

Scenic Easements: A Unique Approach to Cooperative Management

by Robert F. Burford, Director,
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...the next step was appraisal. ...how does one objectively determine the value of not doing something?

Preserving certain special scenic areas in this country has become a cooperative affair among some private landowners and the Bureau of Land Management (BLM).

Several methods to achieve such a goal are available. Some have been around for a long time, such as government purchase of key lands and participation by third party foundations in acquisitions. Some are just now being explored, such as special tax benefits and voluntary deed restrictions. One method that has been used in a few areas on public lands is a process called scenic easements.

A scenic easement is the right to control the use of a particular piece of private land to preserve the natural quality of the property or its surroundings. The Federal Government sometimes purchases scenic easements on private lands as a means of maintaining the status quo and preventing inappropriate development in areas adjacent to Federal lands with special designations.

The legal foundation for such easements dates back to the English concept of property rights. That concept, itself based in Roman law, is simply that property rights are made up of a bundle of sticks. When the property is transferred to another owner, all or only a few of the sticks may be included.

If the Federal Government acquires a scenic easement on your property, essentially you are selling, for a negotiated price, one of your sticks: the right to develop or change your property as you see fit. Instead, you agree to do certain things and not do certain things under the supervision of the Federal Government.

With the current boom in condominiums, perhaps the easiest way to illustrate scenic easements is to compare them with the rules and regulations of a condominium association. That association, which a new owner is required to join when he buys the living unit, has a clearly defined set of rules that all homeowners must legally follow. For example, rules common to most condominium associations include a prohibition against painting the exterior of your unit with paint other than the standard color for the complex. Adding an air conditioner, hot tub, solar panels, etc. are common situations which would require the association's permission prior to installation. Such additions are sometimes allowed, but must be in accordance with specifications approved by the association, such as concealing them from view or painting the addition with a certain color to blend with the natural surroundings.

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Scenic easements are very similar. In special areas, such as wild and scenic rivers or scenic highways, the Federal Government may wish to cooperate with those owning property adjacent to the Federal area in limiting development to preserve the scenic beauty. One way to do this, as an alternative to full acquisition or purchase of the property, is to negotiate a scenic easement.

Although scenic easements have been used by other Federal agencies for a variety of special use areas, here at BLM our use of scenic easements has been to preserve the scenic beauty of congressionally designated components of the Wild and Scenic River System. So far, we have used the scenic easement process on three rivers: the Rogue River in Oregon, the Upper Missouri in Montana, and the Rio Grande in New Mexico.

By far, our most extensive effort has been on the Rogue River. The Rogue was one of the eight original wild and scenic rivers designated by the National Wild and Scenic Rivers Act of 1968. The BLM was given responsibility for 47 miles, from the mouth of the Applegate River to Marial, covering one of the most beautiful and exciting stretches of river in the country. This beauty and challenge draws thousands of visitors each year to enjoy the river and camp along its banks.

The Act directs these special values be preserved for present and future generations. Since 1972, Congress has appropriated money each year to BLM from the Land and Water Conservation Fund to purchase land and scenic easements to preserve the aesthetic, scenic, historic, archaeologic, and scientific features.

Although scenic easements are not new, the BLM was one of the first agencies to apply the concept to a wild and scenic river. The past history of scenic easements was almost entirely in the area of scenic highways. Situations such as parks were traditionally handled through fee simple acquisitions.

The BLM set two objectives for its acquisition effort on the Rogue: 1) to protect vegetation and 2) to limit new structures. The term "limit" is important here, because the 1972 management plan, developed cooperatively with the U.S. Department of Agriculture's Forest Service, which also has management responsibilities on a portion of the river, states there are places where new development may be desirable.

Two types of acquisition methods, scenic easements and full purchase, were available to meet these objectives. The type chosen was based upon property values, present owner inclination, extent of development, river view, adjacent land use and ownership, and topography. Each parcel was critically evaluated on a case-by-case basis.

In the Rogue River situation, scenic easements were heavily used for a number of reasons. One reason was the nature of the river and the property owners who lived along it. Since the Rogue River is reasonably close to large population centers (13 million people reside within a 12-hour drive), many of the homes along the river were second or vacation homes, bought or built by the urban dwellers with a desire to "get away from it all." Many of these people strongly desired the river and its banks to remain in a reasonably undeveloped state. They wanted to keep their vacation homes rather than sell them and most were not



The Rogue River

opposed to limiting their remaining development opportunities. Scenic easements were therefore preferable to acquisition to many landowners.

Another reason was money. Although scenic easements are not inexpensive, in most cases the initial outlay to the Federal Government is usually less than acquisition of all property rights.

A third reason was practicality. The ultimate goal of the effort was to preserve the natural character of the Rogue River. With several hundred parcels of private land involved, scenic easements provided an opportunity to get closer to the goal within limited funding constraints and with less public opposition than outright acquisition.

The final reason was flexibility. With so many landowners and situations involved, there were bound to be a variety of both resource and individual needs. Scenic easements, with their inherent ability to be tailored to each particular situation, gave the BLM and the landowners the opportunity to work together in a mutually satisfactory way.

But there were, and continue to be, some problems. The first challenge on each parcel was to determine the management needs. That is, what restrictions were necessary

to preserve the natural character of the river. The lay of the land, the amount of vegetation, the existing structures and their location, the view or visual access from the river, all had to be considered. Especially in the early easements, it was difficult to foresee every possibility.

Once the needs were established and provisions of the easement drafted and negotiated with the landowner, the next step was appraisal. This proved to be a difficult task. The issue came down to how does one objectively determine the value of not doing something? The job of the appraisers was to determine the fair market value of the property before and after the easement is applied, certainly not an easy task.

The BLM approached this task carefully, researching the past history of scenic easements and adapting what we could to the Rogue River situation. But in most cases the effort involved new appraisal methods, unconventional approaches, and innovative ideas. Lack of resale history was a problem, but as some properties began to turn over, a firm base of comparison was established.

By necessity, no two easements were exactly alike. One common fac-

tor was that most scenic easements were acquired in perpetuity; very few term easements were written.

Another common provision was maintenance of the status quo. By law, the BLM could not stop pre-existing uses prior to the acquisition of the scenic easement, so negotiations were important in every case.

Each easement also gives the Government the right to inspect the property for possible violations. Other common provisions were related to fire suppression, handling of garbage and debris, and other general issues.

Beyond these factors, each easement was tailored to the particular situation. Since appraisal was also done on a case-by-case basis, the amount paid for these easements also varied widely, ranging from five to 95 percent of the property's full value.

Most of the work envisioned on the Rogue River has now been completed. A sizeable amount of Federal funds have been spent acquiring scenic easements on about 2,000

parcels from about 65 landowners, compared to \$3.6 million spent acquiring deeds to 2,400 acres from about 100 landowners.

And, of course, acquisition is not the end, but really the beginning. Enforcement of the scenic easement stipulations is an important part of the BLM's management responsibility in the area.

Although not nearly as far along as the Rogue River effort, BLM has also some history of scenic easements on the Upper Missouri and Rio Grande Rivers.

The Upper Missouri became a wild and scenic river in 1976. Rich in scenic beauty, the river also offers thousands of visitors a chance to walk in the footsteps of western explorers Lewis and Clark, who first explored the area in 1805. On the Missouri, the management challenge has really just begun. So far, the BLM has completed four fee simple acquisitions involving 1,317 acres and one scenic easement involving 3,296 acres.

Although the experience on the

Rogue River was helpful, again we found the factors to be considered in scenic easements on the Missouri River demanded a tailor-made approach. A large chunk of land and one owner were involved, as opposed to small parcels and many owners.

Based on mutual desire, the scenic easement on the Missouri River was made through an exchange. The BLM acquired a scenic easement on an 8-mile stretch of the river for about 14,000 acres of public land elsewhere in Montana. The scenic easement prohibited commercial development and limited the landowner to the current grazing and farming uses. It also restricted further agricultural development of the prime bottom land along the river.

Other tracts are identified in the BLM's acquisition plan for the area. Because of limited funding, BLM is looking for other opportunities to accomplish Congress' objective of preserving the river.

The BLM's other experience with scenic easements is on the Rio Grande. Like the Rogue River, it was one of the original wild and scenic rivers designated in 1968.

So far, about 675 acres have been acquired in fee simple and scenic easements have been obtained on an additional 693 acres. Total expenditures were \$231,000 on the fee simple acreage and \$175,000 on the scenic easements.

The scenic easement was on the Sangre de Cristo Tract and involves two landowners. The easement restricts development and any changes to the general character of the land in perpetuity. More work toward accomplishing Congress' goals on the Rio Grande remains to be done.

Based on the experience gained during these three efforts, policy-makers both inside and outside government are looking at possible improvements in the scenic easement process and exploring other options that could achieve the same objectives.

Under the umbrella of the "New Federalism" approach in government, there may be opportunities for



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more private sector involvement in protecting such areas. Voluntary, self-imposed deed restrictions are one option, which would have the same force and effect of scenic easements, but without large taxpayer-funded outlays. Other possibilities are getting groups interested in preserving these areas to help finance some acquisitions. Still another possibility is authorizing tax benefits similar to those available to owners of historical properties to encourage preservation by private owners.

All these options, including the more traditional methods of scenic easements and fee simple acquisitions, should be explored to ensure the taxpayers, as well as the private landowners involved, are treated fairly. Congress must also ensure that when such laws are passed the total costs are fully covered by the authorizing legislation. Public and private needs must be carefully balanced with environmental needs to ensure sound land management practices.

Careful planning, objective approaches, innovative ideas and a cooperative spirit on all fronts are the keys to success in any partnership. Such a partnership is needed to ensure the future protection of certain special areas for the enjoyment of all Americans.

Rio Grande Gorge, Sangre de Cristo Scenic Easement



Request for Course Proposals

IRWA is seeking proposals for the development of a one-day course in easement valuation to include overhead, pipeline, scenic, temporary, slope, and construction easements. Consideration is being given to combining the valuation of all types of easements in one course, plus developing specific one-day courses that concentrate on one type of easement. If you are interested in developing either a comprehensive or specialized program, please call Ralph Brown, SR/WA, Director of Professional Services no later than November 1, 1983, at 213-649-5323.

Canadian Federal Land Use Manual

by Wayne Bond

An educational manual, entitled *The Identification of Impacts of Federal Programs on Land Use: A Manual for Program Managers*, has recently been produced by the federal government's Interdepartmental Committee on Land. This manual is designed to make federal managers aware of the possible land use effects of the programs that they administer. Managers are assisted in recognizing land use impacts through an introductory discussion of land use characteristics; a screening questionnaire for program sectors ranging from agriculture through housing, energy generation, heritage lands, financial policies, etc.; and a corresponding explanation for each sector. Through the various explanations, managers are asked to consider effects such as economic stimulus to land development by transport facilities; competition for land use between agriculture, forestry, housing and other uses; degradation of land through poor cultivation practices; contamination of land from hazardous wastes; and research into land characteristics. Since managers have to read only sections pertinent to their type of program, the manual can be read in a few minutes. Federal managers are encouraged generally to assess the land use effects of their program on a response form enclosed with the manual.

As the manual notes, many federal government programs affect

the capability, use or management of Canada's land resource. Some federal activities directly affect land use through, for example, the purchase of farmland, the management of a national park, or the construction of an airport. Other programs influence the use of the nation's land in a significant but less direct way, through activities such as regulation, research, regional development incentives, financial assistance to an economic sector, or tariffs and taxation.

Although addressed to the federal level, the manual to identify the impacts of federal programs on land use could prove useful to other government agencies and public interest groups concerned about land use issues and impact assessment methods. Since additional reports to assist managers in evaluating the land use impacts of programs are planned, comments would be appreciated on the approach taken, and on other methods to pursue in assessing the dealing with the land use impacts of government programs. The manual is available from the ICL Secretariat, Lands Directorate, Environment Canada, 20th Floor, Place Vincent Massey, Ottawa K1A 0E7, (tel.: 819-997-2470).

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