

Scenic America Viewpoints

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SPRING, 2001

Affiliates Advocate Bold Actions for Beauty

Scenic America's #1 goal is to build a citizen movement for scenic conservation. Success at the national level is more likely when we speak from a strong state and local base. Because state and local policies most directly affect visual character and community appearance, we give top priority to helping people organize for change at the state and local level.

We now have affiliates in California, Florida, Kentucky, Michigan, Missouri, North

Carolina, Tennessee, Texas, and Virginia. In addition, we work with a growing network of 15 other scenic conservation groups in states and cities including Alabama, Colorado, Georgia, Illinois, Minnesota, Montana, Ohio, Nevada, and Wisconsin. In each of these states, citizens are achieving impressive victories both by stopping harmful things from happening, and by positively protecting irreplaceable resources. Some are undertaking bold campaigns in city councils or state legislatures.

Georgia

SB59 died in the waning moments of the 2001 Georgia legislative session.

The bill as originally proposed would have redefined the area around highway interchanges where billboards could be placed (allowing more billboards throughout the state), reduced the spacing between "multiple message" billboards, and reduced the time each message on these boards would have to show from 10 to 6 seconds.

Through intensive lobbying

and incredible newspaper editorial support, Scenic Georgia was able to remove everything but the 10 to 6 second reduction in the Georgia Senate. Further, the Senate added an amendment that declared any moving message board that did not meet the 6-second rule to be illegal and subject to removal. The Senate vote was 29-22 in favor of the bill, but by Senate standards was incredibly close to being completely defeated.

The House Transportation Committee added back all of the provisions and more, but the House Rules Committee, which

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New Mexico's stunning scenic beauty is threatened by billboard blight.

Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it's the only thing that ever has.

— Margaret Mead



Meg Maguire

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THE BIG Picture

BY MEG MAGUIRE, PRESIDENT

In "Beauty Resurrected" (*The Family Therapy Networker* magazine, January/February 2001), Austin Chronicle columnist Michael Ventura suggests that beauty's primary function is to connect our innermost being to the world. Through beauty, he writes, "...one's soul and one's world are connected in an engagement of wonder.... The experience of beauty is always one of expansion, of opening, of inclusion – a moment of connection." Much depression is a symptom of resistance to ugliness – a holding-back of the spirit from an aggressively ugly environment. Ugliness, he writes, closes us down, shuts us off, blunts our perceptions.

At the heart of the therapeutic relationship should be this question:

"What is beautiful in your life?.... Your children, your friends — do you find them beautiful? ... Your wife, husband, lover, what is their beauty in your eyes?.... Your home, your city, your town, are they beautiful? How do you enter and celebrate and preserve their beauty, or do you? And if your surroundings are not beautiful or, more to the point, if you can find no beauty in them, what is there to do about this?"



Scenic Americans acknowledge the importance of beauty and we work every day to preserve and enhance the scenic character of our surroundings.

We know instinctively that the visual environment has an effect on

our individual and community well-being, but we don't always have the science to prove it. Fortunately, environmental psychologists such as Scenic America board member Dr. Roger Ulrich of Texas A&M University are documenting the importance of viewing nature in shortening recovery from illness and increasing the ability to solve problems under stress.

Michael Ventura proves the point. In 1957, at the age of 12, doctors placed him in a hospital room to die of what they thought was acute malnutrition and an untreatable fever. But from his very ordinary hospital window he would watch the very ordinary pigeons alight on the sill,

"...suddenly, as though out of nowhere.... Through that window I would watch the changing light of the sky, and the clouds – I had never noticed how many shades of light inhabited the sky. And sometimes a flock of pigeons would sail across my field of vision, high up and

far away.... and their wings would catch the sun as they banked all together at some unseen mutual signal, and that flash of many-winged light thrilled my heart. I think I remember that window so well because it was my first consciousness of beauty....I was being touched directly by a sweet and transforming force, or feeling, for which I know no other word but beauty."

This issue of *Viewpoints* features the work of Scenic America's affiliates and associate organizations organized by people who give an extraordinary amount of time, money and passion to preserving and enhancing the beauty of their communities. "What is beautiful in your life?" For me, one of the most beautiful things in my life is all the dedicated activists I work with every day who have experienced the transforming force of beauty and now have become a transforming force for beauty.

[To read the full text of Michael Ventura's article "A Question of Beauty" in the *Austin Chronicle*, visit their website at: http://www.auschron.com/issues/dispatch/2001-01-19/cols_ventura.html.]

Scenic America Welcomes New Board Members

KAY CROOKER (Houston, TX) is a citizen activist who has been very involved with Scenic Houston's billboard control and landscape ordinance work. She was appointed by three different mayors to serve on the Planning and Zoning Commission of the City of Houston, helping to draft city ordinances, and served on the Mayor's Green Ribbon Committee to address Houston's lack of green spaces.

LYMAN ORTON (Steamboat Springs, Colorado and Weston, Vermont) is chairman and proprietor of The Vermont Country Store. Mr. Orton founded The Orton Family Foundation in 1995, using profits derived from The Vermont Country Store, to help citizens of rural America define the future, shape the growth and preserve the heritage of their communities.

HARRY G. ROBINSON III (Washington, D.C.) is a design professional educated in architecture, city planning and urban design. A recipient of several architectural honors and awards, his career in architecture and city planning has included professional work and consultation. He also maintains a firm, The RobinsonGroup/TRG International, that specializes in project development, architecture, planning, and urban design. ■

"One of the things that makes Scenic America so strong is our knowledgeable and committed board of directors," said Scenic America President Meg Maguire. "I look forward to working with these new board members on the challenges we face in saving scenic beauty across America."

(continued from pg. 1)

sets the agenda for bills discussed on the floor, refused to let this bill out. After repeated attempts on the final day of the session to get this bill to the floor, with a full cadre of billboard lobbyists in attendance, it died at midnight, still sitting in the Rules Committee.

"We can finally breathe a sigh of relief. It was not over until the final gavel fell at midnight," said Kent Igleheart, of Scenic Georgia. "It is just starting to sink in what a remarkable accomplishment it was to kill this bill."

Georgia's legislative sessions carry over for two years, so this bill will still be a threat next January, but Scenic Georgia plans to continue to educate state lawmakers on the benefits of scenic conservation, and to go into the 2002 session ready for battle with a bill of their own to stop the construction of new billboards state-wide!

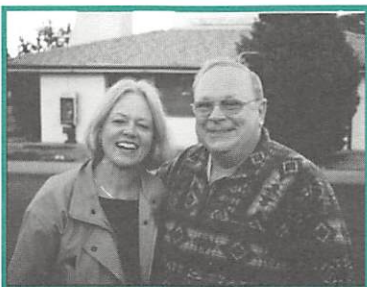
Kentucky

Keith Eiken and Scenic Kentucky have been working with state representative Greg Stumbo in support of House Bill 183. This environmental cleanup bill legislates universal garbage collection statewide and requires each county to have a solid waste coordinator. In addition, the state will charge fast food establishments one half of one cent on each beverage cup sold. The money collected will be used to pay for litter cleanup throughout the state.

Minnesota

Brian Bates and members of Scenic Minnesota have been tying up loose ends after their successful five-year effort to end the construction of new billboards in Saint Paul. They are now working on getting language into the ordinance that will clearly specify what repairs can and cannot be made on existing signs.

The billboard industry has taken the city to court. DeLite Outdoor is challenging the denial of billboard building permits in federal district court, while the city is bringing an administrative action against the company for failing to remove an illegal billboard on highway I-94. Also, Eller Media is expected to challenge the

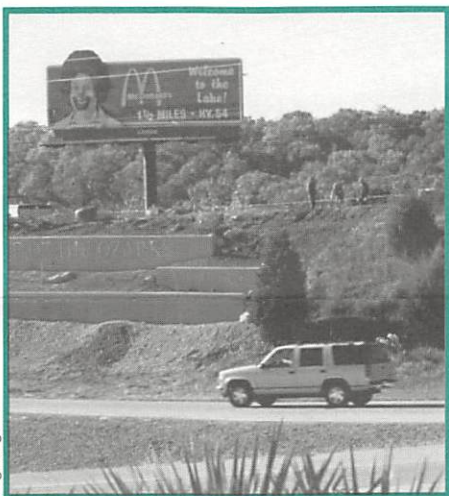


Scenic America President Meg Maguire and Bill Holhut of Citizens for a Scenic Reno shortly before the groups' victory at the ballot box.

initiative. Doug Smith and Citizens for a Scenic Reno spent less than \$3,500 for their resounding victory over billboard blight. For more information on Citizens for a Scenic Reno, visit their website at www.scenicreno.com. ■

Billboard industry's loss comes at a price

In November 2000, voters in Reno passed a ballot initiative to stop the construction of new billboards by 57 to 43 percent. Citizens for a Scenic Reno reports that the billboard industry spent over \$225,000 in their losing effort to stop the citizen's



In the Missouri Ozarks, beautiful landscaping that welcomes visitors is topped by a giant billboard.

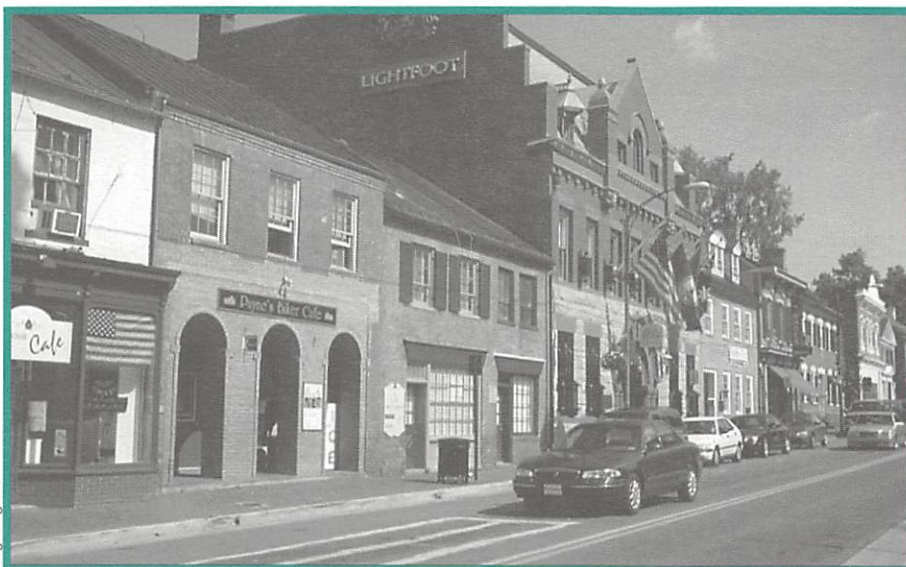
Missouri

Scenic Missouri Executive Director Karl Kruse reports that in light of Proposition A's near victory at the polls in November, Missouri Senator Ken Jacob filed a bill that would enact the primary provisions of the measure: 1) prohibition of new billboards, 2) clarification of local regulatory authority and, 3) prohibition of tree cutting on public rights-of-way to enhance billboard visibility. To combat the "Big Lie" campaign of the Missouri Outdoor Advertising Association (MOAA) that led to the defeat of Proposition A, Sen. Jacob's bill includes the following language: "The provisions of this act shall not create any new obligations for the expenditure of state funds." The bill was co-sponsored by nine Republican and Democrat Senators.

Running a bit scared, the MOAA filed a bill that would: 1) require billboard owners to "surrender" two permits before getting a permit for a new sign (until the total number of billboards decreased from 13,500 to 11,000); 2) impose an "actual commercial use" requirement on commercially zoned land before billboards could be erected; 3) increase minimum spacing from 500 to 1000 feet on both interstate and federal highways and, 4) give billboard companies the "absolute right" to cut trees on highway right of ways. Ironically, even though the industry proposed the "2 for 1" requirement, rural senators deleted it in committee,

city's denial of repair permits in state district court. Scenic Minnesota will continue to monitor and participate in these legal actions as appropriate.

Scenic Minnesota is also taking on the billboard industry at the state level. They have drafted a bill that will prohibit the construction of new billboards state-wide on state and federal highways. Scenic Minnesota held a press event on March 23, 2001 to announce the bill and to introduce its legislative authors. At the event, supporters urged the legislature to pass a moratorium on new billboards. Stay tuned for more information on this bold initiative.



Historic downtown Leesburg, Virginia, is one stop on the Journey Through Hallowed Ground.

complaining that small businesses in their districts that did not have billboards to “swap” would not be able to erect a new billboard. In addition, these renegade senators combined Senator Jacob’s bill (without any of its language) with the industry bill (creating a “committee substitute”), thus giving control to hostile senators.

Legislators friendly to Scenic Missouri – their numbers seem to be growing – will now offer amendments on the floor to enhance the scenic conservation quality of the bill. Although Missourians must still drive some of the most visually polluted highways in America, they are making slow, steady progress. For more information on Scenic Missouri, visit their website at www.scenicmissouri.org.

New Mexico

A bill that would have banned new billboards from New Mexico’s state highways was tabled in that state’s Senate Corporation and Transportation Committee in February. New Mexico scenics Vince Chavez and Rick Roberts worked hard in support of the bill introduced by Republican State Senator Steve Komadina. Vince and Rick also got great support from city planners, 1000 Friends of New Mexico, the New Mexico

Preservation and Heritage Foundation, and private citizens.

“We feel we are at least raising public awareness of billboard blight in the Land of Enchantment,” said Rick. “This bill won’t pass this year, but we did stir up some troubled waters. I know this will take several years but at least we shook some billboarders.”

Texas

Executive Director Cece Fowler and the Scenic Texas staff are active at the state capitol in Austin, urging state officials to pass legislation that will help keep Texas beautiful.

The Scenic Texas staff refers to HB2512, introduced by Representative Garnet Coleman, and the companion Senate bill SB1128, introduced by Senator David Bernsen, as the Scenic Act of 2001. The Act has four components: 1) one percent set-aside for landscaping along Texas highways; 2) requirement of context sensitive design of all Texas roads; 3) provision for public/private partnerships in landscaping and maintenance of state highways; and 4) prohibition of construction of new billboards on the primary system of roadways.

Other bills introduced to strengthen scenic conservation include:

- HB1660, authored by Rep. Jessica Farrar of Houston, provides for an increase from \$500 to \$2,000 in the fine that localities can impose on beautification ordinance violations. This puts Houston and other cities without zoning on an even playing field with zoned Texas cities that can impose meaningful penalties for violations of beautification ordinances.
 - SB1129 and HB1825, also introduced by Sen. Bernsen and Rep. Coleman, provide a means for the Texas Department of Transportation (TxDOT) to participate in the National Scenic Byways program. This will make Texas eligible for federal funding for scenic roadways.
 - HB1965, authored by Rep. Debra Danburg of Houston, imposes the local sales tax on billboard advertising services. Two percent of the collected funds will be used to support sign administration in districts throughout the state; the remaining funds will be deposited in a TxDOT managed account to pay for the removal of billboards that would otherwise be relocated as a result of highway construction.
- For more information about the activities of Scenic Texas or to receive information about contacting legislators, please e-mail platt@scenictexas.org or call the Scenic Texas office at 713-533-9149.

Virginia

Scenic Virginia worked with Sen. Patricia Ticer, a member of Scenic Virginia’s Honorary Board, on a resolution to designate the Virginia portion of the Journey Through Hallowed Ground (Route 15 corridor) as a worthy project of the Commonwealth and deserving of recognition. Scenic America was a founding partner in the multi-state effort with Maryland and Pennsylvania; Scenic Virginia is an active member of the JTHG partners group.

For more information on Journey Through Hallowed Ground, visit Scenic America’s website at www.scenic.org. To get involved in Scenic Virginia, visit their website at www.scenicva.org. ■

The HBA Does Not Protect



Bill Jonson

Trees Along America's Roads

The Highway Beautification Act (HBA) has been the subject of significant controversy almost since it passed in 1965. The HBA was designed to protect natural and scenic beauty along federal-aid highways by, among other things, providing for landscaping along these roads, including tree planting and maintenance. However, in the implementation of the HBA, the Federal Highway Administration has permitted states to allow billboard companies to trim or cut vegetation on the public right of way to improve the view of privately owned billboards off the right of way. Twenty-five states allow tree cutting; 20 do not.

Virginia's beautiful tree-lined roads and highways delight millions of visitors each year. Scenic Virginia is committed to protecting this valuable resource.



Scenic America

Trees play a vital role in a community's scenic beauty, the character of the local landscape, and the overall quality of the environment. Yet, as important as trees are, their survival is often threatened. Scenic America has found that the billboard industry destroys thousands of publicly-owned trees each year to improve the view of billboards on private property, often without warning or notice to citizens or local officials.

In February 2001, the *Charlotte (NC) Observer* reported that authorities accused Robert Willard, former owner of Horizon Billboards, of hiring tree cutters to illegally chop down scores of trees blocking ads along Mecklenburg, NC interstates. Mr. Willard was charged with conspiracy to commit a misdemeanor and a crime called injury to trees, and if he is convicted, he could have to pay more than \$186,000 in restitution. The paper reports that Mr. Willard says he is cooperating with the authorities and accepts "full responsibility for any damage."

In March 2001, the *Forsyth County (GA) News* reports that Department of Transportation officials are investigating the cutting down of over a dozen trees that stood in front of a billboard on GA 400 in Forsyth County in mid-February. This is directly across the road from where a similar incident took place last year. John

Kieffer, Forsyth County Commission Chairman, surveyed the damage and said, "It looks like they were cut to provide a view corridor. It's apparent these [outdoor advertising] companies either ignore the law or think they're above the law."

Citizen Action Can Change DOT Tree Maintenance Standards and Practices

Although the 2001 session of the Virginia General Assembly was a painful experience for most conservation-minded Virginians who watched legislators kill one good bill after another, Scenic Virginia emerged as one of the few conservation organizations with good news to report.

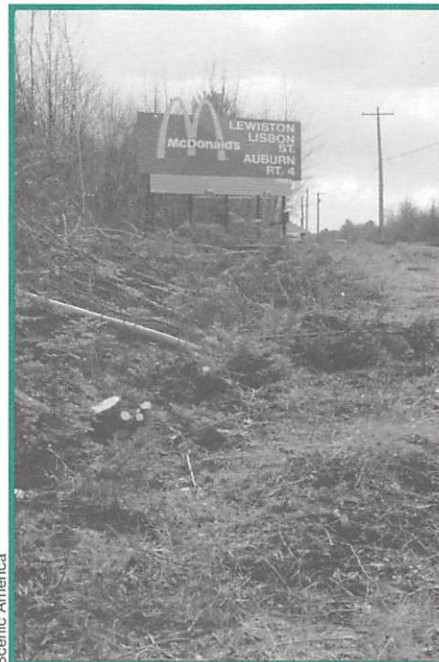
Scenic Virginia's biggest success was the overwhelming passage of legislation that instructs Virginia's Commonwealth Transportation Board to adopt policies to improve the way that the Virginia Department of Transportation (VDOT) prunes and trims those roadside trees not affecting highway operations, maintenance, or safety. In addition, the legislation mandates that Scenic Virginia be part of the committee making the policy decisions.

Scenic Virginia had heard many complaints from members distressed at the

quality and quantity of tree-trimming in certain areas of the state. Upon examination, Scenic Virginia realized there was great disparity in trimming practices from one VDOT district to another. Some districts trimmed appropriately, cutting only the branches that posed a threat to motorists, and with an eye toward the health of the tree and the aesthetic result. Other districts cut branches recklessly and for no discernible reason, leaving behind a mangled, unsightly mess that compromised Virginia's true beauty.

Scenic Virginia urged passage of this bill for economic reasons, pointing out that tourism is Virginia's third largest industry and that travelers from all over the world come to the state to see its breathtaking landscape. Because the first glimpse of the Commonwealth is often from its roads, quality tree care by VDOT is vital in preserving the state's scenic beauty.

"This argument resonated with the legislature, which passed the bill overwhelmingly in the House of Delegates and



Scenic America

unanimously in the Senate," said Leighton Powell, executive director of Scenic Virginia. "Time after time, we heard it referred to as 'a good bill.'" Governor Gilmore signed the bill into law on March 13, 2001.

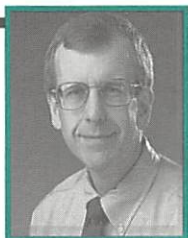
And, Rhode Island environmentalists concerned with the proper care and management of trees along their roads have made tremendous strides working with the state's Department of Transportation

The billboard industry will often cut trees on public rights-of-way to improve billboard visibility.

(RIDOT).

Bob Votava, president of DOT Watch Inc., a R.I. non-profit citizens transportation advisory group, reports that the organization received numerous calls from citizens about the removal, improper pruning and trimming of trees, including some on private property adjacent to state roads. Complaints ranged from destroying the tree canopy, stubbing (improper pruning) of limbs, as well as use of the "boom tractor mower," a vertical machine used to cut growth on roadways, which causes a mangled tearing effect on the trees. DOT Watch called a meeting with RIDOT to discuss tree maintenance standards for state roads.

As a result, RIDOT recently assigned a landscape architect to their maintenance division. Maintenance crews corrected some previous trimming, which did not meet state arborists' standards, and recently removed dead trees within a median strip. Congratulations to DOT Watch. Citizen action is vital to scenic conservation! ■



Scenic America Board Member Elected City Commissioner in Florida

Bill Jonson, president of Citizens for a Scenic Florida and a member of the board of directors of Scenic America, is one of three new city commissioners in Clearwater, Florida. Jonson handily won the four-way race on March 13, 2001.

"Bill Jonson understands how government ought to work and now he has a chance to make it work," said Meg Maguire, president of Scenic America. "The citizens of Clearwater are fortunate to have him on their council just as Scenic America is fortunate to have him on our board."

In early March, the *St. Petersburg Times* endorsed Jonson's candidacy, saying, "He doesn't talk much, but listens a lot. He earns respect even from those who oppose him on issues because he does lots of homework and reaches cautious, well-founded conclusions." The editorial continued, "In a city where the public is having trouble trusting its elected officials, we believe Jonson already has demonstrated that he can be trusted."

Jonson has worked extensively on Florida highway beautification activities. He was a member of the Florida Scenic

Byways Advisory Council, and was active in legislative and rule development pertaining to vegetation protection and billboard controls.

Jonson has been an active and involved member of the board of directors of Scenic America since 1990.

"Bill Jonson is a visionary leader. He has been a terrific role model for all of us who serve with him on the Scenic America board," said Scenic America Board Chair Kathy Whitmire. "The people of Clearwater are indeed fortunate." ■

Celebration of Barrier Islands: Restless Ribbons of Sand



left: Core Banks,
1995
right: Australia's
Fraser Island, 1999



Mary Edna Fraser

"My life's work is from an aerial perspective, a view of the earth I choose to transcribe onto silk using dyes in the ancient medium of batik. Photographing from the open cockpit of my grandfather's '46 Ercoupe plane with my father or brother as pilots, we explore the natural wonders unaltered by man. Each area is carefully researched by often hiking the terrain, exploring the waterways by boat, and painting watercolor studies on location."

*– Mary Edna Fraser,
batik artist*

Award-winning batik artist Mary Edna Fraser will bring her special view of the natural world to the National Academy of Sciences' Arts in the Academy program from June 15 – September 15, 2001. *Celebration of Barrier Islands: Restless Ribbons of Sand* is a display of batiks inspired by aerial photographs of barrier islands around the world.

Fraser began creating batiks in 1980, when she conceived the idea of designing works of art on silk based on aerial photographs. She consults navigational charts to identify features of visual interest, then photographs those features from the air. She then studies the terrain on the ground, making on-site watercolor studies before undertaking the batik. She has exhibited her work in museums across the country, and was featured in *The Smithsonian Magazine*. ■

If you visit our nation's capital this summer, you won't want to miss this special exhibit inspired by the fragility and dynamic nature of the world's barrier islands. To open the exhibit, artist Mary Edna Fraser, scientist Dr. Orrin Pilkey, and poet Marjory Wentworth explore the beauty of barrier islands through batiks, monotypes, scientific text and poetry on Tuesday, June 12, 2001 at 6:00 pm in the Lecture Room of the National Academy of Sciences.

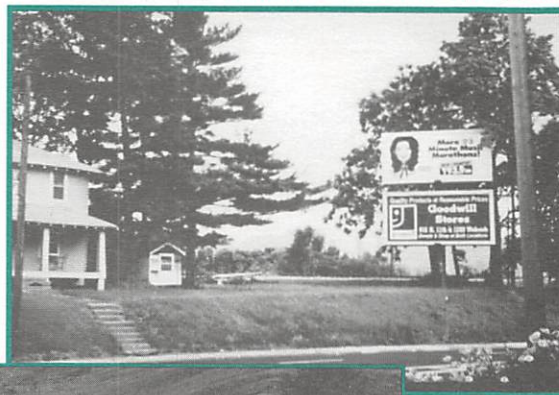
Arts in the Academy is a public service program of the National Academy of Sciences. The National Academy of Sciences is located in Washington, DC, at 2100 C Street, NW, approximately six blocks south of the Foggy Bottom/GWU Metro Station. Viewing hours are Monday - Friday 9:00 a.m. to 5:00 p.m. For more information call 202-334-2436.

Scenic America Seeks Nominations for “Last Chance Landscapes”

Scenic America is now accepting nominations for the 2001 *Last Chance Landscapes* program. These endangered landscapes are places of beauty or distinctive community character with both a pending threat and a potential solution. Nominations are due on June 1, 2001.

Scenic America's President Meg Maguire said, “Unless we reverse course in this decade, many of the landscapes and communities we love will disappear beneath a sea of billboards, cell towers, rampant roads, and strip malls.”

After the designation of Springfield, Illinois as a *Last Chance Landscape 2000* Mayor Karen Hasara announced a city beautification plan she calls “Scenic Springfield.”



Credit: Monroe S. Frederick, II

Scenic America staff visited with Last Chance Landscape nominators at a meeting after the announcement of the 2000 list in November 2000.

Seated left to right: Elizabeth M. Parish, Ontario, WI; Frederick Douglass, IV, one of the speakers at the press event; Diane Dale, Washington, DC; Will Paniagua, Hillsboro, WI; Djuana Joseph, Scenic America. Standing left to right: Tom Pelikan, Mary Houser, Deborah L. Myerson, AICP, and Meg Maguire, Scenic America; Denise Sandy, Springtown, PA; Scot Hume and Steve Castle, Colorado Springs, CO; Jeff Marshall, Doylestown, PA; Henry Hoff and Steven Strohmeier, Scenic America.



The Last Chance Landscapes designation was key to on-going citizen efforts to save Mt. Tom and Mt. Holyoke Ranges in western Massachusetts from inappropriate development and a ten-fold expansion of an existing three-acre trap rock quarry.

Local individuals or groups nominated the areas, which included a scenic roadway, open space in metropolitan areas,

A *Last Chance Landscape* can be a scenic vista, a distinct region, an urban neighborhood, or some other place people cherish and want to preserve. Scenic America will judge nominations on the scenic quality and/or distinctive character of the area, the extent and urgency of the threat, and the opportunities to save the landscape.

“Often we look around our communities and countryside and ask ‘How did this happen?’” said Maguire. “The challenge is to take action before it’s too late to protect scenic landscapes, save open space, preserve community character, and ensure a better quality of life for future generations.”

Last Chance Landscape nomination forms are available at Scenic America's website (www.scenic.org) or by calling

Scenic America at (202) 543-6200. There is no fee to submit a nomination. For a copy of the *Last Chance Landscapes 2000* publication, please visit our on-line bookstore or call Scenic America.

Scenic America launched the *Last Chance Landscapes* program in 1999 to highlight the growing challenge of preserving natural beauty and distinctive community character. The 2000 *Last Chance Landscapes* report listed places ranging from the Verdugo Mountains in southern California to Mount Tom and Mount Holyoke Ranges in western Massachusetts. In 2000, for the first time, Scenic America named an entire state, Colorado, as a *Last Chance Landscape*.

historic towns, and other places people treasure.

“A word for any group interested in applying for *Last Chance Landscape* status: Do it! The process of applying will, of itself, help citizens coalesce around common goals. Those of us lucky enough to bear the designation have found that it helps citizens rally around efforts to protect the places in which we live and to recognize once again our responsibilities to pass our landscapes on to the next generations.” – John Sinton, Trustee of the Connecticut River Watershed Council, nominator of Mt. Tom and Mt. Holyoke, MA *Last Chance Landscape 2000* ■

Michigan Supreme Court Approves Billboard Amortization

In 1975, the City of East Lansing, MI adopted a billboard ordinance calling for the removal of certain rooftop billboards through amortization within twelve years.

Adams Outdoor Advertising bought the leases for these rooftop billboards, and renewed them several times after the 1975 ordinance was adopted. At the end of the stated amortization period, Adams sued the City of East Lansing claiming that the city had no authority to adopt the ordinance, and that the ordinance constituted a "taking" of private property.

In 1992, Adams lost the first claim. The Michigan Supreme Court determined that a home rule city, such as East Lansing, had the authority to adopt an ordinance of this nature. The Supreme Court then remanded the case to the lower court for a determination of whether the ordinance constituted a "taking."

The trial court and the Michigan Court of Appeals found East Lansing's ordinance constituted a "taking" of Adams' property rights. Accordingly, the lower courts ordered the City to pay Adams compensation for the amortization provisions.

In January 2000, Scenic Michigan and Scenic America filed amicus curiae (friend of the court) briefs in the Michigan Supreme Court. The brief

BILLBOARD AMORTIZATION AND THE "TAKINGS" ARGUMENT

One method of removing existing, non-conforming billboards is through amortization. Amortization allows a billboard company to recoup its investment by granting some time to make money from existing billboards that don't conform with a newly-passed local ordinance. Such provisions usually provide billboard operators between five and eight years, or more, to remove their billboards. Not all states permit local governments to use this tool, but in those that do, amortization can be an effective way to rid a community of billboards over a period of time.

Often, you'll hear billboard companies argue that amortization of nonconforming billboards is a "taking," and that they should receive cash compensation for their property. The Fifth Amendment of the United States Constitution, which states, in part: "nor shall private property be taken for public use, without just compensation," prevents the government from "taking" land for roads, town halls, etc. without "just compensation." Early in the 20th century, however, the Fifth Amendment was applied not only to the physical "taking" of land, but also to the regulation of land. This gave rise to a new field of law known as "regulatory taking."

When a locality passes a billboard ordinance that requires the signs to be removed through amortization, billboard

operators will sue the jurisdiction to overturn the ordinance, often at the end of the stated amortization period. However, many legal scholars including John Echeverria of the Georgetown University Law Center, argue that decisions by federal and state courts recognize that a reasonable amortization period leaves the owner with a substantial portion of the value of the property and, therefore, a billboard amortization statute cannot result in a taking under the governing U.S. Supreme Court precedents. Cities that fight these suits usually win; Jacksonville, FL, for example, will remove 1,000 billboards over 20 years, and Charlotte, NC, will remove several hundred, both as a result of amortization ordinances.

Working against removal through amortization, a 1978 amendment to the Highway Beautification Act requires that cash compensation be paid for the removal of any nonconforming billboard along federal highways or National Highway System roads. So, even if a community gets rid of billboards on state roads and city streets through amortization, it will not be able to get rid of billboards on federal aid highways. In places like Raleigh and Durham, NC, billboards have come down citywide — but the interstates through town remain as billboard alleys. ■

represented a collaborative effort by John Echeverria of Georgetown University Law Center in Washington, DC; John Bagg, a takings specialist in Salem, OR; and John Rohe, a Petoskey, MI attorney and husband of Scenic Michigan Chair Debbie Rohe.

On July 26, 2000, the Michigan Supreme Court unanimously reversed the lower court's ruling, saying that the billboards must go. The majority opinion found the rooftop signs represent only a "narrow parcel or interest" of the entire building. Since the regulation was reasonable and did not substantially affect all of the building's value, the majority found East Lansing owed no compensation.

Although courts across the country have determined that amortization of billboards is not a taking, the Michigan Supreme Court decided this case on narrower grounds. It contrasted the value of the regulated rooftop billboard with the value of the entire building, and found the ordinance did not impact a substantial part of the whole.

As of the date this article was written, the City of East Lansing reports that the billboards have not come down as required by the State Supreme Court. The East Lansing city attorney has filed a motion to enforce the rule. A hearing is scheduled for early April. ■

Montana's new Highway 93 promises a new era of harmony between people, habitat, and road

*"The road is no longer like a pair of scissors—it's a vital thread."
—Grant Jones, Jones & Jones*



Jones and Jones

Thanks to context-sensitive road design by firms like Jones & Jones, scenic roads like Highway 93, shown here in Montana's Jocko River Valley, can be safe as well as beautiful and environmentally responsible.

For decades, state DOTs and highway engineers designed roads based on the criteria set out by the American Association of State Highway and Transportation Officials (AASHTO). In most cases, that meant straighter, flatter, and wider, with little consideration given to the impact on the surrounding landscape or the cultural context. Fortunately, a growing number of far-sighted highway engineers are promoting a new way of thinking.

In January 2001, the Montana Department of Transportation (MDOT), the Confederated Salish & Kootenai Tribes (the CSKT), and the Federal Highway Commission approved guidelines for rebuilding U.S. Highway 93 across the Flathead Indian Reservation in western Montana. These guidelines represent an unprecedented level of environmental protection in road design, and strike a critical balance between the interests of state and tribal authorities.

Scenic America is a leader in promoting context-sensitive highway design, as illustrated in the plan for Highway 93 in western Montana. Our Action Guide, *Getting It Right In the Right-of-Way: Citizen Participation in Context-Sensitive Highway Design* by Deborah L. Myerson, AICP, Director of Programs for Scenic America, is a must-have for citizens concerned about the reconstruction or rehabilitation of a road in their community. To order, visit our website at www.scenic.org, or call Scenic America at (202) 543-6200 to order by phone.

A New Way to Design an Old Road

The MDOT goals for the redesign of Highway 93 included safety and a higher "level of service" to accommodate an increased volume of traffic. The original plan, to widen the entire roadway to four lanes, threatened to bring more suburban settlement from the urban areas to the south and to damage ecosystems forever.

But tribal authorities wanted to protect their threatened culture, their sensitive environment, and their breathtaking scenery. For several years, the tribes and the state could not agree on redesign guidelines, and federal funding for the project was in jeopardy.

Getting all parties to agree required the review of some basic assumptions about road building: alignments, safety standards and the relationship of the roadway to the surrounding land. A staff attorney for the CSKT contacted Jones & Jones, a Seattle-based architecture and landscape architecture firm, to work with the consultants to find new solutions to the impasse on the project.

When Jones & Jones began research for the redesign project, special places—Mission Valley, Mission and Salish Mountains, Jocko Valley, and Rattlesnake Divide—became part of the highway design process. Mapping the patterns of waters, glaciers, winds, plants, animals and native peoples in space and time added new dimensions, and provided a strong foundation for subsequent discussions and decisions.

Instead of cutting across the scenic landscape in a straight line, the 56-mile stretch of highway between Evaro and

Polson, Montana will be shaped to respect the distinctive scenery and precious natural habitat of this area.

Subtle, slow curves in the roadway will acknowledge the many features of the land and enhance scenic panoramas. Wildlife crossings are not just marked with signs to slow traffic, but will include multi-faceted strategies to funnel migrating wildlife to safe crossings under and over the roadbed.

Tools to Protect the Scenic Landscape of Western Montana

Corridor overlay zoning, acquisition and transfer of development rights by the tribe, conservation easements, and open space protection measures are tools the tribe will use to control use of the land adjacent to the right-of-way. With the highway improvements, market pressures for roadside advertising are expected to increase. To avoid the threat of visual pollution, the guidelines include a list of institutional and regulatory controls on signage.

By coming together to look beyond the traditional questions and answers of road design, the tribes of the Flathead Reservation and the state of Montana were able to envision a road that not only improves the level of service, but leads to greater quality of life for those who live there and those who visit. Construction on Highway 93 is expected to begin in 2003. ■

PEC Permanently Protects One of America's

Most Breathtaking Landscapes

Piedmont Environmental Council

The Piedmont Environmental Council (PEC) is preserving one of America's most scenic and historic landscapes. Two years in the making, a 1,235-acre preservation project is part of the ongoing efforts of a community acutely aware of the march of suburban sprawl across the Virginia countryside.

The area, an historic tract of land called Ovoka Farm adjacent to where Route 50 crosses over the Blue Ridge Mountains, is part of one of 12 *Last Chance Landscapes* Scenic America designated in 1999. The magnificent view from the farm and the neighboring Ashby Gap is one of the most popular and painted scenes in Virginia. George Washington surveyed the old Route 50 running through this gap, which has been an important westward travel route since colonial times.

Ovoka Farm owner Phil Thomas, a long-time advocate of conservation in the Piedmont area, passed up numerous lucrative development offers in order to preserve the area. The land transaction with PEC is an excellent example of how a concerned landowner and a land conservation organization can work together to preserve and protect important landscapes.

"PEC will ensure that this land is protected from development. Part of the property will be transferred to the National Park Service," said PEC President Chris Miller. "A portion of the property, contiguous to Sky Meadows State Park, will be added to the park and will be available for passive recreation."

For several years PEC has worked with individuals, landowners and organizations as a part of a much larger effort to protect viewsheds, reduce truck traffic, and place more land in voluntary conservation easements in this valley and throughout the Virginia Piedmont. The permanent protection of one of America's most historic and scenic areas is possible only through the public and private partnership of PEC, the National Park Service, the State of Virginia, and the landowners.

The Piedmont Environmental Council is a non-profit membership organization established in 1972 to promote and protect the Piedmont's rural economy, natural resources, history and beauty. Throughout its nine-county service area, PEC provides technical and legal expertise to citizens, local governments and grassroots groups concerned about land use issues. For more information: visit www.pecva.org or call 540-347-2334. ■

Oregon's Measure 7 Found Unconstitutional

Judge Cites Serious Constitutional Problems In Landowner Payments Measure

On February 22, 2001, Marion County Circuit Court Judge Paul Lipscomb ruled that Ballot Measure 7 violates Oregon's Constitution. The measure, passed by a 53 percent to 47 percent margin in November 2000, requires payments to landowners for reductions in property values caused by changes to state or local government regulations.

The scope of the measure was enormous. Literally any change in pollution regulations or zoning or historic preservation rules that restricted what a landowner could do, no matter how small the imposition or how great the public benefit, would have a price tag paid by the taxpayer. Listing of a new species on a state endangered species register, a new historic district, stricter building codes, anything

could trigger compensation. The total cost would be far greater than the annual state budget and most local budgets.

However, because the backers of Measure 7 failed to properly inform the voters about the implications of their proposal, the measure has been struck down at the trial level and will work its way through the appellate process.

The ruling came in response to a lawsuit brought by Audrey McCall, widow of former Oregon Governor Tom McCall, who signed the state's far-reaching land use provisions into law, and other concerned citizens.

Judge Lipscomb ruled that the changes in Measure 7 were presented to voters out of context. The measure should have included the existing parts of the

Constitution that it would modify — including protections that already require compensation when the government takes private property for public use.

"The requirement that a ballot measure fully explain all the changes it makes to the Oregon Constitution and the prohibition against bundling together multiple Constitutional amendments in one ballot measure are fundamental protections to voters, in our initiative system," said Robert Liberty, executive director of 1000 Friends of Oregon. "These protections are especially important in a case like this, where a measure has such far-reaching consequences for Oregon and Oregon's taxpayers."

Supporters of Measure 7 are expected to appeal the decision. ■

Save the Date!

Scenic Summit: Action for America's Communities, Countryside, and Public Lands

April 21–24, 2002
in Denver, Colorado

For more information, visit the website at www.scenicsummit.org

The beginning of a new century offers an opportunity to focus on protecting the beauty of America's landscapes and set a national agenda for scenic conservation. The Scenic Summit is a landmark event that will draw on professionals and citizen activists to discuss the challenges for protecting the visual environment, to examine the tools and management techniques now available,

and to create a strategic action plan for the future of scenic conservation.

Sponsorship opportunities are available for corporate stewards of our scenic heritage committed to preserving "America the Beautiful." For information on how you can support this important national event, call Scenic America President Meg Maguire at 202-543-6200. ■



Scenic America Viewpoints
801 Pennsylvania Ave, SE, Suite 300
Washington, DC 20003
(202)543-6200
www.scenic.org

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801 Pennsylvania Ave., Suite 300
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