

# Turquoise Trail Corridor Management Plan

## Version 1.0

### 6.0 Intrinsic Asset Protection Plan

This corridor management plan does not suggest that change is inevitable or that it is not desired, but rather to suggest that the Turquoise Trail Scenic Byway has opportunities for preservation, growth, and development that can all be accommodated within a program that recognizes the special appeal of the scenic corridor. This must be done to (1) enhance the recreational qualities of the area while (2) safeguarding the natural beauty, open space, and other primary attractions, and (3) provide safe and efficient transportation. Balancing all the issues influencing the use and development of the Turquoise Trail, if properly understood, planned for, accommodated or avoided, can increase the basic appeal of the byway and quality of service to both the resident and the visitor.

It is critically important that the intrinsic assets of the TTSB be protected and preserved, otherwise they will cease to exist as we know them today. Only by increasing the level of public awareness and advocacy by stakeholders will the intrinsic qualities of the byway be preserved. Other activities and tools should be explored to determine their usefulness and effectiveness. Some examples are conservation easements, purchase of development rights, acquisition of sites, and land use controls.

#### 6.1 CONSERVATION TECHNIQUES

A conservation easement is a legally recorded agreement by which landowners may voluntarily restrict the use of their land. A conservation easement protects important land resources and can be held by a qualified conservation organization (such as the Taos Land Trust) or local unit of government. Provided that certain conditions are met, donors of easements may be eligible for income, estate and/or property tax benefits. One condition is that there must be an established, recognizable public benefit, such as protecting rare species, public water supplies, or scenic vistas visible from roads. Public access is not a requirement.

Although the duration of a conservation easement can vary depending on the desires of the landowner, tax benefits are available only for perpetual easements. Many land trusts will only accept perpetual easements, since they provide permanent protection by subjecting all future landowners to the same restrictions. Conservation easements are also the principal legal mechanism used to protect land in a Purchase of Development Rights (PDR) or Transfer of Development Rights (TDR) program.

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### 6.1.1 What Types of Land Can Be Protected through Conservation Easements?

Any type of undeveloped or sparsely developed property can be protected with a conservation easement. Conservation easements can be used to protect agricultural land, forested land, wildlife areas, wetlands and other scenic or natural lands.

### 6.1.2 What Effect Does This Agreement Have on a Landowner's Property Rights?

A landowner who conveys a conservation easement retains all rights to use the land for any purposes that do not interfere with the conservation of the property as stated in the terms of the easement. The landowner retains the title to the property, the right to sell it, the right to restrict public access, and the right to give it to whomever he or she chooses. However, most or all of the rights to develop are restricted or eliminated. The terms of a conservation easement are individually tailored to reflect each landowner's particular needs, situation and county property. For example, one landowner may want to prevent any future development. Another may want to retain the right to construct an additional barn or shed. A third landowner may want to reduce, beyond what is allowed by current zoning, the number of homes that may be built on a certain parcel. The easement can be written to apply to the entire property or to only a portion of it.

### 6.1.3 How Is the Easement Value Determined?

Land ownership can be viewed as owning a variety of separate rights on the property. These rights include, but are not limited to, the right to farm the land, the right to build on the land, and the right to exclude the public. When a conservation easement limits any of these rights, the value of the land is affected. The value is determined by having a 'before' and 'after' appraisal completed by a qualified appraiser who meets IRS requirements. First, the land is appraised in light of its full development potential. Then the land is appraised again, taking into account the easement restrictions which limit some or all of the property's development rights. The difference between these two figures is the value of the easement. In instances where the easement is donated and qualifies under IRS regulations, this amount also is the value of a charitable contribution which can be taken as an income tax deduction. Appraisal costs are the responsibility of the landowner considering donating a conservation easement.

### 6.1.4 What are the Tax Benefits of a Donated Conservation Easement?

- Federal Income Tax Benefits-Under the IRS code, the donation of a qualified conservation easement may be treated as a charitable contribution. The value of the contribution can be deducted at an amount up to 30 percent of the

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donor's adjusted gross income in the year of the gift. If the easement's value exceeds 30 percent of the donor's income, the excess can be carried forward and deducted (again, subjected to the 30 percent limit) over the next five years, if needed. The tax code is complicated; therefore, property owners should seek professional tax advice.

- **Estate Tax Benefits-**Donation of easements, whether during the landowner's life or by bequest, can reduce the value of the land upon which estate taxes are calculated. This can greatly benefit the landowner wishing to transfer land to relatives. The estate tax benefits of a conservation easement can often mean the difference between heirs having to sell property to pay estate taxes or being able to keep the property in the family.
- **Property Tax Benefits-**The conveyance of a conservation easement may reduce a landowner's property taxes. This depends on current zoning and land use, current assessed value, and whether the owner participates in a current-use assessment program. Under New Mexico law, county assessors must take a conservation easement into consideration in establishing the market value of the land subject to the easement. However, existing tax basis, assessed value, and current zoning of each piece of property are important factors in determining the potential benefits of any easement. The exact terms of each individual easement also have a bearing on its effect on property taxes.

### 6.1.5 What Criteria Must Be Satisfied?

To be eligible for most of the above tax benefits, the agreement must be entered into with a qualified conservation organization, such as the Taos Land Trust, or a local unit of government. In addition, the terms of the easement must be perpetual and they must meet other IRS requirements. The criteria that must be satisfied for the Taos Land Trust to accept such a donation are available upon request.

### 6.1.6 What Rights Does the Easement Holder Have to the Land?

If a qualified organization accepts an easement on your land, it is obligated to oversee and enforce the easement's terms and conditions. For example, an organization has the right to enter and inspect the property (usually once a year) to ensure that the terms of the agreement are being upheld. Except in unusual circumstances, these visits are scheduled with the landowner. The organization does not have the right to use your property, nor does the easement allow public access to the property since it remains privately owned.

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- Purchase of Development Rights (PDR) programs have been used successful in many areas around the nation. They were pioneered in Suffolk County, New York in 1974 and have since been used across the nation to preserve an estimated 400,000 acres of farmland alone. Programs focused on natural areas and other open spaces have protected additional acreage. Under a PDR program, a landowner voluntarily sells his or her rights to develop a parcel of land to a public agency or a charitable organization interested in natural resource conservation. The landowner retains all other ownership rights attached to the land, and a conservation easement is placed on the land and recorded on the title. The buyer (often a local unit of government) essentially purchases the right to develop the land and retires that right permanently, thereby assuring that development will not occur on that particular property. The landowner is generally compensated for the value of the right to develop the land through the following formula:

$$\begin{array}{rcccl} \text{Appraised Value} & & \text{Appraised Value} & & \text{Appraised Value} \\ \text{For} & - & \text{For} & = & \text{of} \\ \text{Development} & & \text{Agriculture/Conservation} & & \text{Development Rights} \end{array}$$

When considering where PDR fits into a community's land conservation plan, one should consider the cost involved in purchasing development rights on a significant amount of land. In areas with high growth pressure, the cost of a PDR program can be high as the difference between development value and conservation value increases. Used strategically, however, a PDR program can be an effective tool to help maximize a community's conservation efforts. Money for PDR programs can be raised through a variety of means, including bonding initiatives, private grants, and various taxation options. Many communities have found matching dollars from state and federal sources.

- Acquisition of sites: Due to the cost of land in the Turquoise Trail corridor and the limited financial resources of the Turquoise Trail Association, it seems very unlikely that actual purchases of land will be made to protect scenic, natural and other resources. However, the TTA does intend to work with property owners to encourage them to assist in preserving resources.
- Land Use Controls: Currently the counties who have jurisdiction over the Turquoise Trail area all have zoning regulations in place. Much of the area is zoned agricultural and residential. Residential is restricted in that no multi-family housing is allowed and each house must be on a minimum of two acres. In certain areas, commercial and neighborhood shopping areas are allowed.

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### 6.2 EXISTING PROTECTIONS

- *Archaeological:* Some assets, such as archeological, are and can be protected by not telling people they exist. For example, the Archeological Conservancy District stated their position regarding the protection of archeological intrinsic qualities. They believe that if the general public is aware that these assets exist, there will be so much interest in them that they cannot be protected and preserved because the resources would be stolen or ruined.
- The Museum of Archaeology and Material Culture, located on the TTSB has immediate plans (if the FY 2000 TEA-21 Scenic Byway Grant is received) to develop interpretive materials which will help in promoting preservation of archaeological artifacts.
- *Cultural:* Plans are currently underway for the development of a Civilian Conservation Camp (CCC) museum and park off of Highway 536. Additionally, there are historic groups which preserve the cultural and historical system of acequia (ditch) irrigation and protection of water supplies. These are just two examples of cultural preservation.
- *Historic:* The communities of Cerrillos and Madrid have several properties listed on the National Register of Historic Places.
- *Natural:* The USFS manages and maintains the Sandia Mountain Wilderness area which protects many natural resources of the Sandia Ranger District of the Cibola National Forest. Highway 536 and the right-of-way are also managed by the USFS and there are several facilities in this area. In addition, the USFS is constructing a visitor interpretive center at the Crest.
- *Recreational:* The USFS has been in the business of protecting and preserving intrinsic assets for many years. They do a wonderful job of both protection and interpretation. Most management activities are aimed at preventing overuse and abuse of the forest. The TTA plans to further develop its partnership with the USFS to preserve intrinsic qualities. Research indicates there are no other protection methods in use at this time.
- *Scenic:* In addition to land use controls, there is an organization called the East Mountain Legal Defense Fund which tackles conservation, preservation and protections issues. Current issues include light pollution, cellular telephone towers and high density and unplanned growth. The Turquoise Trail Association, the Madrid, Cerrillos and San Marcos landowner associations are all fighting against

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the widening and straightening of Highway 14 in those areas. These people all believe that, if this occurs, scenic views will be lost forever.

### 6.3 PROTECTION GOALS

- A. To preserve and protect the intrinsic assets of the TTSB.
- B. Protect natural resources.

### 6.4 PROTECTION OBJECTIVES

- A. Identify the 5 assets most in need of protection and implement the following strategies in the year 2000.
- B. Manage vegetation open views and make vegetation part of the scenic value of the corridor.

### 6.5 PROTECTION STRATEGIES

- A. Communicate the importance of retaining the environmental integrity of the byway.
- B. Learn about the activities of the National Trust for Historic Preservation and how they relate to protection of assets of the TTSB.
- C. Learn about the activities of the Historic Preservation Division of the NM Office of Cultural Affairs and how they relate to protection of assets of the TTSB.
- D. Initiate personal relationships with land developers along the TTSB. Provide them with copies of the CMP and encourage them to comply with the goals of the plan.
- E. Engage in extensive partnerships with volunteer citizen organizations to provide high levels of vegetation management. Activities should include trash pick up and other beautification programs.
- F. Become involved with the NM Clean and Beautiful program under NMH&TD.