

Case Law Summaries and Take Aways

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Temporary vs Permanent- Intent Matters

- Avery v. Medina, 94 A.3d 1241, 151 Conn. App. 433 (Conn. App. Ct. 2014)(Avery I); 163 A.3d 1271, 174 Conn. App. 507 (Conn. App. Ct. July 11, 2017)(Avery II)
- State: Connecticut
 - Procedural Status: Case concluded.
 - Date: 2017
 - Keywords: Building; common law principles; contempt of court; restrictive covenant; structure; violation; wall.
 - Summary of Facts and Issues: In 2003, Luis Medina and John Avery purchased 56 acres of land in Norfolk. The co-owners agreed to subdivide the land into two four-acre building lots to be owned separately by Medina and Avery, and one approximately 47-acre lot, which was to be conveyed to the Norfolk Land Trust. The deeds for the four-acre lots included restrictive covenants that no permanent structures could be erected within a 100-foot setback area, and that no more than one residence and two outbuildings could be built anywhere on each respective parcel. Shortly after the conveyances, Medina built a pole barn on his parcel. Avery filed suit, claiming that the pole barn was a prohibited third “outbuilding.” Medina subsequently established a stone wall within the setback area, and Avery amended his complaint to add a claim for removal of the wall as a “prohibited permanent structure.” The trial court ruled that the pole barn was an outbuilding and ordered its removal, but found that the stone wall was not permanent and therefore allowed it to remain. Following the appellate court’s remand in Avery I (see below), Medina removed the first stone wall but then placed stones lower in height in a similar position within the setback area. Avery filed a contempt of court action and the trial court judge rejected Medina’s argument that the new stones were just a loose collection of stones, stating “If that’s not a stone wall, I don’t know what it is.”
 - Holding: In Avery I, the appellate court affirmed with respect to the outbuilding but reversed and remanded with respect to the stone wall. The court noted that “there can be no doubt that the defendants intend for the wall to remain firmly in the same place where it was erected and not be moved or relocated on a seasonal basis.” The court thus ordered its removal as a prohibited permanent structure. In Avery II, the appellate court upheld a finding of contempt of court for Medina’s refusal to remove the modified, somewhat lower, stone wall and failure to pay court-ordered fines. In particular, the appellate court found that regardless of its lower height, the stone wall was permanently affixed to the land and intended to remain permanently in its present location.
 - Analysis and Notes: Even though this case involves a restrictive covenant between two individuals, and not a conservation easement that connotes public benefit, the holdings are noteworthy for their interpretation of the terms “outbuilding” and “permanent structure,” which terms are quite common in conservation easements. By now, conservation easement drafters should know well enough to define these key terms in the document itself, and not rely on

common law, statutory, or municipal ordinance definitions.

Impermissible Private Benefit Concerns

- Gentry and Owens Articles
- Community Lake IRS Rev. Ruling 70-186 and City Block Association IRS Rev. Ruling 75-286- benefits from organizations activities must flow principally to the general public. Private benefits can only be incidental.

What Counts as Recreational and the Importance of Drafting Intentionally

For new conservation easements describing recreation or residential structures, it is critical to use precise language that clearly demonstrates the intent. The Parsons case discusses the distinction of a barn used to house horses or a barn used as a basketball court. Do both constitute passive recreation? Are there different impacts on the conservation values? In Racine, additional structures were allowed because the language in the deed was not explicit. In Soundview, a landowner unsuccessfully tried to push the boundaries of what is defined as recreational. In Campbell, the landowner was surprised that a boardwalk could be constructed on her property due to the broad language in the easement. Duffy explores equestrian uses as recreational and/or agricultural. Pinnacle Point discussed the potential overlap and distinction between residential and commercial uses. Jeffords discusses when recreational residential uses cross the line into commercial uses. Rowe highlights the importance of consistency in deeds with the Court interpreting the easement such that an allowed use (transient hospitality) allowed for the creation of additional structures for that purpose.

- Northampton Twp. v. Parsons, No. 2057 C.D. 2010, 2011 Pa. Commw. Unpub. LEXIS 549 (Pa. Commw. Ct. July 12, 2011)(Unpublished)
 - State: Pennsylvania
 - Procedural Status: Case concluded.
 - Date: 2011
 - Keywords: Agriculture; amendment; building interior; county conservation easement; enabling statute; public conservation easement; purchase and sale agreement; recitals; recreation; remedy; removal of structure; structure; termination; violation.
 - Summary of Facts and Issues: In 2000, Northampton Township (Township) purchased two parcels of land of 49 acres (Lot 1) and 2 acres (Lot 2), respectively. Lot 2 contained a farmhouse and barn. The purchase was made with a \$872,000 grant from the Bucks County (County), pursuant to a state open space acquisition statute. As a condition of the grant, the Township entered into a Declaration of Covenants, Conditions and Restrictions (DCCR) for Lot 1. A recital in the DCCR stated that the general purpose of the County's grant was to enable municipalities to acquire land "to protect natural areas, preserve agriculture, or provide park and recreation facilities." A term of the DCCR required that the property be used only for "wildlife refuge, sanctuary, open space, agricultural, recreational, historical, cultural, or natural resource conservation purposes." In 2005, the Township decided to sell Lots 1 and 2 to a private individual, and the Parsons were the highest bidders. The Parsons sought to have the DCCR terminated prior to the sale, and the Township initially agreed to seek County approval, but the County rejected any such termination. As a fallback approach, the Township agreed with Parsons to seek an unspecified amendment to the DCCR. However, the final Agreement of Sale between the Township and Parsons clearly stated that the conveyance was subject to the DCCR, and

that no commitment to amend had been made. In addition, the Agreement of Sale contained additional use restrictions. One of these provisions restricted use of the property to a single-family residence, a tree farm or a horse farm. A second provision stated "No buildings, fencing, tents improvement or fixture shall be placed upon the Premises, whether permanent or temporary, except such as are building structures, stalls, barns and the like used for the keeping of horses." In 2008, without notifying the Township or obtaining any permits, Parsons established a two-story, 14,000-square-foot steel pole barn on Lot 1, at an estimated cost of \$1,000,000. Parsons intended to use the barn as a non-commercial indoor basketball facility for area children. The Township filed suit, seeking removal of the pole barn, claiming that it violated the DCCR and the Agreement of Sale, and was established in violation of local building codes. The trial court ruled for Parsons, finding no violation of the DCCR because the pole barn was a "recreational facility." The trial court also concluded that the structure did not violate the Agreement of Sale because Parsons was authorized to build a barn for the keeping of horses. The trial court found that the fact that the "community children, rather than horses, will be using the inside of the pole barn is a distinction without a difference." Finally, the trial court permitted Parsons to retain the pole barn/basketball facility even though he failed to obtain permits, but required him to apply for all appropriate permits, make no commercial use of the barn, and execute a conservation easement on an area equal to that of the barn plus a buffer of fifteen foot surrounding the barn, totaling 14,140 square feet, to County. The Township appealed.

- Holding: The appellate court reversed, finding that the pole barn was a violation of the DCCR and the Agreement of Sale. In particular, the appellate court held that the DCCR limited the use of Lot 1 to passive recreational uses. The appellate court ordered that the pole barn be removed, based on its finding that Parsons knowingly violated the DCCR and the Agreement of Sale.
- Analysis and Notes: This is an interesting case on many levels. Unfortunately, the opinion is unpublished, for it would have served as useful authority for a couple pro-conservation points. First, the appellate court distinguished between "passive recreation" and the a large indoor basketball facility. Second, the appellate court acknowledged the distinction between interior use as a horse barn and a basketball facility, even if the exterior of the building was identical. Interior usage restrictions still find their way into many conservation easements, even though drafters stay up at night worrying about their stewardship and enforcement implications. So at the very least, it is comforting to see the restriction enforced in this case, albeit after the trial court judge blatantly ignored it. Note that the restrictions on the property were not styled as a conservation easement because in 2000, Pennsylvania was still one year away from passing a conservation easement enabling statute.
- Racine v. United States, 858 F.2d 506 (9th Cir. 1988)
 - State: Idaho
 - Procedural Status: Case concluded.
 - Date: 1988
 - Keywords: Ambiguous; drafting; federal conservation easement; public conservation easement; scenic easement; structure; violation.

- Summary of Facts and Issues: Under federal statute, the Department of Agriculture was authorized to acquire scenic easements in the Sawtooth National Recreation Area. The regulations governing these scenic easements allowed structures that do not "substantially impair or detract" from scenic, wildlife and other natural values and that are necessary for, among other things, dude ranches. In 1974, the government purchased a scenic easement from Racine's predecessor. The easement, with a reference to these regulations, permitted one residence and one tenant dwelling. In 1983, Racine negotiated a sale of the property contingent on the U.S. Forest Service's (holding agency) approval of a proposal to develop it for dude ranching. The proposal contemplated construction of a log ranch house, three two--story bunk barns, one equipment barn, riding stables, parking facilities, and recreational support facilities. The property already contained a log cabin, bunkhouse and barn. The Forest Service rejected the proposal as inconsistent with the easement restrictions, and Racine filed suit. The trial court held that the easement allowed dude ranch structures such as corrals and barns.
 - Holding: The Ninth Circuit affirmed, holding that the scenic easement did not prohibit a dude ranch and related structures.
 - Analysis and Notes: The court put the burden on the parties to be explicit in stating what structures are prohibited by the easement. It appears from this opinion that the government was a victim of careless drafting.
- Soundview Associates v. Town of Riverhead, No 09-cv-4095(JFB) (AKT), 2012 U.S. Dist. LEXIS 140963 (E.D.N.Y. September 28, 2012)

 - State: New York
 - Procedural Status: Case concluded.
 - Date: 2012
 - Keywords: Due process; municipal conservation easement; public conservation easement; recreation; scenic easement; violation.
 - Summary of Facts and Issues: In 1983, Soundview Associates (Soundview) granted a scenic easement to the Town of Riverhead as part of a land use approval process for a condominium development. The easement protected a 6-acre parcel of land called the "Recreation and Open Space Preserve" in the easement. The easement did allow certain recreational activities and structures, such as a golf course and related structures, including a clubhouse and restaurant and retail stores specializing in golf, tennis and swimming equipment. The easement also allowed "any other compatible recreational uses." In 2002, Soundview sought to build a 78,100 square foot residential resort and spa facility on the protected property. Soundview argued that because the Town's land use ordinances defined spas as a recreational use, therefore the entire facility was a "compatible recreational use" within the meaning of the scenic easement. When the Town rejected this application, Soundview filed suit in state court, lost at the trial court level, appealed, and eventually withdrew the appeal. In 2009, Soundview brought a due process federal court case against the Town.
 - Holding: The District Court held that the Town did not violate Soundview's substantive and procedural due process rights. The opinion does not directly interpret the scenic easement, but does hold that Soundview did not have a federally protected property right to build the resort because of the easement, and affirmed that the Town's interpretation of

the easement was not arbitrary or irrational, which is the applicable standard for a successful due process claim.

- Analysis and Notes: Federal due process claims challenging municipal land use decisions are rarely successful, and this case is no exception. The broader lesson for land conservation is that easement drafters should be careful and precise when using the term “recreational,” as aggressive landowners can try to stretch the language to encompass all manner of structures and activities.
- [Campbell v. Village of Deforest](#), 2018 WI App 8 (Ct. App. Wis. Dec. 14, 2017)(Unpublished)
 - State: Wisconsin
 - Procedural Status: Case concluded.
 - Date: 2017
 - Keywords: Eminent domain; municipal conservation easement; overburden; public conservation easement; trail; scope of easement; trail easement; vagueness.
 - Summary of Facts and Issues: In 1993, the Sunnybrook subdivision was approved by the Village of Deforest. The recorded subdivision plat included a public pedestrian and bicycle easement held by the Village along the bank of the Yahara River, crossing several of the lots. The full text of this easement, as included on the plat and not elaborated upon elsewhere, was “30' Wide Public Pedestrian and Bicycle Easement.” In 1999, Angela Campbell purchased one of the burdened lots, with notice of the public easement and the potential for a trail to be built in the future. In 2015, the Village constructed a boardwalk on the easement. The boardwalk was approximately ten feet wide with railings that are 54 inches tall on either side. The boardwalk is part of the Upper Yahara River Trail, a complex over three miles long which goes through the Village. Campbell filed a petition for an inverse condemnation proceeding, seeking compensation from the Village for its construction of the boardwalk. After a bench trial, the circuit court found that the boardwalk created a barrier across Campbell's property that effectively excluded her from using the thirty-foot strip of her property subject to the easement. However, the circuit court also determined that the terms of the easement were very broad, and that the Village's design and construction of the boardwalk were reasonably necessary to fulfill the purpose of the easement. Consequently, the circuit court concluded that the Village was acting within its rights pursuant to the terms of the easement in constructing the boardwalk and no taking had occurred. Campbell appealed.
 - Holding(s): The appellate court affirmed, holding that there was no taking as long as the Village was acting within the scope of its rights as the easement holder. Furthermore, because of the brief but broad terms of the easement, and because the easement traversed a steep slope abutting the river, the appellate court concluded that the Village reasonably interpreted the easement to allow a boardwalk, so as to allow for a smooth, level path for pedestrians and cyclists in all seasons. And even though the appellate court agreed that the boardwalk effectively excluded Campbell from parts of her property, it held that the Village's right to construct the boardwalk took precedent under the common law of easements.
 - Analysis and Notes: This case is a useful, although non-precedential, example of expansive rights of trail easement holders. The court also noted that even if Campbell had not had actual notice of the easement prior to her purchase, the same analysis would have

applied. Despite the favorable outcome for the Village, in order to avoid lawsuits drafters of trail easement should clearly spell out if and what kinds of recreational structures are permitted.

- Duffy v. Milder, 896 A.2d 27 (R.I. 2006)
 - State: Rhode Island
 - Procedural Status: Case concluded.
 - Date: 2006
 - Keywords: Animals; equestrian; fencing; grazing; municipal conservation easement; public conservation easement; recreation; violation; zoning.
 - Summary of Facts and Issues: In 1997, James and Paula Malm purchased a small horse farm in the Town of East Greenwich and began the process of rezoning and developing the property for residential purposes. The town approved the rezoning application, contingent upon the Malms' granting an "open space easement" on a 2.7-acre area that had historically been used as a corral. The easement prohibited development on the corral area but permitted "perimeter fences", "the grazing of horses and/or similar animals" and "passive recreational purposes [by nearby landowners]". The Malms then sold the property to the Milders, who began to graze a variety of animals on the property, including the corral area. In addition to grazing, however, the Milders erected internal fences across the easement area and installed various equestrian structures such as a riding ring, jumps, and posts. The Milder also barred nearby landowners from accessing the property for recreational purposes. The town and neighboring landowners brought suit, alleging that the Milders' use of the corral area violated the open space easement. Claims concerning the rezoning of the property were also at issue, but they are not discussed here.
 - Holding: The Rhode Island Supreme Court affirmed the trial court in holding that:
 - (a) the easement permitted only grazing, and not the additional equestrian uses and structures established by the Milders; and (b) the easement granted the Milders the discretion to allow passive recreational use by the nearby landowners, but did not require such access.
 - Analysis and Notes: As demonstrated by this case, equestrian issues are a lurking source of disagreement in many conservation easements. Opinions vary on whether equestrian uses are "agricultural," "recreational," or both. Easement drafters are advised to pay close attention to these matters so as to avoid later confusion and controversy.

- Pinnacle Point Partners, LLC v. The Land Trust for Tennessee, Inc., No. 18-0074 (Chancery Ct. 11th Dist. Sept. 13, 2018)
 - State: Tennessee
 - Date: 2018
 - Procedural Status: Case concluded.
 - Keywords: Ambiguous; commercial uses; liberal purpose provision; overburden; private conservation easement; residence; road violation.
 - Summary of Facts and Issues: In 2011, Pinnacle Point Partners, LLC (Pinnacle) granted a conservation easement to the Land Trust for Tennessee on an eight-acre parcel of land in Hamilton County. Pinnacle owned an abutting undeveloped five-

acre parcel that was not placed under conservation easement. During the planning and drafting process, Pinnacle stated its intent to the Land Trust to develop the abutting parcel for residential purposes, but was not specific as to its plans. In any event, the easement expressly allowed for a paved road to be established to access Pinnacle's abutting parcel for "residential development" of up to 30 residences but not for "commercial or industrial development." The easement also provided that the road "shall not unreasonably interfere with the Conservation Values" of the protected property. At some point after the easement was conveyed, Pinnacle launched plans to develop a for-profit assisted living facility on the abutting parcel, and to use the road across the protected property for access. The facility would have 105 beds in 85 bedrooms, and would be served by a variety of employees and vendors. A traffic engineer concluded that the facility would generate 104 fewer trips per week than 30 single family homes. After the Land Trust declined to approve the use of the road to access the assisted living facility, Pinnacle filed a declaratory judgment action and the parties held a bench trial.

- Holding: The trial court found for Pinnacle, declaring that the assisted living facility was a permitted residential use of the road. The court used an ordinary definition of "residential" as "a place where people live" and did not agree with the Land Trust that the need for employees at the facility rendered it a commercial activity. The court's analysis was based on a strict construction of the easement, a rule of construction applicable to conventional easements in Tennessee. The court further ruled that the use of the road for the assisted living facility would not interfere with the conservation values more than its use for 30 single family homes.
- Analysis and Notes: This case is one of several that highlights the dangers of relying on a general commercial use prohibition in a conservation easement. See, e.g., Merrill v. Saco Valley Land Trust, No. RE-16-44 (York Cnty. Super. Ct. April 29, 2017)(below). For an older but similar case, see Assisted Living Associates of Moorestown, L.L.P. v. Moorestown Tp., 31 F.Supp.2d 389 (D. N.J. 1998)(below). Interestingly, one of the witnesses who testified that the use of the road for the assisted living facility would not interfere with the conservation purposes was a former employee of the Land Trust who had negotiated this very project. On another note, even though the easement did have a liberal construction provision and it was emphasized by the Land Trust's attorney at the trial, the court used a strict construction against the Land Trust, an approach that is appropriate for conventional easements but not for conservation easements. The Land Trust decided not to appeal the trial court's decision.
- Windham Land Trust v. Jeffords, et. al, 2009 ME 29 (Me. 2009), affirming (Cumberland County Super. Ct. July 29, 2008)(Order granting summary judgment)(UNPUBLISHED); 2007 Me. Super. LEXIS 140 (Cumberland County Super. Ct. June 29, 2007)(Order granting preliminary injunction)(UNPUBLISHED)
 - State: Maine
 - Procedural Status: Case concluded.
 - Date: 2009
 - Keywords: Attorney general; campground; charitable trust; commercial uses; contract clause (Constitution); enabling statute; estoppel; injunction; intervention;

mediation; overburden; recreation; retroactivity; subject matter jurisdiction; temporary restraining order.

- Summary of Facts and Issues: In 2003, a decedent's estate granted a conservation easement to the Windham Land Trust (WLT) over an 85-acre parcel, which abutted a 15-acre parcel also owned by the estate. The easement provides that the protected property "shall be used by Grantor only for residential recreational purposes." The estate sold both the protected 85 acres and the unprotected 15 acres to a third party in 2004, who then sold it to the defendant landowners. Since 2004, the landowners organized and conducted two music festivals on the unrestricted 15-acre parcel, and have permitted festival patrons to hike on logging trails and take hay rides and sleigh rides on the Easement Parcel. The landowners donated most of the festival proceeds to charities and earned some income from the endeavor. They intended to carry out similar activities during music festivals scheduled for July and August 2007, hoping to attract approximately 1,000 people to each festival. They also planned to allow festival patrons to camp overnight without charge on a 20-acre area located entirely within the protected parcel. In addition, the defendants pursued plans and obtained a state permit to establish a year-round 36-site tent and trailer campground on the easement property, along with associated recreational activities for campers such as hay rides, skiing, etc. WLT brought suit, filing for a temporary restraining order and a preliminary injunction to prevent the planned festival and campground activities. In June 2007, the trial judge granted a preliminary injunction in favor of WLT, holding that the easement unambiguously prohibited the planned recreational activities and that the large number of potential recreational users was an overburdening of the easement. In January 2008, the court granted the Maine Attorney General's motion to intervene on behalf of WLT. In July 2008, the court granted summary judgment to WLT and the State, affirming the earlier determination that the easement prohibited the proposed recreational activities. The landowners appealed.
- Holding: The Maine Supreme Court held as follows: The easement's restriction to "residential recreational purposes" unambiguously prohibited the income-generating recreational activities proposed by the landowners. The court also rejected the landowners' estoppel arguments.
- Anderson Valley Land Trust v. Rowe, No. SCUK CVG 17-69470 (Super. Ct. Cal. Mendocino Cnty. Feb. 6, 2019)
 - State: California
 - Date: 2019
 - Procedural Status: Case concluded.
 - Keywords: Building area; commercial uses; enabling statute; private conservation easement; residence; ripeness; structures; violation.

Summary of Facts and Issues: In 2005, landowners donated a conservation easement on a 115-acre residential and farmland parcel to the Anderson Valley Land Trust (AVLT). The easement prohibited all commercial uses except for "home occupations" and "transient hospitality." Even though the protected property was a working ranch and farm at the time of the easement donation, in an apparent oversight there was no explicit exception for commercial agricultural activities. The

easement also allowed for three separate three-acre residential areas, with one single-family home permitted in each. In 2014, successor landowners who inherited the property began requesting clarifications and amendments to the easement, and the relationship with AVLT gradually deteriorated. AVLT filed a declaratory judgment action in 2017, requesting a declaration that the easement did not allow more than the three single-family residences and did not allow a commercial campground. AVLT also sought injunctive relief prohibiting other activities such as developing additional cabins or campsites, using off-road vehicles, and advertising the cabins for rentals.

- Holding: Following a two-day trial, the court ruled in favor of the landowners. The court began by stating that many of the issues set forth by AVLT were not ripe, because there was no indication that the landowners intended to establish a commercial campground or build additional cabins. However, the court went on to find that a commercial campground or additional rental cabins were consistent with the term “transient hospitality” and thus would not be in violation of the easement.
- Analysis and Notes: This is another case that plumbs the distinctions between residential and commercial uses. The opinion is brief and rather disjointed, and it is difficult to discern exactly what was going on here. But the take home message for conservation easement drafters is to be meticulous in stating what kinds of structures are permitted and prohibited, and not to rely on general language prohibiting or limiting residential structures if another section of the easement could be read to allow camping, bed and breakfasts, and other forms of short-term overnight uses.
- Other cases discussing the definition of recreation/recreational use: *Cleveland Botanical Garden v. Drewien*, 2022-Ohio-3706 (Ohio Oct. 20, 2022)- public park can include a botanical garden and associated facilities; *In re Jackson*, 280 A.3d 1074 (Pa. Commw. Ct. Aug. 1, 2022)- court looked at the dictionary definition of recreation to conclude that an unimproved park can serve recreational uses. The inability to build facilities did not make it make it impossible to fulfill the recreational purpose.

Importance of consistent timely enforcement

While the landowners were unsuccessful in challenging the government for selective enforcement, the Court did not dismiss the estoppel claim in *Jackson*. For any conservation easement enforcement, it is crucial to apply and interpret the terms consistently and bring actions in a timely manner.

- *United States v. Ponte*, 246 F. Supp. 2d 74 (D. Me. 2003)
 - State: Maine
 - Procedural Status: Case concluded.
 - Date: 2003
 - Keywords: Boundary; federal conservation easement; public conservation easement; removal of structure; selective enforcement; setback; structure; violation.
 - Summary of Facts and Issues: In 1974, previous landowners granted a conservation easement to the federal government on Black Island. The easement was administered by the National Park Service (NPS) as part of Acadia National Park. The easement provided

that “No new structures, except those for which immediate proximity to the water is essential, shall be located within the area between low and high water marks of the Property or between mean high water mark and a line parallel to, and set back 100 feet from, said high water mark.” In 1998, the Ponte family constructed within the apparent setback zone a 24-foot by 20-foot platform. NPS filed suit to enforce the easement. In part because of the Ponte’s failure to maintain legal counsel and other delaying tactics, the procedural history became a “morass” (in the court’s words), and the government eventually moved for a default judgment.

- Holding: The court held that a 100-foot setback zone was to be measured horizontally, not vertically (over the face of the Earth), based on Maine common law. It further held that the platform was not a structure “for which immediate proximity to the water is essential,” and thus not a permitted structure. The court entered a default judgment for the United States, requiring the removal of the platform. In addition, the court denied Ponte’s motion to set aside the default judgment, noting the family’s repeated violations of court orders.
- Analysis and Notes: The court noted that Ponte’s selective enforcement and harassment arguments were “irrelevant.”
- United States v. Jackson, 2006 U.S. Dist. LEXIS 83020 (D. Idaho November 14, 2006)(UNPUBLISHED), 2007 U.S. Dist. LEXIS 29171 (D. Idaho April 17, 2007)(UNPUBLISHED)
 - State: Idaho
 - Procedural Status: Case concluded.
 - Date: 2007
 - Keywords: Approval provision; estoppel; federal conservation easement; public conservation easement; purpose clause; scenic easement; selective enforcement; structures; surface alterations; topography; violation; waiver; Wild and Scenic River.
 - Summary of Facts and Issues: In 1980, the United States purchased two scenic easements from Therral Jackson’s predecessor in interest. The purpose of the easements was to protect the scenic, recreational, and ecological values of the property, which overlooked the Middle Fork of the Clearwater River, a National Wild and Scenic River. The easements contained a provision requiring the holder’s written approval for any changes to “topography of the landscape or land surface.” Beginning in 2002, without seeking holder’s approval, Jackson constructed a large concrete retaining wall and paver patios, a 55-foot steel bridge, a 114-foot concrete walkway, and a garage different from approved plans. The United States brought a civil suit seeking to enforce the easements and moved for summary judgment on its claims. Jackson posed a variety of defenses, including ambiguity with respect to the approval provision; no change in the topography of the land; estoppel based on an alleged verbal approval; and waiver based on the United States’ failure to enforce similar provisions against other land owners.
 - Holding: In its November 2006 opinion, the trial court granted summary judgment with respect to the retaining wall and paver patios but denied it with respect to the bridge and the walkway due to a lack of evidence. The court declined to rule on the estoppel defense but rejected the waiver (selective enforcement) argument. In its April 2007 opinion, the court denied the government’s motion to dismiss the estoppel defense, holding that intent to mislead is not a necessary element of the affirmative misconduct required for an

estoppel claim against the federal government. The court did leave open the possibility of dismissing the estoppel claim at trial upon a showing of evidence concerning the injury to the public interest and the defendants' costs in removing the structures.