

Preservation Law Educational Materials . . .

APPROACHES TO VIEWSHED PROTECTION AROUND THE COUNTRY

A variety of laws have been adopted around the United States to protect historic and scenic viewsheds. Some laws protect a resource's natural or scenic views,¹ while others protect the views and settings of landmark buildings.² A handful of laws focus on views to and from a specific historic building,³ while others protect only public views of a particular resource from afar.⁴ A few communities protect views through the application of design criteria to proposed changes to property within an historic or buffer district.⁵ Others apply prescriptive zoning restrictions, such as height and setback requirements, to properties located in a pre-determined viewshed.⁶

As with any effort to protect historic properties, viewshed protection also requires extensive analysis of the land affected by viewshed restrictions. This may entail identification of the underlying zoning of land in private ownership that sits within a property's viewshed (and other sites under consideration for protection) and the political feasibility of adopting restrictions that would reduce or preclude development within that viewshed. For example, the capitol view protection law in effect in Austin restricts height through the application of a complex height on structures located within specific sight-lines to the capitol building. Sacramento imposes maximum height and setback (step-back) requirements, which vary according to the distance of the project from the capitol building and its location within a pre-defined area. Indeed, many view protection laws include specific restraints on height and setbacks.⁷

Fairfax County and Princeton Township offer examples of how viewsheds of individual historic sites can be protected through the application of specific criteria to overlay and/or buffer districts. In these communities, viewsheds are protected through the application of detailed criteria and maps, which guide not only the design of new construction but also the siting, size, and configuration of structures to be constructed within the district or buffer district. This approach works well to protect the impact of new construction on a resource's immediate setting. It is less effective in protecting distant views of a single resource, such as Austin's capitol building or Seattle's Space Needle.

¹ See, e.g., Denver, CO, Portland, OR, Palo Alto, CA, and Redland, WA. An ever-increasing number of jurisdictions also regulate views through hillside protection laws. See, e.g., Boulder Cty, CO and Colorado Springs, CO.

² See Seattle, WA, which protects views of the city's natural setting as well as certain landmarks.

³ See, e.g., Sacramento, CA.

⁴ See, e.g., Austin, TX.

⁵ See, e.g. Fairfax County, VA and Princeton Twp., NJ.

⁶ See, e.g., Austin, TX.

⁷ Communities with laws designed to protect natural or scenic views often rely on height restrictions. Denver's "Mountain View Ordinance," codified at Denver Revised Municipal Code, Ch. 10, Articles III and IV, restricts buildings heights to protect panoramic views of the Rocky Mountains and the Denver downtown sky line from specific areas within the city. Portland, Oregon, protects scenic vistas through the establishment of height and length limits on structures and vegetation within specific view corridors. See Portland Code, Ch. 33, § 33.44 (establishing "scenic resource zones).

Even where design review is contemplated, zoning classifications should not be ignored. Georgetown, Colorado provides a good example of such an approach, whereby zoning laws reinforce the objectives of the town's comprehensive design review process. Indeed, Georgetown illustrates how effective laws can become in achieving view protection goals when the link between historic setting, viewshed, and tourism is well-understood.

Moreover, in situations where viewsheds are protected through the application of criteria on a case-by-case basis, it is important to consider the scope of the decisionmaker's authority as well as the decisionmaker. Will the decisionmaker be able to reduce the height of a building or can it only mitigate impacts by shifting bulk or height? In Seattle, for example, the city may take into consideration height, siting, and setbacks, among other mitigation measures, when considering proposals to construct buildings within protected viewsheds. Will the decisionmaker understand the need for view protection? In Annapolis, views of the city's NHL historic district are protected only through the city's site plan review process, which requires review by its planning rather than preservation staff.

Significantly, Kansas,⁸ through its state historic preservation act, protects historic resources by also requiring review of projects within the environs of a historic resource. Under this state's approach, any project that would "damage, destroy or encroach upon" a historic resource (including projects to be located within 500 feet of a historic property) cannot be approved unless it finds "based on a consideration of all relevant factors, that there is no feasible and prudent alternative to the proposal and that the program includes all possible planning to minimize harm to [the] historic property." *See* Kan. Stat. Ann. § 75-2724. Although the law has withstood court challenges over the years, each decision has invited controversy and unsatisfactory results, invariably due to unresolved conflicts with zoning laws.⁹ Under the Kansas statute, final review authority rests with the city council.

Set forth below are examples of laws in effect around the country, which seek to protect the views or viewsheds of one or more historic resources. No single approach presents the ideal model. However, attributes of these various laws could be adapted to develop workable legislation for individual resources.

Annapolis, Maryland

Objective: Protect historic context and critical views of historic districts.

Approach: Site design plan review and approval based on site design standards.

Decision-Making

body: Planning and Zoning Director

Legal authority: Annapolis Municipal Code, Ch. 21, §§ 21.22

Website: <http://bpc.iserver.net/codes/annapolis/>

Summary: In Annapolis, resources within the city's National Historic Landmark Historic District are protected under a historic preservation ordinance that, in addition to design-based review, restricts height and bulk. In addition, the city imposes "site design standards" on any projects requiring a site design plan, which include:

⁸South Dakota has enacted a similar law. SDCL § 1-19A-11.1.

⁹See, e.g., *Reiter v. City of Beloit*, 947 P.2d. 425 (Kan. 1997) (upholding city's determination that there was no feasible and prudent alternative to the construction of a store within the environs of a home listed on the National Register and that all plans were considered to minimize impact to the historic property, despite SHPO's determination that store was visually incompatible and would destroy the historic house's relationship with neighborhood).

“new developments, construction, enlargement or alteration of any building, other than a single-family or two-family dwelling, and other than development approved as part of a planned development.” Included within the city’s design standards is a special requirement relating to views. The provision states:

21.62.060 Scenic, historic, archaeological and landmark sites and views.

Scenic, historical, archaeological and landmark sites and features that are located on or adjacent to the proposed development shall be preserved and protected to the maximum extent as practicable through site design, building location, and parking layout. Special consideration shall be given to the impact of projects on views of the Annapolis historic district from the following points:

1. From Eastport and the City dock; and
2. From Truxtun Park; and
3. From the Severn River Scenic Overlook; and
4. From Rowe Boulevard.

Comment: This law, administered by the Planning and Zoning Dept., seeks to regulate development outside the district which could impact on views of the district from specific view points, through its site plan review process “to the maximum extent possible.” Another approach may be to regulate siting through comprehensive design regulations that apply to projects located within a building or area’s viewshed and that are administered by a preservation-based authority. Other zoning-based restrictions, such as height and setbacks, should also be considered.

Austin, Texas

Objective: Protect views and prominence of capitol building throughout city.

Approach: Regulate height in established view corridors and area within a ¼ mile radius from capitol building. View corridors and capitol dominance district established as zoning overlays.

Administrative

Body: Office of Development/Environmental Services

Legal

Authority: Austin Land Dev. Code, §§ 25-2-161, 25-2-162, 25-2-641, and 25-2-642 and Appendix A. Texas Statute § 3151.

Website: Texas statute: <http://www.capitol.state.tx.us/Home.aspx> (Government Code)
Austin city code: <http://www.ci.austin.tx.us/development/>

Report: http://www.ci.austin.tx.us/downtown/downloads/CVC_Report_Final.pdf

Summary: Views of the Texas state capitol from various vantage points around Austin are protected under both state and local law. The state has identified 30 specific view corridors and the City of Austin has identified 26. (In cases where conflicts appear, the more restrictive law applies). Each view corridor is described through coordinates. Maximum allowable height in a protected corridor is established through the use of a complex formula, taking into consideration changes in topography and distances from the capitol building.

Comment: Austin has protected views of its capitol building since the mid-1980s. Views were originally selected based on a detailed study from 1983 that evaluated 60 different views based on four categories: (1) stationary parks; (2) threshold views (from entryways into the CBD); (3) sustained approaches (continuous views along a corridor); and (4) dramatic glimpses. From this study a height calculation formula was developed to determine height allowances within each corridor. See http://www.ci.austin.tx.us/downtown/downloads/Capitol_View_Preservation_Study.pdf. Austin reevaluated each view corridor as part of a 2007 study conducted by a “downtown commission,” which includes recommendations on adjustments to specific corridors. See http://www.ci.austin.tx.us/downtown/downloads/CVC_Report_Final.pdf. In some situations, the study suggested that alterations may be justifiable under a cost/benefit analysis.

Fairfax County, Virginia

Objective: Protect historic sites and their settings.

Approach: Regulate changes affecting historic sites within historic overlay districts. Boundary lines are established to protect historic sites and visual encroachments on such sites. A district may include “lands closely related to and bearing upon the visual character of the district core and that contribute to the historic context of the district.”

Decision-making Body Architectural Review Board (ARB)

Legal

Authority: Fairfax County Zoning Ordinance, Art. 7, Part 2 § 7-200

Websites: <http://www.fairfaxcounty.gov/dpz/zoningordinance/>
<http://www.fairfaxcounty.gov/dpz/historic/>

Summary: Fairfax County, located just outside Washington, D.C., protects historic sites and their settings through the designation of historic site districts, and the corresponding adoption of guidelines specific to each district. These guidelines seek to preserve the natural contours of the landscape and vistas to and from historic sites. For example, the Huntley Historic Overlay District protects not only the Huntley House, built in 1818 for Thomas Mason, but also views from the house to the south and views to the house from Harrison Lane, a winding road that provides an axial view of the house.

In Fairfax County, all applications for rezoning, special exceptions, special permits, variances, building permits for properties in designated districts are reviewed by the ARB. No applications may be approved unless they are architecturally compatible with the historic resource and conform to requirements set forth under the designating ordinance, which may include restrictions on use, bulk, open space, and so forth.

Comment: Following Fairfax County’s model, historic districts could be created around NHL sites, and the city’s preservation commission could be empowered to deny changes to properties within that area that would compromise important viewsheds to or from the resource. Detailed guidelines could be developed for

each district. As in Fairfax and other jurisdictions, it would be prudent to ensure that zoning meshes with the objectives set forth in each guideline

Georgetown, Colorado

- Objective:** Protect town's historic setting and sites, including views of mountains and historic sites.
- Approach:** Design review and comprehensive rezoning.
- Decision-making Body:** Design Review Commission (also performs as historic preservation commission); Appeal to Board of Selectmen.
- Legal Authority:** Georgetown Code, Title 17 (Land Use Code)
- Website:** <http://town.georgetown.co.us/> (Click on Government to find links to town code and guidelines)
- Summary:** Georgetown, Colorado, a historic mining town, seeks to preserve its natural setting and heritage through a unified regulatory system that places a high emphasis on contextual development. In Georgetown, permits for development may be issued only after review and approval by the town's Design Review Commission (DRC), which issues "certificates of appropriateness" based on a project's conformity with a comprehensive set of design guidelines. The entire town is divided into "design areas" and individual "character areas." Among the design areas is a "Historic Area," which includes most of the town's historic structures and its hillsides. The "Millside Area" serves as a buffer between the Historic Area and newer areas of the town.
- The DRC has adopted detailed design guidelines, which include typical preservation-based standards, but also allow for consideration of issues relating to height and views. For example, the guidelines for the Historic Area state: "Views to natural and historic features abound in Georgetown and contribute to its unique setting. These view corridors should be respected. Maintaining views to the mountains and historic landmarks are especially important." Georgetown is included in the Georgetown-Silver Plume National Historic Landmark District.
- Consistent with its unified development approach, the city's zoning laws are designed to reinforce the attributes of individual design and character areas. For example, maximum heights and minimum lot sizes are consistent with existing buildings and development patterns. "To the extent that the existing patterns of lots and locations of buildings on their sites contribute to the desired character of a district, it is the intent of the district area and bulk regulations to encourage continuation of such patterns so as to enhance and protect the historic character of the Town and its designation as a National Historic Landmark District." View protection requirements are also applied in other design districts, but the focus is on protecting views of the mountains rather than historic structures.
- Comment:** Georgetown's holistic approach to preserving its history and natural setting provides an interesting model. The town's entire land use program is designed to preserve its attributes while allowing for compatible development and individual decisions are made by a design review board.

Princeton Township, New Jersey

- Objective: Protect historic sites and districts from encroachment.
- Approach: Protect historic sites through the adoption of buffer zones. The Preservation Commission reviews and acts on proposed “preservation plans” (proposals for alterations, additions, demolition, new construction), for projects in locally designated historic districts and buffer zones. Proposed actions must not adversely affect a structure’s setting.
- Decision-Making Body: Historic Preservation Commission (HPC)
- Legal Authority: Princeton General Ordinances, §§ 10B-27.5; 10B-41.1-2; and 10B-240.1
- Website: <http://www.princetontwp.org/histpres.html>
<http://www.princetontwp.org/histdist.html>
http://70.168.205.112/princeton_nj/lpext.dll?f=templates&fn=site_main-j.htm&2.0
- Summary: Princeton protects its historic sites through the designation of preservation zoning districts and historic buffer districts, which protect historic sites from encroaching development. The HPC has authority over development in both the historic district and buffer district. As part of the designation process, the HPC prepares a report that includes, among other things, a description and statement of justification for the boundaries. It also includes an explanation of its relationship to an adjacent historic district and design standards or guidelines.
- Comment: Princeton offers a potentially useful model for the protection of viewsheds by establishing buffer zones adjacent to historic sites. Guidelines could be adopted through the designation process that identify the specific areas to be protected and the standards governing any proposed development within a buffer area.

Sacramento, California

- Objective: Protection of views to and from state capitol building.
- Approach: Regulates height and setbacks of surrounding buildings to protect views of state capitol building and surrounding grounds.
- Administrative Body: Planning Commission
- Legal Authority: Capitol View Protection Act, Sacramento City Code, § 17.96.100
- Website: <http://www.cityofsacramento.org/planning/policies-and-programs/capitol-view.cfm>
- Summary: The city, by ordinance, sets building height limits, setback requirements, and parking limitations in a prescribed area surrounding the state capitol building and park. The height and setback requirements are prescriptive, but vary by location/distance from capitol building. Setback areas may be encroached upon if pedestrian level features are built into a project, such as arcades or plazas, and

the size of the setback must increase as the height of the building increases. Parking is regulated through a special permitting process and excess height resulting from “architectural embellishments” may be exceeded on a case-by-case basis. Variances may also be granted on a case-by-case basis.

Comment: Sacramento’s law, in effect since 1992, offers an example of a prescriptive approach to protecting views to and from the resource. Projects are also reviewed by the downtown design commission, which has design authority over all projects in the CBD-Special District and in some cases, the city’s preservation commission. Design guidelines for the central city area, currently in draft form, reinforce the city’s capitol view protection act. See <http://www.cityofsacramento.org/dsd/planning/urban-design/central-city-urban-design-guidelines/>.

Seattle, Washington

Objective: View protection of landmarks such as the Space Needle, Smith Tower, and King Street Station, as well as Mount Rainier, Cascade and Olympic mountain ranges, Puget Sound, Seattle lakes, and the downtown skyline.

Approach: Establishment of environmental policy that requires protection of identified public views through the application of “mitigation measures,” which may include setback and height restrictions.

Decision-Making Body: Department of Planning and Development

Legal Authority: Seattle Municipal Code § 25.05.675P, Public View Protection

Website: Seattle Code: <http://clerk.ci.seattle.wa.us/~public/toc/25-05.htm>

Overview: http://www.seattle.gov/dpd/Planning/View_Protection/Overview/

Space Needle View Protection Report: http://www.seattle.gov/dpd/Planning/View_Protection/ProtectingSpaceNeedleViews/default.asp

Inventory of public view sites: http://www.seattle.gov/dpd/Planning/View_Protection/Inventory/default.asp

Summary: Seattle protects public views through its environmental review process. Under Seattle’s approach, the city may conditionally approve or deny projects that would adversely affect protected views. Examples of mitigation may include, among other requirements, adjustments in height, bulk, setbacks, or re-location of the project on the site. Seattle protects 86 public views and viewscapes under this law. Protected views are listed in the city’s code and more fully described in reports and inventories.

Although Seattle’s environmental act specifically refers to public views of historic landmarks, the city has done little to protect views of historic landmarks thus far. The city adopted special legislation protecting 10 different vistas of the Space Needle in 2001. Protection of landmark sites is controversial and the general view is that only a very limited number of landmarks merit view

protection under this provision, such as the Smith Tower and King Street Station. As with the Space Needle, these structures are highly visible from various locations in the city.

Comment: Seattle's program is primarily designed around public vistas and viewpoints, mainly from parks rather than specifically identified view corridors. Even where views of specific buildings are protected, the objective is to protect a vista rather than the building's viewshed. Protection is achieved on a case-by-case basis rather than through the application of elaborate height formulas, as in Texas, and a broader range of potential mitigation measures may be considered.