



New Hampshire
Office of Energy & Planning

PRESERVATION OF SCENIC AREAS AND VIEWSHEDS

Technical Bulletin 10

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Introduction

The natural landscape and visual quality of a community provide it with a sense of pride and individuality, setting it apart from other places. Special vistas, views and scenic areas contribute significantly to the quality of life, add to the value of property, and enhance the desirability and livability of a community. People respond positively to places that are visually appealing because an extremely high percent of human sensory experience is visual. When development occurs on or in the vicinity of a well-recognized landmark or outstanding view, it can have a dramatic affect upon whether people still consider that place special.

Driving is a leading form of passive outdoor recreation; therefore, special views and vistas from roadways add dramatically to the recreation experience of the driving public. For many individuals, the lake, river, hillside or mountaintop view, as observed from an automobile window, may provide the most satisfying and best recreational experience they will have. A roadway turnoff that provides an opportunity to leave the automobile for a short period of relaxation, a picnic, or a short walk, substantially increases that experience. For these reasons it is important to identify and protect from development those vistas, views and scenic areas that are considered significant to the residents of a community.

In this context, protecting views may be considered an extension of the concept of promoting the general health and welfare of a community and region. This enables municipalities, under their police powers, to develop standards and to impose reasonable restrictions on development within a designated view protection area. Such restrictions can be

carried out through the adoption of zoning ordinances under RSA 674:16 which regulate building height, lot coverage, density, set backs and open space.

Municipalities are also authorized to adopt innovative land use controls under RSA 674:21 that may include, but are not limited to: cluster development, performance standards, the purchase of development rights, and donations. Local officials are encouraged to use these innovative land use control techniques as a means of assisting in implementing the goals and objectives of their community, including the preservation of scenic resources and special views.

A Process for Protecting and Saving Views

Residents of a community have thoughts and ideas about what makes their surroundings and community visually important and attractive. They generally enjoy views of open fields, farm settings, mountain vistas, water views and tree shaded streets, qualities that make people feel positive about their environment. The challenge is to preserve these visual attributes while working them into our future development. The following suggests a process for:

- Identifying scenic areas in a community
- Providing a clear statement in the master plan about goals for preservation of scenic values, and
- Incorporating specific policies into the zoning ordinance, subdivision regulations and site plan review regulations that will enhance the aesthetic qualities

that define the community and make it unique.

Visual Resource Committee

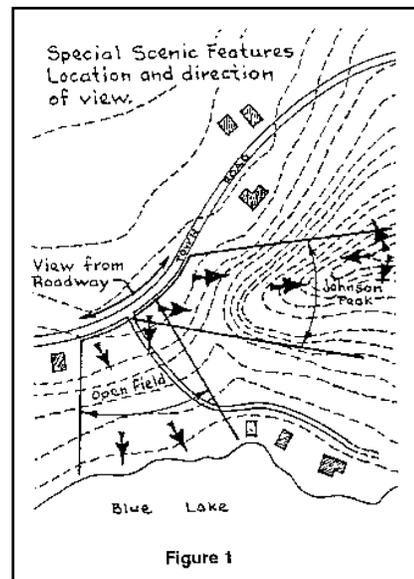
The planning board should enlist broad-based citizen participation to help in selecting and inventorying the community's visual resources. The Visual Resource Committee should have broad representation including the conservation commission, the business community, and property owners, to discuss and identify what is visually important to the townspeople and what contributes most to their town's identity.

The Committee may wish to poll or survey the community to assist in determining what sites are considered worthy of protection. Citizens should be asked to prioritize each visual resource they identify. This will help in identifying sites, establish a ranking or priority list, and will help to establish public support for the protection of views and visual resources as a legitimate community goal. The Community Cornerstone Project (See Technical Bulletin #8) offers a process to strengthen citizen participation and community involvement.

Visual Resource Inventory

A visual survey that includes photo documentation and written description is an excellent method to identify views, vista's, open space, and related visual resources. The description should explain why each site is unique, identify the distinguishing aesthetic characteristics that contribute to the visual quality or experience of the viewer, define the general size of the site, ownership, access and/or point from which the best view is available, and discuss appropriate land use considerations including potential threats. The survey results can then be keyed to a map (Figure 1) and incorporated into the municipality's master plan along with stated goals and objectives relative to visual resources and aesthetic protection. This information will be the basis for developing the standards and regulations for protecting the identified views.

Once the initial survey is completed and sites mapped, the Visual Resource Committee should analyze the results and develop a more detailed inventory, focusing on those special visual features which are ranked highest and for which it wishes to seek protection. The development of an evaluation form with a ranking or rating system will prove helpful in carrying out this task. In addition to the items previously mentioned, the form should include a detailed description of the views or special feature, its distinguishing attributes, and an evaluation of significance, visibility and importance in terms of the number of people who see it on a daily basis. A particular view may not be as scenic as some others, but because it is located on a heavily traveled road, its protection may be considered more crucial and receive a higher ranking.



The Local Master Plan

The purpose of a master plan is to guide community growth and development and shall include, among other things, adequate provisions for traffic, the promotion of safety from fire and other damages, adequate provision for light and air, and the promotion of good civic design (RSA 674:3). The content of the plan may vary from community to community but generally will include analysis, recommendation and proposals for the

community's population, economy, housing, transportation, community facilities and land use (RSA 674:2-3). A general statement, including Community Goals, Policies and Objectives that provide direction for implementation of the master plan, must be developed and included in the plan.

A common goal of locally adopted master plans is to protect the municipality's scenic quality and rural character. However, most do not identify the special places that need protection and there are few, if any, recommendations for how this might be done. If a community wishes to protect its visual resources, it is extremely important to incorporate a statement in its master plan that expresses its goals and objectives for preservation of identified scenic values, natural beauty, and aesthetic qualities.

In addition to establishing goals, policies and objectives for view preservation, the master plan should incorporate a separate section or chapter addressing aesthetic concerns and visual resources. This section should include an inventory and a description of the types of scenic areas considered worthy of protection. This information will help in developing criteria and regulations designed to protect the views and scenic areas that have been identified. This section of the master plan should also provide general design considerations recommended for use in these special scenic areas along with specific recommendations and guidelines to protect them.

Generally the landscape that provides pleasant scenery and visual quality is privately owned. Nevertheless, the public "uses" the landscape visually, and it may well be a key element of the community or regional economy. Therefore, protecting these recognized resources provides a significant and tangible benefit.

Visual Resources Protection Techniques

Communities may rely on a combination of regulatory techniques to protect open space, scenic vistas along roadways, and to assure proper use of its visual and natural resources. Among them are height, bulk, and use restrictions, lot coverage, sign control, and landscaping regulations. Like other land use controls, regulations to protect visual resources should be developed and implemented carefully and cautiously and with a clear public purpose.

A primary objective of such a regulation is to provide the ability to see something, such as a panorama of a lake or mountains, without interference. Such regulations should focus on the special or distinctive views as outlined and described in the master plan, those that characteristically contribute to the visual quality of the community and area and provide a sense of place and image.

Protection of views can be accomplished by adopting or amending present zoning and site plan review regulations. Where view protection has been stated as a public goal, it should be included in the zoning ordinance section that describes the purpose of the ordinance, and should spell out the procedures to accomplish the stated purpose and goals.

Regulations should not be so exacting that they prohibit any development from occurring on a property or deny other reasonable land uses. A taking would arise if an ordinance is developed and then applied in such a way that a property owner is prevented from making any reasonable economically viable use of his/her property and where the regulations are more restrictive than required to further the public purpose.

While a person's private property rights must be acknowledged, it should be recognized that no person has the privilege to use his land in such a way to adversely affect or impact his neighbors or the general public.

Cluster development is an excellent design technique to protect special features, views and the visual quality of a site while respecting the owner's ability to use the land. Aesthetics based land use regulations might encourage cluster development to permit the concentration of buildings in specific areas on a site to preserve open space or perhaps a unique area. The ordinance can be designed essentially to maintain the allowable development density in the zoning district.

A planning board may encourage permanent maintenance of vistas and open space by allowing a density bonus either through a cluster provision or by permitting greater density on selected portions of the lot in exchange for protecting an identified view. It may also permit a reduction in side yard and setback requirements when the reduction would result in maintaining or providing a better view from the roadway or adjoining property without impairing the view from other nearby properties.

For example, setback requirements may preserve views along a street or roadway; side yard requirements and minimum distance between buildings can be used to maintain a particular view. Height restrictions and sign placement regulations may prevent view obstruction as well. Regulations should allow some flexibility in siting of buildings and other structures in view protection areas.

Overlay Zoning District

One approach to accomplish the above objectives is to establish an Overlay View Protection District (OVPD). Such a district can detail special restrictions and standards tailored to the specific areas identified for view protection. The overlay district would be superimposed upon existing zoning districts without changing the applicability of the underlying district regulations. The regulations for an overlay district are described separately from those of the underlying zoning district,

both in the text of the zoning ordinance and on a map where the boundaries of the overlay district are shown.

View Protection Standards

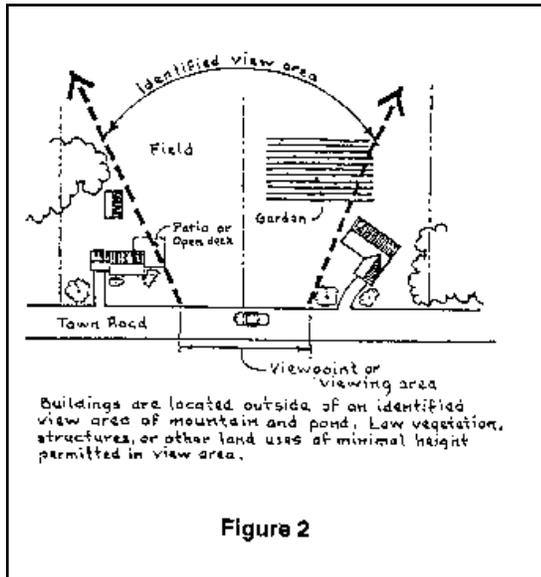
The standards that must be met to build or develop land within an OVPD should be designed to address the effects of permitted land uses on the view being protected. These standards would apply only within the view protection district and should regulate the following: size, bulk, location and height of a structure; setbacks; side yards; open space; and the location of fences and signs. Size and location of on-site landscaping should also be considered. While view protection standards may be more restrictive than those specified for the underlying district, they must provide flexibility of design and use in a particular project. Standards that are too specific will limit the freedom of architects and designers. Conversely, they should not be so overly general that planning board members vote their personal preference without regulatory guidance.

All development in the OVPD may be subject to review by the planning board and a special use permit issued by the planning board or other official as set forth in district regulations and in accordance with RSA 674:21, II. The planning board should determine if the proposed development structure(s)' location and height meets the objectives of the zoning ordinance.

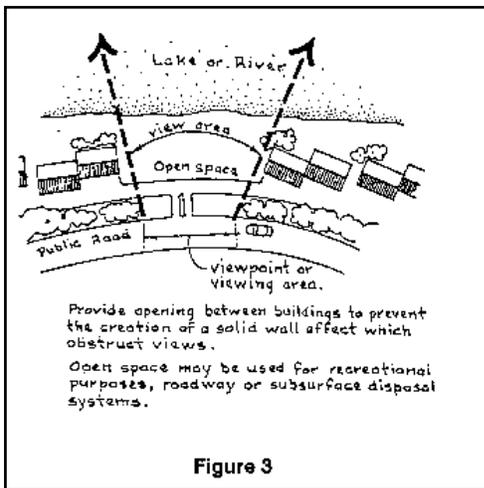
Siting of Buildings

The preceding discussion suggests that the most direct way of achieving view protection objectives is through the control of building location, spacing (see Figure 2), bulk, and height. When protecting eye level or ground level views such as a lake view, or on the downhill side from a viewpoint such as an overlook, it is important to control building bulk and spacing as well as the placement of fences, shrubs, and trees. In this setting, even

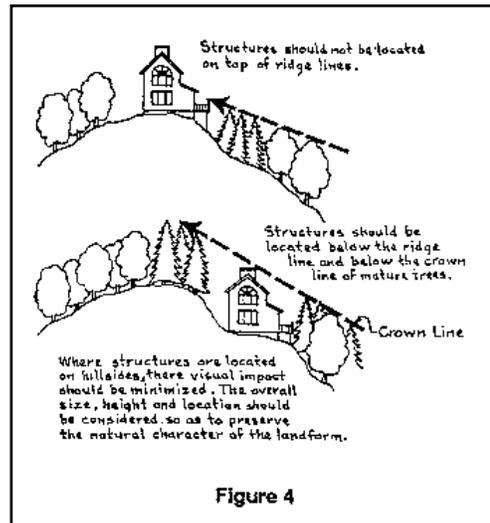
one story buildings erected within the view area or in a long solid mass can block a view.



In such settings, buildings should be placed in such a manner that they do not obstruct the view to be preserved. Buildings along a shoreline, placed so as to create a solid wall effect, not only obstruct views of the lake but also adversely affect the shoreline's visual quality from the lake (see Figure 3). To assure that this will not happen, the planning board should require the designer, developer or builder to stake out the outline of all proposed buildings and landscaping for on-site inspection so that the view blockage will be made clear before the plan is approved or a building permit issued.



Where construction is to be located on a hillside within a designated view area, the visual impact should be minimized. The overall size, height, and location should be considered so that structures will not be placed on top of ridge lines but should be located below the ridge top and below the crown line of mature trees (see Figure 4). All hillside grading should be kept to a minimum. Siting and location of roads, buildings and other structures should be designed to minimize grading and to retain existing landform and characteristics in a natural state. A building project should utilize the natural grade rather than graded building pads. Terrace or step-type building pads that substantially alter the natural contours should not be permitted.



Maximum Building Height

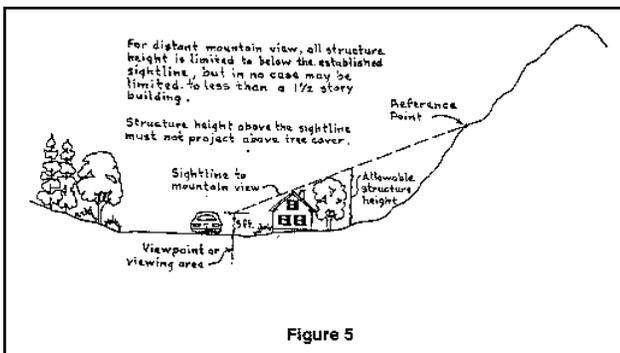
To protect the aesthetic quality of a hillside or the upper portion of a mountain within a designated view protection area from unsightly development that protrudes above the treetops, there is considerable advantage in placing a height limitation on structures.

Buildings might be limited to a height of no more than 30 feet (measured from the average ground elevation at the building walls) where they would obstruct views or project above the tree cover. Heights exceeding this limit might be permitted where it can be shown that such

construction will not interfere with the scenic attractiveness of the view to be protected.

While maximum building height might be restricted in absolute terms, buildings may be restricted to a height determined relative to the object or view to be protected. An example might be to protect the uphill view of a mountaintop or mountain ridge from a given viewpoint or from a designated scenic section along a highway. This technique would involve establishing a sightline where the maximum height of any building constructed within the designated view area would not intrude above the sightline. In no case should buildings be restricted to less than 1½ story in height.

The sightline is established from a viewpoint or highway right-of-way to a reference point or elevation on the view or hillside to be protected (see Figure 5). This approach may present some technical difficulties in its administration. The precise location of a sightline is open to dispute, particularly where the topographic slopes run in various directions.



Buffer or Screen Area

Hillside building sites should retain sufficient tree cover to screen structures from view. Natural vegetation (trees and shrubs) or a landscaped buffer should be maintained or established on the downhill side of the mountain slope between the viewpoint area and the building. This screening is intended to block visual contact with the structure from a view area and to create a strong impression of uninterrupted green area.

Administration of View Protection Ordinance

While a view protection ordinance may control the height and location of structures, the only way to assure that a view is properly protected is through good site planning and administrative review of each individual site to be developed. The planning board must work closely with applicants during the review and approval process, encouraging them to design their proposal in a manner which has minimum impact upon views identified in the master plan and zoning ordinance. Through a special permitting process for all structures located within an Overlay View Protection District, adequate attention can be given to the location and spacing of structures to assure that identified views will not be impaired.

The responsibility for developing an OVPD is in the hands of the planning board. Once enacted, the board will have appreciable control in its implementation through site plan review and the special permit approval process. However, the administration of the regulation and its standards is the responsibility of the building official, code enforcement officer or other individuals or groups as may be designated by the town.

The OVPD and regulations will be most able to withstand legal challenge if tied to the community's master plan and the zoning ordinance map. Supporting documentation in the master plan to the greatest extent possible, with the development of land use standards that are reasonable and are not unnecessarily burdensome on a landowner, is most essential. Generally, a standard is sufficiently defined if a reasonable person can understand what is requested by the standard and a court can use the standard to evaluate whether a particular administrative decision is arbitrary or capricious, given the standard and the reason stated for the administrative decision.

View Protection Through Other Techniques

Preservation and protection of scenic areas through regulatory techniques may be more realistic than outright purchase of land, which is rarely possible because of the lack of sufficient municipal funding. Nevertheless, acquisition of a land parcel to protect critical forest, open space, special views, aesthetic, or natural resource lands may be the most positive method of view protection. Acquisition may be the only option available where regulations or other protection solutions are not fully supported by the community or when key properties become available.

In addition to municipal ownership, land to protect views and scenic areas may be acquired and/or held by another agency with conservation and protection interests. These include the Society for the Protection of New Hampshire Forests, the Audubon Society of New Hampshire or some other local or state land trusts.

Land Gift

Receiving a gift of land to protect identified scenic areas is the simplest and least expensive acquisition. This provides the conservation- or preservation-minded landowner the assurance of the land's long-term protection without the responsibility of ownership. Such a gift also removes that portion of the property from the donor's tax liability and at the same time may provide the donor some federal income tax benefit.

Deed Restrictions/Conservation Easements

Generally these techniques are used to restrict future development or other activity on a specific property or identified portion of the property. The deed restrictions are recorded with the property deed in the town and county records. The owner may choose to do this voluntarily for personal reasons, or may do so

when offered compensation by the town or a nonprofit organization.

Conservation easements are appropriate in areas where the objectives are to ensure that development does not alter a particular view, especially when only a portion of the property is to be protected. The terms of the easement can prevent detrimental land use that would block the view while the land remains in private ownership and the landowner continues to enjoy the other rights and duties associated with the land, including the payment of property taxes which may be reduced.

It is important that a responsible party such as the local conservation commission or other local or state agency such as the Society for the Protection of New Hampshire Forests or the Audubon Society of New Hampshire be identified to monitor the land on which the conservation easement is held to ensure compliance with the terms of the easement and to enforce those terms.

Conservation easements may be negotiated and obtained during the development design review process, during review of a subdivision or cluster development for example. Conservation easements will cost less than outright acquisition; how much less will depend on what rights remain with the land. Conservation easements are authorized by RSA 477:45-48.

Purchase of Development Rights

The purchase or donation of development rights through a scenic easement is another technique that may be used for preserving scenic areas and views. Here a landowner continues to own the property but gives up the right to develop. In such cases, the property owner agrees not to build structures within the viewshed easement area and to limit use of the land to gardening, fields or other agricultural or similar natural uses, or to whatever use the agreement says in order to achieve the long term protection and goals of the community and land owner.

Land Use Negotiation

When outright purchase of land or a conservation easement is not possible, or when the regulatory authority may be limited in its ability to protect or preserve a popular scenic area, the planning board may be able to negotiate with the landowner or developer to encourage preservation of that portion of the land that will protect a particular view or natural resource.

Land use negotiation means that local officials and the developer take time to communicate, to understand each other's goals and needs, and to consider imaginative alternative development solutions that may be satisfactory to both parties. When the needs of both parties are recognized, such negotiations will establish a working relationship between public officials and the private developer strong enough to make the project better than even the local regulations may have required.

It is important to begin the negotiation process in the early stages of the development plan review so that the goals and objectives of the master plan and the needs of the developer can both be met.

Selective Cutting

Municipalities should also consider a program of selective trimming and clearing roadside vegetation in order to maintain open views of scenic fields, hillsides, look-offs, and water frontage.

This Technical Bulletin is intended as a general guide and introduction to the procedures for protecting those scenic resources that make our communities special and unique.