THE LEGAL LANDSCAPE
GUIDELINES FOR REGULATING ENVIRONMENTAL AND AESTHETIC QUALITY

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The purpose of this book quite simply is to present legally defensible mechanisms for maintaining and protecting aesthetic quality in the landscape, and to show how appropriate analyses of landscape character and values can be appropriately integrated into these legal mechanisms.

There has been a great deal of controversy over appropriate mechanisms for land-use control and/or project review which have had as their major or partial purpose protection or maintenance of landscape aesthetic quality. This is true for local land-use control as well as federal project/activity review. Seldom have courts and hearing officers been so confused or hesitant to engage such issues when asked to review decisions or process. Such actions are sometimes pushed to the Supreme Court because of alleged conflicts with the first, fifth, and fourteenth constitutional amendments.

Although there have been many law journal articles reviewing such cases, and some technical planning literature that reviews legal mechanisms for aesthetic land-use control, there has not been a major work that coalesces legal application, critical review of such, and appropriate baseline landscape analyses.

In December 1978 Smardon prepared a manuscript for the USDA Forest Services' Pacific Southwest Forest and Range Experiment Station in Berkeley, California entitled “Land And Aesthetics or When is the Pig in the Parlor? A Legal/Policy Overview of Legal Factors Influences on Visual Landscape Policy.” This unpublished report was intended to be an in-depth survey of legal factors consideration affecting visual resource management by federal agencies and was subsequently used and referred to by resource professionals in the USDA Forest Service, USDI Bureau of Land Management, and USDA Soil Conservation Service. A few excerpts of this manuscript appeared as papers or were published, but the bulk of the manuscript has never been published.

The revision, updating, and broadening of this manuscript to a format suitable for a book was our objective. Another objective was to broaden the scope of the book specifically to include aesthetic control issues that relate to local governments' jurisdiction, as well as state and federal agencies.

The audience for such a book includes both legal and resource professionals, e.g., environmental and land-use lawyers, planners, landscape architects, and architects; planning para-professionals such as planning board members of local governments; agency personnel from federal and state agencies; and students and professors of planning, landscape architecture, architecture, historic preservation, and environmental law. Lastly, but most importantly, the book can serve as a reference and handbook for citizens who care about maintaining and preserving their own community landscape.

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I
Introduction
and Constraints