revitalization throughout the region. (55)

The Villages of Van Buren sponsor an annual bike ride which features J-40 as a key element. "Bike Van Buren" is a two-day biking tour of the county which covers some 95 miles of road. The tour starts in Keosauqua and takes the bikers through the historic villages of Bentonsport, Bonaparte, and Farmington. Held in August, Bike Van Buren attracted some 200 bikers its first year, 275 the next year, and over 300 in 1989. Bikers have come from as far away as New Mexico. (56)

Another promotional event that features J-40 is the autumn Van Buren Scenic Drive. With a map clearly marked, travelers are encouraged to explore the historic villages along the river and to visit the Forest Crafts Festival at the Lacey-Keosauqua State Park near Keosauqua, where woodcrafts, buckskins, and numerous forest crafts are demonstrated. Each village features its own

demonstrations and sale of wares, with an emphasis on historic arts and crafts.

Other efforts have formed in Van Buren County to complement the tourism. In late 1986, a shopping center operating in 19th-century buildings on the main street of Bonaparte posted "going-out-of-business" signs. Alarmed citizens banded together to form a for-profit corporation, Township Stores, Inc., to save the downtown. Some 50 people invested $2,000 each. The corporation owns buildings which it leases to businesses that contribute to the town. (57) Most recently, in January 1990, the village of Bonaparte approved an Urban Revitalization Plan. The plan takes advantage of Iowa enabling legislation that allows qualified real estate in a designated revitalization area to receive total or partial exemption from property taxes on improvements. (58) Thus, tax incentives will be used, along with local initiative, to protect the area's resources.

Evaluation of Protection Techniques

Van Buren County is small, with a population of only 8,500. It is relatively poor, and has been experiencing steady outmigration and a loss of retail trade over many decades. Its promotion of historic riverboat villages and scenic roads is a major step toward revitalization, one that the county deems necessary for economic survival.

Although some of the villages have comprehensive plans, Van Buren County has no formal protection in place for J-40 and its other country roads. So far, J-40 has not been threatened in any way. Although revenues from tourism increased from $800,000 in 1984 to $1.2 million in 1988 (by 50%), county observers believe that tourism can continue to grow considerably without seriously threatening county resources. (59)

Currently, Van Buren County is working on a comprehensive plan and is not unfavorably disposed toward a zoning ordinance. (60) Some county residents are considering special provisions for J-40 in the plan, with an eye to future scenic designation. (61) The Villages of Van Buren, Inc. has applied to Iowa's Rural Enterprise Fund to create signage both within and outside the county that promotes the area for tourism. The key for Van Buren County is to have protection techniques for J-40 and other roads in place before scenic designation and before the number of tourists to the region threatens its quiet beauty.

V. EVALUATION OF PROTECTION TECHNIQUES

Protection of scenic or historic resources implies that the resources are under attack; to protect is to keep from harm or injury. Obviously, then, the test of success of a given protection technique is whether or not it saves resources from conversion to an incompatible use. The four case studies of scenic byways provide no pat answers but do provide insights into the relative success of various protection techniques. In all cases, the attack has come from incompatible development, not from the pressures of tourism per se.

Obviously, outright public or quasi-public ownership of property for preservation purposes is the strongest protection technique studied. Along the Blue Ridge Parkway and in the Sawtooth NRA, lands acquired in fee by NPS and USFS have remained undeveloped for decades and continue to provide scenic views as they did when originally acquired. Fee-simple ownership has allowed the agencies to manage the land strictly for conservation and recreational purposes.

Easements have also proven to be a successful land-protection technique for NPS and USFS, although their management has been

somewhat costly and sometimes troublesome. No easements have been permanently violated in either the Sawtooth NRA or along the Blue Ridge Parkway. Their chief benefit to the federal agencies has been a savings in initial acquisition costs. At the same time, private citizens have been allowed to continue occupancy and agricultural use of the land, and county tax revenues have not been so drastically cut as with fee-simple acquisition.

As mentioned earlier, numerous conservation organizations and land trusts acquire and accept easements. Preparing an easement document is a much more sophistocated and enlightened process today than it was in the 1930s for the Blue Ridge or in the 1970s for the Sawtooth. It would be helpful to compare the experience of conservation organizations and land trusts with the federal agencies in long-term easement management. Presumably, with more specific wording and greater clarification of terms, easements should have fewer violations and should be easier to monitor.

State scenic highway designation in and of itself does virtually nothing to protect a road's scenic or historic resources. To the extent that a state agency requires a strong local management plan or a strong zoning ordinance, such protection is more assured. To the extent that scenic designation stems from local initiative, protection may logically follow.

The techniques most commonly used to protect state-designated scenic byways are local comprehensive planning and zoning. These tools were studied along Virginia's Route 5. Here, they have been inadequate to protect the road from development of strip shopping centers and residential subdivisions. On lands zoned for commercial development along Route 5, setbacks and other restrictions have been inadequate to buffer the road from the asphalt of retail parking lots. Signage ordinances are very weak. In James City County, although recent subdivisions have honored a 75- or 100-foot "greenbelt," the homes are clearly

visible from the road, and the traffic they generate will put increasing pressure on VDOT to widen Route 5. The most effective forces for protection of Route 5 have been--for Charles City County, distance from urban areas and a lack of sewer and water, and--for Henrico and James City Counties, vigilant, concerned citizens who monitor the applications of comprehensive planning and zoning to the land.

Iowa's J-40 illustrates that a scenic road may stay intact without any formal protection techniques and, more important, that local citizens can do a great deal to care for and promote the resources along a road. However, J-40 is not yet under attack. Where development pressures have reached rural areas, such as in the counties along the Blue Ridge Parkway and in the Sawtooth NRA, the lack of comprehensive planning and zoning have been detrimental.

States can take a much more active role in protecting scenic and historic resources through enabling legislation. In 1988, for example, Virginia passed legislation permitting local jurisdictions to establish design standards for major routes of tourist access to historic districts or sites. The town of Leesburg is the first locality to develop such standards through the H-2 Corridor Ordinance, effective March 1, 1990. Currently, some eight miles of approach to historic Leesburg along both Route 7 and Route 15 (<u>not</u> designated as scenic highways) are now protected with specific site design and building design guidelines. The corridor widths range from 300 to 1,000 feet.

States can also be much more aggressive in protecting designated scenic byways. They can acquire land in fee-simple or easements for buffer strips along the road; they can acquire critical resources outright or protect them through easement. Short of these measures, states can require local management plans for scenic byways prior to designation. Although several states

suggest that such plans be in place, few--California, Arizona, and New York among them--actually monitor the plans or work with local jurisdictions to develop them. Where a scenic byway crosses through several jurisdictions, the state could orchestrate a regional approach to the road, so that neighboring jurisdictions prepare a joint plan for the scenic byway. Only through a holistic approach--incorporating land or resource acquisition, easements, and/or strict zoning that treats the whole road as a unit--can protection for scenic byways be assured.

VI. RECOMMENDATIONS

1. Congress should enact a program to create a national system of Scenic and Historic Byways. Federal funds should be available to states and federal agencies that participate in the system. The national program will also provide uniform signage and promotion of designated scenic and historic roads.

2. States would participate in the national system voluntarily and would be responsible for administering their own scenic and historic byway programs under national policy guidance. State departments of transportation would work with state departments of historic preservation and departments of natural resources to administer the program.

3. Minimum federal standards for Scenic and Historic Byways should be developed as a state-federal cooperative effort, with the participation of the National Governors Association, AASHTO, the National Trust for Historic Preservation, and the Department of Transportation. These standards should apply to both designation criteria and minimum protection standards.

4. Participating states should designate a scenic and historic byway only if and when a local management plan is in place for the entire area relevant to the byway under

consideration. The management plan should be based upon a comprehensive survey of the scenic and historic attributes of the area and should include identification and documentation of all sites eligible for listing in the National Register of Historic Places and for state or local historic designation. The management plan must, at a minimum, provide specific mechanisms for protection of the resources of the byway. Most commonly this would be done through comprehensive planning and a zoning ordinance. The National Trust strongly recommends the protection technique of a highway corridor overlay district. This supplements a zoning ordinance and addresses protection of historic sites, setbacks, height limitations, vegetation controls, signage, and similar specific concerns for a defined byway corridor. The overlay district may be combined with the use of easements or fee-simple acquisition to protect sites or vistas of particular importance.

5. Participating states must develop criteria and a process for de-designating scenic and historic byways if the resources of the corridor are compromised or destroyed.

6. Funding for the National Scenic and Historic Byway system may be structured either as a categorical set-aside or as an incentive program, for example, so that state participation would ensure a higher percent of federal highway funding. Scenic and Historic Byway funds could be applied toward acquisition in fee simple and easements of property of open space, natural, or historical significance; toward state planning and planning grants to local governments; toward the administration of the byway program and enforcement of its protection plan; and toward promotion and interpretation of designated byways.

7. A National Scenic and Historic Byway Center should be established to develop and provide educational and training assistance to state and local officials who administer scenic

byway programs. The Center would serve as a clearinghouse for information on the various programs undertaken by federal agencies, state and local governments, nonprofit organizations, and others.

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3. Stokes, et al., p. 179.

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16. "Scenic Easement Restriction in Deed Dated November 10,

1943...." Sample North Carolina easement provided by Robert A. Hope, Blue Ridge Parkway, June 4, 1990.

17. "Commonwealth of Virginia to United States of America - Deed." Sample Virginia easements provided by Robert A. Hope, Blue Ridge Parkway, June 4, 1990, p. 2.

18. Ibid., p. 4.

19. Harpond, "Scenic Easements," pp. 9-10.

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21. Memorandum from Superintendent, Blue Ridge to Assistant Superintendents and All Ranger Personnel, December 12, 1972, NPS internal document.

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25. Ibid., p. 18.

26. Sawtooth National Recreation Area Fact Sheet, August 1989.

27. Letter from Deon Wells, Lands Specialist, USFS Sawtooth National Forest, Idaho, June 14, 1990.

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30. U.S. Forest Service, "Regulations Concerning Land Acquisition and Standards for Use, Subdivision, and Development of Private Lands in the S.N.R.A., Sawtooth National Forest, Idaho," p. 1.

31. Ibid., p. 11.

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33. Telephone interview with Celia Barry, Trust for Public Land, June 19, 1990; and USFS "Consummated Easements" listing sheet.

34. Interview with Wells, June 11, 1990.

35. Telephone interview with Deon Wells, June 20, 1990.

36. Interview with Wells, June 11, 1990.

37. Telephone interview with Jean Gibbons, Richmond, Virginia, May 30, 1990.

38. "Historic Landmarks Along the James River," Lower James River Association, Richmond, Virginia, n.d.

39. Telephone interviews with Phil Baker, Environmental Program Planner, Virginia Department of Transportation, April-June 1990.

40. Telephone interview with Garland Campbell, Traffic Engineer, Virginia Department of Transportation, Richmond, Virginia, May 24, 1990.

41. Telephone interviews with Lisa Ruffin Harrison, Evelynton Plantation, Charles City County, Virginia, June 20-21, 1990.

42. Interview with Gibbons.

43. S. Kathleen Pepper, "An Evaluation of Land Use Protections Affecting the Route 5 Byway," Lower James River Association, Richmond, Virginia, March 1990. This draft paper provided much of the information on the comprehensive plans and zoning ordinances of Henrico County, Charles City County, and James City County.

44. Interview with Bill Britton, Charles City County Planner, Charles City County, Virginia, May 10, 1990.

45. Ibid., June 20, 1990.

46. "Real Estate Assessment - Report of Parcels Zoned B-1, 3-02-90" and "Real Estate Assessment - Report of Parcels Zoned LB, 3-08-90," (Computer Printouts) James City County, Virginia.

47. Telephone interview with Virginia McConnell, Virginia Department of Historic Resources, Richmond, Virginia, June 20, 1990.

48. Telephone interview with George Wright, Historic Route 5 Association, Williamsburg, Virginia, June 1, 1990.

49. Telephone interview with Charles Finley, Varina Beautification Committee, Henrico County, Virginia, May 30, 1990.

50. Telephone interview with Fred Fisher, Varina

Beautification Committee, Richmond, Virginia, May 31, 1990.

51. Letter from George H. Krieger, County Administrator, Nelson County, Virginia, May 2, 1990.

52. "Greensprings Proffer Agreement," James City County, February 6, 1989, pp. 2-3.

53. Telephone interview with Rebecca Reynolds-Knight, Van Buren County, Iowa, June 14, 1990.

54. Rebecca Christian, "The Villages of Van Buren," The Iowan (Spring 1988), p. 13.

55. Telephone interview with Mark Eckman, Executive Director, Villages of Van Buren, Inc., Iowa, June 20, 1990.

56. "County's Own 'RAGBRAI' Set for August 19 & 20" and "Bike Van Buren III is Great Success" in Van Buren County Leader-Record, August 17, 24, 1990.

57. Letter from Michael Gunn, President, Township Stores, Inc., Bonaparte, Iowa, March 5, 1987.

58. City of Bonaparte, Iowa, Urban Revitalization Plan, January 14, 1990.

59. Interview with Eckman.

60. Interview with Reynolds-Knight.

61. Interview with Eckman.

APPENDIX A

INFORMATION REQUESTED FOR EACH SCENIC BYWAY

Road location:
Road length:
Formal designation:
Date of designation:

1. Why was this road designated as a scenic highway? What does the scenic designation mean?

2. What was the process by which it was designated? Which person(s) or group(s) were instrumental in its designation?

3. Describe the area through which the road travels: its geography, economy, and demographics.

4. What types of land use exist on the road? What are its principal scenic qualities? What are its most important historic qualities? What are its historic resources? Are any resources listed in the National Register or eligible for the National Register?

5. What are the major techniques that your (organization) has developed to protect the scenic/historic qualities of the road? Explore the role of easements, comprehensive planning, zoning, overlay districts (including historic districts), ordinances, policies, and tax incentives. Itemize specific restrictions, such as pertaining to uses, access, signage, etc.

6. Which of these techniques have been most effective in protecting historic/scenic resources? Why?

7. What is the average traffic count along the highway? How has this increased over the past 10 years?

8. Has the scenic highway been widened or improved during the last 10 years? If so, how and why? How would you rate the road in terms of safety? Has it become more or less safe since its designation?

9. Is this scenic highway a tourist route? What are the chief attractions? Has tourist traffic increased over the past 10 years? Can this increase be attributed to the road's designation as a scenic highway?

10. Have any special promotional materials been developed to publicize the area as scenic/historic, or to publicize the scenic highway? Are roadside markers or other interpretive materials used to inform the public about the highway or events/structures/landscapes along the highway?

11. Describe the nature of commercial development along or near the scenic highway. Has commercial development increased over the last 10 years?

To what do you attribute this increase? Have other types of development increased along the highway? To what do you attribute the increase?

12. What is the status of the historic resources along the highway? Are they protected, and if so, how? Has their protection increased since the highway was designated as scenic? Have any historic resources been lost along the highway? How and why? Are there protection techniques that might have prevented their destruction?

13. Have land values changed along the scenic highway? Have they increased or decreased relative to the rest of the area? To what do you attribute this change?

14. Have any land trusts or conservation organizations helped to protect land or properties along the scenic highway? Get specific examples.

APPENDIX B

NORTH CAROLINA EASEMENT

SCENIC EASEMENT RESTRICTION IN DEED DATED NOVEMBER 10, 1943, EXECUTED BY THE STATE OF NORTH CAROLINA TO CONVEY TO THE UNITED STATES OF AMERICA THE LANDS DESCRIBED AS SECTION 2-E OF THE BLUE RIDGE PARKWAY

ON THE LANDS HEREINAFTER DESCRIBED THERE IS HEREBY CONVEYED A RIGHT OF USE OR EASEMENT FOR THE ENFORCEMENT OF THE FOLLOWING RESTRICTIONS AND NONE OTHER, TO WIT:

(a) That buildings, pole lines and structures may be erected on such lands only for farm or residential purposes. New buildings or major alterations to existing buildings shall be subject to the prior approval of the National Park Service. No commercial buildings, power lines or other industrial or commercial structures shall be erected on such lands, except that existing commercial buildings may be altered or the property may be otherwise improved for the purpose of continuing established use after plans have been approved by the National Park Service.

(b) That no mature or stable trees or shrubs shall be removed or destroyed on such land without the consent of the grantee or its assigns, except such seedling shrubbery or seedling trees as may be grubbed up or cut down in accordance with good farm practice and residential maintenance, and except that cultivated crops, including orchard fruits, may be pruned, sprayed, harvested, and otherwise maintained in accordance with good farming practice.

(c) That no dump of ashes, trash, sawdust or any unsightly or offensive material shall be placed upon such land.

(d) That no sign, billboard or advertisement shall be displayed or placed upon such land, except one sign not greater than 18 inches by 24 inches advertising the sale of the property or products raised upon it.

W I T N E S S E T H'

WHEREAS, the State Highway Commission is a Department of the Commonwealth of Virginia and was created an agency of the said Commonwealth by Act of the General Assembly approved March 24, 1922 (Acts 1922, Chapter 403, page 673), as amended; and

WHEREAS, the State Highway Commission of Virginia, acting through the State Highway Commissioner, is authorized to acquire in the name of and on behalf of the Commonwealth of Virginia real estate for the purpose of construction, reconstruction, alteration and maintenance of roads embraced in the State highway system, including the Blue Ridge Parkway, as well as lands adjacent thereto, for scenic and park purposes; and

WHEREAS, the provisions of the Act approved February 21, 1934, designated as Chapter 42, Acts of 1934, referred to above, are as follows:

> "1. Be it enacted by the General Assembly of Virginia, That, in addition to its other powers and duties, the State Highway Commission be, and is hereby authorized and empowered to add to the State highway system a route from a point at or near Jarman's Gap running generally in a southwesterly direction, at or near the crest of the mountain as it may deem advisable, to the North Carolina or Tennessee line, the widths and grades, and the alignment between places designated by the State Highway Commission, to be determined by the State Highway Commissioner.
>
> "2. That the State Highway Commissioner, by and with the approval of the Governor, be, and is hereby, authorized and empowered to transfer, assign and convey, at one time, or from time to time, to the United States of America, or any

department, bureau, board, commission or official thereof, who will agree to construct or improve a roadway thereon, the right, title and interest of the Commonwealth of Virginia in the property and rights acquired for such highway, whether by gift, purchase, condemnation, or otherwise, and upon such transfers, assignments or conveyances, the property and rights so transferred, assigned, or conveyed, shall cease to be part of the State highway system, provided further that the State Highway Commissioner is authorized to enter into an agreement with the proper Federal agency to maintain said road and to expend funds from the motor fuel tax for such purpose.

"3. All such contracts, transfers, assignments and conveyances shall be subject to the approval of the Governor;" and

WHEREAS, the provisions of the Act, approved March 12, 1936 (Chapter 163, Acts 1936), referred to above are as follows:

"Section 1. This act may be cited as the Scenic Easement Act.

"Sec. 2. Definitions. -- The following terms, whenever used or referred to in this act shall have the following meaning, unless a different meaning clearly appears from the context:

"(a) The term 'scenic easement' shall mean the easement or right of the Commonwealth of Virginia or of its assigns, the United States of America (in cases where said easement is assigned or conveyed to the United States), to restrict the use of any and all lands covered by or subject to said easement so that the owner or owners of said land, or any part thereof, or their assigns shall not have the privilege or right (1) to erect or authorize the erection thereon of any buildings, pole, pole line or other structure; (2) to construct thereon any private drive or road; (3) to require the Commonwealth of Virginia or its assigns to construct any access road or drive thereon; (4) to remove from or break, cut, injure or destroy on the said land any trees or plants or shrubbery; (5) to place thereon any dumps of ashes, trash, sawdust or any unsightly or offensive material; (6) to place or display thereon any sign, billboard or advertisement.

"(b) The term 'parkway' shall mean that recently added portion of the State highway system extending from at or near Jarman's Gap, in a general southwesterly direction to the North Carolina line, which has been adopted by the Department of the Interior of the United States as the location of the proposed Shenandoah-Great Smoky Mountains National Parkway.

"Sec. 3. The State Highway Commissioner is hereby authorized to acquire, out of funds now or hereafter appropriated for highway purposes, by gift, purchase, condemnation or otherwise, 'scenic easements' as defined in section two (a) of this act along one side or both sides of the 'parkway' as defined in section two (b) of this act. The State Highway Commissioner, by and with the approval of the Governor, be, and is hereby, authorized and empowered to transfer, assign and convey at one time or from time to time any or all such easements to the United States of America whenever the United States or its authorized agency shall contract and agree to construct a roadway on the 'parkway' adjacent to any such easement so to be transferred, assigned or conveyed.

"Sec. 4. The State Highway Commissioner is hereby authorized to acquire out of funds now or hereafter appropriated for highway purposes, by gift, purchase, condemnation or otherwise, land in fee simple along one side or both sides of the parkway as defined in section two (b) of this act, in lieu of acquiring such scenic easements as hereinbefore defined, for the purpose of beautification and scenic protection of said parkway so as to conform with the plans for said parkway prepared by the National Park Service of the United States Government.

"The State Highway Commissioner, by and with the approval of the Governor, be, and is hereby, authorized and empowered to transfer, assign and convey from time to time any or all such land, or scenic easements thereon, to the United States of America whenever the United States or its authorized agency shall contract and agree to construct a roadway on the parkway adjacent to any such land so to be transferred, assigned or conveyed.

"Sec. 6. The State Highway Commissioner is hereby vested with the power of eminent domain and may condemn scenic easements and such lands as are referred to in section four of this act in accordance with the provisions of section ten of the act creating the State Highway Commission, as amended and re-enacted by chapter three hundred and seventy-seven, Acts of the General Assembly, nineteen hundred and thirty-four.

"Sec. 7. An emergency existing, this act shall be in force from its passage." and

WHEREAS, said Act designated as Chapter 163, Acts 1936, was amended by Chapter 389, Acts 1938, and approved March 31, 1938, in the following words, to-wit:

advertisement, except one sign not greater than eighteen inches by twenty-four inches advertising the sale of the property or produce raised upon it.

"In the event the State Highway Commissioner, in the condemnation or purchase of scenic easements as hereinafter authorized, should desire to condemn or purchase an easement containing a part but not all of the restrictions above set forth, the deed or condemnation petition shall set forth the specific restrictions purchased or sought to be condemned; and same shall be deemed a scenic easement within the meaning of this act.

"(b) Parkway. — The term 'Parkway' shall mean that recently added portion of the State Highway System extending from at or near Jarman's Gap, in a general southwesterly direction to the North Carolina line, which has been adopted by the Department of the Interior of the United States as the location of the proposed Blue Ridge Parkway.

"(c) The parkway as defined herein and which has been designated in former acts as the Shenandoah-Great Smoky Mountains National Parkway shall hereafter be known as the Blue Ridge Parkway, or by such title as may be hereafter designated by the Congress of the United States.

"Section 5. The State Highway Commissioner may condemn for said parkway and such additional lands, including scenic easements, as are herein referred to, and for such purposes said State Highway Commissioner is hereby not only vested with the power of eminent domain but is also vested with all the rights of possession and other rights and powers conferred upon him as such commissioner by virtue of the provisions of section ten of the act creating the State Highway Commission, approved March twenty-fourth, nineteen hundred and twenty-two, and acts amendatory thereof, and condemnation proceedings may in all respects, except as is hereinafter specified, be in accordance with the provisions of said section ten of said act creating the State Highway Commission, as heretofore or hereafter amended. In the event the commissioner proposes to condemn, at the same time, both for the parkway, as herein defined, or any part thereof, and adjacent lands for park purposes, and/or scenic easements, he may for this purpose institute one proceeding and file one petition against the landowner or owners or landowners. In all such condemnation matters the enhancement, if any, in the value of the remaining property of the landowner by reason of the establishment of the parkway and adjacent scenic park or any improvements contemplated or made by said commissioner, or his grantee or assignee, on said parkway and on any additional land in connection therewith, including scenic or park land or scenic easements, shall be offset against the damages, if any, resulting to such remaining property of such

"1. Be it enacted by the General Assembly of Virginia, That section two and section six of an act entitled an act to authorize the State Highway Commissioner to acquire, by gifts, purchase, condemnation, or otherwise, scenic easements, or in lieu thereof parcels of land, on either side or both sides of the roadway or highway from a point at or near Jarman's Gap and extending generally in a southwesterly direction to the North Carolina line, which roadway or highway the State Highway Commissioner has been heretofore authorized to convey to the United States, and which has been set apart and designated by the United States as the proposed Shenandoah-Great Smoky Mountains National Parkway; and to authorize the State Highway Commissioner to transfer, assign and convey to the United States said scenic easements, or land, so acquired, approved March twelfth, nineteen hundred and thirty-six, be amended and re-enacted so as to read as follows:

"Section 2. Definitions. - The following terms, whenever used or referred to in this act shall have the following meaning, unless a different meaning clearly appears from the context:

"(a) Scenic Easement. - Scenic easement shall mean the easement or right of the Commonwealth of Virginia or its grantee or assignee, the United States of America, to restrict the use of any and all lands covered by or subject to said easements so that the owner or owners of said land, or any part thereof, or their grantees or assignees, shall not have the privilege or right, (first) to erect or authorize the erection of any building, pole line, or other structure, except for farm or residential purposes, (second) to erect any commercial buildings, power lines, or industrial or commercial structures, except that existing commercial buildings may be altered or the property may be otherwise improved for the purpose of continuing the present established use or other use with the consent of the Commonwealth or its grantee or assignee, (third) to construct thereon any private drive or road, except with the consent and approval of the Commonwealth of Virginia, or its grantee or assignee, (fourth) to require the Commonwealth of Virginia or its assigns to construct any access or drive thereon, (fifth) to remove from or to break, cut, injure, destroy on the said land, any mature or stable trees or shrubs without the consent of the Commonwealth of Virginia, its grantee or assignee, except such seedling shrubbery or seedling trees as may be grubbed up or cut down in accordance with usual farm practice and residential maintenance, and except that cultivated crops, including orchard fruits, may be pruned, sprayed, harvested, and otherwise maintained in accordance with usual farming practice, (sixth) to place thereon any dumps of ashes, trash, sawdust, or any unsightly or offensive material, (seventh) to place

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