Protecting Scenic Views: 
Seventy Years of Managing and Enforcing 
Scenic Easements along the Blue Ridge Parkway

George T. Davis

Thesis submitted to the Faculty of the 
Virginia Polytechnic Institute and State University
in partial fulfillment of the requirements for the degree of 

Masters of Urban and Regional Planning

Through the Department of Urban Affairs and Planning

Jesse J. Richardson, Chair
John Randolph
Bruce Goldstein

May 5, 2009
Blacksburg, Virginia

Key Words: blue ridge parkway, conservation easements, scenic easements, easement restrictions, easement violation

Copyright 2009, George T. Davis
Conservation easements are among the fastest growing techniques for protecting land and open space. Conservation easements are legal agreements between a landowner and a conservation organization that limits or restricts entirely the right to develop a property in order to protect important conservation values associated with the property.

At the heart of the conservation easement movement is the assumption that easements will protect ecologically important lands in perpetuity. However, there is little evidence that conservation easements can protect land permanently. Very few land trusts have experience in dealing with the myriad of challenges associated with long-term enforcement of conservation easements. This study sought to examine scenic easements acquired for the Blue Ridge Parkway in the 1930’s and 40’s and to develop an understanding of the challenges faced by the Parkway in attempting to enforce the terms of scenic easements drafted nearly 70 years ago.

The scenic easements acquired for the Blue Ridge Parkways represent the first widespread use of conservation easements in the country. The Parkway’s early architects had few examples of easement programs to assist them in acquiring and managing these early forms of conservation easement nor did the NPS have the network of conservation organizations that exists today.

This study reviews the process utilized by the Commonwealth of Virginia and the State of North Carolina to acquire scenic easements for the Blue Ridge Parkway and assesses the deeds used to convey the scenic easements from the states to the federal government. Further, this study evaluates and examines the number and types of violations of easement terms experienced by the Parkway and the various factors that may have contributed to violations of scenic easement restrictions and requests to alter/amend easements. This study also evaluates the various strategies used by the National Park Service to exchange and release scenic easements. Finally, this study concludes with a number of recommendations for improving the management of the Parkway’s scenic easements and how organizations currently holding conservations can improve the stewardship of easements by incorporating adaptive management principles into their conservation easement stewardship programs.
Acknowledgements

I owe a sincere debt of thanks to my wife, love of my life and best friend Kathy Laskowski for all of her love and support, especially over the past couple of months. Kathy’s encouragement helped me take the initial step to apply for admission to Virginia Tech and the Department of Urban Affairs and Planning. I also would like to thank my son’s Alex & Zach for helping me keep things in perspective and for providing me with necessary distractions and constant adventures! I also want to thank my parents Tom and Kathryn Davis for all of their love and encouragement over the years. In many ways, a two hour trip with them and my brother Jeff to Hampshire County, West Virginia opened the door to my chosen career path (and a lot of adventures). I also owe a special thank you to my in-laws Hank & Chris Laskowski for all of their encouragement and for walking the dog, watching the kids, and for providing a warm meal whenever I needed a few extra minutes to write. Also, a special thank you goes to Riley for knowing when it’s time to take me for a walk.

I owe a sincere thanks to my major professors, Dr. Jesse Richardson and Dr. John Randolph. This research started out as a paper in Jesse Richardson’s Land Use Law Class. Jesse saw the potential in that paper and in this research project and continued his interest, even during my 3-year sabbatical. John Randolph took a chance on me and eagerly walked me through the admissions process and provided encouragement and support throughout my years in the UAP program. I would also like to thank Dr. Bruce Goldstein for his encouragement, feedback and critical review throughout my thesis project.

I would also like to thank Adrienne Smith in the UAP Department for all of her assistance in helping me to navigate the gauntlet of forms and paperwork to allow me readmission back into Virginia Tech following my “sabbatical.”

I would also like to extend a special thank you to my friends, colleagues and fellow co-workers on the Blue Ridge Parkway. Their professionalism and dedication exemplify the standards of the National Park Service. A special thank you goes to my Supervisor, Bambi Teague. Bambi is without a doubt one of the best mentors I have ever had in my 20+ career with the National Park Service. She has offered constant encouragement throughout my time on the Parkway and gave me the freedom to change my work schedule to accommodate my classes. She also graciously allowed me the time off to finish this research. Bambi also encouraged me to apply for the Albright Wirth Grant, which made much of this research possible.

I owe a big debt (and a couple of beers) to J. David Anderson, the Parkway’s Land Resources Specialist, Landscape Architect, GIS Coordinator, Rights-of-Way Specialist and overseer of Scenic Easements (are there any other titles you have that I may have missed?). David was instrumental throughout the research phase of this project and all of the stages in between. He is always willing to make time for my constant barrage of questions related to deeds, scenic easements and the Parkway’s land management program. If there are scenic easements files to be found, Dave can find them. I also owe a debt to Sheila Gasperson, the Parkway’s Realty Specialist for helping me navigate the Parkway’s maze of deeds and land resource files. Sheila took a special interest in my research and made numerous comments on the earlier drafts to this paper.
I would also like to thank Gary Johnson, the Chief of the Resource Planning & Professional Services with the Parkway for all his help and encouragement through the research phase of this project. Also many thanks to Curator and Archivist Extraordinaire, Jackie Holt, for all of her help in navigating the Parkway’s archives and her willingness to search the archives for documents, oral history transcripts, annual reports and whatever files I could not locate in the Land Resources files.

I am very grateful to know and work with two outstanding Biologists-- Bob Cherry and Chris Ulrey (I owe you guys a couple of beers too). Many thanks for your encouragement and support over the past several years.

Special thanks also goes to Suzette Molling, Environmental Protection Specialist with the Parkway, who provided encouraging words during my many trips to the Blue Ridge Parkway Headquarters and who allowed me to hog the copy machine during the long process of going through the tens of thousands of files, documents, correspondence and reports that make up the Parkway’s Land Resources files.

I would also like to thank the rest of the staff of the Blue Ridge Parkway, many of whom provided me valuable information and insights into the Parkway’s scenic easements.

Many thanks goes out to Richard Broadwell, Lands Protection Specialist with the Conservation Trust for North Carolina and Ryan Walker, Stewardship Specialist with the Virginia Outdoors Foundation for answering my many questions about their respective organization’s stewardship program and their willingness to share procedures and guidelines related to amending, monitoring and enforcing conservation easements.

I would also like to thank the National Park Foundation. Much of the research for this project was funded in part through an Albright Wirth Grant through the National Park Foundation. The Albright-Wirth Grant Program is a developmental program that awards grants to National Park Service employees to pursue a variety of career-enhancing goals.

For anyone whom I may have missed, please know that you remain in my thoughts and that your help and assistance did not go unnoticed.
# Table of Contents

Abstract........................................................................................................................................... ii
Acknowledgements........................................................................................................................ iii
List of Tables and Figures.................................................................................................................. vii

Chapter 1
1.1 Introduction.............................................................................................................................. 1
1.2 Research Objective.................................................................................................................. 2
1.3 Research Significance.............................................................................................................. 3
1.4 Conservation Easements Defined............................................................................................... 5
1.5 Who Can Hold Conservation Easements?............................................................................... 7

Chapter 2: Defending and Enforcing Conservation Easements: A Literature Review.............. 9
2.1 Conservation Easement Stewardship.......................................................................................... 9
2.2 Conservation Easement Defense/Enforcement Related Research...................................... 11
2.3 Second and Third Generation Landowners.......................................................................... 14
2.4 Previous Case Studies of Scenic Easements........................................................................... 14

Chapter 3: The Blue Ridge Parkway............................................................................................. 17
3.1 Background............................................................................................................................... 17
3.2 Parkway Land Acquisition Policy........................................................................................... 20
3.3 The Land Acquisition Process................................................................................................. 24
3.4 Scenic Easement Deeds............................................................................................................ 26
   3.4.1 Virginia Easement Terms................................................................................................. 26
   3.4.2 North Carolina Easement Terms....................................................................................... 29
3.5 Perceived Weaknesses of Scenic Easement Deeds................................................................. 30
3.6 The 1961 Land Exchange Act.................................................................................................. 31
3.7 Previous Research.................................................................................................................... 32

Chapter 4: Research Plan............................................................................................................... 33
4.1 Research Approach.................................................................................................................... 33
4.2 Research Process...................................................................................................................... 35
4.3 Review of Scenic Easement Violations and Variance Requests........................................... 36
4.4 Limitations and Research Validity............................................................................................ 37

Chapter 5: Results.......................................................................................................................... 39
5.1 Scenic Easements General Information.................................................................................. 39
5.2 Acquisition & Release of Scenic Easements.......................................................................... 44
5.3 Scenic Easements Acquired between 1967 and 2008............................................................. 52
5.4 Scenic Easement Deeds............................................................................................................ 58
5.5 Blue Ridge Parkway Deed Instruments................................................................................... 59
5.6 Virginia Scenic Easement Deeds............................................................................................. 60
5.7 North Carolina’s Scenic Easements....................................................................................... 75
5.8 Affirmative Rights.................................................................................................................... 78
5.9 Conclusions.............................................................................................................................. 79
Chapter 6: Results: Scenic Easement Violations & Variances…………………………………………………………...80
6.1 Scenic Easement Monitoring…………………………………………………….80
6.2 Scenic Easement Violations………………………………………………….…..85
6.3 Litigation and Court Action………………………………………………….99
6.4 Scenic Easement Variance Requests……………………………………………………101

Chapter 7: Discussion………………………………………………………………………127
7.1 Conservation Easement Deeds………………………………………….……....127
7.2 Conservation Easement Stewardship…………………………………………...130
7.3 Conservation Easement Enforcement…………………………………………..136
7.4 Variances & Approval Requests………………………………………………..138
7.5 Easement Amendment & Release………………………………………………141

Chapter 8: Conclusions & Recommendations……………………………………………...144
8.1 Scenic Easement Deeds: Recommendations…………………………………..145
8.1 Scenic Easement Stewardship: Recommendations……………………….……145
8.3 Enforcement of Scenic Easements: Recommendations………………………..146
8.4 Variance/Approval Requests: Recommendations……………………………...147
8.5 Scenic Easement Amendments & Release: Recommendations………………..148
8.6 Conclusions…………………………...……………………………………...148

Literature Cited…………………………………………………………………………………152

Maps, Correspondence, and Memos Cited [U.S. Government Documents: Public Domain]………………………………………………….…………………………...157

Appendix
A. Blue Ridge Parkway Scenic Easement Variables…………………………………….160
B. Case Study: Construction of Prohibited Access Road on Scenic Easement No. 3, Section 1-Q, Floyd County, VA…………………………………….168
C. Case Study: Construction of Prohibited Residential Structure on Scenic Easement No. 4, Section 1-V, Carroll County, VA…………………….170
D. Case Study: Violation of Consent Agreement & Failure to Clean-up Slash on Scenic Easement No. 1, Section 2-C in Alleghany County, NC………………………………………………………..175
E. Letter from Curtis Bell, April 18, 1973 to Southeastern Regional Director Regarding Interpretation of North Carolina Scenic Easement Restrictions………………………………………………………..181
F. Letter to Superintendent, Blue Ridge Parkway from George Frye Regarding Procedure on how to Handle Future Requests to Construct Farm & Residential Buildings on Easements in NC………..182
G. Additional Criteria Utilized by the Blue Ridge Parkway when reviewing Variance requests…………………………………….183
List of Tables and Figures

Figure 3.1: The Blue Ridge Parkway links Shenandoah National Park in Virginia with the Great Smoky Mountains National Park in North Carolina.........................18
Figure 3.2: Blue Ridge Parkway Land Use Map (PLUM) illustrating the Blue Ridge Parkway fee simple right-of-way and less-than-fee scenic easements.....21
Table 3.1: Comparison of Typical Scenic Easement Restrictions: Virginia and North Carolina.................................................................27
Table 5.1: Number & Acres of Scenic Easements Acquired by state..................40
Table 5.2: Mean size of scenic easements acquired by state for the Blue Ridge Parkway.................................................................41
Figure 5.1 Number of Scenic Easements acquired by Virginia and North Carolina by acreage class.................................................................42
Table 5.3: Acreage of scenic easements acquired for the Blue Ridge Parkway by County.................................................................43
Table 5.4: Comparison of number and acres of scenic easements originally acquired for the Blue Ridge Parkway by VA and NC and number & acreage of scenic easements currently remaining..........................45
Table 5.5: Acres of scenic easement acquired in fee simple or exchanged by acquisition method.................................................................46
Table 5.6: Scenic Easements Acquired by the Blue Ridge Parkway through exchange-release.................................................................50
Table 5.7: Scenic Easements Acquired through Land Exchange..........................53
Table 5.8: Scenic Easements Acquired as part of larger tracts of land................54
Figure 5.2: Scenic easements acquired before 1961 and following the 1961 Act........55
Table 5.9: Scenic Easements (Acres) acquired as individual tracts in fee simple by the Blue Ridge Parkway.................................................................56
Table 5.10: Scenic easements acquired by the Blue Ridge Parkway between 1967 and 2008.................................................................57
Table: 5.11: Acres of scenic easements conveyed by composite deed and Blue Ridge Parkway administrative section.................................................................61
Table 5.12: Number of scenic easements acquired for the Parkway in Virginia by Acquisition Method and Scenic Easement Act.................................................................62
Table 5.13: Restrictions found in scenic easements acquired under the 1936 Scenic Easement Act through condemnation (judgment) (n=6).................................................................64
Figure 5.3: Qualifier statement for Scenic Easement No’s 1A & 1B in Section 1R........66
Table 5.14: Restrictions found in scenic easements acquired under the 1936 Scenic Easement Act through negotiations with individual landowners (1936 Deed) (n=27).................................................................67
Figure 5.4. Additional exceptions provided to the Blumont Presbyterian Church in the Scenic Easement Deed.................................................................69
Figure 5.5: Reserved right providing scenic easement holders the right to utilize existing farm roads within the easement.................................................................70
Table 5.15: Scenic easement restrictions provided for in the deeds for easements acquired through scenic easement judgment/condemnation under the 1938 Amended Scenic Easement .................................................................72
Table 5.16: North Carolina Scenic Easement Restrictions.................................................................76
Table 6.1: District Rangers response to Supt. Weems September 18, 1945 memo.............82
Figure 6.1: 1945 Letter mailed to Blue Ridge Parkway scenic easement owners advising them of scenic easement restrictions. (Source: Blue Ridge Parkway Archives).................................................................83
Table 6.2: Number and types of scenic easement violations experienced by the Blue Ridge Parkway.................................................................86
Figure 6.2: Number of scenic easement violations by Year class................................87
Table 6.3: Resolution of scenic easement violations...........................................89
Table 6.4: Resolution of scenic easement violations...........................................90
Table 6.5: Reasons found in Parkway Land Use files for not taking action against violators of scenic easement restrictions........................................92
Table 6.6: Outcome of violation by violation type..............................................93
Table 6.7: Individuals responsible for Scenic Easement Violations..........................94
Table 6.8: Were landowners aware of scenic easement restrictions at the time the violation occurred?.................................................................95
Table 6.9: Did landowners knowingly violate scenic easement restrictions?............96
Table 6.10: Did landowners misunderstand scenic easement restrictions?.............98
Figure 6.3: Text from a memo dated May 1941 from Acting Director of the NPS Hillory Tolson granting the Superintendent of the Blue Ridge Parkway authority to approve changes or alterations to scenic easements.................................................................104
Table 6.11: Number of Scenic Easement Variance Requests by State.....................106
Table 6.12: Variance requests received by the Blue Ridge Parkway.......................107
Table 6.13: Outcome of Requests to Alter/Change Scenic Easements (n = 298).........109
Table 6.14: Number of variance requests approved by State...............................110
Table 6.15: Number of variance requests approved, by Easement Act (n = 298)......114
Table 6.16: Criteria utilized by the Blue Ridge Parkway when reviewing requests by landowners to alter/change scenic easements (n = 374)......................115
Table 6.17: Methods used by the Parkway to convey approval or denial of variance requests to landowners............................................................116
Table 6.18: Did the Parkway conduct an onsite review of the variance request?........117
Table 6.19: Information utilized by the Parkway in reviewing and rendering a decision on variance requests, in percent........................................118
Figure 6.4: GIS map prepared by Parkway Land Resources Staff Source: National Park Service 2006.................................................................120
Table 6.20: How many of the Blue Ridge Parkway’s remaining Scenic Easements have been subdivided? (n = 146)...........................................123
Table 6.21: Number of times remaining scenic easements have been subdivided (n=146)..................................................................................124
Chapter 1

1.1 Introduction

The Blue Ridge Parkway follows the high crests of the southern Appalachian Mountains and links Shenandoah National Park in Virginia with the Great Smoky Mountains National Park in North Carolina. The 469-mile parkway was designed to provide access to and views of some of the most dramatic landscapes of the southern Appalachians (Hellmund 1993, Teague no date). The original architects of the parkway intended to acquire in fee title only a narrow corridor for the parkway averaging 100 acres per mile of road. How to protect this long linear right-of-way was a major concern of the parkway’s early designers (Jolley 1987). In order to protect the “vital strip” of the parkway, the NPS acquired “scenic easements” whereby in return for a one-time financial payment a landowner would agree to perpetual restrictions upon the use of his/her land (Jolly 1987).

Scenic easements on the Blue Ridge Parkway were acquired in order to protect the park’s scenic viewshed and to limit commercial and residential development along the parkway. The National Park Service (NPS) is generally credited as being one of the first entities to use conservation easements in order to protect the natural landscape adjacent to public lands (U.S. Department of the Interior 1974, Roe 2000).

Seventy years following the acquisition of the first scenic easements for the Blue Ridge Parkway, conservation easements have become the fastest growing technique for protecting land and open space. Conservation easements have rapidly surpassed fee title ownership as the preferred method of land protection (Gustanski 2000; Parker 2002). More than 1,600 land trusts currently exist in the United States, with well over half of this number forming in just the past 20-years (Aldrich and Wyerman 2006, Gustanski 2000; Land Trust Alliance 2004). The number of acres protected in conservation easements by land trusts has increased from 450,000 acres in 1990 to more than 5 million acres in 2003, and this figure is only expected to increase (Mahoney 2002; Land Trust Alliance 2004; Byers and Ponte 2005).

A conservation easement is a less-than-fee-interest in a tract of land acquired or voluntarily donated in order to restrict development and other activities on the land to preserve its conservation values. (Wright 1993; Gustanski 2000, Byers and Ponte 2005). Conservation easements are usually donated by or purchased from a private landowner by a government...
agency or a qualified land trust. Of particular importance in terms of ownership is the fact, that the landowner (the grantor) retains fee-simple possession of the property, while giving up future development rights. The relinquished development rights are usually held by a non-profit land trust or government agency (the grantee) in perpetuity and the easement is said to “run with the land”, thereby passing on the development restrictions to all future landowners. Typically, conservation easements protect significant scenic vistas, open space, wildlife habitat, agricultural lands, recreational interests, and historic resources (Wright 1993; Gustanski 2000).

Conservation easements were first used by Frederick Law Olmstead in 1880 to protect parkways he designed for the City of Boston, MA. The first land Trust—the Trustees of Public Reservations—was formed in 1891 in Massachusetts by Charles Eliot, an apprentice and partner of Frederick Law Olmstead. Not unlike today’s Land Trusts, the Trustees of Public Reservations was established in response to rapidly disappearing open space and natural areas and to “improve the lot of the city dwellers” (Brewer 2003).

In the 1930’s the federal government used conservation easements to protect scenic views along the Blue Ridge Parkway in Virginia and North Carolina and along the Natchez Trace Parkway in Tennessee, Alabama and Mississippi. Later in the 1950’s conservation easements were used in creating Wisconsin’s Great River Road.

Beginning in the 1950’s, the U.S. Fish and Wildlife Service began acquiring easements on more than 1.3 million acres in order to protect the ecological integrity of wetlands adjacent to many national wildlife refuges (Barrett and Livermore 1983; Wright 1993; Gustanski 2000; Fairfax and Guenzler 2001; Fairfax et al. 2005). In each of these cases government purchase of large tracts of land would have likely been cost prohibitive. By securing those rights essential to saving scenic views or crucial wildlife habitat, government agencies were able to protect substantially more land than could have been purchased through fee simple acquisition (Barrett and Livermore 1983).

1.2 Research Objective

This project seeks to examine scenic easements acquired for the Blue Ridge Parkway (BLRI) in the 1930’s and 40’s and to develop an understanding of the challenges faced by the Parkway in attempting to enforce the terms of scenic easements drafted nearly 70 years ago. Specifically, this project will (1) describe the number and acres of scenic easements acquired for the Blue Ridge Parkway and the numbers of acres of scenic easements released; (2) investigate
the various deed instruments used to convey scenic easements and how these deeds differ from contemporary conservation easements; (3) examine the numbers and type of violations of easement terms/restrictions and the number of requests to alter/change scenic easements experienced by the Blue Ridge Parkway; (4) Identify and examine factors that may have contributed to violations of scenic easement restrictions and requests to alter/change easements; (5) and finally, this thesis will conclude with a discussion of how scenic easements acquired for the Blue Ridge Parkway apply to the larger debate of whether conservation easements can adequately protect land in perpetuity.

1.3 Research Significance:

At the heart of conservation easement movement is the assumption that easements are perpetual. However, because Land Trusts are a relatively recent phenomenon, little evidence exists to support this assumption. Some recent experiences with land trusts and conservation easements suggest that while easements are a popular tool among first generation landowners, enforcement issues relating to conservation easements increase dramatically with each successive (second and third generation) landowner (Cheever 1996; Collins 2000, Gustanski 2000, Fairfax & Guenzler 2001).

While conservation easements have been in use for nearly a century, their use has only become popular within the past 20 years. As a result, few land trusts have experience with actual challenges to the terms of conservation easements. Land trusts primarily focus on the acquisition of easements, with little forethought about how the terms of easements they hold will be enforced (Guenzler 2000; Merenlender et al., 2004). Fairfax and Guenzler (2001, p. 153) state that:

“...although private conservation has a long history in this country, the current emphasis on easements is a bit of an experiment. Conservation easements are defined in state and federal law, and it is not clear how the relevant statues will be interpreted several decades hence, when landowners not involved in the original transaction want to use their lands in ways circumscribed by the easement... We are in the halcyon days of private efforts and have generally not encountered many frustrations as yet.”

Very little literature exists to indicate how conservation easements will fare as time passes and land trusts merge, dissolve due to lack of interest or just go under (Fairfax et al., 2005). And what will happen after land trusts have acquired all of the land worth saving or expended their last acquisition funds? Will land trusts be able to sustain membership and funds when their only responsibility is maintaining conservation easements acquired 20, 30, or more
years in the past? Fairfax et al., (2005 p. 269) sums up the concerns of many conservation easement skeptics: “Experience with public land holdings gives us reason for worry—both Congress and the public prefer to create new park units rather than fund the management of existing ones.”

Among the earliest use of conservation easements was by the federal government when the National Park Service began acquiring conservation easements during the 1930’s and 1940’s in order to protect scenic views along the Blue Ridge Parkway in North Carolina and Virginia (Wright 1993, Ohm 2000; Roe 2000) Scenic easements on the Blue Ridge Parkway were acquired for a number of purposes including: (1) to protect the natural setting along the parkway and to insure that land adjacent the parkway would be maintained in agriculture or forest; (2) to prevent unsightly commercial and residential development of lands in full view of the parkway and (3) to reduce the cost of land acquisition to the States (U.S. Department of the Interior 1941). The easements were generally intended to protect the scenic values along the parkway, while still permitting adjacent landowners to continue traditional use (primarily farming) of the land (Blue Ridge Parkway 1992).

Up until the late 1980’s, private lands along the parkway remained largely undeveloped. However increasingly, development is erasing the rural character of this scenic parkway. Residential development, resort communities and commercial businesses are increasingly taking the place of forest and farmland along the parkway (Roe 2000). Scenic easements acquired by the Parkway have not protected the park’s viewshed as well as they were intended. With increasing development pressure have come numerous requests by landowners to alter or terminate scenic easements along the parkway. In many cases deeds conveying scenic easements are vague and lack appropriate language to prohibit subdivision of lands containing scenic easements. The ambiguous language of the deeds has also complicated efforts by park staff to interpret the deeds and to enforce easement terms and restrictions. Over the years, staff changes and lack of adequate funding have resulted in little monitoring or enforcement of easement violations. All too often, legal shortcomings and the shortsighted attempts at crafting and applying these first easements have unwittingly aided in the development of adjacent lands along the parkway.

The Blue Ridge Parkway’s easement program provides one of the few long-term examples of the challenges in maintaining and enforcing conservation easements in perpetuity.
The parkway’s scenic easements therefore provide a unique perspective from which to judge the potential enforcement issues relating to present day conservation easements.

1.4 Conservation Easements Defined

A conservation easement is a less-than-fee-interest in a tract of land acquired or voluntarily donated in order to restrict development or preserve certain conservation values. (Wright 1993; Gustanski 2000). The classic analogy used in describing a conservation easement’s impact on property compares land acquisition to owning a “bundle of sticks” (Diehl and Barrett 1988; Gustanski 2000; Parker 2004). Individual sticks in the bundle represent different rights related to ownership. A landowner, who purchases a tract of land in fee-simple title, generally acquires the entire bundle of sticks—including the water rights, mineral rights, timber rights, right of access, development rights, the right to subdivide the property and the right to exclude others. The landowner may at any time sell some or all of these rights, while retaining fee title to the property.

Historically, landowners sold water, mineral and timber rights associated with the land. These “positive” or affirmative rights give the easement holder the right to enter upon the land in order to carry out a certain activity (Wright 1993). Mineral and timber companies frequently acquire the right to enter onto a tract of land for the purpose of extracting oil, gas, coal or to harvest marketable timber (Wright 1993). Utility easements are typically acquired for telephone, cable and electrical right-of-ways. During acquisition of land for the Blue Ridge Parkway, deeded access roads across the Parkway were commonly granted to adjacent landowners whose only other means of access to roads and adjacent property were cutoff because of the scenic motor road. Affirmative rights are often included as part of the overall conservation easement deed. Land trusts and other conservation agencies/organizations are usually granted the right to enter upon easement lands for the purposes of insuring that the terms of the conservation easement are being adhered to.

Conservation easements are examples of “negative easements.” Conservation easements prohibit certain activities (e.g. cutting trees or building a house) that the landowner might otherwise be permitted to do (Buckland 1987). In selling or donating a conservation easement, a landowner gives up some of his “sticks”—most commonly the rights associated with development and other ground disturbing activities—while continuing to hold fee simple title to the tract of land.
The most common restrictions include a complete or partial prohibition against all residential, commercial and industrial development. Other common restrictions include prohibitions against subdividing the property, cutting timber, altering topography, ditching or draining wetlands, mining of soil, gravel, rock & minerals, installing billboards, maintaining trash dumps, and operating cattle feedlots (Bick and Haney 2001).

Restrictions are generally tailored to the wishes of the landowner and to the degree necessary to protect the conservation values of the property in question. Easements may restrict all development if the goal is to maintain the property in its natural condition. If the goal is to preserve the agricultural use however, easements may permit the construction of barns and outbuildings necessary to maintain the current farm operation. In addition, an easement may identify specific areas (“building envelope”) on the property where it is permissible to construct a future residence or similar structure. (Dieh and Barrett 1988; Parker 2002).

The first conservation easements, like those acquired for the Blue Ridge Parkway, were generally purchased. Easements acquired as part of a government program are frequently called Purchase of Development Rights or PDR’s. A number of state, county and local governments from California to Maryland have established Purchase of Agricultural Conservation Easements programs (or PACE), which acquire farm conservation easements to preserve farmland and open space (Daniels (2000). PACE programs compensate farmers who voluntarily agree to limit or restrict development of their land. More recently, a variety of federal and state tax incentive programs have been used to encourage landowners to voluntarily donate easements that restrict development on private land (McLaughlin 2004). These enhanced economic incentives along with increasing suburban growth and a general lack of enthusiasm for federal environmental regulations and have helped fuel the rapid growth of the Land Trust Movement (McLaughlin 2004).

Conservation easements are legally binding agreements that are recorded in a deed. One of the advantages of conservation easements widely touted by land trusts is that they are flexible and can be structured in many different ways based upon the conservation values the easement is intended to protect and the wishes and desires of the landowner. Conservation easement deeds generally contain the following elements:

1. A statement of conservation values (scenic view, wildlife habitat, open space, recreational, historic resources) that the property is intended to protect;
2. A legal description of the property along with an inventory or description of the property’s current “baseline” condition;
3. A statement pertaining to the purpose of the conservation easement;
4. A list of the affirmative rights granted to the land trust or government agency (usually including the right to enter upon the property with adequate notice in order to periodically inspect and monitor the easement).
5. A list of the permitted land uses reserved by the landowner (e.g. the right to continue to reside on the property, the right to engage in agricultural activities etc.)
6. A list of prohibited land uses;
7. Various provisions related to dispute remedies, cost of enforcement, access, cost and liability, and hold harmless clauses and amendment and extinguishment clauses.

(Byers and Ponte 2005; Parker 2002)

1.5 Who Can Hold Conservation Easements?

The Land Trust Alliance (2005, p. 5) defines a Land Trust as “a nonprofit organization that, as all or part of its mission, actively works to conserve land by undertaking or assisting in land or conservation easement acquisition, or by its stewardship of such land or easements.” Land trusts use a variety of methods to carry out their land preservation missions including

- The purchase or acceptance of donations of land in fee title
- The purchase or acceptance of donations of conservation easements
- Brokering the acquisition/donation of land or easements that are subsequently conveyed to another land trust or government agency;
- Facilitating negotiations for land to be acquired by another land trust or agency
- Raising or providing funds for other conservation organizations for land acquisition

(Fairfax and Guenzler 2001; Land Trust Alliance 2004).

While land trusts have received most of the attention in terms of number of conservation easements held, a variety of other organizations hold conservation easements including city, county and town governments, state natural heritage and wildlife departments, regional watershed associations, historic preservation organizations, and a variety of state and federal agencies (Jay 2000, Bick and Haney 2001). Among the federal agencies actively holding conservation easements include the National Forest Service, the U.S. Fish and Wildlife Service, the National Park Service and the Natural Resource Conservation Service. As of 2005, 122 National Park Service units held 253,085 acres in conservation easements and other less than fee lands (USDI 2003). Increasingly, government agencies and private land trusts are forming
public-private partnerships in order to coordinate acquisition and management of lands in watersheds and across larger landscapes (Fairfax and Guenzler 2001; Fairfax et al., 2005).
Chapter 2: Defending and Enforcing Conservation Easements: A Literature Review

2.1 Conservation Easement Stewardship

In accepting conservation easements, many conservation organizations assume that their work is over and that the land encumbered by the easement will be forever protected. However Guenzler (2002, p. 3) describes the conservation easement acquisition process as just the “tip of the iceberg.”

“Conservation organizations have tended to be very preoccupied with acquisition...Negotiations between landowners and the organization can be complex and time-consuming. As the joke goes, perpetuity is a long time, and creating a perpetual property interest requires careful consideration. Clearly, acquisition is a critical activity, and conserving land through direct acquisition is the raison d’être of most land trusts...Nevertheless, easement acquisition is merely the tip of the iceberg.”

Guenzler (2000), Gustanski (2000), Diehl and Barrett (1988) and others point out that the real work—the stewardship and defense of easements begins after the acquisition of an easement is completed. By accepting an easement, a land trust or agency assumes “perpetual responsibility” for ensuring that neither the landowner, nor successive landowners of a tract of land held under an easement violate the terms of the easement (Gustanski 2000).

Brewer (2003, p. 164) believes that part of the problem is that many Land Trusts tend to view themselves “in a war against urban sprawl.” The first priority is to save land from development, with little consideration given to how to manage easements once they are acquired. Protecting land means much more than just obtaining a deed to a conservation easement.

“Stewardship” involves actively monitoring (inspecting) an easement and enforcing the terms and restrictions of the easement. Guenzler (2002), Guenzler (1999), Lind (1991) describe Stewardship as consisting of a number of elements, of which monitoring and enforcement are just a part of. Stewardship of conservation easements generally consists of:

• documenting the condition of the property at the time of an easement is acquired,
• annual monitoring to ensure that easement restrictions are being adhered to,
• maintaining relationships with landowners,
• enforcing and acting on violations in a timely manner,
• training staff and volunteers and,
• ensuring the Land Trust has adequate financial resources to carry out management activities

Zeller however believes that stewardship goes well beyond just documenting and monitoring easements. Zeller (2000, p. 3) states that “Stewardship embodies three concepts: responsibility, care of the land, and management of the land for future generations.” Zeller (2000, p. 3) defines a Stewardship Continuum that consists of three levels:

1. Conservation Easements. This first level of stewardship refers to the monitoring and enforcement of conservation easements. Conservation easements are designed to restrict management practices that harm conservation values, however they are less successful in promoting positive management practices. While many land trusts provide active assistance and education to landowners, their primary focus is on saving land from development through purchase or donation of conservation easements. Stewardship activities at this level ensure that the voluntarily agreed upon restrictions set out in the easement are not violated.

2. Active Land Management. The second level of stewardship refers to actual land management practices to meet long-term ecological health objectives. The term active land management is used to describe an intentional approach to managing land to protect and enhance its conservation values (i.e. wildlife, open space, biological diversity, recreation, etc.).

3. Community Stewardship. The third level refers to stewardship as a community value—the development of goals, programs and partnerships to protect a regional or community-scale landscape or set of resources. This level of stewardship engages the diverse elements of a community in a concerted effort to manage lands and natural resources in a fashion which sustains both the natural resources and the human economy of the area. This level focuses not on individual conservation easements, but the larger landscape and community that the easement is a part of.

Guenzler (2002, p. 5) states that “The fundamental rationale of stewardship is to identify problems or violations and prevent the loss of conservation values.” When a land trust or public agency acquires a conservation easement, it becomes responsible for enforcing the restrictions contained within the easement deed. “To enforce the terms of the easement, the land trust must monitor and visit the property on a regular basis and must maintain written records of the monitoring visits. If the land trust learns that the terms of the conservation easement have been violated by the landowner, the land trust has the ‘legal right to require the owner to correct any violations and restore the property to its condition prior to its violation’” (Jay 2000, p. 448).

A program of regular monitoring and inspections is essential if a land trust or organization is to protect conservation easements in the long term (Lind 1991). Lind states that regular monitoring is important for several reasons:
- Monitoring is the primary tool for catching violations
- To help develop a spirit of cooperation with the landowner
- Monitoring can save time and money by catching violations early—before it becomes so deeply entrenched that the only way to resolve it is through litigation
- Regular monitoring provides a written record over several years of a property’s condition and can serve as important documents in supporting a land trusts case in court.

Brewer (2003, p. 163) states however, that monitoring is “one of the weak spots in the conservation easement balloon.” A survey by the Bay Area Open Space Council of 315 conservation easements found that 49 percent were not regularly monitored. Conservation easements held by land trusts were much more likely (75%) to be regularly monitored. Only 30% of easements held by public agencies were regularly monitored (Brewer 2003; Guenzler 1999).

2.2 Conservation Easement Defense/Enforcement Related Research

Most of the literature uses easement enforcement, and easement defense interchangeably, however, an important distinction needs to be drawn between theses terms, as land trusts and other easement holders can frequently find themselves in one or both roles. Both Guenzler (1999) and Thompson and Jay (2001) draw a distinction between easement enforcement and easement defense.

Defense of an easement occurs when a landowner attacks or otherwise challenges the validity of a conservation easement and the easement holder finds itself having to defend the deed restrictions, often in court. In this role, the land trust or government agency holding the easement acts as the defendant in a case. In an enforcement (violation) case, the easement holder acts as the plaintiff in bringing action against a landowner, usually in an effort to force the landowner to comply with the easement restrictions.

The first significant study of conservation easement violations was conducted by the Land Trust Alliance (Danskin 2000) who released a study in 2000 of more than 7,400 conservation easements held by land trusts throughout the country. The LTA study found a total of 498 violations (~7%)—only 115 of which were described as “major violations.” Major violations were defined as those violations that required a “significant commitment of resources” by land trusts to resolve (Danskin 2000, p. 5). Of the 115 major violations, however, only 21 cases resulted in court actions, and all but 6 violations were ultimately settled out of court; the
other 94 violations were resolved by land trusts without litigation. In the 6 cases that did go to trial, the terms of the conservation easements were upheld in all but one case (Danskin 2000).

The most common major violations reported by LTA were prohibited surface alteration (32 cases), prohibited removal of vegetation (28) and construction of prohibited or unauthorized structures (25) (Danskin 2000, p. 5). In the majority of the litigated cases that the LTA examined, the landowner appeared to have knowingly violated the terms of the easement, even after Land Trust representatives had met with the landowners and reviewed the terms of the easements with them.

Nine of the litigated cases examined by LTA (2000) were enforcement actions in which the land trust brought action against the landowner for violation of the easement terms. Two of the cases were defensive actions in which the landowner filed suit against the land trust seeking to invalidate the terms of the easement.

In 2004, van Doren (2005) conducted a study on conservation easement violations & amendments for the LTA. The study was “designed to gather data on land trust experiences [on conservation easement violations and amendments] and to update and augment the findings of LTA’s 1999 study…” (van Doren 2005, p. 24).

Van Doren found that the most common “minor” violations reported included: dumping of waste & other debris. Other “minor violations included: surface alteration, prohibited cutting of vegetation, unauthorized use of ATV’s, the alteration of wetlands, & unauthorized timber harvests (van Doren 2005). Van Doren’s study documented 75 major violations (defined as those requiring expenditures of more than $1,000 to resolve). Fifty-seven percent of the reported major violations involved construction of prohibited structures. More than 10% involved construction of more than one illegal structure. Another 10% were constructed outside of the building envelop identified by the easement. Fifty-two of the major violations were resolved without litigation while 23 violations required litigation.

In a study of 315 conservation easements held by land trusts and public agencies in the San Francisco Bay area, Guenzler (1999) reported that the restrictions of 43 (or 14%) of the Bay Area easements had been violated. Guenzler stated that this figure is significant for a number of reasons. First only 51 percent of the Bay Area easements are actively monitored. The number of violations would likely increase substantially if more easements were monitored. Second, a 14 percent violation rate may appear low; however, when put in the context that 75
percent of the easements within the Bay Region are less than 10 years old, this number becomes much more significant. Finally, landownership within the Bay Region thus far has remained fairly stable. Guenzler (1999) speculates that as ownership in property changes, violation rates will likely increase, a trend that is discussed in more detail below.

The Bay Area study reported a wide range in the types of violations reported. Common violations included: failing to control exotic species, construction of unauthorized structures, cattle overgrazing, erosion, and boundary adjustments. Guenzler (1999) highlights an important point in that what may be a violation of one easement, may not be a violation of another easement at all. Easements by their very nature are flexible and modern day easement restrictions are usually arrived at through a process of negotiation between the land trust and a landowner. One easement may prohibit vegetation removal altogether, while a neighboring easement may allow limited timber harvest through an approved Forest Management Plan. The conservation values that the easement is intended to protect usually play a key role in developing the terms and restrictions for an individual easement.

Pidot (2005) argues however that this flexibility is creating numerous unforeseen difficulties for land trusts and the landowners alike in terms of attempting to understand, implement, monitor and enforce the various restrictions contained within easement. Pidot (2005, p. 7) states that “Because conservation easements today are often heavily negotiated and nuanced, these tasks can challenge even experienced experts.”

A study by Parker (2002) surveyed western Land Trusts in order to assess the impacts of various conservation easement restrictions on the costs of setting, monitoring and enforcing individual conservation easements. His study found that larger easements cost more to monitor than smaller easements. Easements that allow the property to be subdivided cost more to monitor than easements that do not. In this case Parker (2002) believes that monitoring and keeping track of an easement with multiple owners is more costly than monitoring tracts of land with only one owner. Finally, Parker’s study concluded that easements that permit new residences are more likely to be violated than easements that do not permit residences and those easements with residences generally have higher enforcement costs. Parker (2002, p. 19) believes that there are 3 possible explanations for this:
• Ambiguities in the restrictions concerning the extent of the permitted structures increase the odds that a landowner will inadvertently violate the terms of an easement.
• Since building a residence adds greatly to the value of the property, landowners may have a greater incentive to violate restrictions related to structures.
• Violations are much more costly to remedy if the residential structure is already built.

2.3 Second and Third Generation Landowners

Much has been made about the fact that violations generally occur not with the original grantor, but with successive owners of property encumbered by conservation easements (Diehl and Barrett 1988, Gustanski 2000, Collins 2000, Brewer 2003). One of the most important characteristics of conservation easements is that easements “run with the land” and burden all future landowners. Successive landowners however, do not always share the same values as the original grantors and often resent easement restrictions (Cheever 1996).

In the LTA Study (2000), 13 of 15 cases that resulted in court actions were committed, not by the original grantor, but by successive landowners. Two of the violations were committed by third parties—one by a neighbor, one the result of a trespass violation. Van Doren’s study (2004) also found that subsequent (second & third generation landowners) were the most common party responsible for violating the easement terms. In an examination of 19 easement violations that resulted in court cases, Thompson and Jay (2001) found that all but two of the cases were the result of second or third generation landowners. A study of Michigan conservation easements found that 2 of 8 violations were committed by the original grantors; highlighting the fact that violations by easement donors do occur (Brewer 2003).

2.4 Previous Case Studies of Scenic Easements

Ohm (2000) examined conservation easements acquired for Wisconsin’s Great River Road. The Great River Road project was the first major state program to acquire conservation easements in the United States. Ohm (2000, p. 177) examined easements purchased for the Great River Road in order to “begin to understand the constraints and limitations to the ‘perpetual’ protection offered by conservation easements.” Ohm examined a number of historical documents relating the Great River Road. In addition, Ohm conducted 21 standardized, open-ended telephone interviews with current and retired Wisconsin Department of Transportation (DOT) staff, planners, and key government officials with knowledge of the project.
Scenic easements along the Great River Road were generally acquired to preserve the aesthetic values along the 250-mile road. In all, more than 600 scenic easements were acquired, totaling more than 6,200 acres. Easements were acquired on both sides of the road to a width of 350 ft from the center line (Ohm 2000). Ninety percent of the scenic easements for the Great River Road were acquired through negotiation, while the remaining easements were acquired through condemnation. The early easement terms were standardized and generally included the following provisions:

- Single family residences were permitted on lots of more than 5-acres and having at least 300 ft of road frontage.
- Agricultural activities were permitted (except for fur farms)
- Existing commercial development was permitted to continue, but could not be expanded or structurally altered.
- Any use incidental to the permitted use of a tract was permitted.
- Telephone, telegraph, pipeline, and micro-wave poles and structures were permitted.
- Signs and billboards were prohibited except one sign not more than 8 square feet to advertise goods or produce produced on the property.
- Dumping, disposal or storage of garbage or other “unsightly” material was prohibited.
- Trees or shrubs could not be destroyed, cut or removed except when necessary in performing a permitted use.

(Ohm 2000, p. 182).

Eventually, after numerous landowner objections Wisconsin developed a more flexible approach and permitted negotiated easement terms to allow easements to be tailored to a specific tract of land and land use. Newer easements included not only prohibited uses, but permitted uses as well. In addition newer easements included some affirmative rights which allowed Wisconsin DOT to enter the property to plant and/or selectively cut or trim trees.

Ohm’s study found that Wisconsin still owns all of the original scenic easements purchased in the 1950’s and 1960’s. The Wisconsin DOT has developed an informal “variance process” that allows them to amend or alter easement deeds based upon requests by landowners and changes in adjacent land use. The Wisconsin DOT has no formal guidelines or criteria for evaluating variance requests. Rather “each request is evaluated on its own merits. The ability to modify easements can introduce a considerable amount of flexibility and discretion into the process of administering easements” (Ohm 2000, p. 184). Beginning in 1998, Wisconsin began requiring landowners to buy development rights prior to amending scenic easements. An appraiser is used to determine a value or interest and negotiate a price with the landowner.
However, as of October 1999, no variance requests with development rights payments had been processed (Ohm 2000).

While Ohm’s states that none of easements along the Great River Road have been terminated, his study does not include any statistics on the number or types of violations that have occurred to easements along the road. Ohm (2000, p. 185) does note however that “enforcement has not been a major difficulty for the Great River Road. Most easement violations are the result of a misunderstanding rather than willful transgressions.”
Chapter 3: The Blue Ridge Parkway

3.1 Background

The Blue Ridge Parkway is considered to be “the nation’s premiere scenic ‘motor road’” (Roe 2000, p. 221). As shown in Figure 3.1, the Parkway is located in southwestern Virginia and western North Carolina. The parkway was authorized in 1933 as a park to park scenic highway connecting Shenandoah National Park with Great Smoky Mountains National Park. With an annual visitation of 20 million people, the Blue Ridge Parkway is the most visited unit of the National Park Service. More than 264 scenic overlooks afford visitors and motorists spectacular views of the southern Appalachians and the Blue Ridge Mountains.

Unlike “traditional national parks” the Blue Ridge Parkway is a linear park stretching nearly 470 miles in length with an average right-of-way of only 800-1,000 ft. in width. The parkway traverses 29 counties and 6 congressional districts in Virginia and North Carolina. From Shenandoah National Park the parkway follows its namesake, the Blue Ridge Mountains—the eastern rampart of the Appalachian Mountains—southward for 355 miles. For the remaining 114 miles, the parkway negotiates the Black Mountains (so named for their dark green stands of fir and spruce), the Great Craggies, the Pisgah’s and the Balsam Mountains to its southern terminus at the Great Smoky Mountains National Park.

Construction of the parkway began in 1935, and was not formally completed until 1987, with the completion of the Linn Cove Viaduct. From an historical perspective, the parkway is important:

“because it was the first national rural parkway to be conceived, designed, and built as a leisure driving experience. The landscape architects and engineers who designed the roadway did so to maximize the motorists’ appreciation for the natural, cultural, and scenic qualities of the southern Appalachians. No other park in the country better represents the art of parkway design and construction as practiced in the 1930’s, or has maintained the Blue Ridge Parkway’s integrity for historic landscape design” (Slaiby and Mitchell 2003, p. 1).

Every mile of the parkway was carefully designed to insure that motorists did not drive through a 469-mile “forested tunnel.” Within the span of a single mile, motorists may view
Figure 3.1: The Blue Ridge Parkway links Shenandoah National Park in Virginia with the Great Smoky Mountains National Park in North Carolina. Source: David Anderson, National Park Service, Blue Ridge Parkway.
Dramatic panoramas of distant mountain ranges, agricultural pastoral scenes of rolling farmland, rail fences, old barns and grazing cattle, wildflower meadows and reclaimed forests.

Although the parkway was originally conceived as a park to park scenic motor road, its roots were firmly entrenched in President Roosevelt’s New Deal Program (Quin 1997). The southern Appalachians were hit especially hard by the Great Depression and resulting public works programs like construction of the parkway promised needed construction jobs and potential tourist services for the troubled residents of the region (Quin 1997).

The inspiration for the Blue Ridge Parkway, came from the construction of Shenandoah National Park’s scenic Skyline Drive—another New Deal project. Construction of Skyline Drive using Civilian Conservation Corps (CCC) labor generated national publicity and on August 11th, 1933 President Roosevelt toured a CCC camp in Shenandoah National Park. During President Roosevelt’s visit, Virginia Senator Harry F. Byrd proposed extending the scenic road 500 miles south to the Great Smoky Mountains National Park (Quin 1997; Speer and Haskell 2000). Roosevelt eagerly approved of Senator’s Byrd’s proposal and by October 1933, Byrd had organized a planning team consisting of representatives from Virginia, North Carolina and Tennessee, NPS officials and officials from the Public Works Administration (PWA). On November 24, 1933, Secretary of the Interior Harold Ickes (Ickes was also the Administrator of the PWA) approved the scenic road way as a PWA project.

In December 1933, the PWA authorized $4 million to be transferred to the National Park Service for construction of the parkway. Shortly afterward Ickes hired Stanley Abbott as the resident landscape architect to oversee the planning for the parkway project. Abbott’s hiring has been described as a “pivotal moment in the history of the parkway” (Quin 1997, p. 33). Abbott had previously worked on the Westchester County, NY parkway system and he would play a critical role in planning and designing the parkway. Abbott “promoted the concept of the parkway as a chain of parks and recreational areas, each a destination in itself. Abbott also suggested preserving views beyond the parkway boundaries through the use of scenic easements and presented the motorist with carefully crafted, ever-changing pictures of Appalachian scenery and culture” (U.S. Department of the Interior 2002, p. 3).

While the Parkway’s enabling legislation specified that the scenic motor road would connect Shenandoah National Park in Virginia with Great Smoky Mountains National Park in North Carolina and Tennessee it did not specify the route the Parkway would have to take to
connect the two parks. From the beginning, it was clear that the parkway would be located in Virginia. However, where the parkway would go from there became the subject of much debate. Both North Carolina and Tennessee fought bitterly over routing the parkway through their respective states. Numerous possible routes were eventually narrowed to two. One route would remain entirely within North Carolina, while the second route proposed by Tennessee would run through NC to the Linville Gorge and then turn west toward Tennessee to Gatlinburg’s entrance to Great Smoky Mountains National Park. (Quin 1997).

On November 10, 1934, the Secretary of the Interior Harold Ickes announced that they had selected the North Carolina route. Both the Tennessee and North Carolina routes appeared to be equal in terms of scenic quality. However the factor that tipped the scales to North Carolina’s favor was that Tennessee already had the primary entrance in Gatlinburg to Great Smoky Mountains National Park and the federal government reasoned, it would be unfair to deny North Carolina the possible economic benefits from the tourist dollars of the parkway. Tennessee not only had the Great Smokey’s, but had also recently received millions of dollars in federal aid for the new Tennessee Valley Authority project (Quin 1997).

The fact that Virginia had essentially been handed the route of the parkway, while North Carolina had had to fight for the route through that state would prove to be major factors in how eagerly the respective states cooperated with the federal government in acquiring right-of-ways and scenic easements for the parkway.

3.2 Parkway Land Acquisition Policy

Construction of the parkway began in 1935. As part of the original agreement with the federal government, the states of Virginia and North Carolina were charged with acquiring the land necessary for the parkway right of way. The lands acquired by the states were then conveyed to the Federal Government (Roe 2000). The federal government, through the Works Progress Administration, the Bureau of Public Roads and the National Park Service, shouldered the responsibility for planning and constructing the Blue Ridge Parkway.

In acquiring lands for the Blue Ridge Parkway, the federal government mandated that North Carolina and Virginia obtain both a fee simple right-of-way and less than fee scenic easements (Figure 3.2). The term Right-of-way was defined as the strip of land acquired through a process of either outright purchase or condemnation, over which the parkway was to
Figure 3.2: Blue Ridge Parkway Land Use Map (PLUM) illustrating the Blue Ridge Parkway fee simple right-of-way and less-than-fee scenic easements. Source: National Park Service, Blue Ridge Parkway.
Be built and which legal title would ultimately be transferred from the States to the USA (Jolly 1969, p. 102). Scenic easements however were not so easily understood. Jolly (1969, p. 103) stated that at the time construction of the parkway first began

“‘scenic easement’ was almost unknown or even entirely foreign to the average person’s vocabulary. Many persons, eager to get their share of the Parkway frontage, gladly agreed to relinquish scenic easement rights but completely failed to realize what an enormous amount of control they were granting to the federal government. Scenic easement was thus one of the most difficult aspects of the Parkway for the public to understand. Both the unlettered farmer who had granted the scenic easement in the first place and the congressman called upon to vote for Parkway appropriations or to provide legislation relative to the project had difficulty in comprehending what was meant by the term.”

The National Park Service defined *scenic easements* as “an acquired privilege in which the grantee enjoys the full and absolute control over the use to which a piece of land is put, but legal title rests with the grantor’s hands” (Jolly 1969, p. 102).

Scenic easements were acquired for a number of purposes including (1) to protect the natural setting along the parkway and to insure that land adjacent the parkway would be maintained in agriculture or forest; (2) to prevent unsightly commercial and residential development of lands in full view of the parkway and (3) to reduce the cost of land acquisition to the States (U.S. Department of the Interior 1941). The scenic easements generally seek to protect the scenic values along the parkway, while still permitting adjacent landowners to continue traditional use (primarily farming) of the land (Blue Ridge Parkway 1992).

In the April 1941 edition of the *Blue Ridge Parkway News*—a monthly informational bulletin distributed to park neighbors—the Parkway attempted to explain its intent in acquiring scenic easements:

“The general idea behind the scenic easement is simple enough. It allows the farmer to use the land for farming and it prevents his using it for other business. The reason behind it from our point of view is that we want the farms as part of the picture and we do not want factories or hot dog stands or billboards. It means that the land has been earmarked for farm use. This is like town zoning, which guarantees to a man who has just built a home that a factory will not be built on the next lot… In buying the Parkway right-of-way it was cheaper in most cases than it would have been to buy the same land outright…When the States of Virginia and North Carolina bought the scenic easement they bought for us certain definite rights and they are clearly stated in the deed. All of them are for the purpose of preventing unsightly development within view of the Parkway motor road” (U.S. Department of the Interior 1941, p. 1).
Another challenge faced by the early parkway designers was convincing state officials that the parkway would be more than just another road (Liles, no date, Jolly 1969). State roads at the time had a right of way of 60 ft or less and state officials gave little thought about the right-of-way necessary for the parkway (Quin 1997). The states and many local residents had been led to believe that the parkway would merely be another state road, albeit a lengthy one, connecting Shenandoah and Great Smoky Mountains national parks (Quin 1997). Local residents were disappointed to learn that the Parkway would be a limited access road (Fairfax et al, 2005).

The original plans for the parkway proposed a 200 ft. right of way. However this standard proved to be insufficient to construct the parkway in the steep, rugged terrain of the southern Appalachians, and in some cases did not adequately protect foreground views. As a result, a new proposal was introduced which required the states to not only acquire the 200 ft right-of-way originally proposed, but an additional 800 ft (400 ft on either side of the road) of scenic easements (Jolly 1969, Quin 1997).

While North Carolina eagerly accepted the new land acquisition policy, Virginia did not feel justified in the expenditure of state funds to acquire scenic easements. Virginia Highway Commissioner Henry G. Shirley stated that Virginia would acquire the 200 ft of right-of-way originally proposed, but would only acquire scenic easements “if the state could obtain them free of charge, which very quickly proved an impossibility” (Jolly 1969, p. 110).

Many landowners objected to the scenic easement restrictions and preferred to sell their land out right. As a result, both states were soon paying as much for scenic easements as for lands acquired in fee simple (Quin 1997). A survey by Whyte (1968) found that in rural sections along the Blue Ridge Parkway in Virginia land cost $60/acre for full fee title, while scenic easements cost $50/acre. An internal National Park Service memo states that on average, the states paid $40 an acre for the parkway fee simple right-of-way and an average of $15 to $30/acre for scenic easements (NPS no date).

In February 1935, the National Park Service and the Bureau of Public Roads approved a “general right-of-way policy” which recommended that the states acquire a fee simple right-of-way that would average 100 acres per mile and 50-acres per mile in scenic easement. This policy provided a protected corridor about 1,200 ft wide—800 ft. in fee simple and an additional 400 ft. in scenic easement (Jolly 1969, Quin 1997). North Carolina again readily accepted the
newest proposal, but Virginia remained reluctant to accept the new proposal because of its past difficulties in acquiring scenic easements (Jolly 1969).

In December 1935, Virginia agreed to a compromise that allowed the state to substitute fee simple purchase in stead of scenic easements. In lieu of purchasing the 400 ft of additional scenic easements, they agreed to acquire (in fee simple) an additional 300 feet in wooded areas, 200 feet in poor farmland, and 100 feet in good farmland. This compromise provided for a total right-of-way of 400-800 feet (Quin 1997a). In March 1936, the Virginia General Assembly authorized “the state highway commissioner to acquire scenic easements for the parkway and to convey the acquired easements to the United States (Quin 1997).

In 1937, North Carolina amended its land acquisition policy in order to give the parkway an even larger right of way than they originally agreed to. North Carolina’s amended policy authorized the state to acquire 125 acres a mile (Quin 1997). Virginia on the other hand adopted a policy of acquiring 400 ft. of scenic easements in addition to the 200 ft. right-of-way.

3.3 The Land Acquisition Process

Land for the Blue Ridge Parkway right-of-way was acquired using several different land acquisition methods:

- As part of the original agreement between the federal government and the states, Virginia and North Carolina acquired tracts of property from individual owners and transferred the resulting right-of-ways to the federal government for the parkway.
- Approximately 6,000 acres in the Jefferson, George Washington, Pisgah and Nantahala National Forests was transferred from the U.S. Forest Service to the General Services Administration for the parkway.
- Land for many of the recreation areas along the parkway was acquired by the Area Resettlement Administration.
- The National Park Service acquired property from individual landowners (through condemnation and from willing sellers).
- Several key tracts of land along the parkway (e.g. Moses Cone Estate, Julian Price Memorial Park and Linville Falls were donated to the parkway by private individuals. (Speer and Haskell 2000; Quin 1997).

North Carolina and Virginia used entirely different methods to acquire lands for the Blue Ridge Parkway. North Carolina relied primarily on its power of eminent domain to acquire lands for the parkway right-of-way—the same process it used in acquiring right-of-ways’ for state highways. North Carolina’s Act of January 1935 authorized the State Highway and Public Works Commission to acquire all right-of-ways and easements for the parkway. The Act stated in part:
“that the right-of-way acquired or appropriated may, at the option of the Commission, be a fee simple title, and the nature and extent of the right-of-way and easements so acquired or appropriated shall be designated on a map showing the location across each county, and when adopted by the Commission, shall be filed with the Registrar of Deed in each county, and upon the filing of said map, such title shall vest in the State Highway and Public Works Commission.” (North Carolina 1935, Chap 2, pp. 1-2. Also see Jolly 1969, p. 104 and Important Legislation of the BLRI).

In effect, North Carolina’s notification process provided that by posting maps at the county courthouse designating the proposed right-of-way, the state automatically took title of the listed parcels. Affected landowners were left with only two options: accept the state’s offer of compensation or settle the matter in court. The problem frequently encountered with the second choice however, was that the appraisal and settlement process was often quite lengthy, and in the meantime, state officials were authorized to proceed with construction (Jolly 1969). North Carolina used this method of land acquisition until 1937, when at the urging of the NPS, it began to negotiate directly with landowners (Quin 1997).

Virginia, unlike North Carolina, chose to deal directly with landowners in acquiring the right-of-way for the parkway. Lands acquired for the parkway in Virginia were dealt with in much the same manner as the state acquired lands for all of its roadways (Jolly 1969). Virginia acquired each parcel individually through a process of negotiation. Actual negotiation did not begin until a parcel of land had been appraised. If the landowner agreed with the State’s offer of compensation, a deed was prepared and the whole matter concluded in short order—usually within 2 or 3 months. However, if the landowner was not agreeable, and condemnation procedures were necessary, the process could take as long as 6 months.

While the process of land acquisition in Virginia proceeded much slower, Virginia state authorities were more prompt in making final settlements with landowners and at the end of the legal process the federal government received clear title to the property (Quin 1997). North Carolina’s land acquisition policy of using maps to condemn large blocks of land simultaneously did not leave any official records of land transfers between individual landowners and the state in the county Courthouse, an omission that has caused problems for parkway officials (Quin 1997).

A total of 49 scenic easements consisting of 405 acres were originally acquired by the Commonwealth of Virginia. North Carolina acquired 147 easements totaling 936 acres. The
larger number of easements in NC was likely a reflection of that state’s greater acceptance of the federal government’s land acquisition policy.

3.4 Scenic Easement Deeds

Scenic Easement restrictions were arrived at through a joint process of negotiation between National Park Service officials and the respective states. While each state’s restrictions are similar, there are also a number of notable differences. Table 3.1 summarizes the restrictions on scenic easements acquired for the Virginia and North Carolina sections of the Parkway.

3.4.1 Virginia Easement Terms

Virginia passed the first Act authorizing the acquisition of scenic easements on March 12, 1936. The terms of Virginia’s Scenic Easement Act: Chapter 163 were considered very strict at the time. The 1936 Act defined a scenic easement as:

“the easement or right of the Commonwealth of Virginia or 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 of any building, pole, poleline 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, 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.”
<table>
<thead>
<tr>
<th></th>
<th>VA 1936 Deed</th>
<th>VA 1936 Act</th>
<th>VA 1938 Amended Act</th>
<th>NC 1935 Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>Farm Structures</td>
<td>Prohibited</td>
<td>Permitted with consent/approval of grantee</td>
<td>Permitted</td>
<td>Permitted with prior approval from Grantee</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Residential Structures</td>
<td>Prohibited</td>
<td>Prohibited</td>
<td>Permitted</td>
<td>Permitted with prior approval from Grantee</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commercial Structures</td>
<td>Prohibited</td>
<td>Prohibited</td>
<td>New structures prohibited. Except that existing commercial buildings may be improved for the purpose of continuing the existing use w/consent of grantee.</td>
<td>New structures prohibited. Except that existing commercial buildings may be improved for the purpose of continuing the existing use after plans have been approved by NPS.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Access roads/ driveways</td>
<td>Prohibited</td>
<td>Prohibited except with consent and approval of grantee</td>
<td>Prohibited, except with consent of NPS</td>
<td>Permitted.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Removal of mature (stable) vegetation/trees</td>
<td>Prohibited</td>
<td>Prohibited except with consent and approval of grantee</td>
<td>Prohibited except with consent of NPS</td>
<td>Prohibited except with consent of NPS</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Removal of seedling trees/shrubs</td>
<td>Prohibited</td>
<td>Prohibited except with consent and approval of grantee</td>
<td>Permitted “in accordance with good farming and residential practices.”</td>
<td>Permitted “in accordance with good farming and residential practices.”</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dumps/ashes</td>
<td>Prohibited</td>
<td>Prohibited</td>
<td>Prohibited.</td>
<td>Prohibited</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Signs/billboards</td>
<td>Prohibited</td>
<td>Prohibited except for one sign not greater than 18” X 24” advertising for the sale of the property or produce raised upon it.</td>
<td>Prohibited except for one sign not greater than 18” X 24” advertising for the sale of the property or produce raised upon it.</td>
<td>Prohibited except for one sign not greater than 18” X 24” advertising for the sale of the property or produce raised upon it.</td>
</tr>
</tbody>
</table>
The highly restrictive language of the 1936 Act generally served to discourage local landowners from conveying easements to the Commonwealth of Virginia (David Anderson, per. com. 2007). As a result, in 1938 Virginia amended the scenic easement restrictions (Chapter 389). The Amended Act passed on March 31, 1938 stated in part that:

“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 of Virginia, 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 road 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, it grantee or assignee; except such seedling shrubbery or seedling trees as may be grubbed up or cut down in accordance with usual farm practice or residential maintenance, and except cultivated crops, including orchard fruits, may be pruned, sprayed, harvested or 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 or display thereon any signs, billboards or advertisement, except that one sign not greater than eighteen inches by twenty-four inches advertising the sale of the property or produce raised upon it.” *[The text of the 1938 Act is underlined in several documents to emphasize changes/additions in the 1938 Act and is included here for emphasis].

In addition, the 1938 Act states that: “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 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.”

Under the amended Act, landowners were permitted to construct new buildings within an easement for farm or residential purposes. In addition, the 1938 Act allowed landowners to alter or improve existing buildings for the purpose of “continuing the present established use or other use with the consent of the Commonwealth or its grantee or assignee…”. The 1938 Act also permitted limited removal of shrubs and sapling trees if it was done in accordance with “good farming practices or residential maintenance.” The 1938 Act permitted landowners to erect an
18 X 24” sign for the express purpose of advertising the sale of the property or fruit and vegetables grown within the easement.

In general, the 1938 Act was not nearly as restrictive as the 1936 Act and permitted landowners to continue to use land encumbered by scenic easements as they had been doing. In addition, the 1938 Act permitted the Commonwealth of Virginia to tailor the easements to the wishes and needs of the landowner, which has frequently generated confusion in attempting to enforce blanket restrictions within scenic easements.

3.4.2 North Carolina Easement Terms

The authority authorizing North Carolina to acquire easements is found in Chapter 1 of House Bill 43, which was signed on January 18, 1935. The Act states in part that:

“On the land here and after described is hereby acquired a right of use or easement for the enforcement of the following restrictions and none other to wit:

(a) That no buildings, pole lines and structures may be erected on such land only for farm and residential purposes. New buildings or major alterations shall be subject to the prior approval of the National Park Service. No commercial buildings, power lines, or other industrial or commercial structures may 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 materials shall be placed upon such land.

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

Like the 1938 Virginia Act, North Carolina easements prohibit the construction of buildings, utility poles and other structures within the scenic easement except for farm or residential purposes and only after prior approval of the National Park Service. Additionally, North Carolina prohibits commercial buildings or activities, except that existing commercial buildings may be improved for the purpose of continuing the established use—with NPS
approval of development plans. Like Virginia, North Carolina also prohibits removal of mature
trees, but permits limited removal of shrubs and sapling trees for farm or residential purposes.
Additionally, North Carolina prohibits maintaining debris dumps or the erection of signs and
billboards. Unlike Virginia, North Carolina easements do not prohibit landowners from
constructing driveways or access roads across the easement.

3.5 Perceived Weaknesses of Scenic Easement Deeds

The scenic easements acquired for the Blue Ridge Parkway represents one of the “first
substantial use of easements for land conservation in American history” (Roe 2000a, p. 18).
However early assessments of the Blue Ridge Parkway’s scenic easements view them with
mixed success (Cunningham 1968, Foresta 1985, Roe 2000a, Wright 2000). In general, parkway
easements have encountered a number of problems including:

- Objectives/purposes of scenic easement are not spelled out in deed documents
- Easement language is vague and ambiguous
- Ownership has changed over time
- Many landowners have not been willing to cooperate with NPS officials
- Easements are poorly understood by landowners and in many cases even park
  staff.
- Money spent enforcing and administering easements has far exceeded the
  money purportedly saved by acquiring easements.
- Easements have not been regularly monitored
- Easement deeds do not grant NPS officials authority to enter onto easements
  to monitor or enforce restrictions
- Easements are overly permissive by modern easement standards
  (e.g. Scenic easement deeds permit the subdivision of easements).

Because easements were acquired by the individual state highway departments, and not
by National Park Service officials, many landowners were not fully aware of the rights they
relinquished. In many cases, state officials were only concerned with convincing the landowner
to sign the easement deed (Cunningham 1968).

Further there were no standards on how to appraise the rights acquired under the scenic
easements. Easements particularly in Virginia were negotiated with landowners on a case by
case basis.

“Consequently, there was much dickering and very little uniformity in the prices paid.
The net result was that many landowners did not understand just what rights they had
sold, and many of them were bitter at what they regarded as unfair treatment when they
discovered that they had been paid less than other landowners were paid for the same
easement over similar land” (Cunningham 1968, p. 182).
Cunningham (1968, p. 182) states that concerns with scenic easements along the Blue Ridge and Natchez Trace Parkways “arose from two causes: either the landowner wanted to harvest standing timber, or he wanted to subdivide and develop his land for residential use.”

3.6 The 1961 Land Exchange Act

Beginning in the 1950’s, in response to many of the problems experienced by the Blue Ridge and Natchez Trace Parkway, the National Park Service discontinued the use of easements and instructed parks to acquire remaining lands in fee simple (Cunningham 1968). This response by the National Park Service was likely due in part to perceived problems associated with scenic easements including ambiguous and vague deed language that made enforcement difficult, money spent enforcing easements far exceed the initial cost of the easements, and the fact that easements were not preserving scenic resources as they were intended. In June 1961, Congress passed the Equal Exchange of Lands Act (75 Stat. 196), which authorized the purchase or exchange of contiguous lands and interests (including scenic easements) along the Blue Ridge and Natchez Trace Parkways. The Act read in part:


Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That, in order to consolidate, on the Blue Ridge Parkway and the Natchez Trace Parkway, the land forming each such parkway, to adjust ownership lines, and to eliminate hazardous crossings of and accesses to these parkways, the Secretary of the Interior is authorized to acquire by purchase or exchange, land and interests in land contiguous to the parkways. In consummating exchanges under this Act, the Secretary may transfer parkway land, interests therein, and easements: Provided, That the property rights so exchanged shall be approximately equal in value.”

The June 1961 Act allowed for the acquisition and exchange—release of scenic easements for more suitable tracts of land along the parkway. The parkway has used this act to acquire and release scenic easements. In many cases, landowners along the parkway were willing to convey a portion of the land encumbered by the scenic easement in fee simple to the Parkway in exchange for the release of the scenic easement restrictions on the remainder of the property. The authority to exchange scenic easements often helped to eliminate “troublesome situations involving scenic easement…” (U.S. Department of the Interior 1974, p. 8).
3.7 Previous Research

Despite the perceived failings of the scenic easements acquired by the Blue Ridge Parkway, no systematic study on the management of the Blue Ridge’s scenic easements has ever been undertaken. In the early 1960’s W.D. Davis (no date) an appraiser with Appraisal Associates undertook a study in order to assess the impacts of scenic easements acquired for the Blue Ridge Parkway on the fair market value land on land in Alleghany County, NC. The study compared land sales subject to scenic easements to land sales not encumbered by easements (Davis, no date). The study identified 51 scenic easements acquired for the parkway in Alleghany County. Thirty land sales were reviewed during the study period of which 11 included lands subject to NPS scenic easements. In each of the land transactions involving scenic easements there was “an apparent loss in value to the various land use types encumbered by scenic easement” (Davis no date, p. 33). However, the effects of the easements on the value of the property varied according to the current land use of the property, its distance from the parkway motor road and whether or not the property fronted a public road.
Chapter 4: Research Plan

This case study and evaluation of the Blue Ridge Parkway’s Scenic Easements addresses four primary objectives: (1) this study will categorize and describe the number & acres of scenic easements acquired by the Blue Ridge Parkway as well as the number and acreage of easements terminated, acquired in fee simple or released before and after the enactment of the 1961 Act. (2) I will investigate the various deed instruments used to convey scenic easements to the National Park Service and how these deeds differ from contemporary conservation easement deeds. (3) I will examine the number of scenic easement violations experienced by the Blue Ridge Parkway and requests to alter or make physical changes to scenic easements along the Parkway; (4) the study will also identify and examine the factors that may have contributed to violations of scenic easement restrictions and requests for easement variances including: ambiguity and lack of understanding of easement terms & restrictions, successive landowners, and subdivision of easements; (5) Finally, this thesis will conclude with a discussion of how easements acquired for the Blue Ridge Parkway apply to the larger debate of whether conservation easements can adequately protect land in perpetuity.

The overall research question of this thesis is whether or not the scenic easements acquired for the Blue Ridge Parkway have given the National Park Service sufficient control over neighboring land to protect scenic viewsheds along the 470-mile motor road. Looking at the Parkway’s scenic easements from a larger perspective, the primary question is what other conservation organizations and agencies can learn from the parkway’s long history of attempting to manage and enforce easements in perpetuity. Ambiguous language, lack of understating of easement terms and restrictions by land landowners and government officials, lack of monitoring and inconsistent enforcement have hampered efforts to enforce scenic easements along the Blue Ridge Parkway.

4.1 Research Approach

This study’s primary research approach was through a case study of the National Park Service, Blue Ridge Parkway and how it has attempted to manage and enforce scenic easements over a 70-year time period. Case studies are the preferred approach when studying questions of “how” and “why” a particular phenomenon occurred and when conducting an in depth longitudinal analysis of a single instance, group or event within a real-life context (Yin 2003, GAO 1990). The Government Accounting Office (GAO, 1990, p. 15) defines a Case Study as “a
method for learning about a complex instance based on a comprehensive understanding of that instance obtained by extensive description and analysis of that instance taken as a whole and in its context.” Berg (2001) states that case study methods involve systematically gathering enough information about an individual setting, event or group to permit the researcher to effectively understand how it operates. Berg (2001) and Yin (2005) both point out that a case study is not a technique used to collect data, but rather a “methodological approach” that utilizes a number of complimentary data-gathering techniques.

While case studies are recognized for their ability to provide rich, in-depth analysis of a particular individual, group, or event, it is also recognized as one of the most challenging of the social science research methods. Case studies are often stereotyped as weak and conducted with insufficient vigor, objectivity and rigor to be taken seriously as a research method.

Berg (2001) Yin (2005) however notes that many of these concerns can be controlled through careful selection of research design. A number of tests are used to assess the quality of qualitative social research including construct validity, external validity and reliability. These issues will be addressed further below.

This study attempted to use a Case Study approach advocated by Yin (2005) and the GAO utilizing multiple sources of data including analysis of a variety of archival and contemporary documents including memorandum and correspondence between Parkway designers, architects, managers and state officials involved in the acquisition and management of scenic easements; annual Superintendent Reports; memorandum and letters between park officials and easement owners; site investigation reports; as well as maps, sketches and photographs of the easements themselves. In addition a number of oral history transcripts collected in the 1970’s from former park staff members including Stanley Abbott, the Parkway’s first Landscape Architect were also reviewed.

Analysis of the above documents was supplemented with a number of open-ended interviews and focused discussions with key park staff members involved in the administration of the scenic easements. Finally, the author, as a 15-year employee of the Blue Ridge Parkway used participant (both active and passive roles) and long-term observation of the parkway’s land resources program and specifically the scenic easement program to gain further insights into the overall management of the scenic easement program.
4.2 Research Process:

The first step in this study was to identify all of the original scenic easements acquired for the Blue Ridge Parkway and to determine how many (number and acres) scenic easements were originally acquired for the Parkway and how many easements (number and acres) had been acquired, exchanged or released by the National Park Service. Much of this information was found in the park’s Scenic Easement database. Additional information was obtained through a review of the Parkway Land Use Maps (or PLUMs), Land Status Maps and through examination of the various Composite Deeds between Parkway and the Commonwealth of Virginia and state of North Carolina. Most of these documents were available in the Land Resources files at the Blue Ridge Parkway Headquarters Building and the Parkway’s Archives in Asheville, North Carolina. A database for all of the original and current scenic easements was created using Microsoft Access™ and Microsoft Excel™.

The data relating to the acquisition of scenic easements, interpretation of scenic easement restrictions, variance requests, scenic easement violations/challenges was obtained through an in-depth examination of planning documents relating to the Blue Ridge Parkway’s scenic easement program including federal and state legislation, deeds and other court documents, memorandum and correspondence, annual reports, guidelines, court decisions and legal files relating to easement violations dating from 1935 through June 2008. Most of these documents were available in the Blue Ridge Parkway’s land files and the parkway’s archives/curatorial building located in Asheville, North Carolina.

A systematic search of was carried out of the archives, curatorial files, and parkway land files. Any document (either whole or individual pages) containing any reference whatsoever to “scenic easement,” “easement,” or “conservation easement” was set aside and Xeroxed for further review. Additional documents were obtained through in-depth discussions with knowledgeable park staff members, in particular the Parkway’s Landscape Architect and Realty Specialist.

Deeds for all of the scenic easements acquired in Virginia (North Carolina’s scenic easement acquisition process did not leave deeds between the state and individual landowners) were obtained from the respective County Courthouse where the deed was filed. Deed book numbers and page numbers for the deeds were obtained from Parkway land records, scenic easement database and through Grantor and Grantee Indexes maintained in the court houses.
In order to review and assess all of the information gathered above, an evaluation instrument was developed that includes the questions and factors addressed by this research. This instrument was developed after a thorough review of existing literature, policy and guidelines for monitoring and enforcing conservation easements developed by various Land Trusts and in particular Land Trust Standards and Practices developed by the Land Trust Alliance (2004a). A list of the questions/variables used to evaluate how the parkway managed various aspects of the scenic easements can be found in Appendix A.

County land use records and tax parcel information for each of the Parkway’s remaining scenic easements (as of January 2009) were reviewed in order to determine current ownership of land encumbered by parkway scenic easements and the number of times (if any) scenic easements had been subdivided. In addition, aerial photography and on-line County Geographic Information System (GIS) was reviewed in order to determine how many (if any) residential, farm, commercial and other structures were present on scenic easements. In some cases, aerial photos/GIS maps did not exist or did not have sufficient resolution to determine if structures were present on easements. In these cases, I attempted to field check the scenic easement (viewed from the Parkway or nearest other road).

4.3 Review of Scenic Easement Violations and Variance Requests

Each specific case found where Parkway officials received requests to alter easements (e.g. build a residence, cut trees/vegetation) or where NPS staff attempted to enforce scenic easement violations were examined. Each incident was categorized according to the type of violation or request, who made the request or was responsible for the violation, the outcome of the incident as well as the process utilized the Parkway to review and evaluate each variance request/enforcement issue.

In many cases, Parkway officials received letters/correspondence from landowners making multiple variance requests simultaneously (e.g. a landowner requested to construct a residence, remove several trees and install utility lines). In these cases, each request was entered into the database as a separate entry; since there were often separate outcomes (e.g. parkway might approve construction of a residence and install utility lines, but deny a landowner’s request to remove trees from the easement).

Summary statistics and frequency tables were completed for all of the variables on the evaluation instrument using SPSS Version 17.0 statistical software. Summary statistics were
compared to corresponding documents and Excel and Access spreadsheets to insure accuracy of all data entry. Any errors in the data were corrected or removed from the databases.

4.4 Limitations and Research Validity

This research attempted to deal with the many issues of validity common in case studies through the collection of multiple sources of evidence (data triangulation) including the use of a variety of documents (e.g. memorandum, correspondence, oral history transcripts, court documents, deeds, maps, and a variety of planning documents), open-ended as well as focused interviews and through personal observation and participation. In addition, a chain of evidence methodology is utilized throughout this paper whereby specific examples/cases of scenic easements that illustrate key points are cited and discussed. In addition, all or portions of key documents are included in either the body of the paper or included in the Appendix. This research also focused on a number of potential variables and explanations that could account for some of the perceived failings (and successes) of the scenic easements acquired for the Blue Ridge Parkway.

Potential issues associated with variability were addressed by using a single individual (the author) throughout the entire process of collecting, reviewing and assessing all of the documents and archival materials associated with this project. Further, reliability was addressed through making digital and/or print copies of each of the documents collected and reviewed for this study (including documents for each of the violations and/or variance requests) so that the results of this study are reproducible.

This research has a number of potential limitations. The vast majority of the data collection associated with the Blue Ridge Parkway’s scenic easement occurred in the Blue Ridge Parkway Headquarters Building at milepost 284 on the Blue Ridge Parkway in Asheville, North Carolina. At the time this research was initiated, the Parkway’s Resource Planning and Professional Service Division maintained the majority of the Land Use Records associated with acquisition, administration and the day to day management of the parkway lands—including scenic easements. The Parkway is in the process of scanning the original Land Files and upon completion of that project; the original documents will be moved to the Parkway’s Archives and Curatorial Building which is currently located near the old Veterans Hospital in Asheville, NC.

In many cases throughout this research files and documents related to the Parkway’s scenic easements were found to be incomplete or missing portions of key documents. In these
cases, I attempted to contact knowledgeable park staff members in order to fill in and supplement the missing files. However, while interviews and conversations with both current and retired park staff members were helpful in filling in these “data gaps” the author also recognizes that individual memories are not always perfect and that answers to these questions as well as responses from the focused interviews may reflect the respondents own personal perception of the events and not necessarily the true facts of the events as they occurred.

Further, the author also recognizes that this research focuses primarily on the management of the scenic easements from the perspective of the National Park Service and does not take into account, events and incidents discussed and reviewed during this research from the easement owner’s perspective. It is hoped that one potential outcome of this project will be to generate further interest related to how scenic easement holders have attempted to live with the restrictions placed on their individual properties nearly 70 years ago.

Finally, the author wishes to acknowledge that he has been an employee of the Blue Ridge Parkway for nearly 15 years, and an employee of the National Park Service for over 20 years. A critical part of this research involved the author’s personal observation as well as direct and indirect participation in the many facets associated with the management and administration of the scenic easements. These observations were both formal and casual in nature. While the author’s employment with the Parkway provided unparallel opportunities to observe the administration of the scenic easements from a number of different perspectives, I also recognize that it also introduced a number of bias’s and pitfalls into this research. In particular, as an employee with the National Park Service, it was often my role to assist with various enforcement activities related to the scenic easements, which raises a number of issues associated with impartiality of the researcher. In some cases, my role as a researcher was secondary to my duties as Resource Manager with the National Park Service. It is hoped that the credibility of this research has been maintained through the use of multiple sources of data and the repeatability of this study.
Chapter 5: Results

Chapter 1 included an introduction to conservation easements, the significance of this research, and general background information related to conservation easements. Chapter 2 included a review of the literature including a discussion Conservation Stewardship and a review of previous research as it relates to defense and enforcement of conservation easements. Chapter 3 included background and history of the Blue Ridge Parkway with special emphasis on the Parkway’s early land acquisition program and the unique relationship between Virginia, North Carolina and the Federal Government to acquire the Parkway fee simple right-of-way and the less-than-flee scenic easements. Chapter 4 included a discussion of the research plan utilized for this project and the procedure used to obtain and assess the memos, documents and records utilized for this research. Chapter 5 describes the scenic easements acquired for the Blue Ridge Parkway including the numbers and acres of scenic easements acquired for the Parkway by the Commonwealth of Virginia and the State of North Carolina; the number of acres of scenic easements released by the National Park Service; the deed instruments used to convey scenic easements and how these deeds differ from contemporary conservation easements.

5.1 Scenic Easements General Information

A total of 195 scenic easements comprising 1,340.86 acres were acquired for the Blue Ridge Parkway by the State of North Carolina and the Commonwealth of Virginia as summarized in Table 5.1. Virginia acquired 48 easements comprising 405.04 acres; while North Carolina acquired 147 easements comprising 935.82 acres. Figure 1 summarizes the acreage of scenic easements acquired for the Parkway by acreage class.

Mean size of scenic easements acquired for the Blue Ridge Parkway was 6.9 acres (Table 5.2). The mean size of easements acquired for the Virginia portion of the Parkway was 8.4 acres compared to 6.4 acres for North Carolina. The median size of scenic easements acquired for the Parkway was 4.6 acres. Scenic easements range in size from 0.01 acres to 57.34 acres. In Virginia, easements range from 0.28 acres to 28 acres. Easements in North Carolina ranged from 0.1 acres to 57 acres.

Table 5.3 summarizes the acreage of scenic easements purchased within each of the counties along the Blue Ridge Parkway. The largest acreage of scenic easements was purchased in Floyd County, VA (21%) and in Alleghany County, NC (18.8%). Both of these
Table 5.1: Number & Acres of Scenic Easements Acquired by State.

<table>
<thead>
<tr>
<th></th>
<th># Easements Acquired</th>
<th># Acres Acquired</th>
<th>Acres Acquired (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Virginia</td>
<td>48</td>
<td>405.04</td>
<td>30</td>
</tr>
<tr>
<td>North Carolina</td>
<td>147</td>
<td>935.82</td>
<td>70</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>195</strong></td>
<td><strong>1,340.86</strong></td>
<td></td>
</tr>
</tbody>
</table>
Table 5.2: Mean size of scenic easements acquired by state for the Blue Ridge Parkway.

<table>
<thead>
<tr>
<th>State</th>
<th>Mean # Acres</th>
<th>Median Acres</th>
<th>Range in size (Acres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Virginia</td>
<td>8.43</td>
<td>6.57</td>
<td>0.28 – 28.24</td>
</tr>
<tr>
<td>North Carolina</td>
<td>6.37</td>
<td>4.27</td>
<td>0.01 – 57.34</td>
</tr>
<tr>
<td>Parkway-wide</td>
<td>6.88</td>
<td>4.62</td>
<td>0.01 – 57.34</td>
</tr>
</tbody>
</table>
Figure 5.1 Number of Scenic Easements acquired by Virginia and North Carolina by acreage class.
Table 5.3: Acreage of scenic easements acquired for the Blue Ridge Parkway by County.

<table>
<thead>
<tr>
<th>County</th>
<th>Acreage</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Augusta, VA</td>
<td>2.38</td>
<td>0.17</td>
</tr>
<tr>
<td>Nelson, VA</td>
<td>25.02</td>
<td>1.87</td>
</tr>
<tr>
<td>Rockingham, VA</td>
<td>19.34</td>
<td>1.44</td>
</tr>
<tr>
<td>Bedford, VA</td>
<td>5.44</td>
<td>0.41</td>
</tr>
<tr>
<td>Roanoke, VA</td>
<td>8.13</td>
<td>0.61</td>
</tr>
<tr>
<td>Franklin, VA</td>
<td>25.62</td>
<td>1.91</td>
</tr>
<tr>
<td>Floyd, VA</td>
<td>280.43</td>
<td>20.9</td>
</tr>
<tr>
<td>Patrick, VA</td>
<td>19.9</td>
<td>1.48</td>
</tr>
<tr>
<td>Carroll, VA</td>
<td>18.78</td>
<td>1.4</td>
</tr>
<tr>
<td>Alleghany, NC</td>
<td>252.74</td>
<td>18.8</td>
</tr>
<tr>
<td>Wilkes, NC</td>
<td>202.73</td>
<td>15.1</td>
</tr>
<tr>
<td>Ashe, NC</td>
<td>164.05</td>
<td>12.2</td>
</tr>
<tr>
<td>Watauga, NC</td>
<td>118.17</td>
<td>8.81</td>
</tr>
<tr>
<td>Burke, NC</td>
<td>18.33</td>
<td>1.37</td>
</tr>
<tr>
<td>Mitchell, NC</td>
<td>63.99</td>
<td>4.77</td>
</tr>
<tr>
<td>McDowell, NC</td>
<td>115.81</td>
<td>8.64</td>
</tr>
</tbody>
</table>
counties are similar in terms of both topography and land use. Both counties are made up of predominantly rural farm land; topography is fairly level. The large expanse areas of level land, may have led park and state officials to acquire additional easements in these areas due to concerns that adjacent development would be particularly visible in these counties due to the large number of potential home sites.

5.2: Acquisition & Release of Scenic Easements

Over the past 70 years the Blue Ridge Parkway has purchased in fee, exchanged or released approximately 490 acres of the original scenic easements acquired for the Parkway, a reduction in the acreage of scenic easements of 36%. Table 5.4 below compares the original acreage acquired for the Blue Ridge Parkway with the current number and acres held in scenic easement. More than 50 percent of the original acreage in scenic easements in Virginia have been acquired in fee or released. Comparatively, North Carolina has only seen a 29 percent reduction in the acreage of scenic easements. One scenic easement in Virginia was acquired in fee as early as 1937—not long after the scenic easement deed was transferred to the National Park Service. Following the original acquisition of the Parkway right-of-way near milepost 154, NPS officials proposed to acquire additional acreage for the Smart View Picnic Area. Scenic Easement 1Q-4 was subsequently acquired in fee by the National Park Service as part of land acquisition process for the picnic area and hiking trail. Two additional scenic easements located at the north end of the Parkway in Virginia were subsequently purchased by the Commonwealth of Virginia and donated to the Parkway in 1939.

The passage of the 1961 Equal Exchange of Lands Act, permitted the Parkway to acquire scenic easements in fee simple or alternatively to conduct an equal value exchange of lands where in return for a portion of a scenic easement being deeded over the Parkway in fee simple, the NPS would release the remainder of the scenic easement restrictions from the property. Using this authority, the Parkway acquired in fee and/or exchanged portions of scenic easements on 49 tracts between 1961 and 2008. Table 5.5 summarizes the number of tracts and acres of scenic easement acquired or exchanged by acquisition method.

Thirteen scenic easements were released from the restrictions through the process of equal value exchange—release. A total of 54.58 acres were acquired in fee simple for the parkway in exchange for the release of scenic easement restrictions on 71.29 acres. As table 5.6
Table 5.4: Comparison of number and acres of scenic easements originally acquired for the Blue Ridge Parkway by Virginia and North Carolina and number & acreage of scenic easements currently remaining.

<table>
<thead>
<tr>
<th>State</th>
<th># Original Easements</th>
<th>Original Acreage</th>
<th># Current Easements</th>
<th>Current Acreage</th>
<th>% Δ in Acreage</th>
</tr>
</thead>
<tbody>
<tr>
<td>VA</td>
<td>48</td>
<td>405.04</td>
<td>26</td>
<td>192.70</td>
<td>-52.42%</td>
</tr>
<tr>
<td>NC</td>
<td>147</td>
<td>935.82</td>
<td>121</td>
<td>661.14</td>
<td>-29.35%</td>
</tr>
<tr>
<td>Total</td>
<td>195</td>
<td>1,340.86</td>
<td>147</td>
<td>853.84</td>
<td>-36.32%</td>
</tr>
</tbody>
</table>
Table 5.5: Acres of scenic easement acquired in fee simple or exchanged by acquisition method.

<table>
<thead>
<tr>
<th>Acquisition Method</th>
<th># of Scenic Easement Tracts</th>
<th>Acres of scenic easement acquired in fee simple</th>
<th>Acres released from scenic easement restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acquired in fee simple</td>
<td>33</td>
<td>274.15</td>
<td>--</td>
</tr>
<tr>
<td>Exchange—Release</td>
<td>13</td>
<td>54.58</td>
<td>71.29</td>
</tr>
<tr>
<td>Donated to NPS in fee simple</td>
<td>3</td>
<td>40.15</td>
<td></td>
</tr>
<tr>
<td>Acquired in fee simple by VA/NC &amp; donated to USA</td>
<td>4</td>
<td>21.02</td>
<td>--</td>
</tr>
<tr>
<td>Land Exchange</td>
<td>3</td>
<td>15.3</td>
<td>--</td>
</tr>
<tr>
<td>Unknown</td>
<td>3</td>
<td>10.53</td>
<td>--</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>59</strong></td>
<td><strong>415.73</strong></td>
<td><strong>71.29</strong></td>
</tr>
</tbody>
</table>
indicates, 3 tracts comprising 6.47 acres still have scenic easement restrictions remaining on them. All but one of the scenic easements acquired/exchanged through this technique were located on the North Carolina portion of the Parkway. Reasons for entering into the land exchanges were varied. In at least two cases, the park officials agreed to the exchange in order to relieve the parkway of “troublesome” landowners. In another instance a landowner purchased property not realizing that the land was encumbered by a scenic easement. The landowner immediately began construction of a residential home within the easement. The parkway resolved the violation by negotiating an exchange with the landowner. In four instances, landowners approached the parkway about obtaining permission to construct residences within scenic easements. In each case, the parkway negotiated an exchange with the effected landowners.

In one instance, park officials entered into two separate exchanges involving scenic easement No. 2L-22. By 1970, this scenic easement had been subdivided into four parcels among four different landowners. During January 1970, Mr. & Mrs. James Casey, Jr. wrote the Parkway requesting permission to subdivide a portion of Scenic Easement No. 22, Section 2L near milepost 329.5 for housing lots. The parkway denied the Casey’s request, but the Casey’s persisted, arguing that since the home sites would not be visible from the parkway, subdivision of the easement into house lots would not impact the scenic view from the parkway. Eventually, the parkway and the Casey’s reached an agreement in which the parkway would release 9.2 acres from the scenic easement in exchange for acquisition of 2.057 acres of the easement in fee.

While negotiations with the Casey’s were on-going, Mr. J.C. Blackney contacted the parkway about obtaining permission to construct a house on 1.9 acres of scenic easement No. 2L-22. The Parkway subsequently denied the Blackney’s request as well stating that

“Aside from the legal considerations, there is a matter of public relations and the ethical requirement of fair and impartial treatment in the administration of the easement rights held by the United States. Since there are more than 1,200 acres in the States of North Carolina and Virginia subject to Scenic Easement restrictions, you can imagine some of the frightful adversities that could be expected from a relaxation to permit subdivision of all the easements. Already, three other owners share with you the underlying fee ownership of Scenic Easement No. 22, and the same thing has happened in varying amounts all along the Parkway…In view of this situation, we are taking the position that we must discourage such developments” (Liles 1973, p.1).
The sole purpose for which the Blackneys had acquired their property 10 years previously was to construct a home on it in the future. The Blackneys indicated that they were not aware of the scenic easement restrictions at the time they purchased the property, but stated “No where in the Scenic Easement restrictions did I find any denial of my right to build provided I first secured National Park Service approval of my residence plans…” After discussions with the U.S. Solicitor’s office and a meeting with the Blackneys, the parkway and the Blackneys negotiated an exchange in which the Blackneys would convey 0.46 acres in fee to the Parkway in exchange for release of the easement restrictions on the remaining 1.44 acres of the Blackney’s portion of the scenic easement.

An exchange-release was consummated on Parcel 2D-9 after the landowner’s heirs could not agree on how to divide the portion of the property encumbered by the scenic easement. Park officials deemed that the scenic easement was not visible from the parkway motor road and entered into an exchange-release with the heirs.

The 1961 Act required that the National Park Service in pursuing an exchange, ensure that the property rights exchanged be “approximately equal in value.” In order determine the fair market value of the tract(s) of land involved in an exchange, an appraisal was required. Prior to 1995 these appraisals were usually carried out by the Parkway’s Land Management Specialist. Over the past 10 years, the Parkway has developed a partnership with the Appalachian Trail (AT) Lands Office in Martinsburg, WV. The AT Lands Office employs a full time Realty Staff. While the AT Lands Office staff employs a full time appraiser, more recently appraisals have been contracted out to independent Appraisers (S. Gasperson per. com, April 2009).

Appraisals generally value the land based upon the property’s highest and best use and may take in to account the value of marketable timber on the easement, whether the easement contains sites suitable for residential development, whether the property was suitable for agricultural use and recent sales of comparable properties within the immediate area of the scenic easement. Davis (no date, p. 13) states that “The great difficulty with this possible exchange of lands is in estimating the increase in value, if any, to the property from which the easement is removed so that the buyers can deed an area of similar value to the Federal Government in fee simple.” In at least one instance, landowners of scenic easement No. 12 in section 2E were required to pay the USA $4,020.00 to equalize the exchange in which the USA acquired 0.73 acre in fee for releasing the restrictions on the remaining 15.59 acres of the easement. Of the 13
scenic easement exchanges carried out by the Parkway, deeds and/or records indicate that appraisals were prepared for each of the exchanges.

Another technique used to relieve the Parkway of troublesome scenic easements was through direct land exchange where the landowner of the underlying scenic easement conveyed to the parkway the tract of land encumbered by the scenic easement in fee simple. In exchange, the Parkway conveyed to the landowner an equal acreage of Parkway fee lands elsewhere. Using this technique the NPS acquired 5 scenic easement tracts consisting of 20.42 acres in fee plus an additional 49 acres in fee simple in exchange for conveying 37 acres of Parkway fee lands to adjacent landowners (Table 5.7).

Three tracts of land containing scenic easements were acquired through a land exchange by the parkway in order to eliminate troublesome access roads across NPS lands. Scenic easement 1Q-2 was acquired by the Parkway in order to eliminate a private road across scenic easement lands to the Parkway. Local residents were apparently beginning to use this road as a public access, much to the dismay of park officials. In exchange for the landowner conveying the 2.92 acre scenic easement in fee to the parkway, the NPS conveyed an adjacent 7.17 acre NPS tract to the landowner. In 1966, in order to resolve another long-standing access road issue, three brothers—Robert, “RW” and J. Frank Barr offered to exchange a 60 acre tract adjacent to the Blue Ridge Parkway that included Scenic Easement No. 2E-22. In exchange, the Barr Brothers accepted a 26.23 acre tract from the Parkway. Of the 26 acres conveyed to the Barr Brothers, 22.92 acres are subject the following development restrictions: “the right of the National Park Service to prohibit the grantees and their heirs and assigns from using any portion of said parcel for development of public accommodations, commercial buildings, or for advertising signs or advertising structures.”

In 1969, the NPS entered into a land exchange with the North Carolina State Highway Commission whereby the Highway Commission conveyed scenic easement 2L-23, consisting of 1.43 acres to the NPS in fee in exchange for a 0.554 acre parcel of land in Alleghany County, NC. The exchange with the NC Highway Commission was undertaken to clear up a long-standing issue concerning title to scenic easement no. 23.
Table 5.6: Scenic Easements Acquired by the Blue Ridge Parkway through exchange-release

<table>
<thead>
<tr>
<th>Scenic Easement</th>
<th>Original acres of SE</th>
<th>Current Acres of SE</th>
<th>Acres Acquired by NPS in fee simple</th>
<th>Acres released from scenic easement</th>
</tr>
</thead>
<tbody>
<tr>
<td>2A-9</td>
<td>6.44</td>
<td>1.77</td>
<td>0.97</td>
<td>3.7</td>
</tr>
<tr>
<td>2B-6</td>
<td>2.65</td>
<td>0</td>
<td>0.97</td>
<td>1.68</td>
</tr>
<tr>
<td>2C-4</td>
<td>6.58</td>
<td>0</td>
<td>5.37</td>
<td>1.21</td>
</tr>
<tr>
<td>2C-5</td>
<td>4.03</td>
<td>0</td>
<td>1.33</td>
<td>2.7</td>
</tr>
<tr>
<td>2D-4</td>
<td>4.28</td>
<td>0</td>
<td>1.27</td>
<td>3.01</td>
</tr>
<tr>
<td>2D-9</td>
<td>9.12</td>
<td>0</td>
<td>2.88</td>
<td>6.24</td>
</tr>
<tr>
<td>2D-11</td>
<td>11.22</td>
<td>0</td>
<td>4.22</td>
<td>7.0</td>
</tr>
<tr>
<td>2D-13</td>
<td>4.01</td>
<td>1.76</td>
<td>0.48</td>
<td>1.77</td>
</tr>
<tr>
<td>2D-18</td>
<td>23.39</td>
<td>0</td>
<td>21.56</td>
<td>1.83</td>
</tr>
<tr>
<td>2E-12</td>
<td>16.32</td>
<td>0</td>
<td>0.73</td>
<td>15.59</td>
</tr>
<tr>
<td>2E-13</td>
<td>23.36</td>
<td>0</td>
<td>12.28</td>
<td>10.08</td>
</tr>
<tr>
<td>2L-22*</td>
<td>16.10</td>
<td>2.94</td>
<td>2.52</td>
<td>10.64</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>127.5</strong></td>
<td><strong>6.47</strong></td>
<td><strong>54.58</strong></td>
<td><strong>65.45</strong></td>
</tr>
</tbody>
</table>

*Two separate exchange—releases of easement restrictions occurred on 2L-22: In October 1973 the parkway acquired fee simple title to 2.057 acres from James Casey in exchange for the release of scenic easement restrictions on the remaining 9.2 acres of the easement owned by Mr. Casey. In January 1974, the parkway acquired fee simple title of 0.46 acre of 2L-22 from J.C. Blackeney in exchange for the release of scenic easement restrictions on the remaining 1.44 acres of the portion of the scenic easement owned by Mr. Blackeney. Note that 2.94 acres of 2L-22 remains in scenic easement.
More than 286 acres of scenic easements have been acquired in fee simple by the National Park Service. This includes 86 acres of scenic easements that were acquired specifically to eliminate individual scenic easements and/or widen the BLRI fee boundary. Another 200 acres of scenic easement were acquired not necessarily for the specific acquisition of the easement itself; rather the easement(s) was just a portion of a larger tract of land acquired by the NPS in fee. For example, scenic easement No’s 1A & 1B comprising 22.6 acres in section 1P were acquired in fee in 1978 as part of the acquisition of the Wimmer Farm Tract—a 100+ farm located in Adney Gap at the confluence of Roanoke, Floyd and Franklin Counties, VA. The Wimmer family sold the scenic easements and their adjacent farm to the NPS in part to pay outstanding medical bills. In exchange the Wimmer’s were granted a life-time estate to the farm house and adjacent barns and an agricultural lease on the remaining farm land. The life estate and lease permitted the Wimmers to continue to live on and operate their former family farm. The acquisition of these larger tracts of land was part of an on-going program by National Park Service to acquire highly visible, scenic lands in order to prevent non-conforming land use, and to eliminate hazardous private road crossings along the parkway motor road (Parkway Land Protection Plan, 1994).

In 1997, in order to assess the vulnerability of parkway viewsheds outside of the parkway boundaries, NPS staff undertook a scenic quality assessment using teams consisting of local community leaders and NPS staff in each of the counties along the parkway. The 84-acre Harris Farm, which included Scenic Easement No. 1Q-1B rated among the highest quality views along the Parkway in Floyd County, VA due in large part to the fact that the original house, farm buildings and surrounding farmlands were relatively intact. In 1999, the Harris’ decided to sell their farm. The Harris’ approached the Parkway about acquiring the farm. In 1999, the Parkway acquired the 84-acre farm including scenic easement 1B for $284,400.

Twelve (12) scenic easement tracts comprising approximately 86 acres were acquired as single tracts in fee simple in order to eliminate the specific scenic easements and to widen the Parkway right-of-way (Table 5.9).

A total of four scenic easement tracts consisting of 40.15 acres have been donated to the National Park Service in fee simple. In 1957, owners of scenic easement No. 2B-5 located near milepost 234.9 in Wilkes County, NC negotiated an agreement with the Blue Ridge Parkway that
in exchange for a donation of 2 acres of the scenic easement in fee to the NPS, the parkway would permit the owners to timber the remaining 6.34 acres of the easement.

In 2002, the Conservation Trust of North Carolina donated 131.64 acres to the Blue Ridge Parkway including 37.52 acres of the 40.15 acre scenic easement No. 24 located in Section 2L of the Parkway. This scenic easement included portions of the highly scenic Orchard at Alapass. The easement and adjacent lands were purchased by the CTNC using funds awarded by the North Carolina Department of Transportation through Transportation Enhancement or TEA-21 funds.

Of the 57 scenic easements acquired in fee or released from the scenic easement restrictions, 86 percent of them were acquired/released after the 1961 Act was enacted indicating that this did indeed provide a very valuable tool for the Blue Ridge Parkway in negotiating with landowners over scenic easement restrictions (Figure 5.2).

5.3: Scenic Easements Acquired between 1967 and 2008

Five additional scenic easements comprising 196.21 acres have been purchased by the NPS or donated to the NPS over adjacent lands along the Parkway between 1969 and 2008 (Table 5.9). In 1967, Louis and Marie Yelanjian donated a 79 acre scenic easement to the Parkway near milepost 257 in Ashe County, NC. Four scenic easements have been acquired more recently by the Parkway.

In 1998, the Conservation Trust of North Carolina using raised funds through North Carolina’s Year of the Mountain campaign purchased the 46.893 acre Critcher Farm near parkway milepost 284. The intent of the CTNC was to purchase the tract in fee, then sell a conservation easement to the NPS and then sell the underlying fee property to a “conservation buyer.” In September 1997, the CTNC closed on the Critcher Farm at a price of $470,000. Following a series of discussions with CTNC, the NPS agreed to purchase a highly restrictive conservation easement on 34.805 acres of the property for a price of $344,500. The easement on this tract would permit public access and use of the property and would limit the owner to using the property for agriculture. CTNC subsequently donated a less restrictive conservation easement on the remaining 12.08 acres of the property to the NPS. The conservation easement on this property allows the fee owner to construct a residential structure, barn and an outbuilding.
Table 5.7: Scenic Easements Acquired through Land Exchange

<table>
<thead>
<tr>
<th>Scenic Easement No.</th>
<th>Original Acres of SE</th>
<th>Current SE Acres</th>
<th>Acres Acquired by NPS Fee Simple (including SE)</th>
<th>NPS Acres Exchanged (conveyed)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1Q-2</td>
<td>2.92</td>
<td>0</td>
<td>2.92</td>
<td>7.17</td>
</tr>
<tr>
<td>1R-3</td>
<td>4.84</td>
<td>0</td>
<td>4.84</td>
<td>3.23</td>
</tr>
<tr>
<td>1R-5</td>
<td>0.28</td>
<td>0</td>
<td>0.28</td>
<td>0.26</td>
</tr>
<tr>
<td>2E-22</td>
<td>10.95</td>
<td>0</td>
<td>10.95 + 48.872</td>
<td>26.23*</td>
</tr>
<tr>
<td>2L-23</td>
<td>1.43</td>
<td>0</td>
<td>1.43</td>
<td>0.554</td>
</tr>
<tr>
<td>TOTAL</td>
<td>20.42</td>
<td>0</td>
<td>69.29</td>
<td>37.44</td>
</tr>
</tbody>
</table>
Table 5.8: Scenic Easements Acquired as part of larger tracts of land.

<table>
<thead>
<tr>
<th>Scenic Easement No.</th>
<th>Original Acres of SE</th>
<th>Current SE Acres</th>
<th>Total Acres Acquired in Fee including SE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1P-1A &amp; 1B</td>
<td>10.75 + 11.85</td>
<td>1</td>
<td>108.63</td>
</tr>
<tr>
<td>1Q-1A</td>
<td>12.20</td>
<td>0</td>
<td>15.2</td>
</tr>
<tr>
<td>1Q-1B</td>
<td>12.63</td>
<td>0</td>
<td>84.08</td>
</tr>
<tr>
<td>1R-1A &amp; 1B</td>
<td>8.06 + 3.66</td>
<td>0</td>
<td>25.83</td>
</tr>
<tr>
<td>1R-12</td>
<td>10.43</td>
<td>0</td>
<td>29.30</td>
</tr>
<tr>
<td>1S-Boyd</td>
<td>28.24</td>
<td>5.56</td>
<td>73.73</td>
</tr>
<tr>
<td>1S-2B</td>
<td>27.71</td>
<td>0</td>
<td>51.12</td>
</tr>
<tr>
<td>1S-3</td>
<td>17.87</td>
<td>6.4</td>
<td>Included with 1S-2B</td>
</tr>
<tr>
<td>1T-1</td>
<td>5.26</td>
<td>0</td>
<td>25.20</td>
</tr>
<tr>
<td>1T-1</td>
<td>11.97</td>
<td>0</td>
<td>70.17</td>
</tr>
<tr>
<td>1V-1</td>
<td>2.88</td>
<td>0</td>
<td>32.52</td>
</tr>
<tr>
<td>2A-4</td>
<td>5.25</td>
<td>0</td>
<td>16.62</td>
</tr>
<tr>
<td>2B-4</td>
<td>10.65</td>
<td>0</td>
<td>201.94 (TNC)</td>
</tr>
<tr>
<td>2C-9</td>
<td>2.09</td>
<td>0</td>
<td>50.14</td>
</tr>
<tr>
<td>2C-10</td>
<td>6.48</td>
<td>0</td>
<td>154.57</td>
</tr>
<tr>
<td>2D-5</td>
<td>8.54</td>
<td>0</td>
<td>19.50</td>
</tr>
<tr>
<td>2E-1</td>
<td>4.27</td>
<td></td>
<td>61.8</td>
</tr>
<tr>
<td>Total</td>
<td>200.79</td>
<td>13.96</td>
<td>1,020.35</td>
</tr>
</tbody>
</table>
Figure 5.2: Scenic easements acquired before 1961 and following the 1961 Act.
Table 5.9: Scenic Easements (Acres) acquired as individual tracts in fee simple by the Blue Ridge Parkway.

<table>
<thead>
<tr>
<th>Scenic Easement No.</th>
<th>Original Acres Of SE</th>
<th>Acres Acquired</th>
<th>Acres Remaining in SE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1H</td>
<td>5.44</td>
<td>5.44</td>
<td>0</td>
</tr>
<tr>
<td>1Q-4</td>
<td>14.87</td>
<td>14.87</td>
<td>0</td>
</tr>
<tr>
<td>1R-5</td>
<td>0.28</td>
<td>0.28</td>
<td>0</td>
</tr>
<tr>
<td>1R-10</td>
<td>8.63</td>
<td>8.63</td>
<td>0</td>
</tr>
<tr>
<td>1S-Boyd</td>
<td>5.56</td>
<td>5.56</td>
<td>0</td>
</tr>
<tr>
<td>1U-1</td>
<td>3.03</td>
<td>3.03</td>
<td>0</td>
</tr>
<tr>
<td>2C-6</td>
<td>1.98</td>
<td>1.98</td>
<td>0</td>
</tr>
<tr>
<td>2C-7</td>
<td>7.10</td>
<td>7.10</td>
<td>0</td>
</tr>
<tr>
<td>2D-2</td>
<td>0.14</td>
<td>0.14</td>
<td>0</td>
</tr>
<tr>
<td>2D-22</td>
<td>10.22</td>
<td>5.6</td>
<td>4.62</td>
</tr>
<tr>
<td>2E-6</td>
<td>14.05</td>
<td>14.05</td>
<td>0</td>
</tr>
<tr>
<td>2E-7</td>
<td>18.19</td>
<td>18.19</td>
<td>0</td>
</tr>
<tr>
<td>2E-24</td>
<td>13.25</td>
<td>1.45</td>
<td>11.8</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>102.74</strong></td>
<td><strong>86.32</strong></td>
<td><strong>16.42</strong></td>
</tr>
</tbody>
</table>
Table 5.10: Scenic easements acquired by the Blue Ridge Parkway between 1967 and 2008.

<table>
<thead>
<tr>
<th>Grantor</th>
<th>Year Easement Acquired</th>
<th>Acres</th>
<th>Location</th>
<th>Acquisition Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yelanjin</td>
<td>1967</td>
<td>79</td>
<td>Ashe County, NC</td>
<td>Donated to NPS</td>
</tr>
<tr>
<td>Sterling Carroll</td>
<td>1998</td>
<td>34.81</td>
<td>Watauga County, NC</td>
<td>NPS acquired highly restrictive scenic easement for $190,000 from Conservation Trust for NC</td>
</tr>
<tr>
<td>Sterling Carroll</td>
<td>1998</td>
<td>12.08</td>
<td>Watauga County, NC</td>
<td>Donated to NPS by Conservation Trust for NC. Easement permits a house, barn and outbuilding.</td>
</tr>
<tr>
<td>David Grove</td>
<td>2003</td>
<td>60.85</td>
<td>Carroll County, VA</td>
<td>Easement purchased by NPS for $241,400.</td>
</tr>
<tr>
<td>Rockydale Quarries Corp</td>
<td>2008</td>
<td>9.47</td>
<td>Roanoke City, VA</td>
<td>Donated to NPS.</td>
</tr>
</tbody>
</table>
In 2003, the National Park Service acquired a 60.85 acre scenic easement from David Grove in Carroll County, VA at a price of 241,400 in order to preserve the rural farm scene along the parkway near milepost 207. In 2008, in order to mitigate an encroachment onto NPS lands by the Rockydale Stone Quarry in Roanoke City, VA Rockydale Quarries Corporation donated a 9.47 acre scenic easement to the Blue Ridge Parkway below Gum Springs Overlook.

### 5.4 Scenic Easement Deeds:

A deed is a written instrument that provides for the transfer of real property or interests in real property (Byers and Ponte 2005, p. 385). Scenic and conservation easements both describe “interests” in real property. Bick and Haney (2001) divide the deeds of conservation easements into 5 general “interrelated” categories:

- The boilerplate or preamble
- Affirmative rights
- Easement restrictions
- Reserved rights
- Terms and conditions

The boilerplate includes the purpose for acquiring the conservation easement (e.g. a statement of the properties significance). Affirmative rights are those rights that the grantee (agency or land trust) are permitted to carry out on the easement. Contemporary conservation deeds generally permit the grantee access to the easement (with advance notice) to carry out periodic inspections of the property to insure the terms and conditions of the easement are being met. In addition, land trusts often reserve the right to enter the property in order to investigate violations of the easement terms or to implement mitigating actions to correct violations.

Easement restrictions include the actions or activities that the grantor is prohibited from carrying out on the property as a result of the conservation easement. Common restrictions include prohibitions against subdividing the easement, oil, mineral and gas extraction, timbering or otherwise removing vegetation, dumping of trash or refuse, installation of billboards, maintaining cattle feedlots and the construction of houses, commercial buildings or other structures (unless specifically reserved by the grantor).

Reserved rights provide for the grantor to carry out current and future activities within the easement. Grantor’s frequently reserve the right to carry out agricultural or farming operations, the right to harvest timber (with an approved Forest Plan), and the right to construct a future home (usually within an established “building envelop”).
Terms and conditions include qualifying statements to insure that a donated conservation easement meets all of the provisions necessary for qualifying for Internal Revenue Service (IRS) tax relief guidelines. It may also include instructions for the grantor on how to notify the grantee of any proposed changes or alterations to the easement or the easement agreement and the procedure under which the easement deed may be amended. Deeds also generally include a legal description and survey of the property encumbered by the easement.

5.5: Blue Ridge Parkway Deed Instruments

In Virginia, scenic easements were conveyed using two types of deed instruments. Individual properties were acquired by the Commonwealth of Virginia through negotiation with individual landowners or through condemnation. The resulting deeds between the Commonwealth and the landowners were subsequently filed in the appropriate county courthouse.

Following acquisition of the parkway right-of-way the Commonwealth and the NPS prepared a final composite deed for each of the administrative sections of the Parkway to transfer properties from Virginia to the National Park Service. Composite deeds were based on individual parkway sections numbered 1-B through 1-W. Each section encompasses approximately 7-10 miles of the Parkway motor road. Table 5.11 summarizes the acreage of the 22 composite deeds that conveyed scenic easements to the Blue Ridge Parkway. For example, Blue Ridge Parkway Deed No. 21 transferred 628.20 acres in fee simple and 36.14 acres in Scenic Easements in section 1-T (milepost 174.2 – 183.5) to the USA.

Composite deeds include a description of the provisions/Acts creating the Blue Ridge Parkway as well as the definition of the Scenic Easement restrictions as described by the March 12, 1936 Act (Chapter 163, Acts 1936) and the 1938 Amended Act. The deed lists/describes by metes and bounds all of the parkway fee simple right of way conveyed by the deed. The deed also includes a brief description of private deed reserved roads, state road easements, deed reserved water sources, cattle lanes and similar easements maintained by the original landowner and their successors in title. Finally, the composite deed describes each of the scenic easements including metes and bounds and acres conveyed.

North Carolina’s land (scenic easement) acquisition process of posting maps at each of the individual county courthouses did not require State Highway Department officials to file a deed or any public record with the appropriate county Clerk of Court confirming the transfer of
scenic easements or fee simple lands. Legal descriptions of individual scenic easements along with the easement restrictions adopted by North Carolina’s 1937 Scenic Easement Act however were recorded in the composite deeds transferring scenic easements and fee simple lands from North Carolina to the Federal Government. North Carolina used the same composite deeds to convey the fee simple right-of-way to the National Park Service for each of the administrative sections of the Parkway (numbered 2A through 2W). North Carolina’s composite deeds, like Virginia includes a description of each of the scenic easements conveyed including metes & bounds, name of the Grantor & acreage conveyed. As shown in Table 5.11, Blue Ridge Parkway Deed No. 2 transferred 843.13 acres in fee simple land and 49.75 acres of scenic easements in Alleghany and Wilkes County, NC to the USA.

5.6: Virginia Scenic Easement Deeds:

Copies of Virginia’s scenic easement deeds were acquired from County Clerk’s Offices in each of the counties along the Parkway containing scenic easements. In some cases, park records recorded deed book and page numbers. In other cases, deeds were found by searching Grantee and Grantor indexes.

Deeds were then examined to determine (1) if the scenic easement was acquired under the 1936 Scenic Easement Act or the 1938 Scenic Easement Amendment and (2) whether easements were obtained through negotiation with the landowner or through court ordered condemnation (scenic easement judgment).

Copies of deeds were obtained for 41 out of the 48 (85%) scenic easements acquired for the Blue Ridge Parkway by the Commonwealth of Virginia. This dataset was split into 3 groups: scenic easements acquired through condemnation and recorded as a scenic easement judgment under the 1936 Act (1936 Judgment); scenic easements acquired through negotiation under the 1936 Act and recorded in a deed (1936 Deed); and scenic easements acquired through condemnation and recorded as a scenic easement judgment under the 1938 Amendment (1938 Judgment). From the documents and records examined for this research, it appears that no easements were acquired through negotiation under the 1938 Act.
Table: 5.11: Acres of scenic easements conveyed by composite deed and Blue Ridge Parkway administrative section.

<table>
<thead>
<tr>
<th>Administrative Section</th>
<th>Deed No.</th>
<th>Acres of scenic easement conveyed by the deed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-B</td>
<td>26</td>
<td>2.38</td>
</tr>
<tr>
<td>1-C</td>
<td>24</td>
<td>5.92</td>
</tr>
<tr>
<td>1-E</td>
<td>30</td>
<td>38.44</td>
</tr>
<tr>
<td>1-H</td>
<td>32</td>
<td>5.44</td>
</tr>
<tr>
<td>1-P</td>
<td>22</td>
<td>30.73</td>
</tr>
<tr>
<td>1-Q</td>
<td>23</td>
<td>71.02</td>
</tr>
<tr>
<td>1-R</td>
<td>19</td>
<td>105.06</td>
</tr>
<tr>
<td>1-S</td>
<td>20</td>
<td>90.14</td>
</tr>
<tr>
<td>1-T</td>
<td>21</td>
<td>36.14</td>
</tr>
<tr>
<td>1-U</td>
<td>16</td>
<td>8.67</td>
</tr>
<tr>
<td>1-V</td>
<td>17</td>
<td>9.09</td>
</tr>
<tr>
<td>1-W</td>
<td>18</td>
<td>2.01</td>
</tr>
<tr>
<td>2-A</td>
<td>1</td>
<td>123.0</td>
</tr>
<tr>
<td>2-B</td>
<td>2</td>
<td>49.75</td>
</tr>
<tr>
<td>2-C</td>
<td>3</td>
<td>129.74</td>
</tr>
<tr>
<td>2-D</td>
<td>4</td>
<td>129.29</td>
</tr>
<tr>
<td>2-E</td>
<td>5</td>
<td>255.31</td>
</tr>
<tr>
<td>2-F</td>
<td>29</td>
<td>50.6</td>
</tr>
<tr>
<td>2-J</td>
<td>90</td>
<td>18.33</td>
</tr>
<tr>
<td>2-K</td>
<td>108</td>
<td>12.43</td>
</tr>
<tr>
<td>2-L</td>
<td>12</td>
<td>159.96</td>
</tr>
<tr>
<td>2-M</td>
<td>6</td>
<td>7.41</td>
</tr>
<tr>
<td><strong>Total Acres</strong></td>
<td></td>
<td><strong>1,340.86</strong></td>
</tr>
</tbody>
</table>
Table 5.12: Number of scenic easements acquired for the Parkway in Virginia by Acquisition Method and Scenic Easement Act.

<table>
<thead>
<tr>
<th>Acquisition Method/Act</th>
<th>Total (#)</th>
<th>Percent (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>VA 1936 Judgment</td>
<td>6</td>
<td>15%</td>
</tr>
<tr>
<td>VA 1936 Deed</td>
<td>27</td>
<td>66%</td>
</tr>
<tr>
<td>VA 1938 Judgment</td>
<td>8</td>
<td>19%</td>
</tr>
</tbody>
</table>
Thirty-three (33) (80%) of the scenic easements acquired by Virginia were acquired under the 1936 Scenic Easement Act. Of these, 6 (18%) were acquired through condemnation or court ordered judgments (1936 Judgment) and 27 (82%) were acquired through direct negotiations with landowners (1936 Deed) (Table 5.12). Eight (8) scenic easements were acquired through condemnation under the 1938 Amendment (1938 Act).

**1936 Scenic Easement Judgment:**

A total of 6 scenic easements were acquired through court ordered condemnation under the 1936 Act (Chapter 163, Acts 1936). The deeds for these 6 easements consist of the Report of Commissioners—a group of 5-10 individuals appointed and sworn in by the local County Court to assess a landowner’s claim of damages as well as any potential damages to the landowner’s remaining (residue) property. In general, these deeds are only 2-3 pages in length. While the deeds vary depending upon the County in which the deed was prepared and filed the deeds all contain the following common elements: an introductory paragraph that lists the names of the commissioners appointed by the court and the purpose of their appointment; a description of the parcel of land in question; the Easement Act under which the scenic easement to be taken is defined; and a discussion of the findings of the commission which usually includes not only the “just compensation” for the taking of the scenic easement, but also damage awards to the residue or adjacent property owned by the grantor.

Another common element of the 6 deeds examined under this dataset is that the deeds do not include a list of the actual scenic easement restrictions in the deed between the landowner and the Commonwealth. In order to view the deed restrictions, one must refer back to either the 1936 Scenic Easement Act (Chapter 163, Acts 1936) for a description of the deed restrictions or to the Composite Deed (deed of transfer) between the Commonwealth of Virginia and the USA, which includes the text and scenic easement restrictions of both the 1936 Scenic Easement Act and the Amended Act (Chapter 389, Acts 1938).

All of the scenic easement restrictions in this dataset are identical to the scenic easement restrictions defined by the 1936 Act as shown in Table 5.13. Specifically, easements acquired by judgment under the 1936 Act do not permit landowners to erect any building, structure, utility
Table 5.13: Restrictions found in scenic easements acquired under the 1936 Scenic Easement Act through condemnation (judgment) (n=6).

<table>
<thead>
<tr>
<th>Development Restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shall not have the privilege or right to erect or authorize the erection of any building, pole, poleline or other structure</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Roads</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shall not have the privilege or right to construct thereon any private drive or road; shall not have the privilege or right to require the Commonwealth of Virginia or its assigns to construct any access Road or drive thereon</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Vegetation Management</th>
</tr>
</thead>
<tbody>
<tr>
<td>shall not have the privilege or right to remove from or break, cut, injure or destroy on the said land any trees, plants or shrubbery</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Dumps &amp; Ashes</th>
</tr>
</thead>
<tbody>
<tr>
<td>shall not have the privilege or right to place thereon any dumps of ashes, trash, sawdust or any unsightly or offensive material</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Signs</th>
</tr>
</thead>
<tbody>
<tr>
<td>shall not have the privilege or right to place or display thereon any sign, billboard or advertisement</td>
</tr>
</tbody>
</table>
pole or line. Further the 1936 judgment deeds do not permit any removal of vegetation or the construction of any road upon the easement. Scenic easements within this group are the most restrictive of the Blue Ridge Parkway’s scenic easements.

Two of the scenic easements acquired under by 1936 Judgment contained exceptions in the body of the deed that permitted landowners to use existing farm roads. All 6 scenic easements acquired under the 1936 Act contained rudimentary Intent & Purpose statements. Five of the 6 intent & purpose statements stated that the objective of the deed was to convey and grant a scenic easement as defined by “Chapter 163 of the Acts of the General Assembly of Virginia 1936…” The judgment deed for scenic easement No. 1V-2 in Carroll County, Virginia is much more vague and states only that the “Commonwealth of Virginia shall be vested in such rights in the said 0.83 acres acquired by scenic easement as prescribed by law and in the said petition filed herein by said State Highway Commissioner of Virginia.” None of the deeds in this group had any affirmative rights reserved to the Grantee.

1936 Deed

Twenty-seven (27) of the scenic easements acquired under the 1936 Act restrictions were acquired by the Commonwealth of Virginia through direct negotiations with landowners. Unlike the scenic easements acquired by court judgment, the easements acquired under the 1936 act through negotiation resulted in a more complete deed that lists the restrictions in the body of the deed itself. These restrictions while based upon the 1936 Scenic Easement Act restrictions are looser than those found in the 1936 Act.

The 1936 Deed restrictions prohibit the construction of most structures, but make an exception for farm buildings, which may be constructed or altered with the approval of the grantee. However the deed does not include a definition of what constitutes a “farm building.” In addition, roads may be constructed with the approval of the grantee, and trees and shrubs may be cut or removed with the consent and approval of the grantee. Specific language in the deed varied somewhat based upon the County the deed was acquired in and the date of acquisition (Table 5.14).

There were several variations in the deed restrictions concerning vegetation removal. Twenty-two (81%) of the deeds in this category prohibit the removal, cutting, injury or destruction of “trees, plants or shrubbery thereon.” However, the deed of two easements (1R-1A
“It is further understood and agreed that no mature or stable trees or shrubs shall be removed or destroyed on such land without 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 or residential maintenance, and except that cultivated crops, including orchard fruits, may be pruned, sprayed, harvested, and otherwise maintained in accordance with good farm practice...”

Figure 5.3: Qualifier statement for Scenic Easement No’s 1A & 1B in Section 1R.
Table 5.14: Restrictions found in scenic easements acquired under the 1936 Scenic Easement Act through negotiations with individual landowners (1936 Deed) (n=27).

<table>
<thead>
<tr>
<th>Development Restrictions</th>
<th>Total</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>no building, pole, pole line or other structure shall be erected, except that farm buildings may be erected or altered with the consent and approval of the grantee or its assigns</td>
<td>27</td>
<td>100%</td>
</tr>
</tbody>
</table>

**Roads**

that no road or private drive shall be constructed thereon except with the consent and approval of the grantee or its assigns, that the Commonwealth of Virginia or its assigns shall not be required to construct any road or private drive thereon | 26    | 96%     |

that no private drive shall be constructed thereon except with the approval and consent of the grantee or its assigns; that the Commonwealth of Virginia or its assigns shall not be required to construct any road or private drive thereon | 1     | 4%      |

**Vegetation Management**

that no trees, plants or shrubbery thereon be removed therefrom, cut, injured or destroyed except with the consent and approval of the grantee or its assigns | 22*   | 81%     |

that no trees or shrubbery thereon be removed, cut, injured, or destroyed except with the consent and approval of the grantee or its assigns | 4     | 15%     |

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 farm practice | 1     | 4%      |

**Dumps & Ashes**

that no dumps of ashes, trash, sawdust or any unsightly or offensive material shall be placed thereon | 27    | 100%    |

**Signs**

that no sign, billboard or advertisement shall be placed thereon, except one sign not greater than 18 inches by 24 inches advertising the sale of the property or products raised thereon. | 27    | 100%    |

**Two scenic easements (1R-1A and 1R-1B) contain a qualifier later in the deed that states: “It is further understood and agreed that no mature or stable trees or shrubs shall be removed or destroyed on such land without 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 or residential maintenance, and except that cultivated crops, including orchard fruits, may be pruned, sprayed, harvested, and otherwise maintained in accordance with good farm practice…”**
& 1R-1B) has a qualifier statement later in the body of the deed that makes an additional exception that allows cultivated crops including orchard fruits to be trimmed, sprayed (presumably with pesticides) harvested and otherwise maintained as a part of routine “good” farm maintenance (Figure 5.3).

This language is identical to the restrictions used in the 1938 Scenic Easement Amendment. No explanation was found in any of the files reviewed for the inclusion of this language, though it’s likely that the exception was included at the request of the grantor (Note that the 1938 Amendment includes language that allowed Virginia Highway officials to negotiate certain elements of the deed restrictions as necessary).

Twenty-six (26) of the deeds in this category prohibit the cutting/removal of all trees, plants or shrubs from the easement. One deed in this category prohibits the “cutting of mature or stable [emphasis added] trees and shrubs” without the approval of the grantee and also makes exceptions seedling trees and shrubs as well as for fruit and orchard trees in the body of the restrictions. This particular deed for scenic easement No. 2, section 1T located on the west (or Left) side of the Parkway motor road was not signed until March 1, 1938—just a matter of weeks before the 1938 Amendment took effect. The deed however does not attempt to define what constitutes “mature or stable trees” or “seedling” trees and shrubs.

Only one scenic easement in the 41 deeds examined for this study contained an affirmative right reserved for the National Park Service. The deed for scenic easement 1R-8 located in Floyd County, Virginia provided the National Park Service with the following affirmative right:

“It is understood and agreed between the parties to this deed that the grantee or its assigns shall have the right at times hereafter to enter upon the above described tract or parcel of land and plant trees, flowers, or shrubs and shall have the right to maintain and care for such trees, flowers, or shrubs.”

A memo written in April 1937 by Acting NPS Director A.E. Demaray provides some explanation for the NPS reserving the right to enter upon the scenic easement:

“In further explanation of the right which the Government reserves through the scenic easement to enter upon the property for purposes of removing and trimming trees, plants, and shrubbery, the National Park Service’s purpose may be generally explained as follows:
1. Planting of an occasional shade tree where it will benefit the appearance of the landscape and provide desirable shade for cattle feeding on said property.  
2. Planting of material to aid in control of erosion on pasture areas.

*It is not the intention of the National Park Service, nor would the courts allow entrance upon the property of a private individual for work that would essentially change the character of the land for the use to which the owner wishes to put it...”*

The restrictions in this category for dumps, ashes and signs are identical to those found in the deeds for easements acquired through scenic easement judgments under the 1936 act.

One of the scenic easements acquired under the 1936 Deed is on land owned by the Bluemont Presbyterian Church in Carroll County, Virginia. During the acquisition process for this easement, Church officials expressed concern that the scenic easement restrictions would unduly impact maintenance and future growth of the church. After Virginia Department of Highway officials consulted with National Park Service Landscape Architects, additional language was inserted into the deed allowing for several exceptions (Figure 5.2) which permitted the church to erect and alter “church buildings” with the consent and approval of the grantee; to plant and remove flowers, shrubs and trees, and to install a sign with the church name. The above exceptions remain in effect as long as the easement is used for “church purposes.”

---

**Figure 5.4. Additional exceptions provided to the Bluemont Presbyterian Church in the Scenic Easement Deed.**

Fifteen (15) of the 27 deeds (56%) contained a very general intent and purpose statement—almost identical to the statement contained in the 1936 Act Scenic Easement Judgments.

“The intent and purpose of this deed is to convey and grant unto the grantee a scenic easement as defined in Chapter 163 of the Acts of General Assembly of 1936, over and upon the above described parcel of land.”
Easement restrictions regarding construction of roads was nearly identical in all of the 27 scenic easements acquired by 1936 deed language. The easements prohibit construction of roads and/or private driveways without the consent of grantee. In addition, the Commonwealth of Virginia added additional language stating that landowners could not require the Commonwealth to construct roads within the scenic easement. Eleven (11) of the 27 scenic easement deeds however, do contain a reserved right providing the grantor (landowner) the right to utilize existing private roads, driveways or farm roads connecting to or crossing the Blue Ridge Parkway motor road to reach adjacent private lands or state roads (Figure 5.5).

```
"that no road or private drive shall be constructed thereon except with the consent and approval of the grantee or its assigns, provided, however, that existing farm roads may be used; that the Commonwealth of Virginia or its assigns shall not be required to construct any road or private drive thereon."
```

Figure 5.5: Reserved right providing scenic easement holders the right to utilize existing farm roads within the easement.

1938 Amendment: Eight scenic easements were acquired by the Commonwealth of Virginia under the 1938 Amended Act through court-ordered condemnation/scenic easement judgments. The restrictions found in the deed are listed in Table 5.4. Like, the restrictions for the easements acquired under the 1936 judgment one, must go to the actual 1938 Amended Act to find the deed restrictions. No restrictions were recorded in the deeds created by the Scenic Easement Judgment.

Like the easements acquired under the 1936 Act through condemnation, the deeds for the 8 scenic easements in this group easements consist largely of the Report of Commissioners. While the deeds vary depending upon the County in which the deed was prepared and filed the deeds all contain the following common elements: an introductory paragraph that lists the names of the commissioners appointed by the court and the purpose of their appointment; a description of the parcel of land in question; and a discussion of the findings of the commission including the “just compensation” for the taking of the scenic easement and damage award to the residue or adjacent property owned by the grantor. Only 4 of the scenic easements (all located in Section 1-S) in this set contained a reference to the scenic easement act under which the easement was acquired. The four scenic easements in Section 1S that were acquired through Scenic Easement Judgment under the 1938 Amendment all include the following identical statement:
“We, the undersigned, W.R. Pugh, P.R. Williams, R.L. Slusher, Z.D. Lester and W.H. Blackwell, Commissioners appointed by the Circuit Court of the County of Floyd in the State of Virginia, on the 10th day of May 1938, to ascertain what will be a just compensation for the scenic easement, as defined in Chapter 389 of the Act of the General Assembly of Virginia of 1938…”

The remaining 4 scenic easements in this group all described the scenic easements in the respective judgments “as provided by statute.” In each case the Report of Commissioners was dated 1938. The issue over the statutory definition of a scenic easement was clarified by the U.S. Solicitor’s Office in 2001, when in response to a residential home and driveway constructed on scenic easement No. IV-3 in violation of the easement restrictions, the U.S. Solicitor stated that: “The 1936 Act and the 1938 amendment both intended that the statutory definition of a scenic easement would apply if the deed or condemnation did not have a specific description of the easement conveyed” (Shea 2001).

As a result, in the case of the eight scenic easements acquired through condemnation in 1938, while the judgment orders do not specifically state the easement restrictions, the easement statutes provide that the easements are defined under the 1938 amendment.

The scenic easement restrictions as defined by the 1938 amendment are listed in Table 5.15. The restrictions found in the 1938 amendment are somewhat broader than those found in the 1936 Act Judgment deeds. Landowners holding scenic easements defined under the 1938 amendment are permitted to construct residential and farm related buildings on the easements. Landowners are not permitted to construct new commercial buildings, industrial or commercial structures, power lines, power poles or commercial structures. However the easement permits landowners to alter existing commercial buildings or to otherwise improve the property for the purpose of continuing the present established use or other use with the consent of the NPS.

Assistant Field Solicitor with the Department of Interior’s Knoxville, TN Field Office, Courtney Shea (1997), at the request of the Parkway, attempted to clarify what kinds of structures could be built “for farm and residential purposes” on scenic easements acquired under the 1938 amendment. Her response to the NPS stated that

“You have also asked what kinds of structures can be built for farm and residential purposes. Buildings which are not commercial, but which allow the landowners to live on or farm the land in question, would arguably be permissible. Construction of a subdivision would arguably be commercial in nature and would thus be an infringement of the easement.
Table 5.15: Scenic easement restrictions provided for in the deeds for easements acquired through scenic easement judgment/condemnation under the 1938 Amended Scenic Easement Act.

| Structures: | “shall not have the privilege or right to (1) erect or authorize the erection of any building, pole line or other structure, except for farm or residential purposes, (2) 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 of Virginia, or its grantee or assign.” |
| Roads: | “shall not have the privilege or right (3) to construct thereon any private drive or road, except with the consent and approval of the Commonwealth of Virginia or its grantee or assignee, shall not have the privilege or right (4) to require the Commonwealth of Virginia or its assigns to construct any access road or drive thereon.” |
| Vegetation: | “shall not have the privilege or right 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, it grantee or assignee; except such seedling shrubbery or seedling trees as may be grubbed up or cut down in accordance with usual farm practice or residential maintenance, and except cultivated crops, including orchard fruits, may be pruned, sprayed, harvested or otherwise maintained in accordance with usual farming practice...” |
| Dumps: | “shall not have the privilege or right to place thereon any dumps of ashes, trash, sawdust or any unsightly or offensive material...” |
| Signs: | “shall not have the privilege or right to place or display thereon any signs, billboards or advertisement, except that one sign not greater than eighteen inches by twenty-four inches advertising the sale of the property or produce raised upon it.” |
A related question is whether the Park Service has any control over site plans or colors of farm and residential structures. This deed does not give the Park Service authority to approve designs and colors. If a landowner constructs a building with a commercial appearance, it would, arguably, violate the intent of the easement. However, NPS does not have the authority to approve plans.”

Under the 1938 amendment, landowners are not permitted to construct a private drive or road on the easement unless they have obtained permission from the NPS beforehand. Shea (1997) also attempted to clarify the restriction on roads in the 1938 amendment for the NPS:

“You have also asked whether the restrictions on roads is inconsistent with the permission to build farm and residential structures. The intent of this deed is to allow the landowner some uses of the land such as farming and building a home. Such a use may also require a road or driveway. In my opinion, a court looking at this deed would expect the United States to allow construction of roads or driveways needed for access to a house or farm. The United States could certainly seek to change locations to preserve or enhance its interest in the land.

If we have proof that an unauthorized road is being constructed, then the United States could seek an injunction to enforce the terms of the easement.”

The 1938 amendment also restricts landowners from cutting, damaging, injuring, or otherwise destroying any “mature or stable trees or shrubs” without the consent of the NPS. However, the deed allows landowners to remove or cut “seedling shrubbery or seedling trees” in “accordance with usual farm or residential maintenance” and further allows landowners to harvest, spray or prune cultivated crops and orchard trees—a much broader use of the easement than provided for under the 1936 Act.

In April 1937, the NPS at the request of Parkway officials and State Highway Departments issued the following interpretation of the “Scenic Easements, Clause “C” dealing with the removal of so called seedling vegetation removal:

“Since it is the intent of the scenic easement to permit continued use of such areas by the owner for farm purposes, the National Park Service interprets clause “C” under ‘Scenic Easements’ as follows where it applies to pasture lands:

‘Such seedling shrubbery and trees as may crop up from parent plants each year may be grubbed up or cut down in accordance with the principles of good pasture practice. It is recognized that left to natural conditions a regeneration of plant growth on pasture lands would eventually usurp a substantial part of the acreage involved. No shrubs or trees or other plant material which has reached mature or stable growth (that beyond seedling stage) should be removed. Prior to any cutting on such pasturage a representative of the
State Right-of-Way Department or of the Federal Government should go over the
condition on the ground with the owner in order that misunderstandings may be
avoided.”

The remaining two restrictions—prohibitions against dumps, signs, and billboards,
extecting that the landowner is permitted to install one sign not to exceed 18 X 24” advertising
for the sale of the property or produce or raised upon it are identical to the restrictions found in
the 1936 Act.

Each of the 8 scenic easements acquired under the 1938 Amendment contained
“qualifier” statements which permitted landowners to utilize existing farm roads and private
drives on the scenic easement. The four easements in this group in Section 1S (Deed No. XX)
all contain the following a statement which permitted landowners to use existing private farm
roads, provided that they do not exceed 10 feet. These four easements also allow landowners to
erect gates or fences with the consent and approval of the NPS and provided that the gates do not
span the roads for more than 14 ft.

Scenic easement 1U (no # assigned) provided the heirs of T.Y. Weddle and subsequent
owners “to build, construct, maintain and use one private drive or road not exceeding ten (10)
feet in width from adjoining land on West Right side to Route C-633 and to Route C-639.”
Scenic easement 1V-1 provided for the landowner and subsequent owners to use the existing
private farm roads provided that the road was constructed without expense of the condemnee.
The judgment order further stipulated that the driving surface should not exceed a maximum of
14 ft including a 10 ft wide travel surface and a two foot shoulder on each side of the road.
Scenic easement 1V-3 and 1W-1 also provided their landowners and subsequent owners to use
existing private “farm” roads on the scenic easement.

One of the scenic easements in this group, 1W-1, included the Mt Carroll Methodist
Church. In 1939, the Virginia Department of Highways was in the process of closing the deed to
the one acre scenic easement over the Mt. Carroll Methodist Church. The Church expressed
similar concerns to those expressed by the membership of the Bluemont Church. Consequently,
Senior Highway Engineer M.F. Woltz proposed incorporating provisions similar to those granted
to the Bluemont Church which provided that church buildings could be erected or altered on the
easement with the consent and approval of the NPS; that the church could plant and remove
flowers and shrubbery on church grounds and could erect a sign not exceeding 30 X 48”
welcoming visitors to the church. However, after discussions with the Parkway, it was determined that the NPS had already accepted title to lands in section 1W, including the scenic easement on the Mt. Carroll Church and as a result the only way to incorporate the modifications suggested by Mr. Woltz was through a deed of correction. Instead, Superintendent Abbott (1937) sent church officials a letter in an attempt to assure church officials that the park would not overly interfere with church operations:

“…you may be sure that is not the intention of the National Park Service to hinder in any unnecessary way the work of the Church and I am glad to make the following comments with regard to the existing problems which Mr. Woltz advises us are of concern to you.

(1) That the Church authorities may plant and remove such flowers and shrubbery as they wish to beautify the Church property and there is no need for obtaining approval of the National Park Service to such usual and desirable maintenance of property. It is only our desire through the easement to prevent the cutting of large or mature trees which I fee sure the Church as well would not want to do.

(2) It is not the intention of the National Park Service to prevent proper repairs or minor alterations being made to the Church building and such work may be done without this Service’s approval. In the case of the erection of additional buildings, however, in accordance with the agreement, we would expect an opportunity to discuss this work with representatives of the Church and possibly to offer suggestions regarding it.”

5.7: North Carolina’s Scenic Easements

As previously discussed, North Carolina’s process of condemnation did not require the State Highway Commission to file a deed in the local County Courthouse. The result, all too often in North Carolina is that landowners—even with the benefit of a title search—acquire property encumbered by scenic easements without any knowledge of the existence of the Parkway’s scenic easement restrictions. The easement restrictions are based upon the North Carolina Scenic Easement Statute and are listed in Table 5.16.

The only deed instrument utilized by North Carolina was the Composite Deeds used to convey fee simple right-of-way & scenic easements to the National Park Service. Like the composite deeds utilized by Virginia, North Carolina’s Composite Deeds include a brief statement regarding the purpose of the land transfer, a description (metes & bounds) of the right-of-way conveyed, a description of the scenic easements and the restrictions conveyed to the USA, and a description of other easements provided including deed reserved private roads, state
Table 5.16: North Carolina Scenic Easement Restrictions

(a) That no buildings, pole lines and structures may be erected on such land only for farm and residential purposes. New buildings or major alterations shall be subject to the prior approval of the National Park Service. No commercial buildings, power lines, or other industrial or commercial structures may 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 materials shall be placed upon such land.

(d) That no sign, billboard, or advertisement shall be displayed or placed on such land, except one sign not greater than eighteen inches by twenty-four inches advertising the sale of the property or products raised upon it.
road right-of-ways, deeded cattle lanes and water accesses. Finally the composite deeds conclude with a variety of terms and conditions provided/maintained by the state of North Carolina.

North Carolina’s scenic easement restrictions have been called a diluted version of Virginia’s Scenic Easement restrictions. However, in practice NC’s restrictions are not all that unsimilar to the restrictions found in Virginia’s 1938 amendment. And in at least one key area, North Carolina’s restrictions may be stricter than the 1938 amendment. North Carolina’s scenic easements provide that no buildings, utility lines and poles and other structures can be erected on easements except for farm and residential purposes and that new buildings or “major alterations shall be subject to prior approval of the National Park Service.” Virginia’s deeds do not specifically address the issue of altering existing structures. The language concerning commercial structures is nearly identical to Virginia’s and provides that no commercial buildings, power lines or commercial or industrial structures may be erected within the scenic easements. Like Virginia’s easements, North Carolina allows landowners to alter existing commercial structures or otherwise “improved for the purpose of continuing established use after plans have been approved by the National Park Service.”

In 1973, Field Solicitor Curtis Bell provided the National Park Service an interpretation of North Carolina’s scenic easement restrictions as they pertained to farm and residential structures on the Blue Ridge Parkway:

“Under the provisions of the conveyances of scenic easements in North Carolina, the United States cannot flatly deny a request for authorization or permission to construct new farm and residential buildings on the lands covered by easements, nor can the United States flatly deny a request for authorization or permission to alter existing buildings, whatever the type, on these lands.

Under the provision of the conveyance of scenic easements which makes new farm and residential buildings and major alterations to existing buildings subject to the prior approval of the National Park Service, the service could, in my opinion, impose such conditions and restrictions on the construction and alteration of such buildings as are not unreasonable in light of present day ecological and aesthetic standards….  

…No definite rule can be stated as to what may be considered a reasonable use as distinguished from an unreasonable use. The question is usually one of fact, to be determined in the light of the situation of the property and the surrounding circumstances.”
North Carolina’s restrictions regarding removal/maintenance of vegetation, dumps, and
the erection of signs is identical to the language/restrictions found in Virginia’s 1938
Amendment. The most striking difference in North Carolina’s scenic easement restrictions is
that North Carolina does not prohibit the construction of roads on scenic easements, and does not
even give park officials the capacity to review proposals regarding new roads on the scenic
easements. No authoritative explanation was found for the justification for not including the
construction of new roads under the list of restrictions in North Carolina’s scenic easements.

5.8: Affirmative Rights:

Contemporary conservation easements usually provide the grantee with some
administrative “affirmative” rights that allow the grantee to carry out certain actions or activities
within an easement. Traditionally land trusts include affirmative rights in the negotiation process
that allows them to enter onto the easement (usually with adequate advance notice to the
Grantor) in order to periodically inspect the easement and/or to investigate/enforce violations of
the easement terms. Affirmative rights (with the exception of the one provided for scenic
easement No. 8, Section 1R) were not reserved for the National Park Service as part of the deeds
to the scenic easements acquired for the Blue Ridge Parkway.

This oversight quickly became apparent in the mid-1940’s when parkway staff members
undertook a systematic program to survey and mark the boundaries of scenic easements in
Section 2-A (Alleghany County, NC) of the Parkway. In December 1945, Mr. F.G. Wright, then
owner of scenic easement No. 5, Section 2A proposed to build a service station within the
easement. Fearing that the landowner would follow through with his proposal and not knowing
the exact location of the easement boundaries, park officials made arrangements to have the
boundary surveyed and the corners monumented. Mr. Wright however strenuously objected to
park officials marking the boundaries of the easement. Park officials subsequently checked with
the Assistant District Attorney regarding their rights to survey the boundaries of the scenic
easement.

In December 1946 the NPS was informed that the scenic easements did not provide the
Parkway authority to survey and monument the scenic easements. A letter dated 20 December
1946 to Ranger Griggs from Chief Ranger B.T. Campbell (1946) states:

“As the property owner objected to these corners being set at an earlier date, I checked
the matter with the District Attorney’s office. For your confidential information Mr. Roy Rush,
Assistant District Attorney, stated that in his opinion the scenic easement act in no way granted
employees of the Federal Government the right to set monuments on private lands subject to scenic easement restrictions."

As a result, it is highly very unlikely that the National Park Service even has the authority—unless granted by the landowner—to enter upon scenic easements to investigate possible encroachments and violations of the easement terms.

5.9: Conclusions

Deeds: The deeds utilized by the Commonwealth of Virginia, North Carolina and the Blue Ridge Parkway generally do not meet the standards of modern day conservation easements. In general, deeds conveying scenic easements to the NPS in Virginia lacked any statement or purpose, with one exception did not include any affirmative rights and do not to adequately define the restrictions contained within the deeds. Specifically, the deeds do not readily define what constitutes a residential building, a farm building or what constitutes commercial or industrial structures. Further the deeds do not appear to adequately define or differentiate between “mature or stable trees and shrubs” and seedling trees and shrubs.
Chapter 6: Results: Scenic Easement Violations & Variances

Chapter 5 addressed the first two objectives of this study: how many acres of scenic easements were acquired for the Blue Ridge Parkway, how many acres have been acquired in fee or exchanged and the deed restrictions that were acquired by the Commonwealth of Virginia and the State of North Carolina. This chapter will address the two remaining objectives including the number of scenic easement violations experienced by the Parkway and the number and type of easement variances granted by the Parkway.

6.1 Scenic Easement Monitoring

When an agency or land trust accepts a conservation easement, they take on the obligation of ensuring that the conservation or scenic values that the easement was acquired to protect are maintained—in perpetuity. Easement stewardship includes regular (annual) monitoring of easements, maintaining regular contact with the landowner, conducting regular drive-bys, aerial flyovers or physically walking the easement to insure that the restrictions and terms of the easement are being adhered to. Often photo-points are established at permanent landmarks to document whether significant changes to the easement have occurred since previous visits.

Easement monitoring also includes maintaining contact with the easement owner. In fact Byers and Ponte (2005) call this one of the more important elements of an easement monitoring program. By developing a relationship with an easement holder a conservation agency provides increased opportunities for the landowner to ask questions and obtain information regarding the easement and the restrictions designed to protect its conservation values. This can help reduce the chances that landowners may misunderstand or misinterpret the deeds and reduce violations (Byers and Ponte 2005).

Byers and Ponte (2005), and Bouplon and Lind (2008) recommend a systematic program of regular monitoring. Only two instances were found in which the Blue Ridge Parkway attempted to establish a monitoring program of the scenic easements. A memo was found in the Parkway’s Land Resources files indicating that on September 4, 1945, Park Superintendent Sam Weems sent out a memo to Parkway District Rangers requesting that they contact all of the fee simple owners of scenic easement properties in order to “explain to them the Government’s right under scenic easement so there would be no misunderstanding of our rights to prevent cutting of
trees, commercial development, etc.” On September 14, 1945, then Chief Ranger Granville Liles sent Superintendent Weems a memo suggesting that “a solution to our scenic easement problems might be a letter to every owner of scenic easement lands on the Parkway informing them of the rights of this Service provided in the deed from the State of North Carolina.” Liles also goes on to state that “Since many of these tracts have changed ownership, it will be necessary to request the rangers to furnish your office a complete up-to-date mailing list of the present owners.”

On September 18, 1945, Superintendent Weems sent out a follow-up memo requesting that Parkway District Rangers

“obtain and forward to this office at your earliest convenience the name and address of all fee simple owners of lands in your district under scenic easement. We plan to prepare a statement regarding scenic easement and the Government’s rights thereunder, forwarding a copy to each of the landowners. Our list of these owners is not up to date, and it is for this reason we wish the above information from you.”

Table 6.1 lists the dates that respective Parkway District Rangers responded to Superintendent Weems memo.

A memo in the files from Ranger A.G. Dillon (1945) to Superintendent Weems indicates that even in the early days of the Parkway’s scenic easements, rangers had difficulty contacting easement owners: “This information has been gathered in the field by actual contact with the landholder or his family. I am rather disappointed that I did not get to talk directly to all of the fee simple owners, but, as you know, direct contact is very hard to make in every instance. It sometimes requires three or four trips to make one contact.” Ranger Dillon echo’s Granville Liles memo pointing out that a number of the scenic easement lands had already been sold and subdivided: “You will note that we now have more fee simple owners of Easement Lands than we had at the outset. This was caused by the sale and severance of small tracts of land leaving a residue in the hands of the original owner.”

On October 22, 1945 Superintendent Weems (1945a) sent out a memo—the text of which is found in Figure 6.1—to all of the scenic easement owners outlining the general easement restrictions. From the memo, it appears that park managers did not attempt to differentiate between the scenic easements acquired by Virginia and North Carolina or those acquired under the 1936 Virginia Act and the 1938 Amendment. The memo makes no mention of the fact that construction of new access roads are prohibited by both Virginia scenic easement Acts (unless provided for in the deed between the Commonwealth of Virginia and the landowner).
Table 6.1: District Rangers response to Supt. Weems September 18, 1945 memo.

<table>
<thead>
<tr>
<th>Parkway Sections Addressed</th>
<th>Date of Memo</th>
<th>Ranger/Author of memo</th>
</tr>
</thead>
<tbody>
<tr>
<td>1B, 1E</td>
<td>October 24, 1945</td>
<td>Robert B. Glass</td>
</tr>
<tr>
<td>1P, 1Q, 1R, 1S, 1T</td>
<td>September 22, 1945</td>
<td>A.G. Dillon</td>
</tr>
<tr>
<td>1U, 1V, 1W, 2A</td>
<td>No date found</td>
<td>Richard H. Griggs</td>
</tr>
<tr>
<td>2B, 2C, 2D, 2E</td>
<td>October 17, 1945</td>
<td>Granville B. Liles</td>
</tr>
<tr>
<td>2F, 2J, 2K, 2L</td>
<td>September 22, 1945</td>
<td>Clyde F. Smith</td>
</tr>
</tbody>
</table>
You have title to lands over which the United States Government owns a scenic easement. For your information we have prepared the following statement explaining your rights as well as the Government’s on such lands.

In general scenic easements on lands adjoining the Blue Ridge Parkway allow the land to continue in its present use, usually agricultural or residential, and provide:

(a) That buildings, pole lines and structure 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 farm practice.

(c) That no dumps of ashes, trash, sawdust, or other 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.

Should you have any question regarding lands under scenic easement, please write this office or get in Touch with the Parkway Ranger in your vicinity.

Very truly yours,

[signed] Sam P. Weems
Superintendent
One other attempt to document the current name & addresses of landowners owning scenic easements along the Parkway was found during this research. A memo to the District Ranger, Bluffs from the Sub-District Ranger Doughton Park (no date) that appears to have been prepared in early 1975 indicates that Ranger Pendry and Richardson states that “the following property owners with scenic easements restrictions have been contacted.” The memo then lists 35 landowners in Sections 2A, 2C and 2D that were contacted between July 19, 1974 and January 10, 1975. No additional information on these contacts was found and its unknown whether this was another systematic park-wide attempt to locate easement holders or whether this was just an attempt by one district to contact easement holders.

On December 12, 1972 Superintendent Granvills Liles sent out a memorandum to the Parkway Assistant Superintendents and all Ranger personnel that discussed the scenic easement restrictions on scenic easements in both Virginia and North Carolina. Liles’ memo did on a general level differentiate between the scenic easement restrictions in Virginia and North Carolina. Liles memo also addresses the problems of enforcement

“Since enforcement, then, is really a matter of withholding approval, there are no safe grounds for compromise. Like any proposal subject to permission, the 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.”

Liles also states that “every Ranger should know the location and the boundaries of every Scenic Easement within his area of responsibility and should know the owner of the underlying fee or title to the land.”

On January 29, 1973, Liles sent out a nearly identical memo to his previous one. The memo again differentiates between the Virginia and North Carolina deed language, but does not differentiate between the two Scenic Easement Acts in Virginia. The memo urges rangers to know the location of each scenic easement owner in his respective district.

No other documents were found to indicate that additional surveys of scenic easement landowners were conducted after 1975. Interviews conducted of current Parkway staff and recently retired staff members indicate that there is currently no systematic program of monitoring scenic easements (prior to the field work conducted for this research).
easement’s are monitored on a passive basis—rangers observe easements during routine patrols up and down the Parkway.

6.2 Scenic Easement Violations

Byers and Ponte (2005) and Gustanski (2000) point out that easement holders must be prepared to enforce the terms and restrictions of an easement and to defend it if a landowner should challenge it. When a land trust or a government entity accepts a conservation easement, they have legally and ethically made a commitment to uphold the easement (Byers and Ponte 2005). Byers and Ponte (2005) state that there are a number of reasons that a conservation agency should defend and uphold the terms of an easement:

• To insure that the conservation values on the property are protected
• To demonstrate to the landowner, the public and other easement holders that the agency intends to enforce its easements.
• Failing to enforce an easement jeopardizes an agency’s standing to enforce future violations. Courts and State Attorney Generals may view delayed or inconsistent enforcement as a waiver of the agency’s right to enforce future violations.
• A Land Trust or other tax exempt organization that chooses to ignore a violation risks losing its ability to accept tax deductible conservation easements.
• Enforcing a violation helps maintain public confidence in land trusts as valuable organizations and ensures that conservation easements are a viable land preservation tool.

Fifty-one (51) instances of violations of scenic easement restrictions were found in the Blue Ridge Parkway land records and archives as summarized in Table 6.2. The largest number of violations (18%) involved landowners cutting and/or removing mature (or stable) trees and shrubs from easement lands. Construction of prohibited or unauthorized residential homes accounted for nearly 12 percent of all easement violations. Collectively, construction of prohibited or unauthorized structures (residences, farm buildings, commercial structures and other buildings) accounted for 27 percent of all easement violations. Illegal timbering and the removal of individual trees and shrubs accounted for 23 percent of violations. For the purposes of this study, timbering was defined as the removal (clear-cut & select cut) of large stands of trees for commercial purposes. Removal of stable trees and shrubs included removal of trees & shrubs for non-commercial purposes such as the clearing of trees for home sites, pastures and for access roads/driveways. Figure 6.2 summarizes the number of violations by Year. The highest number of easement violations occurred between 1940 and 1949, with the lowest number of
Table 6.2: Number and types of scenic easement violations experienced by the Blue Ridge Parkway.

<table>
<thead>
<tr>
<th>Violation</th>
<th># Violations (n = 51)</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stable Trees &amp; shrubs</td>
<td>9</td>
<td>18</td>
</tr>
<tr>
<td>New residential structure</td>
<td>6</td>
<td>12</td>
</tr>
<tr>
<td>Dump/slash</td>
<td>5</td>
<td>10</td>
</tr>
<tr>
<td>Alter residential structure</td>
<td>4</td>
<td>8</td>
</tr>
<tr>
<td>Variance conditions</td>
<td>4</td>
<td>8</td>
</tr>
<tr>
<td>Access road</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>New commercial structure/use</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>New “other” structure</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>Signs</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>Timber</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>Alter farm structure</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>New farm structure</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Utility pole/line</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Alter other structure</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Surface excavation</td>
<td>1</td>
<td>2</td>
</tr>
</tbody>
</table>
Figure 6.2: Number of scenic easement violations by Year class.
violations (3) occurring between 1970 and 1979. Easement violations have steadily increased since the 1970’s.

Forty-five (45) percent of the scenic easement violations were resolved, while 43 percent of violations were not resolved (Table 6.3). Easement violations were further evaluated based upon how the violation was resolved. As Table 6.4 illustrates, in 37 percent of the violations examined, the Parkway took no enforcement action against the offending landowner. Table 6.5 summarizes the results of why the parkway took no enforcement action against landowners who violated easement terms. Of the 19 violations where the parkway took no enforcement action against offending landowners, in 37 percent of the instances, the Parkway did not enforce violations because it felt powerless to stop the violation or did not feel confident in its ability to enforce the easement restrictions. Other reasons for failing to take action against violations included: the offending landowner sold his/her fee interest in the scenic easement (11%); park staff felt that the violation was not worth a long-drawn out confrontation over; the Parkway felt that under the circumstances nothing could be done to correct the violation; and in one instance, the violation was not discovered until years later due to lack of follow-up monitoring.

In 31 percent of the violations, the Parkway granted the offending landowner a variance. Variances were generally defined as those instances where landowners requested permission to make changes/alterations to the scenic easements. In many cases, easement deeds gave the Grantee (the NPS) authority to approve construction of residential homes and farm structures on easements as well as authority to approve or at least review major alterations to structures located on the easements. Variances granted by the Parkway will be reviewed in greater detail later in the chapter. However of the 16 variances granted by the parkway for violations of easement terms, six (38%) of the variances granted were for construction of prohibited or unauthorized new structures including four residential homes (Table 6.6). In most of the instances where variances were granted for new residential homes, the fee owner of the easement started construction of a home, unaware of the scenic easement restrictions on his/her property. Four additional variances (25%) were granted for carrying out major alterations to structures (residential homes, barns, or other structures) without prior approval/review by the NPS.

Of the 51 scenic easement violations, 7 cases (14%) involved some sort of litigation. Five (71%) of the litigated cases were resolved—3 were settled out of court and in 2 cases scenic easements were upheld in court. Two litigated cases were not resolved—in both cases, the NPS
Table 6.3: Resolution of scenic easement violations.

<table>
<thead>
<tr>
<th>Violations</th>
<th># Violations</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>23</td>
<td>45</td>
</tr>
<tr>
<td>No</td>
<td>22</td>
<td>43</td>
</tr>
<tr>
<td>On-going</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Unknown</td>
<td>5</td>
<td>10</td>
</tr>
</tbody>
</table>
Table 6.4: Resolution of scenic easement violations

<table>
<thead>
<tr>
<th>Outcome</th>
<th># Violations (n = 51)</th>
<th>Percent (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Park took no action</td>
<td>19</td>
<td>37</td>
</tr>
<tr>
<td>Variance granted</td>
<td>16</td>
<td>31</td>
</tr>
<tr>
<td>Litigation; settlement out of court</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>Litigation; not resolved</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Court: easement upheld</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Exchange—release</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Landowner voluntarily complied</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>On-going</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Unknown</td>
<td>6</td>
<td>12</td>
</tr>
</tbody>
</table>
after attempting to negotiate settlements apparently dropped further attempts to enforce the violations.

Table 6.7 summarizes the parties responsible for violations of scenic easement terms and restrictions. Subsequent (2\textsuperscript{nd} and 3\textsuperscript{rd} generation) landowners were responsible for approximately 80 percent of the scenic easement violations reviewed for this study. Original fee owners were responsible for 12 percent of the violations, while third parties (neighbors, employees of landowner, lessee’s etc) were responsible for 8 percent of the violations.

In 50 percent of violations, landowners were aware of scenic easement restrictions on their properties as shown in Table 6.8. In one instance, the landowner of SE No. 1, section 1T a landowner installed a power line across the scenic easement in violation of the easement terms. The landowner indicated to investigating rangers that she was aware of the scenic easement terms, but had thought that the power company had obtained permission from the Park.

In 17 percent of the violations, landowners were not aware of scenic easement restrictions. In each of the 9 instances where landowners were not aware of the easement restrictions, the landowners apparently acquired the property with the scenic easement without the previous landowner informing them of the easement terms and without benefit of a title search. In 4 of the 9 cases landowners constructed or began construction of residential homes on scenic easements. Three separate violations occurred on Scenic Easement No. 22 in section 2A between 1968 and 1972. Two of these involved erection of prohibited signs/billboards and one involved construction/installation of a trailer/mobile home on the easement. In 33 percent of the violations examined during this research, not enough information was found in the files to make a determination of whether landowners were aware of the existence of the scenic easement restrictions on their easements.

In 20 percent of the scenic easement violations, landowners appeared to have knowingly violated the terms of the scenic easements (Table 6.9). In two instances, landowners who had been granted variances to carry out prohibited activities subsequently violated the terms of the variance agreements. In one instance the landowner for scenic easement No. 1 in section 2-C was given a variance to carry out logging activities on a portion of the scenic easement with the condition that all slash and debris would be cleared from the easement. Following the initial timbering of the scenic easement, the landowner requested permission to remove timber from the remainder of the easement. The parkway refused to grant the landowner permission, contending
Table 6.5: Reasons found in Parkway Land Use files for not taking action against violators of scenic easement restrictions.

<table>
<thead>
<tr>
<th>Reason for not taking action</th>
<th>Violations</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(n = 19)</td>
</tr>
<tr>
<td>NPS was not confident it could enforce the violation</td>
<td>7</td>
</tr>
<tr>
<td>Landowner sold property &amp; his/her interest in the scenic easement</td>
<td>2</td>
</tr>
<tr>
<td>Not worth long drawn out confrontation</td>
<td>2</td>
</tr>
<tr>
<td>Nothing could be done</td>
<td>1</td>
</tr>
<tr>
<td>Violation not discovered within reasonable time</td>
<td>1</td>
</tr>
<tr>
<td>Review still on-going (recent violation)</td>
<td>2</td>
</tr>
<tr>
<td>Unknown</td>
<td>4</td>
</tr>
</tbody>
</table>
Table 6.6: Outcome of violation by violation type.

<table>
<thead>
<tr>
<th>Violation</th>
<th>Voluntarily Complied</th>
<th>Variance Granted</th>
<th>Litigation: Settled out of court</th>
<th>Court: SE Upheld</th>
<th>Park took no action</th>
<th>Litigation: not resolved</th>
<th>Exchange -Release</th>
<th>On-going</th>
<th>Unknown</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Residential Structure</td>
<td>0</td>
<td>4</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>6</td>
</tr>
<tr>
<td>New Farm Structure</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>New Commercial Structure/use</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>New Other Structure</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Alter Residential Structure</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>Alter Farm Structure</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Alter Other Structure</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Utility Pole/Line</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Access Road</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Stable Trees/Shrubs</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>1</td>
<td>5</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>9</td>
</tr>
<tr>
<td>Timber</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Dump</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>Surface Excavitation</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Sign</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Variance Condition</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1</strong></td>
<td><strong>16</strong></td>
<td><strong>3</strong></td>
<td><strong>2</strong></td>
<td><strong>19</strong></td>
<td><strong>2</strong></td>
<td><strong>1</strong></td>
<td><strong>1</strong></td>
<td><strong>6</strong></td>
<td><strong>51</strong></td>
</tr>
</tbody>
</table>
Table 6.7: Individuals responsible for Scenic Easement Violations

<table>
<thead>
<tr>
<th>Violation</th>
<th># Violators ((n = 51))</th>
<th>Percent (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Original landowner</td>
<td>6</td>
<td>12</td>
</tr>
<tr>
<td>Subsequent landowner</td>
<td>41</td>
<td>80</td>
</tr>
<tr>
<td>Third party</td>
<td>4</td>
<td>8</td>
</tr>
</tbody>
</table>
Table 6.8: Were landowners aware of scenic easement restrictions at the time the violation occurred?

<table>
<thead>
<tr>
<th></th>
<th>Frequency (n = 51)</th>
<th>Percent (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>26</td>
<td>50</td>
</tr>
<tr>
<td>No</td>
<td>9</td>
<td>17</td>
</tr>
<tr>
<td>Unknown</td>
<td>17</td>
<td>33</td>
</tr>
</tbody>
</table>
Table 6.9: Did landowners knowingly violate scenic easement restrictions?

<table>
<thead>
<tr>
<th></th>
<th>Frequency (n = 51)</th>
<th>Percent (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>10</td>
<td>20</td>
</tr>
<tr>
<td>No</td>
<td>18</td>
<td>35</td>
</tr>
<tr>
<td>Unknown</td>
<td>23</td>
<td>45</td>
</tr>
</tbody>
</table>
that the remaining trees were necessary to protect the parkway’s scenic character. The park also pointed out that the landowner had not met all of the conditions of his previous variance request—namely clean up and removal of all of the slash. The landowner refused to comply. After several months of negotiations between the US Attorney’s office and the landowner’s attorney, the parkway dropped further efforts to force the landowner to clean-up the timber debris.

In the other instance, the parkway granted permission for a landowner to construct a residential home on scenic easement No. 9 in section 2-J with the express understanding the structure would be used only for residential purposes. However, following completion of the home, the landowner made it known that he intended to operate a grocery store, shoe repair shop and appliance shop out of the “residence.” When park officials confronted the landowner he admitted to knowing about the easement restrictions when he purchased the land, but felt that the easement restrictions did not amount to “anything.” The parkway attempted to work through the North Carolina Highway Commission to enforce the easement terms, but the park again apparently dropped its attempts to enforce the easement terms.

Approximately 20 percent of the landowners misunderstood the terms of their scenic easements (as illustrated in Table 6.10) and inadvertently violated the terms of their scenic easements. Of the 10 instances where landowners misunderstood the terms of easements, the parkway granted variances to landowners in six (60%) of the cases and permitted the activity (after park review and input) to continue. Three of these instances involved the construction of new residential structures. In another instance a landowner, the operator of an orchard constructed an unauthorized deck associated with the orchard operation. After reviewing the deck the parkway permitted construction of the deck to proceed. In another instance, a landowner began major repairs to an old log cabin on the easement. The landowner told park officials he was not aware of the scenic easement restrictions on his property. Park officials granted a variance out of concern for neighbor relations and fearing that not approving the remodeling would create a hardship for the landowner. The final instance involved a misunderstanding between a landowner and the utility company erecting a power line across the scenic easement. The landowner while aware of the scenic easement restrictions thought that the power company (who was not aware of the scenic easement) had taken care of informing the parkway about the utility line.
Table 6.10: Did landowners misunderstand scenic easement restrictions?

<table>
<thead>
<tr>
<th></th>
<th>Frequency (n = 51)</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>10</td>
<td>20</td>
</tr>
<tr>
<td>No</td>
<td>23</td>
<td>45</td>
</tr>
<tr>
<td>Unknown</td>
<td>18</td>
<td>35</td>
</tr>
</tbody>
</table>
6.3 Litigation and Court Action

As previously discussed, 14 percent of the violations of Blue Ridge Parkway scenic easements involved some sort of litigation. Violations of scenic easement terms and restrictions are not criminal actions, but instead are civil proceedings. Two cases—both concerning the unauthorized removal of vegetation/timber required that the NPS seek permanent injunctions through court proceedings. In the first case— the United States v. Darnell—the NPS attempted to stop the owner of a scenic easements from cutting and removing 24 mature trees on the easement. After the landowner refused to comply with the NPS’s request to halt the clearing, they sought an injunction through the Courts. In May 1949, U.S. District Court Judge Johnson Hayes ruled that the

“easement under which the United States of America claims, and which easement is a good and valid lien against the lands of the defendant, to mean that the defendant can only remove seedling shrubbery or seedling trees such as may be grubbed up or cut down in accordance with good farm practice and residential maintenance, and that his cause means undergrowth and excludes by its very terms trees that may be eight inches or more in diameter and which according to the custom in the Wilkes County, North Carolina section, become merchantable timber, and the Court finds that the defendant has state that he will cut twenty-four trees, all of which are eight inches or more in diameter.

It is, therefore, ORDERED, ADJUDGED, AND DECREED that the defendant be and he is hereby permanently enjoined from cutting any trees upon his land which are subject to the easement…”

In the second case—United States v. Bedsaul—the landowners of scenic easement 21, Section 2A began clear-cutting white pine trees in the scenic easement in order to sell the branches as Christmas decorations. Park officials attempted to stop the landowner’s cutting operation, but when they were unable to the Parkway sought a temporary injunction through the court. In December 1951, District Judge Johnson Hayes—the same judge who presided over the Darnell case ruled again in the favor of the Blue Ridge Parkway:

“…the Court finds that the easement under which the United States of America claims, and which easement is a good and valid lien against the lands of the defendants, to mean that the defendants can only remove seedlings, shrubbery or seedling trees such as may be grubbed up or cut down in accordance with good farming practice and residential maintenance.

The Court finds after viewing the site of the scenic easement described in the complaint and designated as Section 2-A, that certain white pines located on the lands burdened by said easement may be trimmed from the ground to heights of 3 or 4 feet and
that certain other white pines should be removed from the said tract and the Court further finds that the fence row along the line of the scenic easement furtherest removed from the Parkway should be cleared of small trees and shrubs in order that a new fence may be properly built and the Court further finds that the thicket along the creek running through said scenic easement should be cleared and put in grass according to good farm practice and that the briers and brambles bushes should be removed from said tract in accordance with good farming practice. However, none of said cutting, trimming and removal should detract from the scenic beauty of view of said tract as viewed from any point along the Blue Ridge Parkway…

…It is now therefore, ORDERED that the defendants, with the permission and approval of the Landscape Architect of the Blue Ridge Parkway, Department of the Interior, may cut, remove or trim the trees, shrubs, fence line and land as set out in the above findings of the Court, and the defendants are hereby permanently enjoined from cutting, topping, mutilating and heading stable or mature trees and shrubs on their lands described in the complaint, without first having obtained permission so to do from the Department of the Interior…”

Three scenic easement violations were settled out of court. The first involved two incidents of a landowner constructing an unauthorized access road constructed across scenic easement No. 1Q-3. In this instance, the landowner had originally sought a variance to construct a road on the easement. The Parkway however denied his request on grounds that the road would be too visible from the Parkway and the landowner had other legal means of access off of the easement. However, the landowner attempted to construction the road in violation of the easement. The landowner and the Parkway eventually reached a settlement out of court whereby the landowner agreed pay $1,192.00 to restore the easement to its original condition [see Appendix B].

The second incident as discussed in detail in Appendix C, involved construction of an unauthorized residence and access road across scenic easement Number 4 in Section 1-V located in Carroll County, VA. After more than 2 years of litigation, the National Park Service and the landowner reached a settlement whereby the house and the access road could remain on the easement and the landowner would pay natural resource damages in the amount of $10,000. The settlement also included modification of the scenic easement terms to allow for the existing residence and access road on the easement.

Two additional violations of Blue Ridge Parkway scenic easements were involved in litigation, but were not resolved—the parkway apparently dropped further action. Both violations occurred simultaneously on scenic easement No. 1, Section 2C (2C-1). In this
instance, the Parkway had granted the landowner of scenic easement 2C-1 in Alleghany County, NC permission to timber a portion of the scenic easement with the understanding that the landowner would clean up and remove all slash and tree debris from the easement [See Appendix D]. The parkway prepared a signed agreement which the landowner signed consenting to the above restriction and a number of others. However, following removal of timber from the easement, the landowner requested that he be allowed to remove the remainder of the timber from the easement. When the parkway denied his request the landowner halted clean up of the slash and tree debris from the easement. Following lengthy negotiations between the parkway, the U.S. Attorney’s office and the landowner and his attorney, the parkway dropped further attempts to enforce the terms of the variance request. The U.S. Attorney’s office cited the poorly written agreement between the Parkway and the landowner and concerns that it would not stand up in a court proceeding as the primary justification for not pursing further litigation.

6.4 Scenic Easement Variance Requests

There is much agreement in the conservation community that change is an evitable part of any program that attempts to protect conservation lands in perpetuity (LTA 2007, McLaughlin 2006, Byers and Ponte 2005). All too often easements that were intended to preserve farmland and open space change ownership, adjacent lands are converted from agriculture to housing subdivisions, and flaws-- including ambiguous language-- in easement deeds themselves become evident. The process of amending conservation easements has been the subject of much debate and discussion. The Land Trust Alliance (2007) has prepared a number of detailed guidelines and reports dealing specifically with the subject. The Land Trust Alliance (LTA) recommends that all organizations that have responsibility for monitoring and maintaining conservation easements prepare written guideline to outline the procedures to follow when amending easements. McLaughlin (2007, 2006 and 2005) has written a number of articles and opinions on the subject of amendment and modification of conservation easements and charitable trusts—the relationship created when an easement owner donates a conservation easement to an organization.

Amendments to conservation easements are generally necessary to correct ambiguous language of deeds, to correct violations of an easement, when a landowner wants to add additional acreage to an existing conservation easement or when a landowner wants to make significant adjustments to the boundaries of a building envelop. Some proposed changes to
easements can be handled through administrative or discretionary approval by the organization holding the easement (Land Trust Alliance 2007, Byers and Ponte 2005). Deeds frequently give the grantee discretion to approve the construction of residential homes and other structures, building sizes within deed-defined building envelops, timber harvests and other activities—providing that they do not reduce the conservation values the property was acquired to protect.

The scenic easements acquired for the Blue Ridge Parkway provide the Grantee (USA) some discretion to approve:

- Construction of new farm buildings, access roads/driveways, and the removal of stable trees and shrubs on easement lands acquired through negotiations under the Virginia 1936 Act (1936 Deed).
- Construction of new residential buildings, farm buildings, and utility lines; to alter existing commercial buildings or otherwise improve the property for the purpose of continuing the established use; to construct access roads, and to remove/cut mature and stable trees on easements covered through condemnation under the Virginia 1938 Amendment;
- Construction of new residential and farm buildings, utility lines; major alterations to existing buildings; to alter existing commercial buildings or otherwise improve the property for the purpose of continuing the established use; and to cut/remove mature trees and shrubs on easements acquired by North Carolina.

The authority to approve these kinds of requests was granted to the Superintendent of the Parkway in a May 1941 memorandum—the text of which is found in Figure 6.41—from Hillory A. Tollson, Acting Director of the National Park Service. Under the new authority the Superintendent of the Parkway was authorized to approve “informally” in writing requests from landowners to construct farm or residential structures, major alterations to existing structures, including commercial buildings; cutting or removal of mature trees and shrubs and other improvements to the easement for the purpose of continuing the existing use on scenic easements. The memo stated that such changes to the easement should be spelled out to the landowner in writing and only after the Superintendent was satisfied that the changes would not subtract from the scenic value of the Parkway or interfere with the operation of the scenic motor road.

In 1973, the Parkway requested through the Director of the National Park Service’s southeast region that the Regional Solicitor review the parkway’s authority to approve and/or deny requests by landowner to construct new residential and farm buildings and requests to alter
existing buildings on scenic easements along the Parkway in NC. The Solicitor’s (Bell 1973, p. 1) response indicated (See Appendix E) that:

“Under the provisions of the conveyances of scenic easements in North Carolina, the United States cannot flatly deny a request for authorization or permission to construct new farm and residential buildings on lands covered by the easements, nor can the United States flatly deny a request for authorization or permission to alter existing buildings, whatever the type, on these lands.”

The Solicitor’s opinion goes on to say that:

“Under the provision of the conveyances of scenic easements which makes new farm and residential buildings and major alterations to existing buildings subject to prior approval of the National Park Service, the Service could, in my opinion, impose such conditions and restrictions on the construction and alteration of such buildings as are not unreasonable in light of present day ecological and aesthetic standards.”

The Solicitor’s opinion concludes that there is no finite rule on what can be considered a reasonable use or an unreasonable use. “The question is one of fact, to be determined in the light of the situation of the property and the surrounding circumstances” (Bell 1973, p. 2).

Based upon Solicitor Bell’s interpretation of North Carolina’s scenic easement restrictions, George Frye, the NPS’ Acting Director of the Southeast Region sent a memo dated May 10, 1973 to the Superintendent of the Blue Ridge Parkway recommending procedures for approving future scenic easement variance requests. The letter stated in part that:

“Each request for authorization or permission to construct or alter farm and residential buildings on land covered by the easements in North Carolina be dealt with on its respective merits by requiring the property owner to present plans to you for the proposed construction or alteration, an inspection by you of the site where the construction or alterations are to take place, and a determination by you as to whether the requested construction or alteration appears reasonable under the circumstances. In the event that it appears necessary for you to deny authorization or permission for such construction or alterations, the matter should be again referred through this office to the Solicitor for his guidance on the particular fact situation on hand…” (Frye 1973, p.1).

A review of the Parkway’s Land Files and Archives found that over the past 70 years, the Blue Ridge Parkway has received and reviewed 298 requests to alter or make changes to scenic easements. Thirty-nine percent (39%) of the variance requests received by the Parkway
MEMORANDUM for the Acting Superintendent, Blue Ridge Parkway, Acting Superintendent, Natchez Trace Parkway, and Superintendent, Shenandoah National Park.

On pages 3 and 4 of the Requirements and Procedures to Govern the Acquisition of Land for National Parkways, approved by the Secretary of the Interior on November 9, 1937, the definition of scenic easement states that the National Park Service shall approve:

a. New farm or residential buildings;
b. Major alterations to existing farm or residential buildings;
c. Alterations to existing commercial buildings;
d. Improvement of property for the purpose of continuing the established use of it; and
e. Removal or destruction of mature or stable trees or shrubs.

These provisions have been incorporated in the deeds conveying the parkway land from the several states to the United States and apply to land the ownership of which still remains in the individual.

Several inquiries have been received from field representatives of this Service concerning the form of approval to be given in instances where one or more of the above additions or changes are contemplated by the owner of the land on which the scenic easements are placed. The superintendent is hereby authorized to grant such approval informally by letter to the owners of the land; provided he is satisfied the proposed changes and additions are not detrimental to the surrounding scenic values and will not otherwise disturb the development and operation of the parkway.

A copy of the recommendations of the field representative and the approval of the superintendent should be forwarded to the Washington office in order that the proper notations may be made on the land maps on file here. Similar notations should be made on the land maps in your office showing the dates of the application, the recommendations of field representatives, the approval of the superintendent, and a reference to the correspondence file.

[signed] Hillory A. Tolson
Acting Director

Figure 6.3: Text from a memo dated May 1941 from Acting Director of the NPS Hillory Tolson granting the Superintendent of the Blue Ridge Parkway authority to approve changes or alterations to scenic easements. Source: National Park Service, Blue Ridge Parkway.
originated on the Virginia portion of the Parkway as shown in Table 6.11, while 61 percent of the variance requests originated from the North Carolina portion of the Parkway. Table 6.12 summarizes the types of variance requests received by the Parkway. The largest number of variance requests (15%) involved requests by landowners to construct new residential homes on scenic easements. Requests to cut/remove mature or “stable” trees and shrubs and to build new farm structures each accounted for 12 percent of the total variance requests received by the Parkway. Requests to construct new structures (residential, farm, commercial or other structures) accounted for 37 percent of all variance requests by landowners. Requests to cut/remove mature trees or to harvest timber collectively accounted for 22% of all variance requests.

As shown in Table 6.13, 82 percent of all requests received by the Blue Ridge Parkway to alter or change scenic easements were approved. Table 6.13 summarizes the outcomes of requests to alter or make changes to scenic easements by the type of variance requested and by the state from which the easement was acquired. Of the 44 requests from scenic easement owners to build new residential homes on easements, the Parkway approved two-thirds (66%) of the requests. The parkway approved 92 percent of all requests to construct farm buildings along the parkway. Of the 8 requests by landowners to build new commercial structures or convert existing residential structures to commercial structures, the Parkway approved 63 percent of the
Table 6.11: Number of Scenic Easement Variance Requests by State:

<table>
<thead>
<tr>
<th>State</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Virginia</td>
<td>116</td>
<td>39</td>
</tr>
<tr>
<td>North Carolina</td>
<td>182</td>
<td>61</td>
</tr>
</tbody>
</table>
Table 6.12: Variance requests received by the Blue Ridge Parkway.

<table>
<thead>
<tr>
<th>Variance Requested</th>
<th># Variances (n = 298)</th>
<th>(%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Build new residential home</td>
<td>44</td>
<td>15</td>
</tr>
<tr>
<td>Cut/remove stable trees/shrubs</td>
<td>37</td>
<td>12</td>
</tr>
<tr>
<td>Construct/maintain utility line/structure</td>
<td>31</td>
<td>10</td>
</tr>
<tr>
<td>New other types of structures*</td>
<td>29</td>
<td>10</td>
</tr>
<tr>
<td>Alter/remodel residential home</td>
<td>27</td>
<td>9</td>
</tr>
<tr>
<td>Alter/remodel farm building</td>
<td>27</td>
<td>9</td>
</tr>
<tr>
<td>Build new farm building</td>
<td>26</td>
<td>9</td>
</tr>
<tr>
<td>Cut/harvest timber</td>
<td>20</td>
<td>9</td>
</tr>
<tr>
<td>Construction/maintain access road/driveway</td>
<td>16</td>
<td>5</td>
</tr>
<tr>
<td>Alter/remodel other structures</td>
<td>9</td>
<td>3</td>
</tr>
<tr>
<td>New commercial building/commercial use</td>
<td>8</td>
<td>3</td>
</tr>
<tr>
<td>Alter/remodel existing commercial building</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>Seedling trees/shrubs</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Erect sign</td>
<td>2</td>
<td>0.70</td>
</tr>
<tr>
<td>Clean up existing dump/slash pile</td>
<td>1</td>
<td>0.30</td>
</tr>
<tr>
<td>Other variance requests**</td>
<td>13</td>
<td>4</td>
</tr>
</tbody>
</table>

*New other structures included garage/carport (7), tool shed (3), generator house, outhouse, picnic shelter, pump house, and spring house.

**Other variance requests included: construction of farm pond or lake (5), install water well/lines (3), septic/leech field, construct dog kennel, expand existing cemetery, construct church parking lot, mining (mica) operation, land aircraft on scenic easement, construct tennis court and install underground water storage tank.
requests. In one instance, an owner of scenic easement No. 9 in section 2F proposed to convert a residence on the scenic easement into an office for his counseling practice. The Parkway approved the landowner’s request stating that the use did not appear excessive and that there would be no exterior alterations to the structure and no signs required.

The Parkway approved 97 percent of all requests to construct “other” structures—which included garages, non-farm related storage sheds, a tennis court and a dog kennel—structures not readily defined under the Parkway’s scenic easement deeds. The parkway approved 96 percent (26 of 27 requests) of all requests to alter or remodel (e.g. construct an addition, paint house, install a new roof) existing residential homes on scenic easements. Only one request to alter an existing residential structure was denied. In this instance the fee owner of scenic easement No. 10, section 2C had requested permission to tear down an old farm house. The parkway initially denied the request stating that the old farm house was picturesque and an important part of the existing scene.

All of the requests to remodel and/or alter existing farm structures, commercial buildings and other structures (e.g. non-farm related storage buildings) were approved by the Parkway. Eighty-one percent (81%) of requests to construct access roads were approved. However, there were differences in approval rates between easements in Virginia and North Carolina as shown in Table 6.14. In Virginia 66 percent of requests to construct access roads were approved, while in North Carolina 100 percent of the requests were approved. Scenic easement deeds in Virginia generally prohibit construction of new access roads on scenic easements unless provided for under the deed or approved in advance by the Parkway. Scenic easement deeds in North Carolina however do not restrict the construction of new access roads.

Park officials approved 73 percent of all requests to cut and/or remove stable trees and shrubs. Parkway officials approved 100 percent of the requests it received to cut/remove seedling trees and shrubs—not surprising since all of the Parkway scenic easement deeds except
<table>
<thead>
<tr>
<th>Outcome of Variance Request</th>
<th>Frequency (#)</th>
<th>Percent (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Request Approved</td>
<td>245</td>
<td>82</td>
</tr>
<tr>
<td>Request Denied</td>
<td>40</td>
<td>13</td>
</tr>
<tr>
<td>Exchange-Release</td>
<td>1</td>
<td>0.3</td>
</tr>
<tr>
<td>On-going</td>
<td>1</td>
<td>0.3</td>
</tr>
<tr>
<td>Action not prohibited by SE</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>Unknown</td>
<td>8</td>
<td>3</td>
</tr>
</tbody>
</table>
Table 6.14: Number of variance requests approved by State

<table>
<thead>
<tr>
<th>Variance Requested</th>
<th>VA</th>
<th>NC</th>
<th>Parkway-wide</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Residential Home</td>
<td>66</td>
<td>66</td>
<td>66</td>
</tr>
<tr>
<td>New Farm Bldg</td>
<td>100</td>
<td>90</td>
<td>92</td>
</tr>
<tr>
<td>New Commercial Structure/Use</td>
<td>--*</td>
<td>63</td>
<td>63</td>
</tr>
<tr>
<td>New Other Structure</td>
<td>100</td>
<td>93</td>
<td>97</td>
</tr>
<tr>
<td>Alter existing residential home</td>
<td>100</td>
<td>92</td>
<td>96</td>
</tr>
<tr>
<td>Alter existing farm building</td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>Alter existing commercial bldg</td>
<td>----</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>Alter other structures</td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>Erect utility pole/line</td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>Construct access road</td>
<td>66</td>
<td>100</td>
<td>75</td>
</tr>
<tr>
<td>Cut/remove mature trees/shrubs</td>
<td>57</td>
<td>88</td>
<td>73</td>
</tr>
<tr>
<td>Cut/remove timber</td>
<td>0**</td>
<td>47</td>
<td>45</td>
</tr>
<tr>
<td>Cut/remove seedling trees/shrubs</td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>Clean-up dump</td>
<td>0</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>Install sign (church)</td>
<td>100</td>
<td>0</td>
<td>50</td>
</tr>
<tr>
<td>Other variance requests</td>
<td>29</td>
<td>100</td>
<td>70</td>
</tr>
</tbody>
</table>

*Virginia has no commercial structures and has had no variance requests regarding commercial structures.

**Only one timber request in Virginia, which was denied.
those acquired through condemnation under the 1936 Act allow for removal of seedling trees and shrubs in accordance with good farm and residential maintenance. Surprisingly, Parkway officials approved 45 percent of the requests of landowners to harvest timber on scenic easements. In 5 percent of the instances where park officials received requests to timber scenic easements, the Parkway negotiated an exchange—release of the scenic easement restrictions. In one instance a landowner “donated” two acres of a scenic easement in fee simple to the Parkway in exchange for being permitted to harvest timber on the remainder of the scenic easement. In 25 percent of the requests to timber scenic easements final outcomes to the variance requests could not be found in the existing files and outcomes were unknown by current parkway staff members.

Table 6.15 summarizes the outcome of variance requests by scenic easement act and acquisition method. In general, there does not appear to be any difference in the approvals for residential structures between the four easement acts. The residential structure approved under the Virginia 1936 Judgment category was for replacement of a previously existing cabin, the remains of which were still present on the easement up until 2008. The Parkway had originally denied the landowner’ request to rebuild the cabin based upon language in the deed. However the U.S. Solicitor’s office which stated that while the 1936 Act prohibited construction of new residential structures

“because the deed is silent as to existing residential use, it can be inferred that the Commonwealth did not intend to extinguish the landowner’s rights to live on the property. A house the same size, with the same improvements as existed in 1937 [the year the easement was acquired], would be rights retained by the landowner. ..” (Shea 2005, p.4).

The Solicitor’s opinion concluded that the landowner “retained the right to use, maintain, or rebuild the residence which pre-existed the scenic easement.” (Shea 2005, p. 5).

In general, the NPS approved fewer variance requests in North Carolina than in Virginia. However, North Carolina’s easements also had approximately 33 percent more variance requests than scenic easements in Virginia.

**Variance Request Review Process**

Data from the past 70 years indicate that the Parkway has not developed any formal written guidelines for evaluating scenic easement variance requests. Instead, park officials have
taken an approach similar to that used by officials at Wisconsin’s Great River Road in reviewing variance requests for scenic easements, whereby each request is evaluated on a case by case basis. Ohm (2000) in his review the Great River Road states that neither the Department of Transportation nor the Mississippi River Planning Commission has developed formal procedures for evaluating variance requests.

While the Parkway lacks formal approval guidelines, a review of the Blue Ridge Parkway variance requests indicates that park officials have utilized a number of common criteria in reviewing individual variance and approval requests. Table 6.16 summarizes the criteria utilized by the Parkway. In 47 percent of the violation requests, the Parkway evaluated scenic easement requests based upon how the request would impact the Blue Ridge Parkway’s scenic viewshed—the primary conservation value the easements were intended to protect. This included: how visible proposed activity would be from the parkway motor road, whether the topographic layout would prevent a structure or other action from being scene from the parkway, whether or not sufficient trees or other vegetation existed to screen the proposed development or activity from the parkway and whether a proposed structure would “blend” in with the surrounding landscape.

Other criteria used by park officials include whether or not proposed activity would eliminate a safety hazard (e.g. removal of a dead or severely damaged tree adjacent to a house), whether or not permitting the proposed activity would set a precedence that could force park officials to approve similar requests; and whether or not the scenic easement permits the activity

Interestingly, whether or not scenic easement deeds permitted the proposed activity was only mentioned in the scenic easement files as a criterion in less than 4 percent of the time. However, one of the limitations of this study is that in most of the cases examined, records were not always complete and did not adequately document conversations between park staff including the Parkway landscape architect on how decisions were made. Interviews with former parkway staff members shed some light on this process, however, for most variance requests, records were not always complete.

The May 1941 memo grants the Superintendent of the Blue Ridge Parkway authority to approve variance requests “informally” in writing. Table 6.17 summarizes the method used by the Parkway to convey approval or denial of variance requests. Eighty percent (80%) of the Parkway variance requests reviewed during this study were approved in writing. In general letters included a few specific restrictions on how variance requests were to be carried out. A
common request by park officials when approving new roofs was that the roofs be painted and not be shiny or reflective from the Parkway motor road. Approximately 12 percent of the variance requests were approved verbally. In general, in this circumstance, the district ranger advised the landowner whether or not his/her request had been approved after consulting with the Parkway Landscape Architect and after being advised of the Superintendent’s decision. In at least two instances however, parkway ranger staff approved a landowner’s request without first consulting the Parkway Landscape Architect and the Superintendent. In one instance (See Appendix D), the National Park Service requested that a landowner sign a Letter of Consent prepared by the Parkway agreeing that he would abide by the terms set out by the Parkway in allowing him to conduct a timber operation on the easement. Among the terms were stipulations that the landowner would maintain an un-cut buffer strip of trees to screen the timber cut from the parkway. The landowner also agreed to remove all of the resulting slash and debris from the easement. However upon completing the timber operation, the landowner subsequently failed to comply with the of the terms of the agreement, which required him to remove the slash from the easement.

In reviewing landowner variance requests, parkway staff—usually the Landscape Architect—met with landowner’s on-site at the scenic easement to review the landowners proposal and to assess potential impacts of the proposal on the scenic easement and the parkway viewshed in 80 percent of the time (Table 6.18). Table 6.19 summarizes the information and materials utilized by park staff in reviewing landowner variance requests. In 53 percent of the variance requests examined for this project, maps of the scenic easement in relation to the parkway were included with the review of the variance requests. Sketches of the landowner’s proposal (e.g. architectural drawings of residential and/or farm buildings, landscape drawings indicating how visible the variance request was from the parkway, etc) were included in the assessment/review process 48 percent of the time. Photos of the scenic easement were included however in less than 10 percent of the documents found for this research. However, again it should be emphasized that files on specific variance requests were not always complete and it’s possible these numbers do not reflect the actual occurrence rate. The lack of photos in the files is a likely a reflection too of the fact that through much of the early years of the Parkway’s scenic easements, cameras may not have been a readily available tool to parkway field staff. The parkway is currently making extensive use of digital photographs, and nearly all activities
Table 6.15: Number of variance requests approved, by Easement Act 
\((n = 298)\)

<table>
<thead>
<tr>
<th>Variance Requested</th>
<th>VA 1936 Act</th>
<th>VA 1936 Deed</th>
<th>VA 1938 Act</th>
<th>NC 1935 Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Residential Home</td>
<td>100*</td>
<td>60</td>
<td>67</td>
<td>66</td>
</tr>
<tr>
<td>New Farm Bldg</td>
<td>----</td>
<td>100</td>
<td>100</td>
<td>90</td>
</tr>
<tr>
<td>New Commercial Structure/Use</td>
<td>-.**</td>
<td>-.**</td>
<td>-.**</td>
<td>63</td>
</tr>
<tr>
<td>New Other Structure</td>
<td>----</td>
<td>100</td>
<td>100</td>
<td>93</td>
</tr>
<tr>
<td>Alter existing residential home</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>92</td>
</tr>
<tr>
<td>Alter existing farm building</td>
<td>----</td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>Alter existing commercial bldg</td>
<td>----</td>
<td>----</td>
<td>----</td>
<td>100</td>
</tr>
<tr>
<td>Alter other structures</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>Erect utility pole/line</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>94</td>
</tr>
<tr>
<td>Construct access road</td>
<td>100</td>
<td>50</td>
<td>100</td>
<td>86</td>
</tr>
<tr>
<td>Cut/remove mature trees/shrubs</td>
<td>67</td>
<td>45</td>
<td>86</td>
<td>88</td>
</tr>
<tr>
<td>Cut/remove timber</td>
<td>----</td>
<td>0***</td>
<td>----</td>
<td>64</td>
</tr>
<tr>
<td>Cut/remove seedling trees/shrubs</td>
<td>----</td>
<td>----</td>
<td>----</td>
<td>100</td>
</tr>
<tr>
<td>Clean-up dump</td>
<td>----</td>
<td>----</td>
<td>----</td>
<td>100****</td>
</tr>
<tr>
<td>Install sign (church)</td>
<td>----</td>
<td>100</td>
<td>----</td>
<td>0</td>
</tr>
<tr>
<td>Other variance requests</td>
<td>----</td>
<td>33</td>
<td>----</td>
<td>100</td>
</tr>
</tbody>
</table>

\*\(n = 1\)

**Virginia has no commercial structures on any of the remaining scenic easements.

***Only one timber request in Virginia, which was denied

****Only one variance request.
Table 6.16: Criteria utilized by the Blue Ridge Parkway when reviewing requests by landowners to alter/change scenic easements (n = 374).

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Impact on Parkway’s scenic viewshed</td>
<td>175</td>
<td>47</td>
</tr>
<tr>
<td>Activity resolves a safety hazard</td>
<td>16</td>
<td>4.3</td>
</tr>
<tr>
<td>Scenic easement permits activity</td>
<td>13</td>
<td>3.5</td>
</tr>
<tr>
<td>Scenic easement prohibits activity</td>
<td>11</td>
<td>2.9</td>
</tr>
<tr>
<td>Building replaces existing structure</td>
<td>11</td>
<td>2.9</td>
</tr>
<tr>
<td>Parkway proposed exchange release</td>
<td>10</td>
<td>2.7</td>
</tr>
<tr>
<td>Activity could set a precedent</td>
<td>10</td>
<td>2.7</td>
</tr>
<tr>
<td>Maintain neighbor relations</td>
<td>7</td>
<td>1.8</td>
</tr>
<tr>
<td>No cutting of trees necessary</td>
<td>6</td>
<td>1.6</td>
</tr>
<tr>
<td>Scenic easement deed does not address Proposed activity</td>
<td>5</td>
<td>1.3</td>
</tr>
<tr>
<td>1961 Act permits exchange—release to relieve landowner of SE burden</td>
<td>5</td>
<td>1.3</td>
</tr>
<tr>
<td>Only dead/down trees cut/removed</td>
<td>4</td>
<td>1.1</td>
</tr>
<tr>
<td>Scenic easement already has a residential home located on it.</td>
<td>3</td>
<td>0.8</td>
</tr>
<tr>
<td>Purpose of scenic easement is to preserve Agriculture/forests</td>
<td>3</td>
<td>0.8</td>
</tr>
<tr>
<td>Variance reviewed by Park Landscape Arch</td>
<td>3</td>
<td>0.8</td>
</tr>
<tr>
<td>Landowner was not aware he/she had</td>
<td>2</td>
<td>0.5</td>
</tr>
<tr>
<td>A scenic easement on their property</td>
<td>2</td>
<td>0.5</td>
</tr>
<tr>
<td>Parkway boundary very narrow at location</td>
<td>2</td>
<td>0.5</td>
</tr>
<tr>
<td>Of scenic easement</td>
<td>2</td>
<td>0.5</td>
</tr>
<tr>
<td>Existing structure beyond repair</td>
<td>2</td>
<td>0.5</td>
</tr>
<tr>
<td>Landowner has other legal means of access</td>
<td>2</td>
<td>0.5</td>
</tr>
<tr>
<td>No exterior modifications necessary to Structure</td>
<td>2</td>
<td>0.5</td>
</tr>
<tr>
<td>Variance is part of the terms of a Settlement of a violation</td>
<td>2</td>
<td>0.5</td>
</tr>
<tr>
<td>Other criteria*</td>
<td>43</td>
<td>11.4</td>
</tr>
<tr>
<td>Unknown</td>
<td>37</td>
<td>10</td>
</tr>
</tbody>
</table>

*See Appendix F for additional criteria
Table 6.17: Methods used by the Parkway to convey approval or denial of variance requests to landowners.

<table>
<thead>
<tr>
<th>Method</th>
<th>Frequency (n = 298)</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Letter to landowner</td>
<td>238</td>
<td>80.5%</td>
</tr>
<tr>
<td>Verbal approval</td>
<td>35</td>
<td>12.0%</td>
</tr>
<tr>
<td>Signed agreement with landowner</td>
<td>3</td>
<td>1.0%</td>
</tr>
<tr>
<td>Unknown</td>
<td>22</td>
<td>7.0%</td>
</tr>
</tbody>
</table>
Table 6.18: Did the Parkway conduct an onsite review of the variance request?

<table>
<thead>
<tr>
<th></th>
<th>Frequency</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>247</td>
<td>83</td>
</tr>
<tr>
<td>No</td>
<td>17</td>
<td>6</td>
</tr>
<tr>
<td>Unknown</td>
<td>34</td>
<td>11</td>
</tr>
</tbody>
</table>
Table 6.19: Information utilized by the Parkway in reviewing and rendering a decision on variance requests, in percent.

<table>
<thead>
<tr>
<th></th>
<th>Map (%)</th>
<th>Sketch/Diagram (%)</th>
<th>Photos (%)</th>
<th>Mgt Plan (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Included</td>
<td>53</td>
<td>48</td>
<td>9</td>
<td>4</td>
</tr>
<tr>
<td>Absent or not found</td>
<td>33</td>
<td>37</td>
<td>77</td>
<td>84</td>
</tr>
<tr>
<td>Unknown</td>
<td>14</td>
<td>15</td>
<td>14</td>
<td>12</td>
</tr>
</tbody>
</table>
associated with easements are now documented with photos (author, pers. Obs.). In only 4 percent of the variance requests the park developed a management plan/desired future conditions report. However, over the past 10 years, the Parkway Land Resources staff have begun to prepare “Desired Future Conditions Reports” for any easement where a landowner has submitted a variance/approval request. The desired future conditions reports generally contain a summary of the request, the specific restrictions for the easement, an analysis of how visible the proposed action is from various points along the Parkway motor road and an assessment of how the scenic easement currently fits into the parkway’s overall viewshed and whether or not the proposed actions/activities fit with the parkway’s overall goals for the easement. Figure 6.4 is an example of a visibility map prepared by Parkway Land Resources Staff on Scenic Easement No. 2 in Section 2-F.

**Subdivision of Scenic Easements**

Most scenic easements include restrictions that prohibit or greatly limit the future subdivision of property (Hamilton, 2008 and Byers and Ponte 2005). Such prohibitions are particularly useful for preserving large tracts of farm and forest land, reducing habitat fragmentation and helping to reduce the burden of monitoring and enforcing easement restrictions among multiple property owners (Byers and Ponte 2005 and Bick and Haney 2001).

Scenic easements acquired for the Blue Ridge Parkway do not include prohibitions against subdivision. As a result many of the scenic easements along the Parkway have been divided among various heirs or subdivided and sold to multiple owners. As previously discussed, in 1945, Superintendent Weems sent a note to district rangers requesting the names and address of all parkway scenic easement owners. The responses submitted by park district rangers indicated that within eight years of the acquisition of most of the Parkway’s scenic easements, 33 percent of the scenic easements had already changed hands and were under new ownership. Five of the original 195 easements (3%) had already been subdivided. Four easements were subdivided into two parcels each, while another easement had been subdivided into 3 parcels. In at least two of these instances, easements had been subdivided among the original landowner’s heirs.
Figure 6.4: GIS map prepared by Parkway Land Resources Staff in order to assess how visibility of scenic easement 2E-2 and surrounding lands along the Blue Ridge Parkway. The easement owner had proposed a selective timber cut on the scenic easement. Source: J. David Anderson, National Park Service, Blue Ridge Parkway 2006.
Between June 2008 and December 2008, tax parcel information was obtained for each of the remaining 146 scenic easements in North Carolina and Virginia. County tax records and GIS maps indicate that there are currently 224 individual tax parcels (mean of 1.5 parcels per easement) of land under scenic easement along the Blue Ridge Parkway—29 more parcels than the original 195 easements acquired for the Parkway. These parcels are owned by 214 individual landowners—several landowners own more than one easement or own more than one parcel within an easement.

Twenty-nine percent (29%) of the Parkway’s remaining 146 scenic easements have been subdivided as indicated in Table 6.20. Of the 146 remaining scenic easements, 17% have been subdivided into 2 lots and 13% have been subdivided into 3 or more lots (Table 6.21). Scenic easement No. 8 in section 2F has been subdivided into 8 individual parcels—among the 6 heirs of the former landowner. Scenic easement No. 6, section 2A has been subdivided into 7 parcels between 6 landowners. At least a portion of this scenic easement includes the Saddle Mountain Estates Trailer Campground.

According to Land Resources Specialist David Anderson (pers. Com, April 2009), the subdivision of scenic easements has created a number of issues for Park staff on how to interpret deed restrictions. In particular, the Parkway is struggling with how to interpret/enforce deed restrictions that permit construction of residential homes on scenic easements. If a scenic easement has been subdivided into a number of different parcels, is the parkway obligated to allow each landowner to construct a residential home? In several instances the parkway has received multiple requests from different landowners of a single easement. According to Anderson, the Parkway’s stance in these circumstances has been to permit only one residence per easement. However, the U.S. Solicitor’s office has not provided a formal opinion on this policy. The U.S. Solicitor has stated to park officials that in general the Parkway has an acquired interest in the scenic easements and can not approve any new activities on a scenic easement that would irrevocably harm the overall scenic value of an easement. Anderson (per. Com April 2009) states that: “Just because a scenic easement has been subdivided 5 times does not mean that each owner gets to build a house. There is an acquired scenic value.” Anderson states that the subdivision of the easements was something that the early designers and architects of the Parkway never anticipated.
As early as 1972, park officials were wrestling with the fall-out of the lack of any prohibitions against the subdivision of scenic easements. In 1962, Parkway officials gave landowner James Casey permission to construct a small guest house on scenic easement No. 22, section 2L in the back of the landowner’s existing residential home. In 1972, Mr. Casey wrote the parkway a letter outlining a proposal to subdivide the scenic easement into 22 “building lots” for residential homes. The parkway denied Mr. Casey’s request stating in part that:

“Obviously, this easement does not prevent the division of property into smaller parcels; however it quite naturally follows that each such parcel will continue to be subject to the restrictions which prohibit the erection of new buildings, advertising signs, or the removal of mature or stable trees….Aside from the legal considerations, there is a matter of public relations and ethical requirement of fair and impartial treatment in the administration of the easement rights held by the United States. Since there are more than 1,200 acres in the States of North Carolina and Virginia subject to easement restrictions, you can imagine some of the frightful adversities that could be expected from the freedom to subdivide and develop these parcels of land (Liles 1970, p. 1).”

The parkway eventually negotiated an exchange—release with the Casey’s for the scenic easement. However, during this time, the Parkway received two additional requests from yet other landowners having an interest in scenic easement number 22 to construct residential homes on the easement. The parkway subsequently negotiated an exchange—release with both those landowners as well.

Public Review of Parkway Variance Requests and other Scenic Easement Activities

In general the Blue Ridge Parkway’s variance review and approval process as well as the purchase, acquisition and exchange of scenic easements and/or scenic easement interests have been handled as an administrative process with very little public oversight and review. Variance requests are submitted to the Park Superintendent in writing, the parkway sends out a representative (in most cases the Landscape Architect) to review the landowner’s proposal and the Superintendent sends the landowner a letter outlining the Parkway’s decision.

In the case of fee acquisition of scenic easements and/or exchanges, historically, the parkway Realty Specialist or Land Resources Specialist completed legal descriptions of the property along with appraisals of the value of the property to be acquired as well as the value of the easement being released. Title searches, if necessary were usually conducted by outside Realty Specialists. Following acceptance of the agreement with the landowner/easement owner,
Table 6.20: How many of the Blue Ridge Parkway’s remaining Scenic Easements have been subdivided? (n = 146)

<table>
<thead>
<tr>
<th></th>
<th>(#)</th>
<th>(%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>43</td>
<td>29</td>
</tr>
<tr>
<td>No</td>
<td>103</td>
<td>71</td>
</tr>
</tbody>
</table>
Table 6.21: Number of times remaining scenic easements have been subdivided (n=146)

<table>
<thead>
<tr>
<th># Parcels/Lots</th>
<th>(#)</th>
<th>(%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>103</td>
<td>71</td>
</tr>
<tr>
<td>2</td>
<td>25</td>
<td>17</td>
</tr>
<tr>
<td>3</td>
<td>11</td>
<td>8</td>
</tr>
<tr>
<td>4</td>
<td>2</td>
<td>1.3</td>
</tr>
<tr>
<td>5</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>6</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>7</td>
<td>1</td>
<td>0.7</td>
</tr>
<tr>
<td>8</td>
<td>1</td>
<td>0.7</td>
</tr>
</tbody>
</table>
the Parkway submitted the legal documents to the NPS, Southeastern Regional Office for final approval and signature by the Regional Director.

However, over the past several years, a number of conversations with the Regional Solicitor’s office has indicated that scenic easements that required federal action fall under the umbrella of the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA) (B. Teague pers. Com April 2008; S. Gasperson, per. Com. April 2009). Federal actions pertaining to the scenic easements could include construction of a residential home or other structure (if the deed requires NPS approval of a structure), cutting/removal of timber, as well as exchange-release of scenic easements.

In 2006, the parkway and the heirs of the former owner of scenic easement No. 2, section 2-F proposed an exchange release after the easement was subdivided into 8 lots as part of the settlement of the estate. Following settlement of the estate, one of heirs approached the parkway about obtaining permission to construct a residence on his portion of the scenic easement. The parkway denied the heir’s request because one residence already existed on the easement and the parkway feared that in granting a request for a second home that they would be setting a precedent that would encourage other owners of the easement to make similar requests.

Following a meeting with the other heirs, the parkway proposed an exchange—release in which the NPS would release the restrictions on 7.67 acres of the 12.13 acre easement; if the heirs would agree to quitclaim 2.43 acres in fee simple to the NPS. The remaining 2.02 acres would continue to fall under the scenic easement restrictions. As part of the exchange, the NPS had to go through a public review process and had to conduct archeological surveys on the 7.6 acres to be released from the scenic easement restrictions. Ultimately this proposed exchange—release fell through, however, it set the stage for integrating NEPA into the decision-making process associated with the scenic easements.

While exchange-release of scenic easement restrictions require public review, Variance requests are generally submitted for internal review among key park staff members through the National Park Services Planning, Environment and Public Comment (PEPC) website. PEPC provides a means for employees of the NPS as well as members of the public access to a variety of current and proposed plans, environmental analysis and other public documents related to project planning. The site also allows NPS staff and members of the public to submit comments on proposed projects.
Currently the Parkway solicits public comments for exchange—release actions; variance requests however are subject to internal park review through an interdisciplinary team approach. Park review team members generally consist of all of the park division chiefs, park biologists and cultural resource specialists, Land Resources Staff, as well as field staff within the parkway district the easement is located in. Review may last between 30-60 days, and often requires a site visit with key park staff.

Not all scenic easement actions however are subject to NEPA. In 2007, a landowner proposed to build a cabin within scenic easement No. 6, Section 1R. The NPS Regional Solicitor determined following a review of the easement deed and other pertinent documents that since a house had existed on the property prior to the acquisition of the easement, the owner had a retained right to build a house matching the footprint of the former residence, even though the old residence had fallen down. The Solicitor determined under those circumstances, that building the house did not constitute a “federal action” and did not fall under NEPA or the NHPA. However, if the landowner were to propose to enlarge the house outside of the original footprint of the house, then that would constitute a federal action and would thus be subject to review under NEPA.
Chapter 7: Discussion

The five objectives of this study were addressed in Chapters 4, 5 and 6 using the data collected through review of Parkway documents, archives, databases, land use maps, oral history transcripts, interviews and focused discussions with key staff and through direct observation from the author. This chapter will provide additional discussion on some of the important findings and will compare the perceived short fallings of the scenic easements acquired for the Blue Ridge Parkway with policies procedures utilized by two local land trusts and the Land Trust Alliance. Specifically this section will address conservation easement deeds, stewardship and monitoring, enforcement of violations, variance approval requests, and conservation easement termination.

In order to gain some additional perspective of the procedures utilized by the Blue Ridge Parkway, the author reviewed a number of documents prepared by the Land Trust Alliance including: Land Trust Practices and Standards (LTA 2004), Conservation Easement Drafting and Documentation (Hamilton 2008), and Conservation Easement Stewardship (Bouplon and Lind, 2008). In addition, I reviewed a number of guidelines, procedures and policies prepared by the Virginia Outdoors Foundation and the Conservation Trust for North Carolina. Follow up interviews were held with key staff members from both the VOF and the CTNC whose primary responsibilities were Conservation Easement Stewardship.

7.1 Conservation Easement Deeds

Lack of Clearly Defined Restrictions

Acquisition of scenic easements for the Blue Ridge Parkway was left primarily to the Commonwealth of Virginia and the State of North Carolina’s respective Highway Departments. Each state relied primarily on the procedures it used in condemning and acquiring right-of-ways for state roads and highways in order to acquire scenic easements for the Blue Ridge Parkway. Virginia’s land acquisition method at least left clear deeds between the Commonwealth and individual landowners. North Carolina’s condemnation process did not leave any deeds between the state and individual landowners. As a result landowners in North Carolina do not have any deed to refer to when attempting to determine exactly how the “scenic easement” on their property is defined.

However, even Virginia’s land acquisition process often left landowners in limbo when trying to determine what restrictions had been placed upon their property. Only the deeds of
scenic easements acquired through direct negotiation with the landowners contain actual
easement restrictions in the body of the deed. Scenic easements that were condemned by the
Commonwealth and went through the Scenic Easement Judgment process do not include any
restrictions in the actual deed document. Instead, the deed only references the Scenic Easement
Act under which the easement was acquired. It’s up to the landowner—if they are willing—to try
to research the meaning of the easements. Individuals must usually contact the National Park
Service to get a true explanation of what a scenic easement is and what restrictions apply to their
land. Numerous letters from landowners were found in the Parkway’s land files requesting an
explanation of what a scenic easement was and how it affected their property.

Further, the National Park Service has not been proactive about trying to reach out to
scenic easement holders. In 1939, the Parkway (U.S. Department of the Interior, 1941)
published a series of informal newsletters—The Blue Ridge Parkway News in an attempt to reach
out to its new park neighbors and to promote understanding of the significance of the parkway in
the local communities along the route of the parkway. Two separate issues of the newsletters
(June 1939, and April 1941) included articles attempting to explain to local landowners and the
general public the purpose of scenic easements, how this new land use tool was intended to work
and how the parkway planned to work with individual landowners to manage the easements.

In 1945, and again possibly between 1974 and 1975 (the parkway’s records are
incomplete), the National Park Service sent scenic easement owners letters summarizing the
general scenic restrictions on their respective properties. However, the letter sent in 1945 did not
include any instructions on what landowners should do if they proposed any changes to land
cumbered by scenic easements.

The St. Croix National Scenic Riverway, a 274-mile long scenic river managed in part by
the National Park Service includes more than 14,000 acres of scenic easements and riverfront
scenic easements in Wisconsin and Minnesota held by the NPS and a variety of partner
organizations. St. Croix has attempted to take a proactive approach in managing their easements.
The National Park Service (2006) has a prepared 10-page informational brochure in question and
answer format for landowners along the river and other interested members of the public that
explains the purpose of the park, how it is managed and defines in easily understood terms what
a scenic easement is and what restrictions apply to affected property. According to Bambi
Teague (pers. Com. Aug. 2008), the Blue Ridge Parkway is proposing to develop a similar
informational brochure in the near future to send to landowners of scenic easements along the Parkway in Virginia and North Carolina.

*Lack of a Purpose Clause*

Another weakness of the deeds created for the Blue Ridge Parkway’s scenic easements is that the deeds do not include any statement or purpose for why the easement was acquired in the first place. The Land Trust Alliance (Hamilton 2008, p. 114) calls the Purpose Clause (or Purpose Statement) of an easement deed “the heart of the easement and for good reason.” The Purpose Clause outlines why the easement was acquired or granted; what the specific conservation values that the landowner and the organization holding the easement wish to protect; and why protecting those values is important (Hamilton 2008).

David Anderson, the Parkway’s Landscape Architect and Land Resources Specialist states that a major problem with the scenic easements conveyed to the Parkway is that “there is no statement about what the intrinsic value was [of individual scenic easements] at the time they were purchased.” Pidot (2005) advocates tying in the Purpose Statement with the restrictions of the easement. Doing so can minimize future conflicts over what the intent of an easement is.

Byers and Ponte (2005, p. 390) recommend including a statement indicating that only “uses that are consistent with protection of the conservation values of the property be permitted under the terms of the conservation easement.” Deed templates utilized by both the Virginia Outdoors Foundation and the Conservation Trust for North Carolina include statements very similar to that advocated by Byers and Ponte.

*Ambiguous Language*

The variable quality of conservation easements has become a concern a major concern among a number of authors and organizations including Pidot (2005). A major criticism (see Wright 2000, Roe 2000), of the Blue Ridge Parkway’s scenic easements has been the ambiguous language and poorly written deeds. In particular Section (a) of North Carolina’s 1935 Scenic Easement Act is open to multiple interpretations:

“(a) That no buildings, pole lines and structures may be erected on such land only for farm and residential purposes. New buildings or major alterations shall be subject to the prior approval of the National Park Service…”

At least one legal opinion received by the Parkway in 1973 by Field Solicitor Curtis Bell indicates that the Parkway probably could not flatly deny a request to build a residential home
within an easement in North Carolina, nor can the United States deny a landowner permission to alter existing structures. However, the Parkway has not sought a formal legal opinion from the current Solicitor’s Office on how this restriction should be interpreted on scenic easements acquired in North Carolina. (Anderson per. Com. April 2009).

The Parkway’s easement language lacks any definition as to what specifically constitutes commercial or industrial structures. The Parkway has had a number of requests to operate commercial businesses out of residential homes. In 2007, the Parkway authorized a landowner to utilize a residential home on the easement for a private counseling practice only because the business required no exterior modifications to the residence. More recently the parkway is wrestling over a landowner who has enlarged and remodeled a pre-existing residence on an easement and is operating it as a bed and breakfast. Easement templates examined from the VOF, CTNC and the Land Trust Alliance all include clear definitions as to what constitute a “commercial business” home business” etc.

Definitions and clear interpretation are also lacking on what constitutes a mature or stable tree. In 1949, the U.S. District Court in granting the USA an injunction against a landowner who was harvesting timber in violation of the scenic easement stated that the easement “by its very terms trees that may be eight inches or more in diameter and which according to the custom in the Wilkes County, North Carolina section, become marketable timber…”

The Land Trust Alliance (Hamilton 2008) recommends a number of steps to improve the overall clarity of a deed including:

- listing conservation easement restrictions under the headings of “permitted uses” and “restrictions.”
- Organizing easement subjects by topic (e.g. a separate headings for restrictions related to buildings, subdivision, commercial structures, timbering, etc.).
- Identifying specific areas (e.g. a building envelop) within the easement on a map where certain activities can and can not occur

7.2 Conservation Easement Stewardship

Lack of Baseline or Current Conditions Report

Baseline condition reports serve to document the current conditions of a property at the time an easement is granted (Bouplon and Lind 2008). The condition report documents the important conservation values for which the easement was acquired/donated in the first place including important viewsheds, farmland or open space, wildlife habitat, and wetlands. In the
event of a violation, the baseline report can serve as an important resource on how the property looked and an important comparison of the condition of the easement following a violation. The baseline report usually includes directions on how to find the easement, a description of the property, and background information on why the easement was acquired. In addition to the written report of the current conditions of the easement, photographs, maps, GIS points and aerial photos should be used to document all relevant features within an easement.

Both the CTNC and the VOF prepare baseline documents prior to the final closing on an easement property. Ryan Walker, a Stewardship Specialist with the Virginia Outdoors Foundation stated that since 2005, the VOF has prepared a baseline report for every conservation easement acquired or donated to the organization. Prior to 2005 however, it was not a standard practice for the VOF to prepare baseline reports. Walker states that the VOF is now in the process of preparing “current conditions assessments” on all of the VOF’s easements acquired prior to 2005.

While documents in the form of letters and correspondence were found in the Parkway land records indicating that parkway designers and architects certainly discussed the scenic merits of individual easements with state highway officials responsible for negotiating the purchase of scenic easements, no formal records were apparently maintained about the current conditions of scenic easements at the time they were acquired. Parkway Land Use Maps, which include the original design drawings of the Parkway in some cases, indicate the presence of residential homes & farm buildings on easements, but lack sufficient detail in most cases to assess the original land use of the easements at the time they were acquired.

Over the past several years, Parkway Landscape Architect David Anderson has begun preparing “ Desired Future Conditions” Assessments on some of the Parkway’s high priority scenic easements—including easements where landowners are proposing major changes (e.g. timbering or constructing a residence) or in instances where a suspected violation has occurred. Thus far, the Parkway has completed approximately eight Desired Future Conditions Reports. These reports include a description of the easement, including its location (by milepost) and an assessment of what landscape types and visual variety is available along the parkway in the area and how important the easement is to maintaining those particular visual features. The write-up also includes a management prescription of how the parkway would like to see the easement maintained in the future. The reports generally include the original Parkway Land Use Map
showing the easement, as well as photos of the easement, topographic maps, aerial photos, and a visibility map that indicates what areas along the parkway motor road the easement can be seen from.

In originally proposing the Desired Future Conditions Inventory of all the Parkway’s scenic easements, Anderson (1997, p. 1) states that:

“The need for a scenic easement inventory, condition report, and management prescription is a necessary tool to better understand the state, importance and condition of our historical scenic easements. This is something that is standard in acquisition of new ‘conservation easements’ and will be a valuable aid in the decision making process.”

The Parkway has not completed the Desired Future Conditions Report for all of the scenic easements. Rather, these assessments have been prepared opportunistically, as individual scenic easement holders have proposed changes or modifications to easements or in response to potential violations. Unfortunately, these current condition reports probably have little value at the point a violation has already occurred.

Overburdened staff and insufficient time have no doubt played a role in the lack of progress toward completing the desired future conditions assessments of the Parkway’s scenic easements. Until approximately 5 years ago, the Parkway had three landscape architects on staff, including the Chief of the Resource Planning and Professional Services Division, the Parkway’s Land Resources Specialist and the Parkway’s primary Landscape Architect. However with the transfer of the Landscape Architect, the Parkway has decided not to fill the position as a result of budgetary concerns. The Parkway’s current Land Resources Specialist is now responsible for overseeing not only the land resources program—including day to day administration of scenic easements—but also serves as the parkway’s Landscape Architect, GIS Specialist and Right-of-Way permits coordinator.

**No Systematic Monitoring**

The overall goal of a conservation easement is to preserve a tract of land containing desirable conservation values in perpetuity. When a conservation organization accepts or purchases an easement, the organization is entrusted with enforcing the restrictions of the easement to insure that the values for which the easement was acquired are protected. If a conservation easement is acquired in order to protect scenic views of a local mountain, the agency commits itself to insuring that no buildings are constructed on the easement without
approval of the Grantee, that trees are not cut on the easement and signs or billboards are not erected in violation of the easement. In order to insure that these terms are adhered to by the easement owner, the conservation organization must regularly monitor the easement.

Actual inspection of the conservation easement is but one element of a monitoring program. Monitoring also consists of contacting the landowner, taking photographs to document to the current condition of the easement, reviewing the easement with the landowner, documenting the inspection in writing and then conducting follow-up visits with the landowner if potential violations of the easement restrictions are found.

The Land Trust Alliance and Hamilton (2008) advocate conducting inspections/monitoring of conservation easements at least annually. The LTA fears that allowing potential violations to persist any longer than a year could make the enforcement of a violation that much more difficult. Richard Broadwell, Land Protection Specialist (per. Com. April 2009) with the CTNC states that the CTNC inspects their easements at least yearly as per the Land Trust Alliance’s Guidelines. Ryan Walker (per. Com. April 2009) reported that the VOF currently monitors their easements on a one and a half to two year cycle—primarily because of the volume of easements the VOF administers. The VOF currently has more than 2,450 easements with a Stewardship staff of 12 full time employees. Walker states that the VOF is now using “short visits” on an alternating basis with more extensive inspections. During the short visits, stewardship staff check-in briefly with the landowner and take a quick look at the more accessible areas of the easement. Walker states that the VOF’s monitoring focuses heavily on looking for new buildings and insuring compliance with their restrictions related to riparian buffers. Walker stated that to date, the VOF has had few major violations.

The Blue Ridge Parkway has never implemented a systematic monitoring program for their scenic easements. Because all of the easements border the scenic motor and most of the easements are visible from the Parkway motor road, monitoring of the easements has generally been on a passive basis throughout the easement’s 70 year history. Rangers observe easements, often on a daily basis during routine patrol up and down the parkway. Eighty-one percent of the violations found during this study were observed and reported by rangers and staff of the Blue Ridge Parkway. Sixty-percent of the violations were discovered within 30 days. Nearly all of the rangers I spoke with carry a set of the Parkway’s Land Use Maps in the patrol vehicles and are generally familiar with the locations of the easements in their respective districts. In general
the rangers, resource managers and many of the longer-term maintenance employees are at least familiar with the scenic easements and are aware that the easements prohibit construction of new buildings, removal of mature trees and prohibit the installation of signs and the maintaining dumps on the easements.

However, not all of the Parkway’s scenic easements are visible from the motor road. In many cases easements that consisted of open farm or agricultural land at the time they were acquired were allowed to grow up into forested tracts. As landowners were prohibited from cutting the timber from easements, in many cases easements that had once been visible from the motor road are now obscured by trees. In a number of cases, references were found in the files indicating that easements had been timbered or houses constructed in violation of the easement terms without park staff being aware of the violation for several years—often too late to take any enforcement action. In fact nearly 12 percent of the violations of parkway scenic easements were not discovered for more than a year after they occurred. Park staff did not discover a barn which had been constructed on an easement in Watauga County, NC until several years after it had been constructed. The violation was discovered only after the Parkway’s landscape architect met with the heirs of the former easement owner to discuss the settlement of the landowners estate which called for subdivision of the estate including the easement into 8 lots.

There is also the question about how much parkway rangers can really observe driving by an easement at 45 miles an hour. The rugged mountainous terrain along the Blue Ridge Parkway means that while portions of easements are visible from the motor road, in most cases not all of the easement is easily seen from the parkway motor road.

Another interesting challenge to any monitoring of the parkway’s easements is that deeds do not grant the National Park Service any affirmative rights of access. In dealing with a perceived violation of an easement, park staff have generally contacted a landowner and requested a meeting on-site with the landowner. However, nothing in the deed requires or compels the landowner to allow national park service staff to enter upon an easement either to monitor an easement or investigate a potential violation. While a landowner did successfully argue against the NPS’s authority to survey and monument his scenic easement, no files or records were found during this research to indicate that easement holders had ever expressly forbid National Park Service employees from entering upon easements.
**Lack of Written Guidelines**

The Land Trust Alliance (Bouplon and Lind 2008) and Byers and Ponte (2005) recommend that organizations develop written procedures on how to implement monitoring and inspection activities of conservation easements. Written procedures ensure that an organization conducts all stewardship activities in a consistent manner and that adequate documentation is available to defend easements should violations arise (Bouplon and Lind 2008). Both the VOF and the CTNC have well established written Stewardship and Monitoring Policies that address the steps to take prior to conducting site visits, the procedures for contacting landowners to inform them of upcoming site visits, procedures for conducting the easement inspections, procedures for document the inspection (including procedures for taking photographs and GIS points), landowner relations and procedures for following up with the landowner should potential violations be found. As previously pointed out, the Parkway does not have any written procedures or guidelines on how monitoring should be conducted and what specific activities park staff should be on the lookout for during routine patrols.

**No Regular Contact with Landowners**

Another important element—Byers and Ponte (2005, p. 134) state it’s “the most important piece”—of a Conservation Easement Stewardship program is developing a relationship with the easement owner. Byers and Ponte (2008) advocate thinking of the relationship between an easement owner and the easement holder as a partnership that begins with the first meeting to discuss a potential easement. After acquisition of an easement is completed, the conservation organization should continue to make contact with the landowner a part of its annual monitoring program. Doing so will help encourage landowners to contact the organization whenever they have a question or concern about the easements or its restrictions.

As discussed in the Literature Review of this paper, research from a variety of sources (e.g. Gustanski 2000, Collins 2000, Byers and Ponte 2005, Hamilton 2008) suggests that most violations occur as a result of landowners who were not participants in the original donation/acquisition of the conservation easement. The Land Trust Alliance (Hamilton 2008) and others advocate meeting with new owners shortly after the property changes hands in order to discuss the conservation values of the property, the restrictions that apply to the property, the conservation organizations procedure for monitoring the easement, the overall mission of the organization and to develop and encourage an on-going relationship with the new owner(s).
Walker (per. Com April 2009) stated that one of the most important part of the VOF’s monitoring program is actually spent not out in the field inspecting easements, but checking in with landowners and conducting title searches in courthouses insuring that easements have not changed hands. While the VOF’s deeds stipulate that Grantor’s are supposed to contact the VOF 30-days prior to the closing when selling a tract of land encumbered by an easement, Walker states that this clause is one of the most common “technical” violations the VOF deals with.

While the Parkway made an early attempt in 1945 to update its records of scenic easement owners and possibly a second attempt in 1975 (the park’s records are not complete), the parkway has made no attempt that I could find to keep in regular contact with easement owners. Prior to this research, the parkway had no records of current easement owner names, addresses and contact information. While rangers in the parkway’s respective district attempt to develop relationships with adjacent landowners (including easement holders) in their respective areas, no systematic attempt has been made to contact easement holders by the Parkway’s management team. If the scenic easement restrictions for the Parkway’s scenic easements are confusing to its staff, there is little doubt that most scenic easement holders do not fully appreciate the meaning of the restrictions held by the NPS on their properties. Without this crucial relationship between the parkway and its easement holders, monitoring and enforcement of the already highly confusing and ambiguous easements will be even a greater challenge to the NPS.

7.3 Conservation Easement Enforcement

This research documented 51 instances of violations of scenic easement restrictions, which occurred between 1939 and June 2008. Most of the violations involved prohibited removal of trees and other vegetation and the construction of prohibited or unauthorized structures including residential homes, farm buildings, non-farm related storage buildings and commercial structures. Only 45 percent of the violations of scenic easement restrictions experienced by the parkway were resolved. In 37% of the violations, the parkway took no enforcement action at all against the offending landowner. In 37% of these instances the park officials felt powerless to stop the violation or did not feel confident in their ability to enforce the violation. In other instances the parkway failed to take enforcement action because they believed the violation was not worth a long-drawn out confrontation over. Park officials felt that under the circumstances nothing could be done to correct the violation and in at least one instance the
violation was not discovered by the park until several years after it had occurred.

In addition, another common method of “resolving” violations was too simply grant the easement owner a variance. In 31 percent of the violations, the Parkway granted easement owners a variance in lieu of attempting to enforce the violation. Thirty-eight percent of the variances granted for violations were for construction of prohibited or unauthorized residential homes on the North Carolina portion of the parkway.

Not unsurprisingly, given the fact that the parkway’s scenic easements are now nearly 70 years old, 80 percent of the violators were successive landowners. In 17 percent of the violations, landowners told park officials that they were not aware of the existence of the scenic easements on their property—the landowners had acquired the property without the previous landowner informing them of the presence of the scenic easement.

Byers and Ponte (2005) and the Land Trust alliance (Hamilton 2008) state that in accepting or acquiring a conservation easement, the conservation organization must be legally committed to enforcing the easement. Only through enforcement of the easement can the conservation organization ensure that the values for which the easement was acquired will be protected in perpetuity (Byers and Ponte 2008). Further through enforcement of the easement, the conservation organization sends a clear signal to the easement owner and the public that it does intend to defend the easements and the conservation values it was intended to protect. Finally, failing to consistently enforce easements could affect the conservation organizations ability to enforce future easements. Courts and attorneys for the easement owner could view an organization’s inconsistent enforcement as a waiver of their rights to enforce future violations (Byers and Ponte 2005).

Both the Virginia Outdoors Foundation and the Conservation Trust for North Carolina have developed written guidelines on how their respective organizations should respond to potential violations. The VOF’s policy begins by outlining a number of steps that the agency employees should take to prevent potential scenic easement violations. In particular, the VOF’s policy calls the VOF and the easement owner co-stewards of the easement property. VOF’s approach to prevent violations includes conducting regular monitoring visits, establishing and maintaining regular contacts with landowners, using easement inspections proactively to remind easement owners of the terms & restrictions associated with their easement, providing timely and accurate responses to easement holder questions and working closely with partner agencies to
educate local realtors, attorneys, title companies and other land management organizations about conservation easements and the restrictions associated with them (VOF 2006a).

The VOF’s and CTNC’s respective policy states that where possible, the agencies will always attempt to work with landowners to resolve the violation through voluntary compliance first. VOF’s enforcement response is based upon a tiered system. Minor technical violations generally consist of instances where landowners failed to notify the respective agency that they had sold the easement or an otherwise minor violation that does not impact the conservation values of the property. In these instances both agencies would generally send the easement owner a letter informing them of the violation and the steps the owner should take to avoid future violations. Major violations are classified as those activities (e.g. extensive clear cutting, construction of an authorized house etc) that compromise the conservation values the easement was designed to protect. In these instances, the VOF’s policy is to contact the State Attorney General’s Office to seek legal advice. From there, further action depends on large part on how cooperative the easement owner is. Major violations could involve injunctions, litigation and damage payments.

CTNC’s policy is similar except that the Director of the CTNC’s Land Protection would contact the easement owner and ask the landowner to voluntarily correct the violation if possible. If the landowner is willing to cooperate, a deadline for completion of the corrective action would be established. The CTNC would then send a follow-up letter to the landowner explaining the violation and advising them of the terms of the restriction in question. If the landowner fails to cooperate, the CTNC’s Executive Director or the Director of Land Protection would contact their legal counsel. Both organizations consider litigation an “action of last resort.”

7.4 Variance and Approval Requests

Much of the Blue Ridge Parkway’s scenic easements require that easement owners seek approval prior for constructing new homes, farm buildings, commercial structures and prior to cutting/removing mature trees and shrubs. In Virginia easements acquired through condemnation under both the 1936 Act and the 1938 Amendment require landowners to obtain approval prior to constructing an access road or driveway across an easement. Over the past 70 years, the parkway has received approximately 298 easement owner requests for variances or “approvals. Fifteen percent of the variance requests involved requests by landowners to construct residential homes on the easements. Requests to remove mature trees and shrubs from
scenic easements accounted for 12 percent of all variance requests. Collectively, requests to construct new structures (residential, farm, commercial etc) accounted for 37 percent of all variance requests while requests to cut individual trees and/or to cut timber accounted for 22 percent of all variance or approval requests. In general, the NPS approved 82 percent of all variance requests. Sixty-six of all requests to construct residential homes were approved while 92 percent of all requests to construct farm buildings were approved. Seventy-three percent of all requests to cut and/or remove individual trees and shrubs from easement lands were approved; while 45 percent of landowner requests to cut timber were approved.

To date, Blue Ridge Parkway officials have not prepared written guidelines and procedures for staff to follow when reviewing variance/approval requests. The Parkway has generally attempted to review each request on a case by case basis. In 47 percent of the variance requests, the Parkway evaluated the requests based upon how the proposed activity would impact the Blue Ridge Parkway’s scenic viewshed—the primary conservation value these easements were acquired to protect. This included: how visible proposed structures would be from the parkway motor road, whether the topographic layout would prevent a structure from being seen from the parkway, and whether sufficient trees or other vegetation existed to screen the proposed development or activity from the parkway.

**Lack of Follow-up Monitoring**

All too frequently when granting variances Park officials have not conducted follow-up monitoring to ensure that the easement owner met all of his/her obligations under a variance approval. For example, in 1964, the parkway authorized the owner of scenic easement No. 9, Section 2-F to build a new home on the residence to replace his existing residence. In order to afford his new house, the landowner proposed to rent out his existing house on the easement for two years. After two years the owner was supposed to tear down the old house along with the existing barns. However, the parkway never conducted a follow inspection of the easement and the house was never removed. The easement was eventually subdivided into two parcels—each with a residence.

In a more recent instance, the Parkway in 2004, authorized the easement owner of scenic easement No’s 10 & 11, Section 2A to remove timber from approximately 1 ½ acres of the easements so that the owner could plant a fruit orchard. As part of the agreement the landowner was required to remove the tree stumps and slash from the easement. However in 2007, the
parkway was contacted by the new owner of the easement who was seeking permission—3 years after the initial timber cut—to remove the piles of slash left over from the timber cut. Had follow-up monitoring occurred, the violation of the original variance agreement could have been caught much sooner and the agreement enforced.

In other situations, the Parkway has not used legally binding agreements when imposing conditions and/or mitigating actions on landowner’s requests for variances. In a case involving scenic easement No. 1, Section 2-C the Parkway imposed a number of conditions on an easement owner as part of a variance agreement that permitted him to harvest timber on a portion of the scenic easement. The Parkway prepared a “consent agreement” in-house without benefit of a legal review through the Solicitor’s Office. The agreement “required” the landowner to remove all shash and tree debris from the easement following completion of the timbering operation. However, the landowner failed to clean up the slash, and when negotiations with the landowner failed, Park managers contacted the Solicitor’s office seeking a legal remedy. The Solicitor’s Office’s attempts to negotiate with the landowner and his attorney also proved unsuccessful. Eventually, the Parkway dropped further enforcement action, based largely on the opinion of the Solicitor, that the “agreement” signed by the easement owner would probably not hold up in court.

The 2004, timber operation cited previously on scenic easement No’s 9 and 10 was very similar to the timber operation on easement No. 1, section 2-C above. The parkway, in consenting to the timber operation on easement No’s 9 & 10 required the easement owner to fulfill a number of mitigating actions, which were ultimately not completed. While lack of follow-up monitoring played a role in not catching the violation sooner, it is unlikely the parkway could have legally defended the conditions written up in the letter to the landowner in a court trial.

**Subdivision of Scenic Easements**

Most contemporary conservation easements include restrictions that greatly limit or prohibit entirely the subdividivision of conservation easements. Such subdivision of easements is generally contrary to the over-all purpose and intent of easements since it often encourages development on lands. The early architects and designers of the Parkway probably could not have fathomed the development now occurring along the Parkway corridor nor could they have anticipated that easements would be subdivided or parceled out into numerous lots.
The parkway is now faced with the problem of handling multiple requests from multiple landowners of the same scenic easement who each want to construct a residential home on their lot within the scenic easement. The parkway has at least two scenic easements (scenic easement No. 13, Section 2-D; and scenic easement No. 9, section 2-F) that have two residential structures on them. Though the parkway has taken a stance that it will only permit one residential home per easement, this policy has not been tested in court and has not even been formally reviewed by the Solicitor’s Office.

7.5 Easement Amendment and Release

Change is an evitable part of any land conservation program—in particular easements that attempt to protect land in perpetuity. Changes in ownership, changes in adjacent land use and refinement of conservation easement administrative deeds and tools can create pressures to amend and change “perpetual” conservation easement agreements. The process of amending conservation easements has been the subject of much debate and discussion. The Land Trust Alliance (2007) cautions that amendments should not be taken lightly and when their use is considered, amendments should be subject to judicial and legal oversight.

Byers and Ponte (2005) and the Land Trust Alliance (2007) believe that the release of conservation easements is generally an undesirable practice that sets a dangerous precedent. A land trust that releases an easement could be subject to legal review from the State Attorney General since public benefits in terms of the conservation values the easement was meant to protect would be lost due to the release of the easement. Further, such a policy could erode public confidence in a land trust’s ability to protect important conservation lands. Byers and Ponte (2005, p. 195) believe that “as a matter policy, a holding organization should not consider voluntarily releasing a conservation easement even for compensation, except under the most extraordinary circumstances.”

According to Richard Broadwell, with the Conservation Trust of North Carolina (CTNC), the CTNC has never terminated an easement. Such an action in North Carolina would require court review and according to Broadwell it would set a dangerous precedent.

The Virginia Outdoors Foundation has however developed a “Release and Substitution Plan” (VOF 2007) according to Ryan Walker, a Stewardship Specialist with the VOF. Virginia’s Open Space Land Act (Code § 10.1-1704), provides a means by which land that has been
designated by the state as “open-space” may be diverted to other land uses. Designated open-space lands in Virginia can not be released unless they meet one of the following criteria:

- It is determined by the state that the open-space in question is necessary for the “orderly development and growth of the locality.”
- There is another property of equal or greater fair market value than the open-space property and it is of equivalent in “usefulness and location for use as permanent open space as is the land to be converted.”

According to Walker, the VOF primarily utilizes this procedure when a utility company proposes to run a utility line across an easement designated by the state as open-space. In every case the process is coordinated and reviewed by the State Attorney General’s Office. Walker indicated that in most cases the state applied the “greater fair market” value to the easement in question. In most cases, this added expense has served as a deterrent for utility companies, which usually opt to relocate the utility line outside of the easement.

The Blue Ridge Parkway has amended only one of its scenic easement deeds. In 1998, the then owner of scenic easement No. 4, Section 1-V constructed a house and driveway in violation of the easement and subsequently sold the house. The new owners made further modifications to the residence. As part of the settlement agreement, the landowners agreed to compensate the Parkway $10,000 for damages. The settlement agreement also included amending the original deed, making the existing residence a legal structure and reinstating the existing easement restrictions.

Since 1961, the Parkway has released 71 acres of scenic easement from their restrictions and in exchange acquired 55 acres in fee simple. Further, the parkway has acquired through direct purchase or donation some 361 acres of former scenic easements in fee simple title.

However, the park’s policy (and practice) of acquiring and/or releasing scenic easements casts serious doubt on its ability and willingness to steward conservation easements acquired by the Parkway or on the Parkway’s behalf by neighboring land trusts over the past 10 years. The question remains does the Parkway have the institutional capacity and the willingness to manage even these newer easements?

The original intent of the parkway’s scenic easement was to protect park viewsheds, serve as an additional buffer along the Parkway’s already narrow boundary and to reduce the original acquisition costs of the Parkway for the states. As such, the parkway’s scenic easements benefit the public and thus any proposed changes to the easements should be subject to public
scrutiny. Only within the past two years however, has the National Park Service has began to incorporate NEPA into its decisions related to the administration and management of the scenic easements. While, discretionary decisions concerning the easements such as landowner requests to construct houses or timber easement are being handled through the Park’s internal review process, current and all future exchange—release of scenic easements at least will be subject to public review.
Chapter 8: Conclusions & Recommendations:

The scenic easements acquired for the Blue Ridge Parkway in the 1930’s and 1940’s were among the first wide spread use of conservation easements in the country. The Parkway’s early architects, designers and planners had few examples of similar programs from which to fall back on and did not have the network of conservation organizations that exists today. The construction of a 470-mile long, multi-state scenic highway had never before been attempted by anyone at the time construction started on the Parkway in 1939. As a result, the original deeds prepared for the Parkway’s scenic easements amounted to no more than what Roe (2000) termed “short-form agreements.” When compared with contemporary conservation easements, the Parkway’s scenic easement are poorly constructed and poorly written instruments that on their own merits have only minimally protected the viewsheds along the Blue Ridge Parkway.

However, despite being saddled with poorly written easements, the National Park Service and the Blue Ridge Parkway has done little to help its own cause. While the poorly written and vague deeds have certainly contributed to a number of violations and misunderstandings between landowners and the NPS; poor oversight and administration including inconsistent enforcement and interpretation of the easements, lack of monitoring, lack of current baseline reporting, and lack of written guidelines have also contributed to easement violations over the past 70 years. Further, the parkway’s policy of exchange—release and/or acquisition of scenic easements in lieu of attempting to enforce violations and requests for variances have only added to the stigma that the easements are unenforceable.

While the Blue Ridge Parkway’s scenic easements are unique in terms of today’s myriad of conservation easements, the parkway’s “short form” scenic easements can still provide insight into some of the challenges that current easements may face down the road. In particular, the easements acquired for the parkway may provide the land trust community a look at what happens when today’s conservation easements no longer serve the purpose for which they were obtained. What happens when lands protected by easements become the preverbal “islands” in a sea of development—to the point where the marginal ecological benefits the easement provides comes at the expense of failing to protect more important lands elsewhere? (McLaughlin 2005). At what point does the cost of enforcing conservation easements exceed the benefits provided by the easements? McLaughlin (2005, p. 425) offers some interesting insights into this situation:
“we may find ourselves in need of engaging in a form of ‘conservation triage,’ where the public benefit as measured under contemporary standards are extinguished, and the value attributable to such easements is used to protect increasingly scarce land with far greater conservation value.”

The Blue Ridge Parkway may already be experiencing this situation. Faced with easements that do not have sufficient teeth to adequately keep adjacent lands in agriculture and forest as the easements were intended; a too narrow boundary; rapidly increasing development pressure; a shrinking staff and decreasing budgets, the parkway has attempted to simply free itself of the burdensome easements and where possible acquire portions of the easements themselves to widen the parkway’s fee boundary. However, until just recently there has been almost no public oversight into the parkway’s administration of the easements—despite the fact that the easements help protect the scenic resources of the most visited unit of the National Park Service—a public benefit!

8.1: Scenic Easement Deeds: Recommendations:

While the National Park Service can not correct current deed restrictions unless a willing landowner were to agree to amend the current scenic easement on his/her property, the National Park Service should take a more proactive stance in regard to administering the deeds including:

- Seek a formal legal opinion through the Solicitor’s office regarding how each of the specific easement deeds and restrictions should be interpreted and enforced. Doing so, would allow the NPS to more efficiently and effectively respond to landowner requests to alter or make changes to the easement and would allow the NPS to more effectively respond to potential violations of the easements.
- The Parkway should work with the Solicitor’s Office to develop an informational brochure or newsletter similar to that utilized by St. Croix to explain to landowners the intended purpose the scenic easements, what specific restrictions mean and the process landowners should go through when proposing changes to their easements.

8.2: Scenic Easement Stewardship: Recommendations

- The Parkway should continue to develop Desired Future Conditions Assessments for all of the remaining scenic easements. To accomplish this Parkway should look for alternate sources of funding (e.g. Blue Ridge Parkway Foundation) to provide funding which would allow the Parkway to hire student interns (Landscape Architecture students) to complete desired future conditions reports of scenic easements. Interns were used in this way several years ago as the Parkway was striving to update and digitize its existing Land Use Maps.

- As a good first step, the NPS should utilize the names and address of easement holder
found during this research to send an introductory letter to current easement owners advising them of the presence of the scenic easement on their property and advising them whom within the Parkway they should contact should they have questions or concerns related to their easement. Easement holders should also be told that the park is in the process of preparing an informational brochure on the scenic easement and that it will be sent to them within 30 days.

- The NPS should then send the information brochure (e.g. see the brochure prepared by St. Croix NSR) to landowners within 30 days of the initial introductory letter.

- The Parkway should also strongly consider contacting the easement owners either in person or via phone to arrange a time to meet with them at their easement and discuss specifics of the scenic easement restrictions and any concerns the landowner may have regarding the easement. Park staff could potentially utilize this meeting to develop current condition assessments and/or desired future conditions for individual scenic easements.

- While parkway rangers regularly monitor easements on passive basis through regular patrols along the motor road, not all areas of individual scenic easement are visible from the parkway motor road, and many easements are not visible at all. The Parkway should strongly consider developing a formal monitoring program that includes a site visit with the easement owner to review easement restrictions, procedures to use when contemplating changes to the easement and to help establish a working relationship with the landowner. The parkway could also utilize this opportunity to collect baseline information on the easement.

8.3 Enforcement of Scenic Easements: Recommendations

- In the past several years the Parkway has developed a close working relationship with the NPS Southeastern Region Solicitor’s Office. NPS Officials should use this relationship to its full advantage and work with the U.S. Solicitor’s Office to prepare written guidelines and procedures on how to respond to future violations of scenic easement terms. The Solicitor’s Office should be contacted whenever any violation is detected that has the potential to undermine the scenic values of the parkway’s scenic easements.

- The Parkway should work proactively with easement holders when possible to insure that they are aware of the scenic easements on their properties and are aware of who within the park to contact should they have a question or concern regarding what constitutes appropriate activities within the easement. The Parkway should strive to draft a quick and accurate response to the easement holder.

- Rangers and other key district staff should be briefed during law enforcement refreshers and at other opportune times about what constitutes a violation of the scenic easement restrictions and what that they should always be on the look out for potential violations of easement restrictions during routine patrols. Rangers and other
staff members should be provided a copy of the Park’s Violation Response Plan so that they are aware of how to respond should they come across a potential violation.

- The park should consider developing a database (Microsoft Excel) similar to the one maintained by the VOF (2004) that describes the nature of the violation(s), the NPS’s proposed response, possible mitigating actions and the dates/times and details of all conversations with the easement owners involved. The database should be maintained in the Park’s “Public Drive” to insure that district field staff have access and can view the database.

- Under no circumstances, should the parkway neglect or ignore potential violations of scenic easement restrictions. The Solicitor’s Office through consultation with the Park Superintendent and the Park Management Team should provide a legal opinion/determination of whether or not an action by a scenic easement holder constitutes a violation of the easement restrictions or not. The opinion should be provided to the park in writing.

8.4 Variance/Approval Requests: Recommendations

- The parkway should prepare written guidelines and procedures for staff to follow when reviewing easement owner requests discretionary changes to the scenic easements. The Virginia Outdoors Foundation and the Conservation Trust for North Carolina both have established procedures for how to respond to Easement Approval and Interpretation Requests that can be used as a template. The procedures should be reviewed by the Solicitor’s Office to insure that the guidelines are adequate and enforceable.

- The Parkway should seek input from the Solicitor when preparing agreements with easement owners that require easement owners to carry out activities or mitigating actions as part of a variance/approval agreement in order to insure that the agreement is enforceable should the easement owner not fulfill his/her obligations under the agreement.

- The Parkway should seek a formal legal opinion from the Solicitor on how to handle requests for construction of more than one residential home within a scenic easement. While it is likely that parkway will have to handle such requests on an individual basis—each on its own merits—the opinion would help the park respond more effectively when they do receive this kind of request. The opinion should be incorporated into the written procedures on how to handle discretionary approvals.
8.5 Scenic Easement Amendments & Release: Recommendations

- The parkway should work with the U.S. Solicitor’s Office to develop procedures for amending conservation easement deeds and for acquiring and/or releasing of scenic easement lands from easement restrictions. Amendments and exchange-release of easement restrictions should only be undertaken when there is a clear public benefit. For example, amendments could be utilized opportunistically by the Parkway to strengthen the current restrictions.

- The National Park Service should look at the scenic easements not as burden, but as a public benefit that serves to protect important scenic and conservation values along the Parkway. Taking this approach, will likely give the parkway more leverage when negotiating with easement owners over discretionary approvals in the easement deeds.

- The Parkway should continue to incorporate NEPA into the decision making process regarding the scenic easements. Allowing for increased opportunities for the public (in particular the many land trusts working with the Parkway in North Carolina and Virginia) to comment and respond to proposed changes to scenic easements. Doing so, will not only fulfill the park’s legal obligations under NEPA, but may also serve to educate members of the public and the local community about the purpose of the scenic easements and vital protection to the Parkway that they provide. It will also help to let the public know that the Parkway is serious about its legal and ethical obligations associated with administering the remaining scenic easements.

8.6 Conclusions

The Blue Ridge Parkway’s 70 years of experience managing and enforcing these early “short-form” conservation easements provides abundant evidence that the circumstances surrounding conservation easements are not static. Conditions change: technology changes, land use changes, easement ownership changes, environmental conditions change, and an organization’s capacity to steward easements will certainly change over time as a result of decreasing funds, waning interest on the part of membership and due to changes in an organizations overall goals and objectives. The Blue Ridge Parkway has seen many changes over the past 70 years including rapid development of adjacent lands, decreased budget and staffing levels and a change in how the parkway perceives the enforceability of its original scenic easements. Further, many of the scenic easements that consisted of open pasture have been allow to grow up through natural succession and no longer provide open views of adjacent lands and ridges. As a result, while scenic easements continue to serve as an insulating layer to the
Parkway’s boundary, many of the easements value in preserving the Blue Ridge Parkway’s scenery has been greatly diminished.

The Parkway’s experience demonstrates that conservation organizations need to be flexible not only during the acquisition of easements, but in carrying out future stewardship activities related to easements. Greene (2005, p. 885) states that:

Traditional conservation easements are flexible during the drafting process but become inflexible once they are signed by both parties. As a result, such static conservation easements may fail to adequately accommodate future events such as change in the land itself, change in a landowner’s use of the land, or an advance in ecological science.

Greene (2005) advocates incorporating adaptive management principles into conservation easement stewardship and utilizing “dynamic conservation easements.” Dynamic easements include terms and restrictions that can be changed or adjusted over time to accommodate changing environmental conditions (Greene 2005). Adaptive management is a practice that is utilized throughout the conservation community in developing habitat conservation plans for endangered and threatened species, forest management plans, and for other conservation programs. It is often used hand in hand with “ecosystem management.”

Olmstead (2006) also argues that conservation easements should be flexible. However, whereas Greene’s emphasis is on creating easements that have more dynamic, adaptive restrictions, Olmstead’s emphasizes what should happen to easements when “adaptation is no longer possible or practical, and the easement should be terminated and redeployed elsewhere to maximize its social benefit” (Olmstead 2006, p. 45). Olmstead (2006, p. 46) states that

While land trusts typically draft conservation easements to exist ‘in perpetuity,’ doing so creates a fiction of ecological stability far removed from the reality of global warming and many other dynamics of our environment. We cannot be sure that every, if any, ‘perpetual’ conservation easement will last for perpetuity. Quite the contrary, we can be sure that every conservation easement ever drafted will eventually terminate or require amendment.

Olmstead’s predictions are supported in the literature. Numerous studies of conservation easements have found that easement violations and legal challenges increase with successive easement owners. All too frequently, easements are acquired by new owners who do not share the same conservation oriented values as the original easement owner. The new owners may
challenge easement restrictions or may attempt to extinguish the easements in order to develop land to its maximum potential (Olmstead 2006, Brewer 2005).

Olmstead (2006) advocates drafting easements to allow them to be more easily terminated by the easement holder—without the judicial review currently required—in the event that environmental conditions change and the easement no longer protects the easement values for which it was originally acquired. Olmstead’s (2006, p. 44) approach would require that conservation easements contain provisions in their deeds to allow a conservation organization “to recover the full, appreciated value of the easement (development rights) upon its termination.” A land trust or government agency could then use these funds to purchase or acquire new more viable lands or easements possessing identical conservation values as the easement terminated or released.

While the Blue Ridge Parkway’s scenic easement program represents only a single attempt by one government agency to management and enforce early “short form” conservation easements, it provides one of the few examples currently available illustrating long-term stewardship of conservation easements. The Parkway’s scenic easements also demonstrate why Land Trusts, Conservation organizations and other easement holders need to be flexible in their approach in managing and stewarding easements. Despite an organizations best intentions, circumstances surrounding an individual easement will change over time. Easement deeds thought to be infallible may at some future date be found to contain ambiguous language; a Land Trust’s membership and finances may wane over time; land use and environmental conditions surrounding an easement will almost certainly change.

At which point, the remaining membership of a land trust will be faced with the dilemma not unlike that of the Blue Ridge Parkway. Do you continue to enforce difficult easements that no longer meet the original values they were intended to protect? Or do you attempt to cut your losses by acquiring or releasing easements from their restrictions and instead use limited resources to protect lands of greater conservation value elsewhere? In the case of the Blue Ridge Parkway, the National Park Service has taken the position that when and where possible, they will attempt to acquire easements in fee and/or exchange them in part for a portion of the easement in fee in order to provide at least some measure of protection for an already too narrow boundary.
The Scenic Easements acquired for the Blue Ridge Parkway clearly point to the fact that managing easements in perpetuity will present significant challenges to even the most steadfast conservation organizations. How flexible an approach current and future conservation organizations take in stewarding conservation easements will likely play a significant role in how successful this popular land protection tool is in preserving key conservation lands in the future.
Literature Cited:


Gustanski J.A. 2000. Protecting the Land: Conservation Easements, Voluntary Actions and


Parker, D.P. 2004. Land Trusts and the Choice to Conserve Land with Full Ownership or Conservation in Easements in Natural Resources Journal: 44 (2) 483-518. The University of New Mexico, School of Law, Albuquerque, NM.


U.S. Department of the Interior, National Park Service, Blue Ridge Parkway. 1941. Blue Ridge Parkway News…a bulletin of popular information for parkway neighbors along the


Maps, Correspondence, and Memos Cited [U.S. Government Documents: Public Domain]:

Abbott, S.W. 1937. Letter to Mr. Thomas C. Vint, Chief Architect, August 11, 1937. Re: Bluemont Presbyterian Church, Section 1U. Blue Ridge Parkway Land Files, Section 1U.

Anderson, J.D. 1997. Figure 6.4: GIS map prepared by Parkway Land Resources Staff in order to assess how visibility of scenic easement 2E-2 and surrounding lands along the Blue Ridge Parkway. The easement owner had proposed a selective timber cut on the scenic easement. Source: J. David Anderson, National Park Service, Blue Ridge Parkway.

Anderson, J.D. (no date). Figure 2.2: The Blue Ridge Parkway links Shenandoah National Park in Virginia with the Great Smoky Mountains National Park in North Carolina. Source: David Anderson, National Park Service, Blue Ridge Parkway. [Public Domain].


Appendix A: Blue Ridge Parkway Scenic Easement Variables

Scenic Easement General Information

Scenic Easement ID Number
Section # - Easement No. (e.g. 1S-1)

State Easement was acquired by
1 = Virginia; 2 = North Carolina

Blue Ridge Parkway Milepost Location of Scenic Easement
Milepost #, Parkway Left (east side) or Right (west side)

County(s) Scenic Easement is Located and Deed Recorded In
Name of County(s)_______________________

Original Landowner Scenic Easement was acquired from (Grantor)
Landowner(s)____________________________

Original Size (Acres) of Scenic Easement Acquired
Acres Acquired_________________________

Size Class: Original Acres of Scenic Easement
0.1 – 0.99 acre
1. – 5 acres
6 – 10 acres
11 – 20 acres
21 – 30 acres
31 - 40 acres
40+ acres

Year Scenic Easement was Acquired
Year____________________

Current Size (Acres Remaining) of Scenic Easement as of September 2008
Acres of Scenic Easement_________________________

Year Scenic Easement was acquired (terminated) in fee or released
Year____________________

If Easement has been terminated, what method was used to acquire or release the easement?
1 = Easement acquired in fee as part of the purchase of a larger tract of land
2 = Easement was acquired in fee by the Parkway as a single tract
3 = Easement was acquired in fee by the State & donated to the NPS
4 = Exchange—Release
5 = Land Exchange
6 = Through donation by a land trust or a scenic easement property owner
7 = Not acquired; Tract is still under a scenic easement
9 = Unknown

**Number of acres of the scenic easement acquired in fee simple**
Acres ______________

**Number of Acres Released from scenic easement restrictions**
Acres ______________

**Number of Acres acquired through land exchange or land transfers**
Acres ______________

**Do files and related documents provide any reason easement was acquired, exchanged or released? YES/NO**
- Difficult landowner
- Vague easement terms made enforcement difficult
- Numerous violations of easement terms
- Easement was considered highly scenic and was a high priority for NPS fee acquisition
- Easement was acquired as part of a larger tract
- Landowner claim/concern was considered valid by NPS.
- Eliminate deed reserved access road.
- Others??
- Unknown

**Deed Information**

**Act under which Easement was acquired** (Scenic Easement Restrictions)
1 = VA 1936 Act (Scenic Easement Condemnation/Judgment)
2 = VA 1936 Deed (Negotiated with Landowner
3 = VA 1938 Amended Act (Scenic Easement Condemnation/Judgment)
4 = NC 1935 Act (Condemnation)

**Scenic Easement Acres acquired under each Deed Instrument/Act**
VA 1936 Act __________ acres
VA 1936 Deed __________ acres
VA 1938 Amended Act __________ acres
NC 1935 Act __________ acres

**Does the scenic easement deed include any of the following deed elements?**
- Recital (whereas) clauses that describe the conservation values of the property and the public benefit of acquiring the easement YES/NO
- Legal description of the property? YES/NO
• A Purpose Clause summarizing the conservation values of the property, and a statement stating that the Grantor will not engage in any activity that is inconsistent with the purposes of the easement.
• A list of definitions of important terms in the document? YES/NO
• A list/description of the deed restrictions? YES/NO
• A list/description of the reserved rights retained by the Grantor? YES/NO
• Reserved (affirmative) rights for the Grantee? YES/NO
• Does the easement deed permit the Grantee right of access to monitor and enforce scenic easement restrictions? YES/NO
• Do the scenic easement deeds include any procedures for amending the scenic easements? YES/NO

**What Specific Deed Restrictions (if any) are listed in the Scenic Easement Deed?**

- Development Restrictions
- Vegetation Management
- Access Roads/Driveways
- Dumps
- Signs
- Easement Condemned—Must refer to Specific Scenic Easement Act

**Does the Scenic Easement deed include any affirmative rights?**

Yes/No
If Yes, List them

**Do any additional deed restrictions apply to this scenic easement?**

Yes/No
If Yes, List them here

**Do any documents (correspondence, memos etc) in files provide any insight as to how various deed restrictions are defined or have been interpreted over the last 70 years?**

YES/NO

**Stewardship**

- How often does the NPS monitor/inspect scenic easements for possible violations?
- Are there written guidelines outlining how often easements should be monitored and for keeping track of landowner information? (e.g. see CTNC Stewardship/Monitoring Site Visit Check List)
- Does the NPS have current contact information for each of the owners of the Parkway’s scenic easements?

**Violations:**

Does the NPS have written guidelines/policies on how to respond to violations of scenic easement terms & restrictions? (e.g. see CTNC Easement Violation Response Guidelines).

YES/NO
How many violations of scenic easement terms has the Parkway encountered?
Number of violations_________________

What types of Scenic Easement Violations has the Parkway encountered?
1 = Unauthorized residential structure
2 = Unauthorized farm building
3 = Unauthorized commercial structure or commercial use
4 = Unauthorized construction of other types of structures (e.g. residential storage buildings etc).
5 = Prohibited remodeling/altering residential structures
6 = Prohibited remodeling/alteration of farm buildings
7 = Prohibited alteration of other buildings
8 = Prohibited utility pole/line
9 = Prohibited access road
10 = Prohibited removal of stable trees & shrubs (non-commercial)
11 = Prohibited removal of timber (commercial)
12 = Prohibited removal of “seedling” trees & shrubs
13 = Maintaining dump/debris on scenic easement
14 = Prohibited surface excavation
15 = Prohibited sign on easement
16 = Violation of variance agreement
17 = Other violation (List)
99 = Unknown

Who was responsible for the violation?
1 = Original landowner (Grantor)
2 = Subsequent (2nd or 3rd generation) landowner
3 = Third Party
9 = Unknown

What Year did the violation occur in?
Year__________

Was the landowner/ violator aware of the scenic easement restrictions on the property at the time the violation occurred?
1 = YES
2 = NO
9 = Unknown

Did the landowner/ violator knowingly (intentionally) violate the easement restrictions/terms?
1 = YES
2 = NO
9 = Unknown

Was the violation a result of the landowner misunderstanding the terms/restrictions of the scenic easement?
Following discovery of the violation did the landowner challenge the existence of the scenic easement on his/her property?
1 = YES
2 = NO
9 = Unknown

How was the violation discovered?______________________________________

How soon after the violation occurred did the NPS discover the violation?
1 = < 30 days
2 = 31 - 90 days
3 = 91 days to 1 year
4 = >1 year
9 = Unknown

What action did the NPS take to enforce the violation? List___________________________

Was the violation resolved?
1 = YES
2 = NO
9 = Unknown

What was the outcome of the violation?
1 = Landowner voluntarily complied/corrected the violation
2 = NPS granted the landowner a variance
3 = Litigation, settlement out of court
4 = Court/Injunction
5 = Park took no enforcement action
6 = Litigation, not resolved
7 = NPS negotiated an exchange/release of the scenic easement
8 = Violation/enforcement action on-going
9 = Unknown

Did the NPS recover monetary damages for the violation?
1 = YES
2 = NO
3 = N/A

Was the Scenic Easement restrictions/deed amended as a result of the violation?
1 = YES
2 = NO
9 = Unknown
Variances Requests and/or Requests to Alter or Change Scenic Easements:

Does the NPS have any written guidelines or procedures to evaluate landowner requests to make changes or alter scenic easements?  YES/NO

How many requests has the NPS received to alter or change (variance) scenic easements?  
Number of Variance Requests__________.

Number and Types of Variances Received by the NPS:
1 = Construct/build new residential structure
2 = Construct/build new farm building
3 = Construct/build new commercial structure or commercial use
4 = Construct/build new other types of structures (e.g. residential storage buildings etc). List
5 = Remodeling/altering existing residential structures
6 = Remodel/alter existing farm buildings
7 = Alter existing commercial buildings or commercial use
8 = Remodel/alter existing other buildings
9 = Install new utility pole/line
10 = Construct access road/driveway across easement
11 = Cut/remove stable trees & shrubs (non-commercial)
12 = Cut/remove timber (commercial)
13 = Cut/remove “seedling” trees & shrubs
14 = Maintain dump/debris on scenic easement
15 = Carry out surface excavation on easement
16 = Install/erect sign on easement
17 = Other violation (List)
99 = Unknown

Year of Variance Request
YEAR__________.

What criteria did the NPS develop or use to assess/evaluate variance requests?  
List__________.

If request is to construct a building, does the proposed structure replace an existing or previously existing building?  YES/NO.

What was the outcome of the variance request?
1 = Variance request approved
2 = Variance request denied
3 = NPS negotiated an exchange/release of the easement with the landowner
4 = Variance review still on-going
5 = The proposed action was not prohibited by the scenic easement
6 = Other (List)
9 = Unknown
How did the NPS inform the landowner of the approval/denial of the variance request?
1 = Verbal approval
2 = Written letter/memo
3 = Signed agreement with landowner
4 = Other (List)
9 = Unknown

Did the NPS conduct a site visit in order to evaluate the variance request?
1 = YES
2 = NO
9 = Unknown

Did the NPS/Landowner include any of the following in the evaluation of the variance request?
- Map of easement in relation to Parkway motor road
- Sketch/architectural drawing of the proposed variance request
- Photos
- Detailed management plan (e.g. Forest Mgt Plan, Desired Future Conditions Assessment)

Was the Variance Request & Outcome consistent with the terms & restrictions of the scenic easement?
YES/NO

Was the Outcome of the variance request and the process used to evaluate the request consistent with written NPS policies & procedures?
YES/NO

What compliance (NEPA) is required regarding review of variance requests. Is NEPA required to evaluate proposals to acquire scenic easements in fee or to enter into scenic easement exchanges with landowners? YES/NO.
Explain________________________________

Does the NPS provide opportunities for public input during the process to review variance requests and/or evaluate scenic easement fee acquisition/exchange? YES/NO

Was the proposed activity visible from the Parkway motor road? YES/NO

What mitigation action did the NPS recommend/require to reduce the impact of the variance request to the Parkway viewshed?
List__________________________________________.

Following approval of the variance request did the landowner violate any of the terms, conditions and/or mitigating actions required by the NPS?
YES/NO

Has Easement been subdivided?
YES/NO
If YES, how many lots/parcels?______________
If YES, how many owners of SE?______________

How many structures are located on the Scenic Easement?
Number & type of structures (residential, farm, commercial, other)______________________

Other factors to look to take into account:

Are Scenic Easements containing residential or commercial structures more likely to experience violations than easements without structures?
--YES/NO?

What impact did the 1961 Act have on how variance requests were handled?
--How many variance requests were approved/denied prior to the 1961 Act?
--How many variance requests were approved/denied after the 1961 Act was passed?

In approving variance requests for Virginia scenic easements, did the NPS differentiate between scenic easements acquired under the 1936 Act vs. the 1938 Amendment?
--YES/NO??
Appendix B

Case Study No. 1:
Litigation and Settlement Out of Court
Construction of Illegal Access Road across Scenic Easement 1Q-3

In February 1992, the Parkway received a letter from Attorney Robert Boswell advising that his client Raymond West requested permission to construct an access road from the adjacent state road in order to haul timber out from his adjacent land not encumbered by the easement. After conducting a field review of the proposed road, the Parkway discovered that an access had already been constructed across a portion of NPS fee lands at that location. The parkway subsequently advised Mr. West that they were unable to grant his request because (1) the proposed road would cross a narrow (10 ft wide) strip of Parkway fee simple land and the park had no legal authority to grant access across NPS lands; (2) it appeared that the scenic easement had been divided into 3 tracts and a deed reserved road at the north end of the tract provided access to all landowners; (3) there was only a very thin line of trees currently screening the scenic easement from the parkway and the trees would not sufficiently screen the road from view of the Parkway. Park officials also requested that Mr. West remove the current access across NPS lands and restore the site to its original condition.

West through his attorney contacted the local congressional office seeking assistance in obtaining an access road across the scenic easement. The parkway sent a letter of response to the Congressman’s office outlining the NPS’s position above and advising that they had no legal authority to grant Mr. West an access across NPS lands.

In October 1992, Attorney Boswell then sent the Parkway a note advising that his client no longer intended to construct an access road, but instead proposed to construct a culvert across a creek in the scenic easement. The felt that while the easement restrictions did not specifically prohibit culverts, park staff felt that installation of the culvert would be a backdoor method of gaining an access road through the easement. Park staff sent a reply back to Mr. Boswell stating that

“After reviewing Mr. West’s request we feel that installation of a culvert on Scenic Easement No. 3 would be tantamount to constructing a portion of a road, which, as we have stated previously, would not be consistent with protecting the scenic resources of
the Blue Ridge Parkway. We believe Mr. West is able to utilize the easement for all authorized purposes without placing a culvert in the stream.”

The park heard nothing further from Mr. West until March 1993, when Ranger Tom Sellese contacted the Parkway’s land resources office to advise them that Raymond West had installed a culvert across the scenic easement and an access road and had begun hauling timber out through the scenic easement. Park officials contacted the U.S. Solicitor’s Office, which immediately began working with park staff to prepare an affidavit.

In April 1993, the Parkway met with a representative from the U.S. Army Corps of Engineers to review Mr. West’s road and culvert to conduct a damage assessment and determine if any wetland laws had been broken. The COE determined that while no wetlands had been adversely impacted, the culvert should be removed from the stream in order to mitigate further damage to the headwaters of a native trout stream. The COE estimate for site restoration coincided with the estimate of park officials to return the site to its former condition-- $1,192.00.

In May 1993, the Parkway and West agreed to a settlement in which West would pay the NPS $1,192.00 to restore the site to its previous condition. West however, continued to press park officials to allow the culvert to remain in place or to allow him to install a “temporary” bridge across the creek. NPS officials however insisted that West remove the culvert and denied his request for the temporary bridge.
Appendix C

Case Study No. 2:
Litigation and Settlement Out of Court
Construction of a Residence and Access Road on Scenic Easement 1V-4

The second incident involved construction of an unauthorized residence and access road across scenic easement No. 4 in Section 1V located in Carroll County, VA. The scenic easement was acquired by the Commonwealth of Virginia from Tyler and Ciller Utt in 1937 under the 1936 Deed and stated in part that “no building, pole, pole line or other structure shall be erected, except that farm buildings may be erected or altered with consent and approval of the grantee or its assigns…” Ironically, in 1938, the Commonwealth acquired a second scenic easement (1V-3) immediately adjacent to scenic easement 1V-4. Easement No. 1V-4 however was acquired under the 1938 Amendment, which by statute redefined scenic easement to restrict the owner’s right to “erect or authorize the erection of any building, pole line or other structure, except for farm or residential purposes” [emphasis added].

In the late 1990’s, Shirley Green purchased properties containing portions of both scenic easement No. 3 and scenic easement No. 4. In 1998, Thomas and Teresa Brown purchased a lot from the Green on which Mr. Green had recently constructed a residence. The Brown’s subsequently enlarged the house and built a driveway. The house was constructed within 200 ft of the Parkway motor road and was considered “highly visible” by parkway officials.

In May 1999, an NPS survey showed that the residence constructed by the Greenes and enlarged by the Brown was located on Scenic Easement No. 4—the easement containing the more restrictive language. Ironically, if the residence had been built on another portion of the Brown’s lot, it would not have been a violation of the scenic easement. The driveway however, could have only been built with approval of the NPS.

The title search for the Brown’s property was performed by Attorney Thomas Jackson who indicated that he believed that Scenic Easement No. 4 was defined by the 1938 Amendment. However, the NPS Solicitor’s office prepared an opinion for the U.S. Attorney’s office disagreeing with Mr. Jackson’s assessment. The opinion stated in part that:

“The Park Service disagrees with Mr. Jackson’s analysis. Virginia obtained these scenic easements for the purpose of conveying them to the United States. The Tyler and Cillia Utt [No. 4] was obtained by Virginia prior to the legislative amendment to the 1936 Act. The 1936 Act and the 1938 amendment both intended that the statutory definition of a
scenic easement would only apply if the deed or condemnation did not have a specific description of the easement conveyed. (Many of the deed in Carroll County include specific easement language rather than relying on the statutory definition). Therefore, in the May 1938 deed from Virginia, the United States obtained a scenic easement description defined by the specific terms of the 1937 Tyler Utt conveyance.” (Shea 2001, p. 3).

Prior to conducting its initial survey of the Brown’s lot, the NPS contracted with Mr. James Ward to provide a title opinion on the two scenic easements that comprised the Brown’s lot. Ward concluded that Brown lot fell under the 1938 amendment, however, Ward erroneously did not include the Tyler Utt deed in the chain of title to the property. In January 1999, the NPS believing that Mr. Ward may have been in error, sent out a short note requesting clarification from Mr. Ward. Ward sent a short reply to the NPS, but did not correct “the obvious errors in his opinion letter” (Shea 2001, p. 4).

Much to the consternation of the NPS, Ward shared his conclusions with the Brown’s attorney. On December 4, 1998 the Brown’s attorney wrote the Browns stating that “an attorney [employed by the Park Service] has rendered an opinion which finds that your structure is not in violation of the scenic easement.”

In January 2000, the NPS Solicitor’s Office sent a demand letter to the Brown’s informing them that their house was in violation of the scenic easement and that the NSP was prepared to refer the matter to the U.S. Department of Justice seeking removal of the house and driveway. The letter went on to say, that the “National Park Service also desires to be a good and equitable neighbor. The unfortunate placement of your house has clouded your title as well as infringing on the rights of the United State. We are most interested in working out a resolution of this issue with you if at all possible.”

In February 2000, the Brown’s contacted their local congressional office regarding the NPS demand letter, and the controversy surrounding James Ward’s title opinion and the NPS’s refusal to accept the opinion. In response, to the Congressional offices request for information, the Solicitor’s Office arranged a meeting with the Brown’s, their attorney, Parkway staff and a representative of the Congressman.

In April 2000, following the meeting with the Congressional Office, the Brown’s attorney submitted a draft settlement proposing that since the location of the house was only a matter of a few feet the Brown’s proposed that they convey an additional portion of their property to the
USA to be held under terms of a more restrictive scenic easement. The Brown’s also proposed to plant a series of trees to screen the house from the Parkway.

In June 2000, the Office of the Solicitor sent the Brown’s a counter settlement that stated in part that:

“The National Park Service has three goals in proposing this settlement. First it wants to rehabilitate and preserve the scenic view from the Parkway; second, it wants to recoup damages and expenses such as its survey and administrative costs, and third; it wants to clarify for both your client and the Park Service, the interests in land which each holds.”

The NPS proposal including reestablishing the terms of the scenic easement on the Brown property approving the construction of and the location of the current residence, stating that only one residence could be built on the property, that any further expansion of the home would acquire NPS approval and that no other building, fence, pole line, driveway, or structure could be constructed on the easement. The NPS further requested that within 6 months the Brown’s plant a 25 trees as a vegetative screen and pay the NPS $25,000 in compensation and damages to the easement.

In September 2000, the Brown’s submitted a counter-proposal requesting that (1) that Due to health problems, the Brown’s be permitted to construct a 18 X 24 ft downstairs bedroom in the back of the house (2) the Brown’s would agree to plant trees as proposed by the NPS, but would use smaller trees in order to reduce the overall costs; and (3) because the the Brown’s did not agree to pay the $25,000 in damages because they believe that the damage to the easement because they believed the damage to be “so slight as to make such a payment grossly unfair.” The Brown’s however indicated that they were still willing to deed the NPS additional land to offset the encroachment.

Approximately one week later, the Brown’s sent the Solicitor’s Office a letter stating that they were no longer interested in a negotiated settlement. In October the NPS sent the Brown’s a response to their counter-proposal stating that the Brown’s proposal to construct an addition to their house was consistent with the new terms of the scenic easement as proposed by the NPS and that under the terms, the Brown’s could submit plans for expansion of the house which the NPS should be able to approve. However, the NPS pointed out that the Brown’s counter-proposal did not address the NPS’s proposal to resolve the issue of the clouded title and again asked the Brown’s if reestablishing the terms of the scenic easement would be acceptable to
them. The NPS also offered to modify the damage payment to $5,000 in order to reimburse the NPS the survey, title costs and related expenses.

In May 2001, the Brown’s through their attorney attempted to file a motion for declaratory judgment against the U.S. Department of Interior. However, because the Department of Interior was not properly served, the case was dismissed without prejudice. In April 2002, the Brown’s filed another motion of Declaratory Judgment, this time the U.S. Attorney’s office was properly served. In May 2002, the U.S. Department of the Interior filed a counter-claim in order to reestablish title to and terms of the scenic easement and to recover damages from the violations.

The case was originally scheduled for oral argument on the USA’s motion for summary judgment on November 18, 2002. The case was scheduled for trial on December 2, 2002. The USA estimated its chances of prevailing as very good (75% chance) but that there remained a risk of an adverse decision.

In November 2002 after additional discussions and negotiations in September and October 2002 with the Browns and their new attorney J. Emmette Pilgreen, IV the USA and the Browns arrived at a settlement, in which both parties agreed that the existing structures could remain and that the Browns and their Title Insurance Company would pay natural resource damages to the parkway. The terms of the settlement stated:

1. That structures, poles and the driveway existing on the Brown property as of the date of the settlement are not in violation of the scenic easement.
2. That existing structures, poles and the driveway may be maintained on the existing site and location, or removed, but may not be moved or enlarged, and no additional structures may be built on the Brown property without the consent and approval of the National Park Service.
3. That the other terms of the Tyler and Ciller Utt easement appropriately modified to conform to the above are confirmed.
4. Within 60 days, the Chicago Title Company will pay the USA $7,500 and the Browns will pay the USA $2500 for a total payment of $10,000 as natural resource damages for the benefit of viewshed enhancement at the Blue Ridge Parkway.
5. The Browns will allow the Parkway to plants trees on a portion of their property north of State Rt. 608, no later than one year from the date of the settlement.

New Terms of the Scenic Easement:
In place of and in lieu of any scenic easement held by the United States or its agents or assigns, it is hereby conveyed to the United States and its assigns the following scenic easement:

a. The structures, poles, and driveway existing on the Easement Property as of the date of this order and as described in the survey of scenic easement parcels No. 3 and 4 by Chuck Sager, a copy of which is attached hereto, and incorporated therein, are not in violation of the scenic easement or easements as amended by this order or as pre-existing this lawsuit;
b. The existing structures, poles and driveway may be maintained at this current site and location, or removed, but may not be moved or enlarged, and no building, pole, pole line or other structure may be built on the Easement Property except with the consent and approval of the National Park Service or other authorized agent of the United States or its assigns;
c. No road or other private drive shall be constructed on the Easement Property except the consent and approval of the National Park Service or other authorized agent of the United States or its assigns, which consent or approval will not be unreasonably withheld;
d. The Commonwealth of Virginia or its assigns shall not be required to construct any road or private drive thereon;
e. No trees, plants or shrubbery thereon shall be removed, cut, injured, or destroyed except with the consent and approval of the National Park Service or other authorized agent of the United States or its assigns; except that such seedling shrubbery or seedling trees may be grubbed 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.
f. No dumps of ashes, trash, sawdust or any unsightly or offensive material shall be placed on the Easement property.
g. No sign, billboard or advertisement shall be placed or displayed thereon, except one sign not greater than 18 inches by 24 inches advertising the sale of the property or products raised thereon.
Appendix D

Case Study No. 3
Litigation, Violation Not Resolved

Violation of Variance Agreement & Failure to Clean up Tree Debris
On Scenic Easement 2C-1 in Alleghany County, NC

Two additional violations of Blue Ridge Parkway scenic easements were involved in litigation, but were not resolved—the parkway apparently dropped further action. Both violations occurred simultaneously on scenic easement No. 1, Section 2C (2C-1).

In January 31, 1984 Mr. Van Miller, Jr. acquired 63.91 acres near Laurel Springs, NC which included much of scenic easement 2C-1. Shortly after acquiring Scenic Easement No. 1, Van Miller contacted the Parkway about his proposal to harvest white pine trees in the northwest corner of the easement. After reviewing the proposal and the easement, the Parkway advised Mr. Miller that it would consent to allow him to harvest the pines if he would be willing to agree to a number of conditions developed by the Parkway’s Landscape Architect. The text of the letter is below:

LETTER OF CONSENT

As the owner of a portion of Scenic Easement No. 1, Section 2-C of the Blue Ridge Parkway, you have requested permission to harvest white pine timber now growing and mature on a part of the easement. The scenic easement restriction provides among other things that ‘no mature or stable trees or shrubs shall be removed or destroyed on such land without the consent of the grantees or assigns...’

The purpose of this letter is to set forth those terms and conditions under which the National Park Service is willing to consent to your removal of some mature trees from Scenic Easement No. 1:

1. Only those trees which are marked by the North Carolina State Forester and the District Ranger shall be removed.

2. A screen or buffer strip of undisturbed trees shall remain along the front portion of the wooded tract above the state road.

3. Logs shall not be skidded out to the state road across the buffer strip except as may be directed by the District Ranger.
4. Great care shall be exercised so as to prevent erosion and to encourage or plant a new stand of white pine to rapidly replace those removed.

5. All slash and debris shall be disposed of in areas not visible from the Parkway motor road and in a manner acceptable to the State Forester and District Ranger.

6. All operations shall comply with state and federal laws and regulations pertaining to sedimentation control and air pollution.

7. This Letter of Consent is not to be construed as a continuing waiver of provisions of the scenic easement or that consent will be given for any future cutting of mature trees on this or any other scenic easement lands.

8. In the event that strict compliance with these terms is not met and the instructions of the District Ranger are not followed conscientiously, this Letter of Consent will be revoked.

This Letter of Consent is issued to you with the understanding that the purpose of the scenic easement is to preserve the scenic beauty of the Parkway. In carrying out the selective removal of mature and stable trees from the scenic easement, you will agree to conscientiously conduct all operations in such a manner which will not interfere with the scenic value of the easement as viewed from any point along the Blue Ridge Parkway. If the terms of this letter are acceptable to you, please sign both copies in the space provided. One copy will be returned to you upon approval of the Superintendent.

Most notably, the letter required that Mr. Miller leave a screen of trees in front of the cut-over area in order to hide the timber cut from the Parkway motor road. The agreement also required that Mr. Miller remove all slash and tree debris from all areas of the easement visible from the parkway motor road. Much of the terms of the agreement were ambiguous at best.

In April 1985, Mr. Miller approached the parkway about removing the remaining timber on the scenic easement—specifically the trees that were left in place adjacent to Miller Road under condition No. 2 in the Letter of Consent. These trees were left in place to screen the timber operation from the parkway. The letter to Assistant Chief Ranger from the Bluffs District Ranger states in part:

“...we were asked to determine the impact of removing trees, left as a condition of the permit, which visually screened the resulting scar. This area is immediately north of highway 18, parkway right, Laurel Springs.

After examining the area Danny Drye and I both agree that harvest of this visual barrier would be a mistake. The scar is visually impacting on the integrity of the natural landscape, and the barrier now in place does an effective job of reducing this impact. The barrier was left as a condition of the original permit, and I do not feel that at this time harvesting is appropriate.
Mr. Miller also expressed concern that the existing barrier limits the growth of new pines in the unharvested area. There is little validity to this statement.”

April 12, 1985: Supt. Everhardt sent Mr. Miller the following memo denying his request to cut the remainder of the trees:

“In response to your recent phone calls and conversation with Assistant Superintendent Arthur Allen and Landscape Architect Robert Hope concerning the cutting of the remaining trees on the Scenic Easement, we are denying your request for the time being.

As we stated in our letter to you of April 27, 1984, Term number 2 specified:

‘A screen or buffer strip of undisturbed trees shall remain along the front portion of the wooded tract above the state road.’

In the same letter, Term number 7 specified:

‘This letter of consent is not to be construed as a continuing waiver of provision of the scenic easement or that consent will be given for any future cutting of mature trees on this or any other scenic easement lands.’

Based upon these terms and the fact that the area in which we permitted you to cut has not healed over with a healthy ground cover, we will not allow this last visual screen of trees to be removed. If they were cut, the visitors traveling the Parkway would see the ugly disturbance caused by the tree harvest. Our reason for purchasing the scenic easement from you in the first place was to protect the view from the Parkway. In addition, we would appreciate your fulfilling the requirements of Terms 4 and 5 concerning planting of new seedlings and removal of slash and debris” [emphasis added].

On April 25, 1985, the Bluffs District Ranger Sullivan sent a memo to the Assistant Chief Ranger with a photo of Scenic Easement No. 1. The memo noted that there was a great deal of tree tops, limbs and slash still lying on the ground from the timber harvest. The memo also noted that “The area needs considerable work if reforestation is to occur.” Ranger Sullivan also requested a copy of the original agreement so that he could meet with Mr. Miller to request that he take corrective action.

Over the next several months, Park officials met with Mr. Miller on a number of occasions in an attempt to comply with the terms of the original agreement. Mr. Miller however, continued to press the Parkway to allow him to harvest the remaining timber and additionally requested permission to construct a barn on the easement. Finally, in August 1985, the Parkway sent a memo to the Regional Director requesting that a Solicitor’s Opinion concerning the Miller
Scenic Easement Violation. The letter outlined the original agreement with Mr. Miller, Miller’s failure to comply with all of the stipulations outlined in the agreement and his desire to cut/remove the remaining trees. The letter concludes:

“We believe we are facing the likelihood that Mr. Miller will continue to fail to comply with either the letter or the spirit of the scenic easement. In the event that he cuts the remaining trees without permission or that he fails to comply with the already agreed upon conditions, we would like to explore the possibility of pursuing a civil action against Mr. Miller.

Enclosed for your consideration is the entire historical file involving this situation. Please share with us your opinion concerning further action regarding what appears to be blatant disregard for a civil contractual agreement between the federal government and a private landowner.”

September 5, 1985: The Parkway received a response from the Regional Solicitor’s Office. The letter states in part:

“An action against Mr. Miller to enforce the scenic easement would be in the form of an injunction. Before taking any legal steps toward securing an injunction, this office feels that we need more information and the Parkway needs to do a number of things. Information that will be needed includes: photographs of the mature trees still standing, photographs of the slash and debris, a map indicating the topography of the area in the vicinity of the Miller property and the scenic easement, photographs of the area adjacent to the Miller property, a copy of the scenic easement which the State of North Carolina acquired, a legal description of the property covered by the scenic easement, and a complete copy of the deed from North Carolina to the United States (Blue Ridge Parkway Deed No. 3).

We note that Mr. Miller requested a meeting with Superintendent Everhardt. Before filing such a lawsuit we believe that it would be incumbent upon the Superintendent to meet with Mr. Miller in an attempt to work out the problem. We recognize that this request is somewhat unusual since Mr. Miller has been working with District Ranger Sullivan, but we believe the court would require the United States to show that every effort was made to avoid the lawsuit prior to requesting the injunction. After this meeting, if a problem still exists, we believe a demand letter requesting compliance with the provisions of the Letter of Consent and a warning against cutting the remaining trees would be advisable.

After the above-mentioned steps have been followed and the requested information has been secured, this office will consider filling a request for an injunction if you are unable to obtain the cooperation of Mr. Miller. We will take no further action in this matter unless a subsequent request is made.”

Despite a number of meetings, conversations and exchanges of letters with Mr. Miller and his attorney the Parkway was still not able to reach a reasonable solution with Mr. Miller to complete the terms of the agreement. In December 1985, Parkway Protection Specialist Jim Fox
received a call from Assistant Solicitor Tom Hinds. Hinds advised the park the biggest problem the Parkway has “from a legal point of view is the poorly written original agreement with Miller.” Hinds also advised park staff that he will handle all future correspondence with Mr. Siskind—Miller’s Attorney and that the next step should be to set up another meeting with Miller and his attorney. Hinds also advised that at the meeting the parkway will spell out specific conditions more precisely and set a new time limit. Hinds also advised that at this point he felt the parkway had a weak case to go before a court and would prefer to take this route first.

On January 29, 1986: Meeting was held between the Parkway, Asst. Solicitor Tom Hindes, Van Miller and Attorney John Siskind. Based upon the meeting, Van Miller agreed to the following:

1. Remove from the scenic easement all downed tree debris, consisting of branches, trunks and roots greater than 6 inches in diameter.
2. Cut or redistribute as necessary, all remaining tree debris including any stumps, or dead trees still standing, so that it nowhere exceeds a depth of 24 inches off the ground.
3. Care would be taken during clean-up operations to minimize destruction of existing seedling. Mr. Miller will reseed and replant white pine trees to insure a uniform replacement stand throughout the affected area. All work to be completed by March 31, 1986.

On January 31, 1986 the parkway received a letter from Attorney John Siskind proposing to convey approx. 10 acres of Scenic Easement 2C-1 in fee to the NPS in exchange for the NPS agreeing to release the remaining 25 acres of the scenic easement. Over the next couple of months, there a number of exchanges between Attorney Siskind, the Parkway and Solicitor Hinds. As the March deadline approaches, Siskind appeals to the parkway to amend to extend the clean-up deadline to April and to change the wording of the agreement to allow for a seedling every 10 feet and changing the debris removal limit from 6 inches to 7 inches. Hinds replys that the Parkway will agree to extending the deadline to April 30th and to amend the agreement to add the requirement to allow Mr. Miller to replant a seedling every ten feet. However, the parkway baulks at the change in the size of the debris removal. On April 7, 1986 the Parkway sends Attorney Siskind a letter advising him that the Parkway had concluded that a land exchange involving release of the Scenic Easement No. 1 was not in the best interest of the Blue Ridge parkway and that the scenic easement provided an adequate level of protection to the parkway.

Finally in May 12, 1986 Hindes sends Siskind a note relaying the NPS’s position as stated above and advising him that he intends to recommend that the Department of Justice
investigate the possibility of proceeding against Mr. Miller in order to enforce the clean-up of the timber operation. However, according to knowledgeable staff, it appears that after review of the case and the facts involved, the Department of Justice declined to pursue the easement violation further.
April 18, 1973

Mr. David Thompson, Jr.
Director, Southeast Region
National Park Service
3401 Whipple Avenue
Atlanta, Georgia 30344

Dear Mr. Thompson:

The following is in response to the questions raised in Acting Director Frye’s letter of March 22, 1973, concerning scenic easements over lands adjoining the Blue Ridge Parkway in North Carolina and Virginia, but is limited to scenic easements in North Carolina because I do not have the language of the scenic easements in Virginia.

1. Under the provisions of the conveyances of scenic easements in North Carolina, the United States cannot flatly deny a request for authorization or permission to construct new farm and residential buildings on lands covered by the easements, nor can the United States flatly deny a request for authorization or permission to alter existing buildings, whatever the type, on these lands.

2. Under the provision of the conveyances of scenic easements which makes new farm and residential buildings and major alterations to existing buildings subject to prior approval of the National Park Service, the Service could, in my opinion, impose such conditions and restrictions on the construction and alteration of such buildings as are not unreasonable in light of present day ecological and aesthetic standards.

The general rule in situations such as we have here is stated in 25 Am. J.2d EASEMENTS AND LICENSES §74:

…an easement granted or reserved in general terms, without any limitations as to its use, is One of unlimited reasonable use…

No definite rule can be stated as to what may be considered reasonable use as distinguished from an unreasonable use. The question is one of fact, to be determined in the light of the situation of the property and the surrounding circumstances.

This is in accord with the decisions of the Supreme Court of North Carolina in Shingleton v. State, 260 N.C. 451, 133 S.E. 2d 183, wherein it was held that owners of the servient estate may make use of their property not inconsistent with reasonable use and enjoyment of the easement granted.

To determine the reasonability of any such condition or restriction, I would suggest that consideration be given to court dealing with the legality, under the States police power, of local zoning ordinances imposing a similar condition or restriction. I will be pleased to assist you further should a dispute arise as to a particular condition or restriction sought to be imposed.

Sincerely yours,

[signed] Curtis H. Bell
Field Solicitor
Appendix F: Letter to Superintendent, Blue Ridge Parkway form George Frye regarding procedure for handling future requests to construct farm or residential buildings on scenic easements in North Carolina.

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
SOUTHEAST REGIONAL OFFICE
3401 Whipple Avenue
Atlanta, Georgia 30344

May 10, 1973

Memorandum

To: Superintendent, Blue Ridge

From: Acting Director, Southeast Region

Subject: Scenic Easements, Blue Ridge

Pursuant to the request in your memorandum of March 7, titled “Scenic Easements, North Carolina,” enclosed for your information and guidance is an opinion from Field Solicitor Bell.

With reference to Mr. Bell’s opinion of April 18, it is recommended that:

1. Each request for authorization or permission to construct or alter farm and residential buildings on land covered by the easements in North Carolina be dealt with on its respective merits by requiring the property owner to present plans to you for the proposed construction or alteration, an inspection by you of the site where the construction or alterations are to take place, and a determination by you as to whether the requested construction or alteration appears reasonable under the circumstances. In the event that it appears necessary for you to deny authorization or permission for such construction or alterations, the matter should be again referred through this office to the Solicitor for his guidance on the particular fact situation at hand;

2. The Solicitor’s opinion be obtained with reference to the scenic easements over lands adjoining the parkway in Virginia by furnishing this office a copy of the Virginia Scenic Easement Act and copies of representative scenic easements.

[signed] George W. Frye
Appendix G: Other Criteria utilized by the Blue Ridge Parkway when reviewing discretionary Variance requests.

Structures
--Solicitor opinion concluded that landowner could rebuild a previously existing structure within the same footprint without NPS approval.
--Moving garage to other location on scenic easement will eliminate unauthorized parking on NPS fee lands.
--Prior agreement between landowner & NCDOT for new residential home
--Only small portion of new home would be located on scenic easement
--Proposed site of new barn reviewed by parkway Landscape Architect
--Barn was considered to be a temporary structure
--Proposed carport will be the same design and appearance as existing home.
--Proposed commercial use did not seem excessive.
--NPS agreed water storage tank was a necessary component of the orchard
--Residential home not eligible for National Register of Historic Places
--Garage to be built in same footprint as previous structure
--Relocation of residential home from NPS fee right-of-way to scenic easement
--Proposed build site on scenic easement is less conspicuous than alternate site off of the scenic easement.
--Alternate build sites exist off of the scenic easement
--Landowner promised to remove original residential home within 2-years.
--Scenic easement has been subdivided multiple times
--Unauthorized barn found on scenic easement

Utility Pole/Lines
--Utilities to be placed underground
--Proposed water line would follow the route of the existing road.
--Permitting utility line could impact a wetland area.

Access Road
--A bridge is equivalent to a road
--A culvert is equivalent to a road
--Third party who constructed access road across scenic easement was not aware of SE restrictions on the property
--State road is a not “frontage” road and landowner would have to cross small portion of NPS fee lands in order to construct the road.
--Previous (negative) experience with landowner.

Vegetation Removal
--Trees to be cut are ornamental and of no scenic value
--Removal of 6 mature trees in lieu of timbering
--Desired future condition of scenic easement is pine forest
--Purpose & intent of scenic easement is to preserve mature trees
--Permanent injunction prohibits timbering on scenic easement
--Trees to be cut were approved by parkway landscape architect
--NPS policy permitted removal of dead chestnut trees from scenic easement
--Allowing removal of timber could result in future commercial development of site.
--Original use of scenic easement was open pasture.
--Conversion of forested tract to orchard seemed like a legitimate use of scenic easement.
--Landowner would utilize selective cutting in removal of timber
--Landowner prepared a forest management plan
--Park received numerous timber requests.
--Timbering would result in silting of adjacent creek.
--Only seedling trees would be cut/removed from scenic easement

**Dump**
--Removal of dump will resolve long-standing violation of SE

**Surface Excavation**
--Local Congressman intervened on the landowner’s behalf
--Mica mine needed to support the war effort (WW II).

**Sign**
--Painted message on roof of barn amounts to a billboard/sign