Chapter 8

Scenic View Protection

INTRODUCTION

This chapter addresses the notion of view protection or preservation — that is, of particular views from particular points looking at specific visual landscape features and along transportation corridors (Figure 8.1). Corridor-specific issues include (1) visual accessibility to scenic aspects of the roadside landscape or specific landscape features such as rivers, and (2) upgrading the whole visual experience of entering a city or park. Chapters 5, 6, and 7 addressed aspects of zoning and land use control, architectural control of structures, and control of signage. This chapter is an “overlay” on them. It includes some of the previously mentioned control mechanisms but focuses on preserving visual access or quality of specific views; it thus encompasses or spills over into issues of land use, architecture, and signage (Figure 8.1).

HISTORY OF VIEW PROTECTION

Scenic view protection dates back to the late 1800s. In one early case, an ordinance was challenged whose objective was the protection of views of the Massachusetts state capitol building in Boston.1 Boston was a leader in its attempt to protect Copley Square from being overshadowed by surrounding buildings. Boston’s efforts were upheld by the Massachusetts high court and the U.S. Supreme Court.2 The former held that the creation of high buildings might exclude sunshine, light, and air to the detriment of the public health. Washington, D.C., had an early height-restriction ordinance based on the height of the U.S. capitol building, and several state capitals followed suit (see Figure 8.2).

In the 1930s a scenic roadway movement caught on, starting with the Winchester County parkways in New York State; the same designer was involved in the creation of the Blue Ridge Parkway in Virginia (Figure 8.3) and North Carolina, which was followed by the Natchez Trace Parkway and Skyline Drive. Many of these parkways are administered today by the National Park Service and the respective state agencies.

When the Blue Ridge and Natchez Trace parkways were planned, it was decided to use scenic easements for portions of the right of way to keep costs down (Cunningham 1968). The actual formula was 100 acres in fee simple and 50 acres subject to scenic easements per mile of parkway. Scenic easements were also acquired by the states and later transferred to the National Park Service. Eventually, the scenic easements acquired along the Blue Ridge Parkway covered nearly 1,500 acres and those along the Natchez Trace Parkway more than 4,500 acres.

Unfortunately, the experience with scenic easements along the two parkways has not been a happy one. Difficulties in negotiating and implementing scenic easements arose from (1) landowners who wanted to harvest timber and (2) owners who wanted to subdivide and develop their land for resort or residential use.

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(Cunningham 1968). There were also problems with use of eminent domain along the Blue Ridge Parkway to acquire land in fee simple and easements. Local landowners felt that their land was being taken without due process or adequate compensation. In addition, there was much conflict with and resentment in general toward the federal government.

The other major road project that the National Park Service was historically involved in was the Great River Road, a scenic highway on both sides of the Mississippi River from New Orleans to the Lake of the Woods in Canada. It was originally conceived in the 1930s as the Mississippi River Parkway. The ten states involved were to acquire easements and rights-of-way. World War II and other events intervened, but planning money became available, and the states of Wisconsin and Minnesota have made progress on acquiring scenic easements for the Great River Road.

The National Park Service has used scenic easements for special problem cases such as Cumberland Gap National Historical Park, Manassas National Battlefield Park, Piscataway Park near the Potomac River, and the Merrywood Estate adjacent to the George Washington Memorial Parkway in Virginia. Many states have authorized legislation for scenic easement acquisition along highways. Wisconsin and California have had the most experience followed by

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3All of the Mississippi River states have enabling legislation sufficient for scenic easement acquisition.
Iowa, Michigan, Minnesota, Illinois, Maryland, New York, Montana, and Oregon. (A good summary of past experience with scenic easements can be found in Cunningham’s 1968 article.)

As Williams (1975) has stated, in few instances were special regulations imposed in order to protect scenic views of unique importance or distinction. Such regulations may apply either to the area included in the view itself, or at one or more viewpoints, or both. Such regulations may require land to be left open, or may simply impose strict height limits.

From 1968 to 1971 Denver initiated a series of ordinances collectively called the Mountain View Ordinance. The Front Range of the Rocky Mountains in Colorado rises steeply for about 10,000 feet at the western edge of the Great Plains (see Figure 8.4) and is one of the most spectacular scenes in the United States. The city of Denver is about ten miles away, and superb views of the range are available from several large open spaces in Denver, especially in the city’s parks. Since these views comprise Denver’s most distinctive scenic experience, the city has acted to protect them by a special series of ordinances. These ordinances establish restrictions on the height of buildings in order to preserve the panoramic views of the Front Range. Specifically, a reference point is established at the farthest (eastern) edge of each park; and buildings are not permitted to penetrate an inclined plane that extends west from that point at the rate of one foot vertical for each 100 feet horizontal.

A similar principle underlies a proposed zoning amendment in Honolulu that would map a “historical-cultural-scenic overlay zone” at several critical areas in the city, to protect the famous view (see Figure 8.5) of Diamond Head. These proposed regulations would apply both along the lower edge of the sight to be viewed (in this case, Diamond Head) and also at a number of viewpoints. New construction would be limited to a height varying from 25 to 40 feet in the area on the lower slopes of Diamond Head and nearby, as part of a rather elaborate long-term municipal program to remove the military installations on Diamond Head (primarily hidden in the crater) and also to minimize the effects of the high-rise apartment buildings that had been permitted in the area between Diamond Head and the point to the south. In addition, the proposed regulations would prohibit any further construction at all as seen from a few critical viewpoints, particularly in Kapilani Park (near the base of the slope) and at nearby Ala Kai golf course.

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5 Or 1.7 feet per 100 feet in the later ordinances.

6 This is one of the regular zoning districts in Honolulu (s. 21-380 of the zoning law) and has been used for various purposes.

VIEW PROTECTION MECHANISMS

Today capital cities, including Austin, Denver, Lincoln, Sacramento, Tallahassee, and Washington, D.C., preserve views of their capitols and surrounding environs with various setback provisions. Some city ordinances protect views of cultural amenities, such as Eastman Theater in Rochester, New York; Pittsburgh preserves river views; Denver, Colorado, Burlington, Vermont, and Portland, Oregon, protect their mountain vistas; and Seattle mandates a series of setbacks within view corridors of the Elliott Bay, West Seattle, and the Olympic Mountains. Cincinnati's hillside protection ordinance preserves prominent hillsides with views of major streams or valleys. Likewise, Austin, Texas, has designated five hill-country corridors to protect scenic views and encourage orderly and environmentally sensitive development in the city's watersheds.

View protection mechanisms are many and draw upon much of the material already presented in Chapters 5, 6, and 7. Height limits and mandatory setbacks established through special districts and overlay zones or view protection corridors build on the material presented in Chapter 5. Site plan and planned development review as well as massing and bulk requirements draw from material presented in Chapter 6. The use of environmental regulations will be covered in more detail in Chapters 10 and 11. These mechanisms typically are implemented through zoning, but they need not be. Denver's Mountain View Ordinance, for example, is part of the city's building code.

Special Districts and Zoning

The simplest technique is a mandatory cap on building height. To preserve views of the nation's capitol dome, Congress passed the Building Height Limitation Act of 1910, which established a citywide building height cap at 110 feet, with some exemptions on Pennsylvania Avenue.

Austin uses two mechanisms to protect capitol views. Its Capitol Domain Zoning District is an overlay that limits heights within one-quarter mile of the capitol building to 653 feet above sea level and permits proportional increases depending on the structure's distance from the capitol. A second method, incorporating twenty-eight Capital View Corridor Zones, is based on a comprehensive formula of trigonometric projections. This more complex method grew out of an exhaustive study that initially identified sixty significant corridors and analyzed the anticipated economic impact of protecting each. Less complicated formulas, used in Lincoln, Nebraska, and Tallahassee, Florida, work by projecting angles from the capitol dome to various sites.

Architectural Review

Other techniques for enhancing views are site plan and planned development (reviewed in Chapter 6). For instance, the zoning ordinance for downtown Rochester, New York, states: "Site plan review of all new development . . . is intended to protect significant views of the Eastman Theater." Likewise, in Burlington, Vermont, any structure over thirty-five feet must undergo design and site plan review; one of the design criteria is the preservation of views of Lake Champlain (Figure 8.6) and the Adirondack Mountains to the west. Protecting scenic vistas is also one of the review standards for approving new development in the Wilmington, Delaware, waterfront district.

Massing and bulk controls are used to enhance views through architectural control ordinances (covered in Chapter 6). San Francisco and Pittsburgh have enacted bulk requirements that effectively slim down and
"Scenic, landscape, sighting or safety easement" shall mean a servitude devised to permit land to remain in private use consistent with parkway purposes determined by the secretary (U.S. Secretary of the Interior) and at the same time placing a control over the future use of the area to maintain its scenic, landscape, sightly or safety values of the parkway in the state.

Cunningham (1968) notes that there is nothing in the nature of a "scenic easement" that requires it to be appurtenant, as we discussed in Chapter 7, although "scenic easements" designed to preserve scenic and historical value along highways will, normally, be appurtenant to the highway, with the highway constituting the dominant estate.

From the point of view of the servient landowner, a scenic easement is primarily a restriction upon the uses that she might otherwise lawfully make of her land. From the point of view of the persons entitled to the benefit of the easement—for instance, the traveling public on a highway to which a scenic easement is appurtenant—the scenic easement is essentially an easement of view. As such, according to Cunningham (1968, p. 171), it may provide a benefit in at least three ways:

1. Something attractive to look at within the easement area.
2. An open area to look through in order to see something attractive beyond the easement itself.
3. A screen to block out an unsightly view beyond the easement area.

Since the advantage of scenic easement is its flexibility, there are no standard forms or format. According to Cunningham (1968, p. 168), however, scenic easements usually include the following:

1. A restriction of new building construction or major alteration of existing structures to farms and residential buildings only, with an express prohibition of new commercial structures and a saving clause permitting the continuance of existing uses and structures;
2. An authorization for necessary public utility lines and roads;
3. A prohibition against cutting "mature trees and shrubs," but with a provision authorizing normal maintenance;
4. A prohibition against dumping; and
5. A prohibition against outdoor advertising, except for advertising of activities located on the premises.

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In addition to the above restrictions, or negative rights, a scenic easement may include one or more affirmative privileges, such as right of entry for the state highway agency to remove structures or plantings in violation of the restrictions, to repair damage done to plantings or other vegetation in violation of the restrictions, to cut and prune brush and trees in order to keep a scenic view, or to engage in landscaping operations.

A substantial body of U.S. case law recognizes a common law negative easement of prospect or view. It has been recognized in California,\textsuperscript{9} Massachusetts,\textsuperscript{10} Rhode Island,\textsuperscript{11} New York,\textsuperscript{12} Vermont,\textsuperscript{13} and Wisconsin.\textsuperscript{14} The Wisconsin case is specific to scenic easements (see legal issues, below).

In general, U.S. case law supports the view that an easement of view or prospect is a recognized “legal” interest in land (Cunningham 1968). However, scenic easements are not without administrative problems in terms of valuation: How much do you pay for them? And enforcement: How do you ensure that the restrictions are observed by the present property owner or the subsequent one?

SCENIC BYWAY PROGRAMS

The Scenic Byways 88 Conference (USDOT FHWA 1988), held in Washington, D.C., showed that there were many states involved in grass roots activity to protect and manage scenic roads. These roads are the two-lane roads that William Least Heat Moon termed “Blue Highways”; they stretch over 3 million miles across the United States (Figure 8.7). Almost every state has taken some type of action to recognize them. Twenty-three states have established programs to designate them as “scenic,” and three more states are considering doing so. Fifteen states, without formal programs, have an official list of historic and scenic roads. Several of the remaining states have no program or list because it is generally believed that since so many of their roads are scenic, it would be difficult to choose among them (FHWA 1988). Once such byways are designated, the most difficult aspect is managing the right-of-way and surrounding land use to keep the views open and the existing visual quality intact.

FIGURE 8.7 A scenic byway. Photo credit: R. C. Smardon

preserve or re-create positive visual experiences along major entryways to the community. In May 1984, New Orleans adopted new zoning provisions to prevent further unsightly commercial strip development along its major roads. The purpose of the new provisions is to provide “a superior environment and positive design image” for this historic city.

The city established an overlay district with special sign and landscaping requirements that applied to other uses as well. Some permitted uses, such as fast food restaurants and developments of one acre or more, are made conditional uses and subject to special site plan review.

Sign regulations are also tightened. The size of any sign is linked to the amount of building frontage; the maximum area is limited to 70 feet and the height to 25 feet or the building height, whichever is lower. No flashing signs are allowed, and rate signs must be integrated into the one detached sign allowed on site. Non-conforming signs are subject to a three-year amortization period. Finally, special site design requirements are imposed, including perimeter and interior landscaping, landscaped setbacks, screened loading areas, and lighting restrictions.

Austin has created special controls on land located within 200 feet of designated “scenic” and “principal” roadways. It has also enacted special protective regulations for land within 1,000 feet of Route 360, known as the Capital of Texas Highway. The following restrictions apply:

1. Scenic Roadways. No off-premise signs are allowed within a 200-foot zone on either side of the road.

\textsuperscript{12}Latimer v. Livermore, 72 N.Y. 174 (1878).
\textsuperscript{13}Fuller v. Arms 45 Vt. 400 (1873); Hopkins the Florist Inc. V. Fleming 112 Vt. 389, 26 A.2d 96 (1942).
\textsuperscript{14}Kamrowski v. State, 51 Wisc.2d 256, 142 N.W.2d 793 (1966).
On-premise signs are restricted to one small monument-style sign integrated into the landscaping plan. Special size and height limits apply as does a prohibition on flashing signs.

2. **Principal Roadways.** Only one freestanding commercial sign is permitted on each parcel; a 1,000-foot spacing requirement exists for off-premise signs.

3. **Capital of Texas Highway.** Only monument-style signs with maximum of two colors are allowed. Signs must be of natural color, and materials must be compatible with surrounding environment. No flashing or neon signs or internal lighting is permitted (Duerksen 1986, pp. 21-22).

The city of Albuquerque has enacted similar comprehensive guidelines for development along Coors Boulevard, a principal traffic artery, to protect views of the Sandia Mountains and Rio Grande River Valley and to ensure quality developments. The plan defines view planes and then prohibits buildings from penetrating them. Landscaping must also be designed so as not to intrude into the view planes. Other special guidelines relating to architectural design, signs, landscaping, and other site plan elements are also set forth. The plan is currently being revised due to some difficulties in applying the design guidelines, which have not been followed by all developers.

The Albuquerque situation illustrates the difficulty of such view protection that necessarily incorporates many elements, including zoning, architectural, and sign control, as well as trying to control new development while making old development conform to new standards.

There is no tougher operating environment for visual landscape management than the urban strip. The author has done several studies (see Figure 8.8) for urban strip reclamation in New York State (Lambe and Smardon 1986; Smardon 1985; Smardon and Goukas 1984). However, when a city such as Detroit actually studies visual upgrading the entryway from the airport to downtown Detroit, then there is hope (Wilkens 1986).

**VIEW PROTECTION: THE CONTROVERSIES**

Sometimes scenic view protection conflicts directly with land use and economic development. Illustrative situations and their related controversies abound.

Washington, D.C., with the traditional building height cap and the Potomac Riverbelt Greenway, is a case in point. A 52-story Port America high-rise building was proposed for Prince Georges County, Maryland, to be designed by architects Philip Johnson and John Burgee. The project has strong backing of the local government, which foresees this massive developing as putting their county "on the map." Arrayed against the development is an impressive group of preservation organizations, national capital planning entities, and federal agencies such as the National Park Service, which fear that this massive building will not only intrude on the low-rise skyline of the capital, but will set a precedent for a ring of gigantic structures around Washington, D.C. (Stuart 1980).

Similar disputes are being played out in Austin, Denver, Houston, and many other cities and towns. In Philadelphia, a proposal to build two office towers that would dwarf the William Penn statue atop city hall (long held to be the unofficial height limit for the community) has kicked off a bitter struggle and led to the mayor calling for a complete revamping of the city's downtown comprehensive plan. The buildings were not built. Similar issues have driven view access disputes in San Francisco and Seattle, as we saw in Chapter 6.

Entryways to national parks and monuments have suffered from rampant strip development leading right up to the park entrance, as well as creating views that are incompatible with the historic character of parks and monuments. Such issues have become major management problems for the National Park Service (see Sax 1980; Sax and Keiter 1987) in areas like Gettysburg National Battlefield Monument.

Control of rural ribbon development, such as in scenic portions of Vermont and in the St. Lawrence River–Thousand Island area, has its own forms of controversy. What controls are possible or defensible in order to keep views open in rural areas with little or no existing planning and land use control? This brings us to legal issues related to view protection that usually arise out of such controversies.

**LEGAL ISSUES AND VIEW PROTECTION**

There have been only a few challenges to scenic view ordinances, and they have generally met with little success. Typically, the primary issue involved is whether the regulations are so stringent as to deny all reasonable use and are thereby in effect a taking.

A challenge to Denver’s Mountain View Ordinance, enacted in 1968, was rejected on grounds that there was no taking and that such an ordinance was supportable on aesthetic grounds. The Mountain View Ordinance allowed buildings near Southmoor Park to be only 42 feet high, with two additional feet allowed for each 100 feet the building was erected away from the reference point in the park. The plaintiffs wanted to construct a 21-story office building, which the current zoning would have allowed notwithstanding the limits of the Mountain View Ordinance. Neighbors of the proposed building opposed the project and, in 1982, persuaded the city council to apply the challenged restrictions over objections of the plaintiffs and the planning board. Despite a finding that the restrictions caused a sub-

FIGURE 8.8 a, b, c, d, e  Urban entryway—Fredonia study. Photo credit: SUNY Faculty of Landscape Architecture, Syracuse, New York

stantial diminution in economic value, the court held there was no taking because the properties still had real estate value. The trial court judge actually visited several parks protected by the law and rejected out-of-hand the contention that the ordinance did not serve a valid police power objective (Duerkson 1986).

In December 1986, the Colorado Supreme Court upheld the Mountain View Ordinance. One of the developers' arguments was that the portion of the ordinance covering Southmoor Park was a subterfuge for the real animating initiative—growth management. The 1982 amendment to the ordinance, which extended mountain view protection to Southmoor Park, apparently had been instigated by neighbors abutting the previously mentioned 21-story landmark project, who also had attempted to downzone the area.

The Colorado court refused to question legislative motives, stating that mountains were a fundamental part of Denver's "unique environmental heritage." The court held that protecting the right to see the distant scenery was a legitimate exercise of the city's police power, notwithstanding the fact that Landmark Land Company might be deprived of the maximum return for its property (Lassar 1987).

The Colorado Supreme Court also dismissed arguments that the city action was quasi-judicial (not fully
legal or addressing special due process requirements) or special legislation. Citing Berman v. Parker,\textsuperscript{17} the court stated: “It has been well established that protection of aesthetics is a legitimate function of legislation. . . . [E]specially in the context of Denver—a city whose civic identity is associated with its connection with the mountains.\textsuperscript{18}” Finally, and most significantly, the Colorado Supreme Court reiterated its high threshold for a successful claim that a land use regulation constitutes an unconstitutional “taking.”

It is well-settled rule in Colorado that in order to establish that an ordinance which restricts the use of land is unconstitutional it must be shown that the ordinance precludes the use of (the) property for any reasonable purpose (due process and just compensation clauses of Federal and State Constitutions do not require that a landowner be allowed to make the most profitable use of his property).\textsuperscript{19}

Generally, scenic protection measures will not be so onerous as to deny all reasonable use of a property. However, a case from Arizona demonstrates that in extreme situations they may be so strict as to effect a taking.\textsuperscript{20} Scottsdale had enacted a hillside protection ordinance that severely restricted development in the McDowell Mountains, a unique geographic area of hilly and mountainous terrain. The hillside ordinance established two areas: a conservation zone within which land was set aside solely for open space and had development limitations due to steep slopes, rockfalls or landslides, and soil erosion; and a development area in which land could be developed subject to certain limits. Development rights for building structures could be transferred from the conservation zone to the development area to alleviate potential hardship. Under the ordinance, 80 percent of the plaintiff’s land was in a conservation area.

Finding that Scottsdale was actually attempting to establish a public mountain preserve without paying for it, the Arizona Court of Appeals struck down the ordinance as a taking and also held that only money, not density credits could amount to “just compensation.” Moreover, the court held that, under Arizona law, public interest in aesthetics, standing alone, is often too vague to offset substantial injury to landowners in a rezoning case. . . . The evidence does not support nor did the trial judge find that a deplorable condition exists or would exist without the hillside ordinance.\textsuperscript{21}

This decision was upheld on appeal to the Arizona Supreme Court, which also ruled that damages were payable for a temporary taking while the offending regulations were in place. While the Corrigan decision is limited in application to Arizona and has come under severe criticism, it stands as a warning to local governments to proceed carefully in the area of protecting scenic views when restrictions effectively prohibit development on significant tracks of land.

**SCENIC EASEMENTS AND EMINENT DOMAIN**

Two important cases on the public use requirements related to scenic easements in eminent domain cases are Berman v. Parker\textsuperscript{22} and Kamrowski v. State.\textsuperscript{23} In Berman the U.S. Supreme Court sustained a congressional act authorizing urban redevelopment in the District of Columbia against constitutional attack, even though the statute authorized the taking by eminent domain of private property and the sale or lease thereof to other private persons for private rather than public uses (Cunningham 1968).

Although the Supreme Court in Berman used the term “police power” in its broadest sense, as constituting the totality of legislative power—including the power of eminent domain—rather than simply the power to regulate, many state courts have relied on the Berman dictum on aesthetic values in sustaining aesthetic zoning under the police power, as in the Denver Mountain View Ordinance case. Whether the Berman holding really supports “aesthetic regulation” or not, it seems clear that it does support the use of the eminent domain power to condemn land for aesthetic purposes. Since Hawaii Housing Authority v. Midkiff\textsuperscript{24} in 1984 the distinction between a public use under eminent domain and a public purpose under the police power is academic. In Midkiff, the Court held that the concepts are “coterminous” (also see Lewis 1985).

The Berman case did not, and could not, decide that

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\textsuperscript{17}548 U.S. 26 (1954).
\textsuperscript{18}Landmark Land Co. v. City and County of Denver 728 P.2d 1281, 1285 (Colo. 1986).
\textsuperscript{19}Id.
\textsuperscript{21}Id.
\textsuperscript{22}348 U.S. 26 (1954).
\textsuperscript{23}31 Wisc.2d 256, 142 N.W.2d 793 (1966).
\textsuperscript{24}467 U.S. 229 (1984).
the Fourteenth Amendment permits the exercise of state eminent domain powers for purposes that do not involve any "use by the public" in the narrow sense, or primarily for aesthetic purposes. The case did decide that the Fifth Amendment permits this when the Supreme Court applies different standards in dealing with an attack on state scenic easement enabling legislation based on the Fourteenth Amendment. It thus seems clear the Supreme Court will sustain state scenic easement-enabling legislation against Fourteenth Amendment attack based on the arguments that land made subject to scenic easement restrictions will not be available for use by the public, and that aesthetic purposes are not public purposes. The Berman opinion is viewed as a persuasive precedent by state courts in dealing with attacks on scenic easement enabling legislation grounded upon state constitutional provisions.

The Wisconsin Supreme Court in Kamrowski v. State specifically upheld the acquisition of scenic easements under the power of eminent domain. This case dealt with a legislative program in Wisconsin for the condemnation of scenic easements along the Mississippi River to preserve natural, undeveloped views for passing motorists. The condemned area would continue to be used for agricultural production but could not be used for more intensive purposes such as residential or commercial. The scenic easement program was challenged on the basis that "public enjoyment of the scenic beauty of certain land is not a public use of such land." The court held that aesthetics may provide the dominant objective for a condemnation proceeding, using support from an earlier case that had declared that "enjoyment of scenic beauty is a legal right." What is even more interesting is the court's definition of public use in a purely aesthetic vein:

The learned trial judge succinctly answered plaintiff's claim that occupancy by the public is essential in order to have public use by saying in the instant case, 'the occupancy is visual.' The enjoyment of the scenic beauty by the public which passes along the highway seems to be a direct use by the public of the rights in land which have been taken in the form of a scenic easement.

There are two possible lines of attack on the public use issue. First, following the Wisconsin court in Kamrowski, the courts could simply hold that the "enjoyment of the scenic beauty by the public which passes along the highway" is a direct use by the public of the rights in land that have been taken in the form of a scenic easement. Second, the state courts might rely on cases holding "public use" to mean simply public purpose, as the U.S. Supreme Court did in the Hawaii Housing Authority case.

Whatever the line of defense used, the authors are more interested in the clear logic in "public visual occupancy," which defines the public use related to the purpose of scenic easements and also nicely defines the public use question raised in Chapter 7. Also, public occupancy can be analytically determined by visibility analysis techniques that will be illustrated in the case study below.

Case Study: St. Lawrence River Scenic Access Study

The concept of "visual occupancy" prompted the author to study public enjoyment of views of the St. Lawrence River from the Seaway Trail (Figure 8.9) beginning in 1983 (see Smardon 1987 or Smardon et al. 1984). In New York State, Section 247 of the municipal law allows local jurisdictions to acquire scenic easements to preserve views and visual access. We wanted to know what views needed to be protected for the towns through which the Seaway Trail passed.

We used two basic evaluative criteria: the general quality of the view, and the amount of visual access to the river. These criteria were arranged within a management matrix, with the views with the highest quality and degree of visual access demanding the highest priority for protection. Since almost all views in this study extended over private land (key views from riverside access points extend from public lands), our ultimate concern was initiating appropriate management techniques. The towns involved in the study were concerned that we would find a lot of land in need of acquisition via scenic easements.

Documenting Visual Occupancy

Black-and-white photographs documented all views from the Seaway Trail to the St. Lawrence River for a 50-mile stretch of highway. Through detailed field notes, highway tenth-mile markers, compass, and standard angle of view (22.5 or 30 degrees) progressing from left to right, view beginnings and endings were precisely located, as well as width of angle and direction on 1-inch-equals-800-feet scale maps (See Figure 8.10). The photographs were enlarged to 5-by-7 inches and spliced together to create panoramas. Photographs were taken in late summer and mid-fall to show views from the same position on the roadside with and without leaves on the trees.

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30Id. at 511-12, 53 N.W.2d at 522.
Detailed notes, field measurements, photographs, and acetate jig allowed transposition of view locations to base maps, using either direct compass reading or compass-bearing method. By this method one could see the land area over which each view of the river extended (see Figure 8.11). After transferring this information to paper-copy maps delineating year-round and seasonal view sheds, a clear display method was developed that facilitated making copies of the base maps (see Figure 8.12).

Determined View Quality

The second step in the process was determining the relative quality of the 125 views along the Seaway Trail. This was done via visual preference testing. Two groups of residents, local residents and students, were asked to rate 20 black-and-white panoramas that were representative of the 125 views compiled. Once the 1 (low) to 10 (high) ratings were compiled for all 20 scenes for the two rating groups, scenes fell out into high, medium, and low visual quality categories.

The question then was why scenes were so rated. Another group was asked to determine specific negative and positive attributes of the original 20 rated scenes (Figure 8.13). The visual cues (Figure 8.14) used from this exercise plus the original quantitative ratings were used as guidance to rank the rest of the 125 views either high, medium, or low visual quality. These rankings were then applied to the mapped views already obtained from the visual documentation process. Thus, all views now had both visual access and visual quality mapped in documented form.

Results

After identifying the intersecting point of town boundaries and the Seaway Trail, the total length of road associated with each view was measured and noted for each town. These measurements were converted into equivalent miles to determine each town’s mileage total; the percentage of each town’s low-, moderate-, and high-ranked views; each town’s total miles of visual access; and the percentage relationships for each town.

Of the 43.8 miles of Seaway Trail in the first study area, 37.5 percent, or 16 miles of the highway, have visual access to the river. Of this portion, 8.3 percent (3.6 miles) were rated high; 21.5 percent (9.4 miles) were moderate; and 7.7 percent (3.4 miles) were low. Of the visually accessible road areas, the ratio of low-, moderate-, and high-quality views is approximately 1:3:1, respectively. We did not, but easily could have, calculated the land area for which scenic easements would need to be acquired. There was a lot less land area involved than some towns had feared, but two towns that had more visual access to the river did need more area protected.

Recommendations

Future planning and management decisions will have the greatest potential impact on moderate-quality views. These views may be enhanced in order to create high-quality views by changing land use character, removing certain distracting features, or managing vegetative growth. On the other hand, certain views could easily be degraded further. Detailed recommendations included:

- Use of scenic easements by the St. Lawrence—Eastern Ontario Commission (for whom we did the study) and local governments to ensure protection of high quality views in danger of imminent land use changes.
- Use of the New York State Environmental Quality Review Act and designation of high-quality views as scenic areas of statewide significance under Coastal Policy 24 to ensure protection by state and local government action.
- Development of an educational/interpretive program stressing the importance of scenic resources and the need for local governments to develop appropriate policy and legal tools to control adverse development.
- Development of overlay zoning and site review mechanisms to restrict encroachment from private development on high-quality view areas. Design guidelines could be developed for problematic land uses, such as trailer parks, vacation homes, and commercial development.

Since the study was completed in 1984 there has been some limited use of scenic easements, especially to protect island shoreline. We have studied another 50-mile segment of Seaway Trail—this time documenting the view from the water to the land via video—to help make recommendations for a green-line park within the St. Lawrence—Thousand Island area (Shannon et al. 1990).
FIGURE 8.10  Photo documentation process
FIGURE 8.10  (Continued) Photo documentation process
FIGURE 8.11  Map transfer process

Base Map Production

Data Sheet Information

Locate North on Base Map

Compass Jig

360 Compass Jig

PHOTO SERIES STRIP

Compass Bearing
FIGURE 8.11  (Continued) Map transfer process
FIGURE 8.12  (Continued) Sample base maps
FIGURE 8.13  Sample scenes for visual preference ratings
FIGURE 8.13 (Continued) Sample scenes for visual preference ratings
LAND USE CHARACTER

DOMINANT OR SUFFICIENT VISUAL APPEARANCE FOR WHICH LANDSCAPE IS BEING USED OR EXISTS NATURALLY, AND WHICH EFFECTS THE VIEW OF THE RIVER.

NATURAL MARSHLAND
(INCLUDES SWAMPS AND WETLANDS)
WITH MIRE VEGETATION AND THE PRESENCE OF OPEN WATER ADJACENT TO THE RIVER. USUALLY A LINEAR TRIBUTARY OF STANDING WATER WHICH PROVIDES VISUAL AND PHYSICAL ACCESS TO THE RIVER. THE PRESENCE OF MAN-MADE ELEMENTS IS MINIMAL. VISUAL ACCESS TO THE RIVER MAY OR MAY NOT BE PRESENT FROM THE VIEWER POSITION.

NATURAL BRUSH/WOODLAND
INCLUDES A MIXTURE OF CONIFEROUS AND DECIDUOUS VEGETATION TYPES FROM GRASSES AND LOW BUSHES TO SMALL TREES. THE PRESENCE OF MAN-MADE ELEMENTS AND MAINTAINED OPEN SPACE IS MINIMAL. SIGNIFICANT NATURAL FEATURES MAY ALSO BE ASSOCIATED SUCH AS VARYING TOPOGRAPHY AND ROCK OUTCROPS.

AGRICULTURE
CHARACTERISTIC VISUAL APPEARANCE ASSOCIATED WITH ACTIVELY CULTIVATED FARMING, GRazed PASTURES OR INACTIVE FARM LAND RETURNING TO BRUSHLAND OR MAINTAINED OPEN SPACE. THE PRESENCE OF SUPPLEMENTARY STRUCTURES SUCH AS BARNs, CYLs, FARM TOURED AND IRREGULATED CENTERFRONT LINEAGES AND SCENIC QUALITY.

MAINTAINED OPEN SPACE
USUALLY ASSOCIATED WITH RESIDENTIAL AND RECREATION-TYPE LAND USES. THE VISUAL LANDSCAPE APPEARANCE IS DOMINATED BY A LOW GROUND COVER (MAINTAINED) AND A FEW SMALL TREES. EXISTING NATURAL VEGETATION AND NEW HEDGEROWS FORM PLANTING ARRANGEMENTS BORDERING FORMER  PROPERTIES, AS WELL AS SCREEN AND DEFINE VIEWS OF THE RIVER FROM THE SCENIC TRACT.

FIGURE 8.14  (pages 116–120) Visual cues for diagnosis of land use character, edge character, amount of water visible, distance to water, viewer position, water feature characteristics, and length of view.
LAND USE CHARACTER

DOMINANT OR SAINTLY VISUAL APPEARANCE FOR WHICH THE LANDSCAPE IS BEING USED OR EXIST NATURALLY, AND WHICH EFFECTS THE VIEW OF THE RIVER.

RECREATIONAL (WATER-RELATED RECREATION USES)
- Maintenance, development

MAY INCLUDE: PUBLIC OR PRIVATE DOCKING FACILITIES, BOAT RAMPS, FISHING PIER, BEACHES AND PARKS. ASSOCIATED ELEMENTS MAY INCLUDE BOAT SALES AND SERVICE, CAFE, DECK, RESTROOM AND FOOD SERVICE FACILITIES.

RECREATIONAL (SEASONAL AND SHORT-TERM RECREATION-RELATED ACCOMMODATIONS)
- Maintenance, development

INCLUDES PUBLIC AND PRIVATE CAMPING, TRAILER PARKS, AND RECREATION VEHICLE FACILITIES. ASSOCIATED ELEMENTS MAY INCLUDE PARK OFFICE, PICNIC AREAS AND RESTROOM FACILITIES. SCENIC QUALITY IS INFLUENCED, AND MAY VARY WITH THE SEASONAL USAGE. CHARACTERISTIC OF THIS LAND USE, SIGNIFICANT AREAS OF MAINTAINED OPEN SPACE ARE GENERALLY ASSOCIATED WITH LAND USE.

RESIDENTIAL PERMANENT
- Maintenance, development

YEAR-ROUND RESIDENTIAL DEVELOPMENT INCLUDES TYPICAL SHINGLE, FARMHOUSE, TRADITIONAL-STYLE HOUSES, AND ASSOCIATED ELEMENTS. SIGNIFICANT AREAS OF MAINTAINED OPEN SPACE ARE ASSOCIATED WITH THIS LAND USE. MOST DEVELOPMENTS OF THIS TYPE TAKE ADVANTAGE OF RIVER VIEWS BY ORIENTING STRUCTURES IN A LINEAR ARRANGEMENT, PARALLEL TO THE RIVER AND THE SCENIC HIGHWAY.

RESIDENTIAL SEASONAL
- Maintenance, development

SECOND HOME TYPE DEVELOPMENT INCLUDING COTTAGES, CASINOS AND MOBILE HOME PARK COMMUNITIES. SIGNIFICANT AREAS OF MAINTAINED OPEN SPACE ASSOCIATED WITH THIS LAND USE. MOST DEVELOPMENT OF THIS TYPE ALSO TAKES ADVANTAGE OF RIVER VIEWS BY ORIENTING STRUCTURES IN A LINEAR ARRANGEMENT, PARALLEL TO THE RIVER AND THE SCENIC HIGHWAY.
EDGE CHARACTER

ENFRAMED NATURAL

ENFRAMED MIXED

SEGMENTED NATURAL

SEGMENTED MIXED

FILTERED BY VEG. (SEASONAL CONDITION)

DIFFERENCES IN SCENIC QUALITY FOR THE SAME LANDSCAPE CAN HAPPEN DUE TO SEASONAL VARIATION IN LANDSCAPE VEGETATION. PRIMARILY DECIDUOUS-TYPE VEGETATION ALONG THE LAND-RIVER EDGE. THIS CONDITION CAN INCREASE THE "AMOUNT OF WATER VISUAL." IN THE SCENE, AS WELL AS CREATE "NEW" RIVER VIEWS IN ADDITIONAL LOCATIONS FROM LATE FALL TO EARLY SPRING. LIKEWISE, "NEGATIVE" STRUCTURAL ELEMENTS, SCALPED FROM HOW IN THE SUMMER (LEAF-OUT) SEASON CAN BE EVEN MORE OBSCURE THROUGH THE SAME TREE BRANCHES DURING THE LEAF-IN CONDITION WHICH CAN NEGATIVELY AFFECT SCENIC QUALITY.
AMOUNT OF WATER VISIBLE

HIGH

MODERATE

LOW

DISTANCE TO WATER

FOREGROUND

MIDGROUND

BACKGROUND

THE FOREGROUND ZONE REPRESENTS THE AREA CLOSEST TO THE OBSERVER. THE BASIC FOREGROUND CHARACTERISTICS INCLUDE:
- A GREAT DEPTH OF FIELD; SEPARATION OF ELEMENTS
- DIAGNOSTIC DIMENSION, SCALE, SHAPE, PATTERN
- PROVIDES SENSE OF RELATIONSHIP BETWEEN VIEWER AND LANDSCAPE

THE MOST HOSTILE LANDSCAPE ZONE WHICH TEND TO DOMINATE THE VIEW. THE RELATIONSHIP BETWEEN ELEMENTS OF THE LANDSCAPE MAY BE SEEN. IN THIS ZONE THE SHAPE OF THE ELEMENTS ARE EMBRAZED, ALSO SHAPES AND PATTERNS ARE OBVIOUS.

THE DISTANT LANDSCAPE ZONE FORMS SIMPLE OUTLINE SHAPE AND HAS LITTLE SENSE OF SURFACE TEXTURE OR DETAIL. ONLY GENERAL PATTERNS STAND OUT.

DESCRIPTIONS THE PHYSICAL PROXIMITY OF THE VIEWER RELATIVE TO THE RIVER. THIS CAN BE DESCRIBED BY DIVIDING A LANDSCAPE INTO SEVERAL HORIZONS, A SERIES OF SECTIONS OF DISTANCE ZONES: FOREGROUND, MIDDLEGROUND, BACKGROUND.
**VIEWER POSITION**

Describes the location of the viewer relative to the river, particularly with regard to being at equal level, high above, or at some intermediate position above the river.

**SUPERIOR**
The superior position offers views down upon and over the river and landscape. It provides minimal view blocking and allows an opportunity to observe distant views and the landscape context. It might also create a sense of openness and expansiveness common to panoramic landscape views.

**SUPER/NORMAL**
This intermediate position represents the viewer's position between superior and normal. Eye level position relative to the river.

**NORMAL**
The normal position provides an eye line-of-sight with respect to the river or any associated water bodies. Landscape elements might effectively enclose, direct, or screen views of the river at this level.

**WATER FEATURE CHARACTERISTICS**

Water feature characteristics include those elements commonly associated with the natural formation, functional usage, recreational activities of the river. Characteristics include:

- Island formations
- Ramps, slaloms
- Highlands, sidewalks
- Recreational shoreline
- Bridges
- Viewing/dogging facilities

**LENGTH OF VIEW**

**PLAN VIEW**

<table>
<thead>
<tr>
<th>Duration of View</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>POINT</td>
<td>River visible from point location</td>
</tr>
<tr>
<td>SHORT</td>
<td>River visible for less than 2/10 mile</td>
</tr>
<tr>
<td>LONG</td>
<td>River visible for more than 2/10 mile</td>
</tr>
</tbody>
</table>
References
III
Federal and State Aesthetic Regulation

OVERVIEW

Chapters 9 through 14 will address specific aspects of aesthetics and legal issues: from a wilderness preservation context; a sensitive land management context; an aesthetic project review context; and a context of specialized concerns such as land-disturbing activities like mining, timber harvesting, and energy production. Parts I and II of this book have laid the foundation in terms of key legal concepts and aesthetic control from a community perspective. Part III has a more federal and state perspective and ties together key regulatory programs, litigation, and aesthetic control issues.