

## Existing And Potential Future Protection Techniques

The following memorandum was prepared by Mike Schmidt and Tom Ankersen of the University of Florida Conservation Clinic outlining and describing existing and potential future protection techniques that the CME will review and consider in the future.

Scenic US 441 has many features worthy of protection, including natural, historic, scenic and recreational resources. The protection techniques component of the Corridor Management Plan (CMP) is critical; without protecting Scenic US 441's intrinsic resources, there is little point in designating Scenic US 441 as a scenic highway. Part I of this memorandum describes the existing protection along Scenic US 441. Part II recommends further protection techniques, focusing on incentive-based techniques.

### I. EXISTING PROTECTION

Protection techniques fall into three general categories: land use controls, land acquisition, and public/private agreements. Several protection techniques are already being implemented along Scenic US 441, including infrastructure protection, land use controls, and land ownership. Part I of this memorandum addresses each of these existing protection techniques in detail.

#### A. Infrastructure protection

Local government, counties and municipalities, have the responsibility of providing infrastructure to local communities. "Infrastructure" refers to required services that allow a "community to function in a manner that the public health, safety and welfare are protected," such as waste collection, potable water, streets, and parks. Moreover, infrastructure may be used to protect scenic and natural qualities through regulation, as well as services.

Recently, Alachua County adopted the Personal Wireless Service Facilities (PWSF) Ordinance, which regulates the installation of PWSFs. The ordinance defines a PWS facility as "any facility for the transmission and/or reception of personal wireless services, which may consist of an antenna array, transmission cables, equipment shelter or building, access road, mount, and a guy system." Cell phones and pagers are examples of personal wireless services. One of the purposes of the ordinance is to minimize the "visual impact" of the PWSFs.

The PWSF ordinance implements a tiered permitting process. Tier one is limited to the installation of "PWSFs on new or existing utility poles (telephone poles, utility distribution and transmission poles, streetlights and traffic signal stanchions)." A PWSF qualifies for tier two status if it meets the detailed standards in section 366.06(a) of the ordinance. PWSFs that do not qualify for tier one or tier two status are considered tier three.

Section 366.06(a), which provides the standards for tier two, generally restricts the installation of PWSFs at locations other than utility poles (tier one). This section lists locations where PWSF installation should be avoided, such as "visual corridors." PWSF installation should also be avoided on recreation, preservation, and conservation areas. Additionally, the ordinance encourages that existing

structures or trees conceal the location of PWSFs, protecting the surrounding viewshed. Lastly, design standards protect the surrounding viewshed by encouraging that the size and height of PWSFs be minimized, and encouraging PWSFs to be painted with colors complementary with natural tones.

Although these standards are not mandatory, at least the ordinance requires the consideration of PWSF impacts on the surrounding viewshed. Because the use of devices such as cell phones and pagers are becoming more and more popular, the PWSF ordinance is a valuable infrastructure technique that protects the scenic view along Scenic US 441, as well as the rest of the unincorporated area of Alachua County.

Another infrastructure protection technique has been implemented by the Florida Department of Transportation (FDOT). FDOT has constructed a wildlife barrier in Paynes Prairie along Scenic US 441, which protects wildlife from the danger of traffic. Moreover, FDOT has constructed four pipes that run underneath Scenic US 441, which allows wildlife to cross from one side of Paynes Prairie to the other. This technique helps to maintain Paynes Prairie as a single wildlife habitat area and protects the natural community along Scenic US 441.

## B. Land Use Controls

Land use controls probably consist of the largest portion of the existing protection along Scenic US 441. Land use controls include zoning districts and subdivision regulations, which restrict activity that may be harmful to Scenic US 441's intrinsic resources. This section will discuss the existing protection provided by zoning designations (preservation, overlay districts, agriculture, historic districts) and ordinances that restrict certain activities (constructing signs, removing trees).

Land use control regulations operate by dividing land, within a local government's jurisdiction, into separate zoning districts. Zones are distinguished by their use, for "trade, industry, residence or other purposes." The local government then enacts ordinances that restrict the use of land, depending on which zoning district the land is in. An ordinance limits development by restricting "the erection, construction, alteration, repair, or use of buildings, structures, or land." The first subsection focuses on the different zoning districts along Scenic US 441. The second subsection focuses on ordinances that regulate specific activities.

### 1. Zoning districts

Generally, zoning districts exist in a hierarchy, based on density. Preservation districts are the most protective of natural and scenic resources, prohibiting development altogether. Agricultural districts have low densities, residential districts have medium densities, and commercial and business districts have higher densities. Most of the land along Scenic US 441 is designated as preservation or agriculture, thus making land use zones an important existing protection technique.

Paynes Prairie is a preservation area, owned by the State, that occupies most of the northern half of Scenic US 441. Because it is designated as preservation, development is prohibited and recreation is permitted to a limited extent. The very northern end of Scenic US 441 is designated as the Idylwild/Serenola Special Overlay District, which protects environmentally sensitive lands and acts as a buffer

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between Gainesville and Paynes Prairie. An overlay district is a zoning district that lays on top of the underlying zones, providing additional protection. Usually overlay districts add protection to historic or environmental resources.

The Idylwild/Serenola Special Overlay District (I/S) protects numerous types of environmentally sensitive lands. For example, I/S protects “significant upland habitat” by requiring the use of clustering, a technique that condenses residential development into a smaller areas and preserves larger areas of undivided open space. This technique not only maintains a large wildlife habitat, but maintains the scenic viewshed as well. I/S also protects “bald eagle nesting zones.” Development is prohibited in primary zones, the area within a 750 foot radius of a nest tree; and land use is “limited to passive recreation, farming, grazing, nurseries or gardening” in secondary zones, the area within a 1,500 foot radius of the nest tree but outside the primary zone.

In addition to protecting wildlife, I/S protects the tree canopy, an important aspect of the scenic and natural resources. The tree protection in I/S is stronger than the tree ordinance that applies to the rest of Alachua County, requiring developments to retain a larger percentage of the initial tree canopy. Trees help to maintain the viewshed by screening commercial/business development. Lastly, I/S also provides added protection to wetlands, archaeologically significant areas, and scenic roads designated under the Scenic Roads Ordinance.

South of Paynes Prairie, most of the land along Scenic US 441 is designated for agricultural use. While not as protective as preservation areas, agricultural zones are still relatively protective of scenic resources. The future land use element of the Alachua County Comprehensive Plan (ACCP) requires a 200 foot set-back from adjacent properties, which preserves open space. Additionally, the ACCP requires vegetative buffers around environmentally sensitive areas, protecting the natural resources and scenic quality of Scenic US 441.

At the very southern end of Scenic US 441, near the Alachua County border, is the historic town of Micanopy. The town is the oldest consecutively inhabited site in the area and used to be trading post for the Seminole Indians. Because of its history, the town has archeological value and the architecture of the buildings have a distinctive look. The town of Micanopy’s Comprehensive Plan contains a historic preservation element that designates an Historic Preservation District. Moreover, Micanopy is on the National Register of Historic Places. A historic preservation ordinance specifically protects the aesthetic qualities of the town, requiring a “certificate of appropriateness” before historic structures are altered.

To the east of Micanopy, between Orange Lake and Little Lochloosa Lake, is the Cross Creek special area study. This district protects the historic significance of the area made famous by Marjorie Keenan Rawlings. Although the Cross Creek area is not adjacent to Scenic US 441, it consists of similar natural, historic, and scenic resources as Scenic US 441. Cross Creek is within the loop road system. Scenic protection along 441 could be extended to the loop roads under Alachua County’s Scenic Roads Ordinance, which authorizes the county to designate scenic roads.

The Scenic Roads Ordinance established a scenic roads advisory committee, which recommends to the county commission the designation of scenic roads. The county

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commission may adopt, by resolution, restrictions that preserve the scenic character of designated scenic roads; however, the ordinance requires the maintenance of scenic roads once designated.

Absent a scenic road designation, the Cross Creek special area study district still protects intrinsic resources by allowing landowners to transfer density from land within the Cross Creek special area to contiguous land under the same ownership. Landowners may also transfer density to contiguous property not under the same ownership if development is presented as a Planned Unit Development (PUD), which implements the clustering technique, and the landowner restricts use of the land by recording the restrictions on the deed. Lastly, landowners may transfer density to noncontiguous land not under the same ownership if a development agreement is approved under section 163.3220 of the Florida Statutes.

## 2. Regulated activities

In addition to ordinances that create zoning districts, ordinances may focus on regulating specific activities, including sign construction and tree removal. Chapter 345 of the Alachua County Code regulates the construction of signs and advertising structures. Signs generally fall into one of two categories: off-site signs and on-site signs. Off-site signs are defined as signs not located on the same land “as the principal business, product, service, or activity” (principal business) being advertised. On-site signs are defined as a sign that is on the same land as the principal business and relates only to the principal business.

The construction of new off-site signs, including billboards, are prohibited, with an exception for agricultural signs. On-site signs are permitted only in commercial, business, professional, or industrial zoning districts. This protection technique is important to Scenic US 441 because most of the land adjacent to the corridor is zoned preservation or agricultural, thus advertising structures are prohibited along most of the corridor. In permitted zones, the size of on-site signs is restricted to one third of the size of the front of the principal building, and no on-site signs shall exceed 300 square feet. Moreover, the ordinance provides that no sign shall be located within 15 feet of a street or within 25 feet of an intersection, and no sign shall exceed 18 feet in height.

Nonconforming signs that were lawfully constructed must be brought into conformance within seven years. Lastly, the ordinance requires landowners to obtain a permit before constructing a sign, and imposes additional restrictions for real estate signs, garage sale signs, directional signs, address signs and home occupation signs, temporary building signs, and signs erected by governmental entities.

While signs and advertising structure disrupt the scenic quality of Scenic US 441, the tree canopy along the corridor not only provides a natural aesthetic quality, but also acts a buffer to screen unattractive structures or land uses. The Alachua County Tree Ordinance is an important tool that regulates the removal of trees. The tree ordinance categorizes trees into three categories, depending on the level of protection needed, but no tree may be removed without a permit. As a condition to granting a permit, an applicant may be required to relocate trees. Furthermore, development plans must consider tree preservation and retain at least 15% of the existing tree canopy. Lastly, the ordinance requires public agencies and utilities to

comply with the National Association Standards for Pruning of Shade Trees when pruning trees.

## A. Ownership of Land

Although land use regulation provides most of the existing protection along Scenic US 441, perhaps conservation friendly landowners provide the strongest protection. Owning land outright is the surest way to protect its resources. The State of Florida owns Paynes Prairie, consisting of over 200 acres of land adjacent to the corridor. Because of State ownership, any private interest in developing land is not an issue. Moreover, other conservation friendly landowners, albeit smaller, are located along the corridor.

## II. ADDITIONAL PROTECTION

While existing protection may be fairly strong, the Corridor Management Entity (CME) should explore ways to enhance the existing protection. This may be done by modifying the existing techniques or by recommending new techniques. This part of the memorandum (Part II) suggests ways to enhance the existing protection, focusing on three areas: land use controls, land acquisition, and conservation agreements.

### A. Land Use Controls

As discussed in Part I.B, numerous ordinances exist that provide protection for the natural, historic, and scenic resources of Scenic US 441. This section offers suggestions for modifying these existing ordinances based on ordinances implemented along other scenic highways. Furthermore, this section discusses the implementation of a new protection technique, Conservation Subdivision Floating Zones.

#### 1. Modifying existing ordinances

Overlay districts are a valuable tool because they provide additional protection that “lays over” the existing protection. The Idylwild/Serenola and Cross Creek special area studies are overlay districts that, in particular, protect wildlife and trees (Idylwild/Serenola) and allow landowners to transfer density away from protected areas (Cross Creek). However, both these overlay districts are limited to smaller areas. The protection along Scenic US 441, as discussed in Part I.B.1, is piecemeal. The Scenic US 441 CAG may want to consider, in the CMP, a scenic highway overlay district that extends the length of the corridor.

Other scenic highways are protected by scenic highway overlay districts, such as the Pensacola Scenic Bluffs Highway, which is protected by the Escambia County scenic highway overlay district and the Pensacola Scenic Bluffs Highway Overlay District (City of Pensacola). Both overlay districts contemplate the impact of fences on the corridor’s scenic quality. The ordinances prohibit certain types of fences (i.e., chain link fences, fences made of solid materials that obstruct the viewshed), restrict the height of fences, and require fences to be as transparent as possible. Also, the ordinances provide for the maintenance of the tree canopy along the corridor, not only to preserve trees but to act as a buffer that screens residential development from the viewshed. Lastly, the Escambia County ordinance states that the CMP

intends to provide a bicycle path along the entire length of the corridor.

Like Escambia County and the City of Pensacola, Charleston County in South Carolina has established criteria for scenic highway zoning districts. The ordinance prohibits outdoor advertising signs unless a uniform design is approved under the ordinance. Trees are also preserved to enhance the natural beauty along the corridor. Lastly, certain activities that may be unsightly are prohibited, although they may be allowed if a conditional permit requires natural screening with trees and shrubs.

Instead of creating a scenic highway overlay zone that extends the length of the corridor, the Scenic US 441 CME may prefer to focus on modifying the existing sign and tree ordinances, which provide similar protection. However, Alachua County's sign ordinance already prohibits the construction of new billboards, a restriction much stricter than either Escambia County's or Charleston County's sign ordinances. Furthermore, Alachua County's sign ordinance states that its objective is to "preserve the aesthetic qualities of the county" and that advertising structures should be "[c]ompatible with their surroundings." One possible modification is to expressly mention scenic roads. The Escambia County sign ordinance specifically addresses scenic roads, stating that "all signage along these roadways should reflect the unique scenic qualities of their environment."

Modifying Alachua County's tree ordinance may also provide additional protection. The ordinance currently imposes a fine for removing a tree without a permit. However, Charleston County requires someone who removes a tree without a permit to replace the tree. This remedy more adequately protects the natural quality of a corridor. Moreover, Alachua County's tree ordinance currently requires developers to retain 15% of the existing tree canopy. Stronger protection is being considered for the Pensacola Scenic Bluffs Highway in its CMP, which proposes a "Canopy Tree Protection Zone" along the corridor that maintains 30% of the existing canopy.

## 2. Conservation Subdivision Floating Zones

In addition to modifying the existing protection, the Scenic US 441 CAG should also consider protection techniques not currently being used. One potential technique is the floating zone, which is similar to an overlay zone. Floating zones generally involve a two-step process. First, a floating zone, which is not fixed on the land use map, is created in anticipation of a rezoning request. Second, the floating zone becomes fixed on a particular parcel of land if certain conditions are met and the rezoning will advance a public interest.

A typical subdivision, which is a residential development, maps out house lots in a checkerboard fashion. By implementing the clustering concept, subdivision development can be concentrated within a smaller area, conserving open space. A conservation subdivision floating zone couples the cluster concept with the floating zone concept. If land in a residential zone met certain open space requirements and maintained a scenic viewshed, which likely would be a valid public interest, that land could then be rezoned as a conservation subdivision floating zone.

Conservation subdivision floating zones (CSFZs) provide an incentive for residential

developers to maintain open space by allowing them to rezone land use at a higher density. Additional incentive may be provided to developers by offering them density bonuses, which allow developers to increase their density if they provide a desired amenity. In exchange for a density bonus, a developer might provide an amenity by dedicating land for public use, such as recreational trails for biking or hiking. Density bonuses might also help developers generate additional income, which could provide an incentive to maintain the open space.

One problem with floating zones in general is that they may be attacked if they are characterized as spot zoning, which favors a private interest over a public interest. However, this attack may be overcome if the rezoning is in accordance with the comprehensive plan. Because the CMP must be adopted at least in part by the Alachua County Comprehensive Plan, a CSFZ should be valid as long as it promotes natural, historic, and scenic resources. Open space, if undivided, may leave scenic views unblocked, preserves wildlife habitat areas, preserves historic resources, and may provide recreational areas. Moreover, native trees and plants may provide a visual buffer between Scenic US 441 and a residential development.

## B. Land Acquisition

Perhaps the strongest way to protect land is to own it. Owning property generally consists of a bundle of rights. To own the entire bundle of rights is to own the land in fee simple. However, certain rights can be deeded away, leaving the landowner with less than fee simple. For example, a landowner may donate a scenic easement to a public agency or a preservation group. The landowner would still own the land, but his/her rights would be restricted. A scenic easement would probably restrict the landowner's right to develop the land in a way that would block a scenic view. This section will discuss conservation/scenic easements.

While acquiring land is protective, it is also expensive. However, there are several preservation groups and public agencies that purchase land for the purpose of preserving it. For example, The Nature Conservancy is a non-profit organization that acquires land across the nation and the world. Public acquisition occurs at the different levels of government. Federal agencies, such as the Fish and Wildlife Service and the National Park Service purchase land. Land is also acquired through state programs in Florida, such as Preservation-2000 and Conservation and Recreation Lands. This section of the memorandum will discuss (in addition to conservation/scenic easements) Alachua County Forever, a local land acquisition program.

### 1. Conservation/Scenic Easements

Under chapter 704.06 of the Florida Statutes, a conservation easement is defined as “a right or interest in real property which is appropriate to retaining land . . . in [its] natural, scenic, open, agricultural, or wooded condition.” The statute prohibits various development activities that go against the purpose of the easement. Easements are perpetual in nature, meaning they run with the land and all subsequent landowners' rights to develop the land are limited. Usually the holder of the conservation/scenic easement has the responsibility of maintaining the easement, although if the easement is held in a land trust, the landowner is

responsible for maintaining the easement.

Conservation/scenic easements are generally held by a preservation organization, public agency, or a land trust, whose purpose is to protect natural and scenic qualities of land. The Nature Conservancy (TNC), a charitable organization that protects land in its natural state, may be a candidate to hold easements along Scenic US 441. However, TNC would be expected to invest the time and money to maintain the easements. The Alachua Conservation Trust (ACT) is another option. In a land trust, the trustee (ACT) holds both the legal and equitable title to the real property, leaving the landowner with a personal property interest. This means the landowner has the responsibility of managing and maintaining the easement. A third option, discussed in the next subsection, is to acquire the easement through Alachua County Forever.

Conservation easements may be an effective protection technique because they offer tax incentives to landowners. Income taxes probably provide the largest tax benefit to landowners. A landowner may receive income tax benefits by donating or selling an easement for less than market value to a qualified organization for a conservation purpose, as defined in I.R.C. § 170. Scenic easements, preserving open space and scenic enjoyment, is expressly included in I.R.C. § 170. The easement may also be a remainder interest; thus, a landowner could retain all interest in the easement for the duration of her life, and then donate the easement to a qualifying organization.

The landowner is then allowed to deduct up to 30% of her income per year for six years or until the full value of the easement has been deducted. The value of the easement is based on qualified appraisals of the fair market value of the land both with and without the easement. The difference in value is the easement's value. Although federal income tax benefits provide the largest tax incentives for landowners interested in donating easements, other tax benefits exist as well, including estate, gift, capital gains, and ad valorem tax benefits. These tax incentives are based on the concept that conservation easements will lower the value of the land, thus reducing taxes.

Conservation easements are a valuable tool to protect scenic highways. For example, the Thomasville Road Scenic Byway, which runs north out of Tallahassee and into Georgia, is protected by a Conservation Management Plan (Plan). The Plan is intended to protect the scenic, cultural, natural, and rural character of the Red Hills region. Specifically, the Plan encourages landowners to work with the staff of the Red Hills Conservation Program to create scenic easements, protecting the intrinsic resources of the area. Moreover, the Plan specifically provides for the preservation of certain types of trees, which is consistent with the tree protection techniques discussed earlier.

## 2. Alachua County Forever

Alachua County Forever, which is on the November 7, 2000 ballot, is a proposed local land acquisition program. The program would raise money to purchase land by “issuing bonds from an annual ad valorem tax of one-quarter of one mil for a period of twenty years.” Land would be acquired based on environmental, social, management, and economic criteria. This program may be a valuable tool to Scenic US 441 because the corridor has many of the values considered under the program. The program evaluates environmental factors, including the diversity of natural

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communities, whether the natural communities are connected, and whether there are endangered species or endemic species along the corridor. Social values include recreation and scenic vistas. Lastly, economic considerations include the willingness of a landowner to sell and option of less than fee techniques (conservation easements).

The Alachua County Ecological Inventory Project, a report prepared by KBN, has already evaluated several natural areas in Alachua County that may be appropriate for acquisition. The KBN report uses a method of evaluation comparable to the method considered by Alachua County forever, ranking sites by assigning values for each of the criteria. Moreover, the KBN report focuses on environmental factors, which overlap with the Alachua County Forever factors.

Four natural areas evaluated in the KBN report appear most relevant. Serenola Forest, located in the Idlywild/Serenola special study area, ranked 28<sup>th</sup> out of the 47 sites evaluated. This area is important because it is connected to Paynes Prairie and acts as a buffer from the City of Gainesville. The KBN report notes that this area will likely be developed and recommends the use of clustering.

In southern Alachua County, to the west of Micanopy, is Levy Lake – Barr Hammock. This area was ranked 6<sup>th</sup> and is a high priority area for protection. Levy Lake is also connected to Paynes Prairie, from the south, and consists mostly of wetlands, a high quality habitat area. In particular, this is the most important habitat for the Florida sandhill crane on private land in Alachua County. The KBN report recommends this land be purchased if possible. This area has high potential to be managed because no roads bisect the area.

To the north of Micanopy and east of Scenic US 441 is Chacala Pond, which connects Paynes Prairie to Lake Wauberg. Chacala Pond (ranked 15<sup>th</sup>) consists of a chain of wetlands that provide habitat to several species, including alligators and bald eagles. The KBN report recommends this area ultimately be purchased, but suggests interim protection such as cooperative agreements and less than fee simple purchases.

Lastly, Lochloosa Forest West (ranked 4<sup>th</sup>) is located just northeast of Micanopy, and southeast of Chacala Pond. Of the four areas along Scenic US 441, Lochloosa Forest West has the highest rank and is probably the most deserving of protection. It is well connected to Lochloosa Forest and consists of both wetland and upland habitat. One of the area's key features is the Micanopy Cypress wood stork rookery, what may be "[t]he single most valuable endangered species location in the county." While purchase is recommended, the current landowner is conservation friendly and has protected the wood stork rookery for decades. As long as the landowner continues to own the land, a cooperative agreement or conservation easement is probably sufficient protection.

## A. Conservation Agreements

One last protection technique is the conservation agreement. Under a conservation agreement, the landowner agrees to manage her property according to certain terms. In return for maintaining land in its natural state, the landowner usually receives a payment or payments. This technique may be appropriate for the section of

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Scenic US 441 along Lake Wauberg. The University of Florida, the landowner of this area, could agree to prune and maintain the tree canopy along Scenic US 441 in a manner that maintains a view of Lake Wauberg from the road. However, because conservation agreements usually involve payments, use of this technique is dependent on funding.