

**Sedona-Red Rock National Scenic Area
Coalition
Position and Rebuttal
of
Sedona Verde Valley Association of
Realtors
Testimony before Congressional House
Committee on Natural Resources
June 10, 2010**

August 17, 2010

**Sedona-Red Rock National Scenic Area Coalition
Position and Rebuttal**

INDEX

Coalition Opening Statement	Page 1
NSA Land Trade Limitation	Page 2
National Forest Service Support of NSA	Pages 2-3
NSA Public Support	Pages 5-6
Legal Precedent, Place-Based Designations/Unintended Consequences	Pages 7-12
Private Property Rights	Page 11-12
Coconino National Forest Plan Amendment 12	Pages 3-4, 13-15
Infrastructure, New Roads, Easements, Local Control	Pages 4, 16-17
NSA 160,000 Acres and Map Filing	Pages 4, 18-20

**Sedona-Red Rock National Scenic Area Coalition
Position and Rebuttal
of
Sedona Verde Valley Association of Realtors
Testimony before Congressional House Committee on Natural Resources
June 10, 2010**

According to a well-known and often-used statement by the late Senator Daniel Patrick Moynihan, “You are entitled to your own opinion, but you are not entitled to your own facts.”

On June 10, 2010, Former President of the Sedona Verde Valley Association of Realtors, Holly Mabery, testified before the House Congressional Committee on Natural Resources in opposition to H.R. 4823 the Sedona-Red Rock National Scenic Area (NSA). Ms. Mabery testified as the official representative of the Sedona Verde Valley Association of Realtors (“Realtors’ Board”) based on a decision of the Association’s Board of Directors.

The Association’s written testimony was dated June 7, 2010 and made part of the record. That testimony states “Thank you members of the committee for the opportunity to testify on behalf of the members of the Sedona Verde Valley Association of Realtors and our clients.”

Those citizens in the red rock area, many of whom support the NSA, who have been or may become a realtor’s client did not know that the Realtors’ Board was giving testimony on their behalf.

Please note that you should not place blame for this misrepresentation on your realtor of choice or realtors in general. They are our friends, neighbors and important members of our business community. We have been contacted by many realtors who have indicated they support the NSA and had not been polled by their Association’s Board as to their position on the NSA. Whatever their position on the NSA is, they are entitled to it. However, the Association gave both oral and written testimony, without consent, that they represented not only their Association, but also its clients.

The purpose of this position and rebuttal paper and its attachments is based on the Coalitions’ review of the Realtors’ Board testimony which it has found it to be lacking in detail, factual representation and legal analysis.

THE FACT IS THAT IN THE ENTIRE BILL THE ONLY LIMITATION IS ON LAND TRADES AND THAT IS FOUND IN TWO SEPARATE SECTIONS.

The first is in Section 2(a) and identifies the purpose of:

(a) “limiting exchanges of land involving National Forest System land included in the Scenic Area.” **The other reference is in section 2 (e) and states:**

(e) “Except as provided in subsection (i) with regard to acquisitions of land for public purposes, land exchanges that dispose of National Forest System land included in the Scenic Area may occur only if--

- (1) the exchange results in the acquisition of land within the boundaries of the Scenic Area from a willing seller for inclusion in the Scenic Area; and
- (2) there is no net loss of National Forest System land within the boundaries of the Scenic Area; and
- (3) an environmental analysis in accordance with the National Environmental Policy Act of 1969 (42 U.S. C. 4321 et seq.) and consistent with the applicable forest plan amendment is completed before any land exchange within the boundaries of the Scenic Area.”

These words out of H.R. 4823 are the only references to any type of limitations in the Bill and are in keeping with the overwhelming desire of the citizens and governmental jurisdictions that are included in the proposed area.

The Coalition does want to point out that the National Forest Service is in full support of the Sedona-Red Rock NSA. National Forest Service Deputy Chief Holtrop, in testimony before the Congressional House Natural Resource Committee on June 10, 2010, stated:

“The Sedona-Red Rock National Scenic Area would designate 160,000 acres of the Coconino National Forest as a National Scenic Area. The spectacular scenery of the area draws millions annually and the proposal has broad support from the community which has worked on the special designation proposal since January of 1999. The Bill limits land exchanges that dispose of National Forest System land within the National Scenic Area. This designation would complement the work of local forest managers and community to balance services to support visitors and protection of important landscape.”

“...this recommendation that we have is based on conversations with the district ranger, forest supervisor, regional forester and our own review of it.”

“We are supportive.”

“The Bill as drafted basically would codify a land exchange restriction in the scenic area and that’s quite limited in scope and it just would require that if there’s any land exchange that’s to occur, National Forest System land, in the

scenic area boundary there would be no net loss of National Forest System land in the scenic area, so any land exchange would be within the scenic area. So that's a limited restriction but that's a, is certainly not, very difficult for us to deal with this part if that's what we currently say in our forest plan which has, which has, a great deal of support in the local area. So, it doesn't greatly restrict what we're doing and is very consistent with or forest plan direction."

The National Forest Service, in consultation with the local ranger, forest supervisor and regional supervisor, supports the NSA and feels that the limited land exchange restriction would complement the work of local forest managers and is very consistent with the forest plan direction.

There are a few issues that require a more in-depth explanation and we have developed amendments for those responses. The attachments and issues are:

Attachment 1: Legal Precedent, Place-Based Designations/Unintended Consequences, Private Property Rights

On the Private Property Rights issue we want to quote Ron Volkman, a realtor and the Realtors' Board Director of Governmental Affairs. In a recent radio interview Mr. Volkman was asked what did he see specifically in the Bill that would cause concern about restrictions on private property rights. Mr. Volkman stated:

"Right now I don't. As the Bill is right now written I can't point to something that I would say jeopardizes private property rights." To be fair he did comment on his fears that Washington D.C. could not be trusted and that the Bill will evolve and be amended."

The Realtors' Board position as expressed in messages to their membership is in direct conflict with Mr. Volkman's statement. It states:

"We feel strongly that this Bill is a direct threat to private property rights. It is also a direct threat to the ability of future generations in this area to decide for themselves how to use their own properties and their public lands."

We point out that Mr. Volkman has been the spokesman on the NSA issue for the Realtors' Board since the proposal was first brought up. He also was highly involved in the discussions surrounding development of Amendment 12.

Attachment 2: Coconino National Forest Plan Amendment 12

There are three items in this attachment that we find relevant to the debate:

- Discussion of ability of Forest Service to actually trade lands even with Amendment 12 in place.

- United States Supreme Court decision in *Ohio Forestry Association v. Sierra Club*, 523 U.S. 726,727(1998)
- United States Supreme Court decision in *Norton v. Southern Utah Wilderness Association*, 542 U.S. 55(2004)

Amendment 12 is one of many amendments to the current Coconino National Forest Management Plan which can be amended any time administratively. That plan is currently in the process of revision.

The Coalition believes of even greater significance is the fact that the Forest Service is not legally bound to follow a management plan once it is issued. Since the adoption of Amendment 12 the Forest Service management process has undergone a sea-change in emphasis supported by the courts, including the United States Supreme Court. These plans are now only guidelines; the **Forest Service has broad discretion to ignore plan provisions if it deems it in their best interests to do so. Land in the Amendment 12 area can presently be traded through an administrative process.** However a Congressional designation limiting land exchanges is virtually permanent. The proposed NSA will only assure that the Forest Service cannot trade land unless it follows the guidelines outlined in pending NSA legislation.

Attachment 3: Infrastructure, New Roads, Easements, Local Control

This attachment clearly identifies that infrastructure, new roads, easements and local control are specifically allowed in the NSA.

Attachment 4: NSA Size 160,000 Acres, Map Filing

The Coalition's position is discussed but we feel the Realtors' Board quote from their written testimony clearly describes the importance of the acreage involved:

“The City of Sedona sits in one of the most unique valleys in the world surrounded by the rising peaks of the Mogollon Rim, Oak Creek running down from the mountains through a terrain of majestic red rocks.”

The rest of the Bill deals with identification of boundaries Section 2 (b), mapping of the area Section 2 (c) and how funds from land sales are processed.

Additionally, the Bill clearly identifies that management of the Forest will continue as it does today through the Coconino National Forest Plan.

Section 2 (a) (2) states:

“managing the National Forest system land included in the Scenic Area as provided in the land and resource management plan for the Coconino National Forest.”

Section 2 (d) states:

“The Secretary of Agriculture shall administer the Scenic Area in accordance with this Act, the land and resource management plan for the Coconino National Forest (including any subsequent amendment or revision of the plan), and the laws and regulations generally applicable to the National Forest System. In the event of conflict between this Act and such other laws and regulations, this Act shall take precedence.”

Section 2 (d) does not mean that the Secretary of Agriculture is the person who will actually administer the Scenic Area. This language is standard for management purposes and does not create another level of government as opponents have indicated.

It is clear that management of our local forests will remain with the local ranger and forest supervisor in Flagstaff and as today be determined by the Coconino National Forest Plan.

In a recent message concerning the NSA to their members the Realtors' Board stated:

“The concerns of the community continue to go unnoticed by the vocal few.”

“There is testimony about 5000 letters that have been gathered in support of the NSA legislation. Those letters were not gathered from property owners or people that live in the area. A majority of those letters were gathered from and signed by tourists.”

You only have to review the results of the recent Sedona elections to identify that community support for the NSA is overwhelming. There were five contested positions including the mayor and the four candidates who had, as a major piece of their platform, made the promise that they would support the NSA. They all won by a 2:1 margin over their opponents who did not support the NSA. They have since kept their promise and by a 7-0 vote approved a resolution in support of the NSA.

On the issue of the letters of support, the Coalition reviewed those letters and found that 79% came from the Sedona/Verde Valley area. The rest came from Arizona residents and persons who reside outside Arizona. While Sedona/Verde Valley citizens are involved with Coconino National Forest on a daily basis it must be said that the forest is the property of all the citizens of the United States of America. It is also one of the most visited tourist sites in the world.

In conclusion, the Sedona-Red Rock NSA is about the protection of lands that the community has agreed need to be protected. The Coalition and many others do not believe that the current Amendment 12 to the Coconino Forest Plan allows for the degree of protection necessary to withstand the test of time. We have expressed our concerns in this paper and its amendments. Since Amendment 12, there have been significant United States Supreme Court decisions that allows the Forest Service

greater latitude in their administrative process. Additionally, the Forest Service has administrative discretion to change or modify the provisions of Amendment 12, with public review, to trade lands. If others disagree with our evaluation then we ask that they contact us to discuss their interpretation of the facts.

Thank you for spending time to understand our position and the facts as we understand the NSA legislation

Attachment 1

ISSUES: Legal Precedent, Place-Based designations/Unintended Consequences, Private Property Rights

Have nationwide National Scenic Area (NSA) designations lead to an increase in lawsuits that could set precedent for the NSA proposed for the Coconino National Forest area?

Can decisions made in other NSA's lead to unintended consequences for the Sedona Red-Rock NSA?

Are private property rights protected in the Sedona-Red Rock NSA legislation?

REALTORS' BOARD POSITION:

"The ongoing legal precedents for National Scenic Areas have national impact for all areas deemed 'scenic'".

"Given the track record of other NSA's throughout the country, the unintended consequences may be lengthy."

NSA COALITION POSITION:

First it should be noted that NSA designations are "Place-Based designations" for National Forest Land that apply only to the specific area described in the legislation, as opposed to general legislation such as the National Forest Service Management Act. Comparing any other NSA to the proposed legislation for Sedona-Red Rock NSA (SRRNSA) is a clear attempt to mislead.

Scenic area legislation is site specific. Therefore, the Realtors' Board claims that legislation or litigation that may have occurred under other scenic areas creates legal precedent does not have any factual or legal basis. The concept of legal precedent is the guiding principal to decide other cases when the prior case arises out of close facts or law that are almost exactly like the case under consideration. Since no two scenic areas are alike in their legislation or factual basis, they cannot create "precedent" in interpreting the issues involved in the proposed NSA.

The critical issue to remember is that the proposed NSA has only one limitation and that is on land trades. Unlike some other NSA designations the proposed SRRNSA clearly identifies that there is no NSA control over private property or state and local government lands; there is, however, discretion to negotiate with the USFS for lands for public infrastructure needs.

In their written testimony to Congress, the Realtors' Board gave some examples of legal precedents for current NSA's.

One of their examples to consider is “SDS Lumber Co was stopped from developing a wind farm “near” the Columbia River NSA (CRGNSA) because critics of the wind farm said it would have bad impacts on the NSA’s view shed.”

The Realtors’ Board’s written testimony to Congress was dated June 7, 2010. Yet, on June 29, 2010 the State of Washington Energy Facility Site Evaluation Council (Council) issued a pre hearing order on application 2009-01. This application is for the Whistling Ridge Energy Project which would be located on the SDS Lumber Co. lands. **The fact is that this project has not been stopped.** In fact the Council has scheduled 8 proceedings between now and December 8, 2010 on this matter.

The State of Washington requires that the Council review applications for energy projects. Under the State Environmental Policy Act, Washington law requires an Environmental Impact Study (EIS). One of the main reasons why this matter is not resolved is that the EIS is only now in draft form and the interested parties are giving comments on the draft.

We agree with the Realtors’ Board that some of the interveners on this issue raised concerns about its impact on the NSA. Other issues involved property owners in the area who had a concern for their property values due to the location and scale of the project. This project would include 40-story-high turbine towers along with associated noise and shadow flicker from the turning blades. Additional issues were the requirements of the EIS and its scope of work.

Obviously, the Realtors’ Board statement that this project was stopped is not only inaccurate, but it is also not factual. It was only because of “NSA critics of the wind farm said that it would have bad impacts on the NSA’s view shed.”

Another example given by the Realtors’ Board states: “Hood River School District (Columbia River Gorge NSA) finally gave up this year trying to acquire 20 acres for a school and they will have to purchase from a private owner for a more distant parcel.”

We agree with the Realtors Board that the Hood River School District has been searching for additional building sites for schools. Unlike the CRGNSA which places a number of restrictions and requirements on areas inside and out of the NSA, the SRRNSA does just the opposite. The salient point is that the NSA legislation that developed Urban Growth Boundaries in the CRGNSA are site-specific to that NSA and have no precedent setting impact on the proposed Sedona-Red Rock NSA (SRRNSA).

As stated in the Bill Section 2(g)(3):

“No Effect on Surrounding Land, Roads, or Easements- The establishment of the Scenic Area does not affect--

(3) the management of State, municipal, or private land located in the vicinity of or within the boundaries of the Scenic Area;

The legislation that applies to the Columbia George NSA was done in conjunction with the State of Washington and State of Oregon, along with 6 local counties and a number of other jurisdictions, including Native American tribes. They joined together and developed management plans for the area to protect a resource important to their future. One of the complications of the Hood River School District was that the State of Washington adopted Goal 11 of the state’s planning rules that prohibits the extension of sewer lines outside the Urban Growth Boundaries. It also restricts the installation of a new water line if it is going to bring more growth to nearby agricultural lands.

Another issue was the school district; the state of Oregon requires that 97 percent of construction costs for schools be borne by local property taxes. However, in Arizona, the State pays for most of the cost of school construction. There were also other options available to the Hood River school district that they chose not to consider.

Another citation by the Realtors’ Board was:

Sierra Club and friends are challenging the US Department of Energy on energy grid corridors that are planned through what they call “scenic area”. Currently this area has not been designated NSA rather dubbed “scenic”.

By this example the Realtors’ Board has shown that challenges to the use of Federal Lands are part of reality whether the area is designated NSA or not. The fact is that the Forest Service is regularly challenged in court on land management issues. It is the issue that matters, not the designation. Since this example does not even deal with NSA’s, we do not understand its relevance to this discussion.

Another Realtors’ Board example is:

“CALTRANS, Mono Basin NSA, has struggled and fought for years for highway projects that the NSA has stalled or killed.”

While the Coalition has answered the infrastructure issue before, we must reiterate that the NSA legislation in H.R. 4823 under Sections 2(g)(2) and 2(g)(5) clearly defines that there is no effect on local government discretion.

Section 2(g)(2) states:

“No Effect on Surrounding Land, Roads, or Easements - The establishment of the Scenic Area does not affect --

- (2) the legal status, maintenance, or use of rights-of-way and utility easements within the Scenic Area;
- (5) the construction or siting of transportation projects or water projects (and associated facilities) within the Scenic Area or in areas outside the Scenic Area.”

Again NSA legislation is site-specific. The enabling legislation for Mono Basin NSA, Public Law 98-425-September 28, 1984 Section 303(C) states: “No reconstruction or expansion of a private or commercial building, including (C) construction of reasonable support development such as roads parking, water and sewage systems shall be treated as detrimental to the integrity of the Scenic Area.” The fact is that the Mono Basin NSA was developed to protect and sustain Mono Lake, guarantee water rights, and protect the watershed that supplies waters to Mono Lake and water allocation to the Los Angeles area. Sedona-Red Rock NSA H.R. 4823 allows for construction of new roads.

The Coalition is surprised that the Realtors’ Board did not bring up other lawsuits in the Mono Basin NSA. The fact is that there at least 24 lawsuits that were filed in regards to water issues involving Mono Lake and associated streams and creeks within the Mono Basin NSA. The reason for this is that the City of Los Angeles gets part of its water supply from Mono Lake and was negatively impacting the lake’s sustainability.

In 1983, the Supreme Court of California, in a landmark decision, ruled that Mono Lake has “public trust values” that must be considered in any decisions about the lake’s water. This decision, based on the public trust doctrine, preceded the establishment of the Mono Basin NSA. A review of the enabling legislation makes it clear that the major stakeholders were involved with development of the legislation.

The legislation identifies that the area is to be managed to protect the water rights of the State of California, the City of Los Angeles and any person who has water rights that are legally recognized. It also directed the Secretary of the Interior to sell to Los Angeles public lands in the NSA and granting rights-of-way over public lands and reserved lands to Los Angeles so the city could continue its water management operations. The Scenic Area Advisory Board was established which consisted of members appointed by Mono County, the Governor of California, the City of Los Angeles and the Forest Service, clearly, an invitation to litigation. The SRRNSA has no such board, nor any rights of eminent domain.

The Realtors’ Board also used as an example:

“Mt. Pleasant NSA, Virginia, enacted language that outlaws all new roads within the NSA.”

The Coalition agrees that this took place. The enabling legislation stated that no roads shall be established or constructed within the scenic area. Again we highlight that the legislation proposed for the Sedona-Red Rock NSA area is site-specific and allows for infrastructure development and specifically allows transportation projects and that the NSA cannot stop transportation and water projects that are outside the NSA.

The last example the Realtors' Board cited was:

“There is evidence from a recent Appeal Court ruling in Oregon that private property rights will be infringed upon dramatically by NSA regulations.”

In correspondence with its members the Realtors' Board stated:

“Your board felt strongly that the proponents of a National Scenic Area understand neither its legal ramifications nor its inherent lack of flexibility and local control in the future.”

The Coalition does understand the legal ramifications and would ask the Realtors' Board to please read the legislation as introduced and amended, understand the issues of Place-Based designation and the concept of legal precedent.

If they do this they will understand that NSA legislation is site-specific and that the legislation introduced for the Sedona-Red Rock NSA directly addresses the private property rights issue. We cite the following:

Section 2(b)

“Boundaries-The Scenic Area shall consist of approximately 160,000 acres of National Forest System land in the Coconino National Forest, as generally depicted on the map entitled “Sedona-Red Rocks National scenic Area” and dated June 7, 2010. The Scenic Area shall not include any land located outside the boundaries of the Coconino National Forest.”

No private property within the boundaries of the NSA is affected by the NSA: there is no right of eminent domain.

Section 2(e)(1)

“Restriction on Scenic Area Land Exchanges - With regard to acquisitions of land for public purposes, land exchanges that dispose of National Forest System land included in the Scenic Area may occur only if-

(1) the exchange results in the acquisition of land within the boundaries of the Scenic area from a willing seller for inclusion in the Scenic Area.”

No private property can be taken unless the property owner wants to sell.

Section 2(g)(1)(2)(3)(4)

“No Effect on Surrounding Land, Roads, or Easements - The establishment of the Scenic Area does not affect--

(1) the maintenance or use of public, private, or Forest Service roads within the Scenic Area:

(2) the legal status, maintenance, or use of rights-of-way and utility easements within the Scenic Area.”

(3)the management of State, municipal, or private land located in the vicinity of or within the boundaries of the Scenic Area

(4) the management of National Forest System land that is not included in the Scenic Area”

Private property rights for ingress and egress to property and legal status of rights-of-way and utility easements to private property are protected. There is no Federal control over private property. Additionally, private and National Forest Lands outside the SRRNSA are not affected. As is the case today, all control outside the National Forest lands of the NSA reside with state and local government.

Private property rights are protected.

Attachment 2

ISSUES: Coconino National Forest Plan (CNFP) Amendment 12

Does Amendment 12 and its prohibition on land trades give the area enough protection?

Does the National Scenic Area designation add an additional layer of government?

REALTORS' BOARD POSITION:

"Currently the way Amendment 12 is written only privately owned land that is contained within the 160,000 acres may be exchanged for forest service land within that same area."

"Amendment 12 has worked successfully since 1998."

"With the Forest Service adoption of Amendment 12 land trades and the management of this fantastic area has been defined. An additional layer of government this designation provides only leads to more confusion and concern."

"It is my belief as well as the position of the Sedona Verde Valley Association of Realtors that the NSA is an extra unnecessary layer of government that can be twisted and used against the local municipalities, private property owners and businesses in the area."

COALITION POSITION:

Both supporters and those in opposition have agreed that this is a unique area (see Realtors' Board statement Page 18), and have indicated their desire to protect it. They have also agreed the best way to do that is to prohibit land trades except for public purposes. Therefore, the Coalition feels that a National Scenic Area designation is the highest and best level of protection available.

Furthermore, since the adoption of Amendment 12, two United States Supreme Court decisions and a change in Forest Service planning regulations have increased the power that the Forest Service has in the administrative process and changes to Forest Service plans such as the CNFP and Amendment 12.

*In Ohio Forestry Association v. Sierra Club, 523 U.S. 726,727(1998) the Supreme Court ruled that forest plans are generally not ripe for judicial review. In reference to forest plans the Court said "do not command anyone to do anything or to refrain from doing anything; they do not grant, withhold, or modify any formal legal license, power, or authority; they do not subject anyone to any civil criminal liability; they create no legal rights or obligations."**

In *Norton v. Southern Utah Wilderness Association*, 542 U.S. 55 (2004), the Court ruled that “a land use plan is generally a statement of priorities; it guides and constrains actions, but does not prescribe them.”*

These two decisions have allowed the USFS to have considerable discretion in choosing how to meet legal requirements, despite what is stated in a land use plan.

After these decisions the USFS changed its land use planning policy. **The 2005 and 2008 agency planning regulations are based on the idea that plans are strategic and aspirational in nature and do not generally bind the agency to a future course of action.*** This means that the USFS has a high level of administrative discretion when it comes to changes to their forest management plans. Therefore, the Forest Service could change the land exchange provisions of Amendment 12 with public input, by an administrative procedure that would be difficult to challenge in court.

As to the additional layer of government argument expressed by the Realtors’ Board, there is no additional layer of government, oversight committee or board in H.R. 4823, unlike other NSA’s. Today, the Coconino National Forest Plan and current National Forest System regulations determine the management of the National Scenic Area and have no authority over local government management decisions. Under H.R. 4823, Sections 2 (d), Section 2 (g) (3)(4) and Section 2 (h) forest service management would remain the same:

Section 2(d)

“Administration- The Secretary of Agriculture shall administer the Scenic Area in accordance with this Act, the land and resource management plan for the Coconino National Forest, and the laws and regulations generally applicable to the National Forest System. In the event of conflict between this Act and such other laws and regulations, this Act shall take precedence.”

Section 2 (g)(3)(4)

“No Effect on Surrounding Land, Roads, Easements- The establishment of the Scenic Area does not affect--”

- (1)the maintenance or use of public, private, or Forest Service roads within the Scenic Area;
- (2)the legal status, maintenance, or use of rights-of-way and utility easements within the scenic Area;
- (3)the management of State, municipal, or private land located in the vicinity of within the boundaries of the Scenic Area
- or
- (4)the management of National Forest System land that is not included in the Scenic Area. .”

* *Nie and Fiebig, Managing the National Forest through Placed-Based legislation, 37 Ecology Law Quarterly, 5-7 (2010)*

The NSA does not consist of any private lands. The Coalition can find no section in the Bill that identifies any additional layer of government. In fact the legislation clearly identifies that the NSA does not have authority over state and local government and that the forest lands, which make up the total acreage of the NSA, will be managed as they currently are except for no land trades. The bill goes even further and identifies that private lands and Forest Service Lands in the vicinity of the NSA but not included within the boundaries are not affected. The Realtors' Boards statement is not based on any factual evidence.

Attachment 3

ISSUE: Infrastructure, New Roads, Easements, Local Control

Are there provisions in the Sedona Red-Rock National Scenic Area (NSA) legislation for new roads, easements, rights-of-way?

REALTORS' BOARD POSITION:

"Currently the legislation before you does not provide for new roads or upgrades to roads just maintenance within the area which again includes the only municipality as well as additional highly populated unincorporated areas of the county to be included in the NSA."

COALITION POSITION:

This statement is not based on fact and is another distortion of the legislation. A complete reading of the legislation as amended would reveal that not only is maintenance allowed but new infrastructure is also allowed.

The Realtors' position is based on only a partial reading of the legislation which is found under Section 2 (g)(1)(2)(5) which states:

"No effect on Surrounding Land, Roads, or Easements- The establishment of the Scenic Area does not affect--

(1) the maintenance or use of public, private, or Forest Service roads with the Scenic Area;

(2) the legal status, maintenance, or use of rights-of-way and utility easements within the Scenic Area;"

(5) the construction or siting of transportation projects or water projects (and associated facilities) within or in the areas outside the Scenic Area."

There are several Federal statutes that apply to the ability of local governments and schools to obtain additional lands to be used for community purposes. As they do today, our local governments, schools and districts would apply for these additional lands to the local forest service district. The Acts used for these purposes are:

The Townsite Act: Authorizes the Forest Service to sell land in certain western states (including Arizona) to local governments for community purposes, upon application. The application must be for no more than 640 acres and the land must lie adjacent to the community. The sale must meet community objectives such as but not limited to expanding existing economic enterprises, public schools, public health facilities and recreation.

The Education Land Grant Act: Authorizes the Forest Service, upon application and review, to convey land (up to 80 acres) at a nominal cost to public school districts for

facilities related to educational purposes that serve a public purpose and public objectives.

The Small Tracts Act: Authorizes Forest Service to sell land not to exceed \$150,000 and not larger than 40 acres, 10 acres of land that has been improved. The purpose of this is to resolve conflicts resulting in encroachments and road rights-of-way. This Act is for use of both government and private citizens who have land issues adjacent to their property.

Attachment 4

ISSUES: NSA Size 160,000 Acres and Map Filing

Why is the Sedona-Red Rock National Scenic Area (NSA) 160,000 acres?

Why will the map be filed after the legislation is passed?

REALTORS' BOARD POSITION:

"At this time the National Scenic Area for Sedona-Red Rock is proposed to encompass 160,000 acres. This would be the largest NSA in the country. The boundary proposed for this NSA comes 15 miles from Sedona south to the City of Cottonwood." At present the proposed boundary would be within 2 miles of the Cottonwood city limits and .5 of a mile from state trust land that Cottonwood has designated for annexation."

NSA COALITION POSITION:

The 160,000 acres proposed for the National Scenic Area is the same 160,000 acres that our community and the Realtors' agreed to in the 1998 Amendment 12 of the forest plan for the Coconino National Forest. The Realtors' Board is on record stating: "Since the idea for a National Scenic Area Designation (NSA) began in 1988, the association has been active in the discussion." Since the Realtors' Board has participated and been fully informed we do not understand their current position that the 160,000 acres is too large. There is a reason why those involved in this process chose the proposed number of acres. The Realtors' Board identifies that reason in their written testimony stating:

"The city of Sedona sits in one of the most unique valleys in the world surrounded by the rising peaks of the Mogollon Rim, Oak Creek running down from the mountains through a terrain of majestic red rocks."

This is exactly why the NSA is being proposed, to protect a unique area now and into the future. The NSA size was not an arbitrary decision and is inclusive of those unique areas that make it one of the most beautiful locations on earth. These areas include:

- (1) Munds Mountain Wilderness Area 18,150 acres
- (2) Red Rock Secret Mountain Wilderness Area 43,850 acres
- (3) Oak Creek Canyon Scenic Area 5,833 acres +/-

These areas already have a higher level of protection than a NSA would give them but were included due to their importance to the overall area and its management. These lands comprise 67,833 acres or 43% of the 160,000 proposed acreage. The additional acreage is included to protect the view shed of these and adjacent areas.

Furthermore, the NSA of 160,000 acres is only 8% of the total 1,900,000 acres in the Coconino National Forest.

Areas to be protected include:

*A narrow area along highway 179 from I-17 to Beaverhead Flats Road to protect the gateway into Red Rock Country

(4) The forest areas around the Village of Oak Creek to protect the view-sheds of Bell Rock, Lee Mountain, Courthouse Rock House Mountain and surrounding mesas

(5) From the Village of Oak Creek to Sedona the acreage includes those lands around Cathedral Rock and on the east side lands leading to Munds Mountain Wilderness Area

(6) Land is included that connects the Munds Mountain and Red Rock Secret Wilderness Areas

(7) The area of the world renowned West Fork of Oak Creek is included

(8) Lands to form the view-shed for Red Rock Secret Mountain Wilderness Area and also are the gateways to Sycamore Canyon and red rock country along Highway 89A.

Furthermore, a NSA designation of these lands does not mean that development will not take place in the Sedona and Verde Valley area. The Verde Valley is estimated to have a build-out population in excess of 160,000. Today's population is less than half that amount. That estimate was based on the amount of land available. As noted earlier, Cottonwood wants to annex the almost 10 square miles of state trust land because of future development concerns. Additionally, the Ruskin-Yavapai Ranch land trade, one of the largest in history, will add significant acreage to future development. The City of Sedona still has 25% of its land to be developed (City estimate) and the Village of Oak Creek still has lands to be developed. Additional lands can be obtained for development or other uses from land not included within the NSA.

The Realtors' Board, in objecting to NSA boundary map stated:

"The proposed legislation provides for the Secretary of Interior to file a map and boundary description after this designation has been put into effect. None of us would ever advise a client to determine a boundary after they have closed escrow. This bill does exactly that. This fact alone would be a reason to oppose the NSA legislation."

NSA COALITION POSITION:

The boundaries of the NSA are well defined. The legislation, H.R. 4823 is clear and we quote Section 2(b):

“BOUNDARIES.- The Scenic Area shall consist of approximately 160,000 acres of National Forest system land in the Coconino National Forest, as generally depicted on the map entitled “Sedona-Red Rocks National Scenic Area” and dated June 7, 2010. The Scenic Area shall not include any land located outside the boundaries.

ONLY NATIONAL FOREST LANDS ARE PART OF THE NATIONAL SCENIC AREA.

While the Realtors’ Board is correct in their observation that the final map will be completed after the Act becomes law as identified in Section 2(c) the map identified in Section 2(b) determines the boundaries where the total 160,000 acres comes from. It would not be prudent of the Forest Service to go through the expense of a final survey prior to Congressional approval as it would not be prudent for a buyer of property to have a survey completed prior to seller acceptance of an offer. The buyer knows the general description of the property, has offered an amount of money based on that description and will sign a contract prior to an official survey.

It is clear that the ‘Planning Area Overview’ identifies the boundaries and that these boundaries are currently what is in the Coconino National Forest Service Plan and have been agreed to by those who were involved in development of Amendment 12 including Realtors’ Board representatives. This process is not unique to the proposed NSA and is standard practice for land trades and other Forest Service legislation. Since 1998, this map and the boundaries have been well-circulated throughout the area.