

Chapter 15



The beauty of Ohio landscapes is an important economic asset for our state.

(Photo: Keep Ohio Beautiful.)

SCENIC PROTECTION

Background

What is Scenic Protection?

Scenic protection refers to a range of tools that are available to communities to encourage preservation and conservation of viewsheds of scenic beauty, usually as visible from roads or other public spaces and access points. These tools can take the form of scenic area designations, or can be regulatory, working like a setback to designate areas that must meet a certain set of standards. This section is focused on planning and zoning measures, but information is also included on resources for scenic byways and other tools.

How does Scenic Protection relate to Balanced Growth?

Scenic beauty, whether it is found in a farmland, natural, or historic area, is often taken for granted. Scenic quality has been shown to contribute greatly to economic development and tourism, property values, and quality of life. Scenic viewsheds, the areas that can be seen from public roads and other public spaces by travelers and visitors, are the key to scenic quality. In Ohio, there are many areas worthy of protection due to their importance to local economies and community character. Lake Erie, the Ohio River, our smaller lake and river resources, and scenic viewpoints from our state highways and local roads and viewpoints are important components of regional and community character and are assets for our future prosperity. It has been found that nature-based tourism is one of the most promising industries in terms of its potential economic benefit. For example, in a survey completed for the Lake Erie Quality Index, it was found that the

Scenic protection can drive economic development through tourism. Visitors made 23,800 trips to the Paul Bunyan Scenic Byway in Minnesota in 2010 and spent \$21.6 million in the area.

(Liechty, Schneider, and Tuck, 2010)

most popular coastal activity was scenic enjoyment of the lake. Ninety-nine percent of people surveyed stated that viewing the lake was an important and frequent pastime for them. This clearly indicates the strong need for preserving viewsheds in order to maintain quality of life in the region from both recreational and economic perspectives. The benefits attained from protecting viewsheds are not limited to scenic enjoyment and tourism, as scenic resources may also increase property values in the area. In addition, protecting viewsheds allows for reductions in the conversion of open space into developed areas. This may indirectly aid in improving water quality by maintaining the natural hydrology and flow characteristics of streams, tributaries, and wetlands.

How does Scenic Protection work ?

One of the most effective ways to protect and manage scenic areas is to develop a scenic protection regulation. Typically this is best done after a thorough and well-discussed comprehensive planning process that identifies areas of priority to the community for protection. Scenic protection regulations are usually based, like setback regulations, on permitted and prohibited uses within a designated distance from a road. In steep terrain areas, hilltops and hillsides may also be regulated to limit the height and bulk of structures visible from nearby roads. Usually the focus is on visual impacts to key roads in the community that are used by tourists and visitors, as well as local residents, or that serve important cultural and recreational resources.

Other tools that can contribute to scenic protection in a community include scenic easements (conservation easements with a scenic purpose), targeted capital improvements (such as tree planting or undergrounding of utility wires), and designation of scenic rivers and scenic byways. Policies identifying the applicability of these tools can be incorporated into comprehensive plans, and implemented through capital plans, and public-private partnerships with nonprofit organizations. See the resources for more information.

Issues

- **Planning is important.** Designation of scenic areas is an important component of comprehensive planning and visual assessments. Local comprehensive planning sets the context for public policy. Visual preference studies and surveys done as part of comprehensive planning provide a way for community members to identify and prioritize community scenic assets that should be protected. Public policy for stewardship and protection of high priority scenic areas can be implemented through capital improvements, scenic designations, and regulations.

People are willing to pay for a scenic view. Increasing the amount of scenic land within view of a property by 10% can be correlated with an increase in property values of between \$5,500 and \$7,400.

(Sander and Polasky 2009)

- **Scenic easements can be a useful tool for high priority preservation that is supportable by presidents and private landowners.** Similar to a conservation easement, a scenic easement is an overlay on private property that is negotiated between a third party easement holder and the property owner. An agreed-upon restriction is placed on the property, with an associated monetary value, and the easement is held by a third party such as a local government or nonprofit organization. The property owner may be compensated for the monetary value of the easement, or may choose to donate the easement, with associated tax benefits. See the resources for more information.

- **Designation of scenic rivers is another method to enhance protection.** The Ohio Scenic Rivers Act, passed in 1968, was the nation's first scenic rivers legislation. The act set standards for the designation of scenic rivers, and established a program to help protect these high quality assets for the long term. The act requires the appointment of a citizen's advisory council for each designated river, which acts in an advisory capacity, along with ODNR staff. There are currently fourteen scenic rivers in Ohio. The Scenic Rivers Act designates three types of Scenic Rivers, each with its own criteria: wild, scenic and recreational. Communities within a watershed, nonprofit organizations, state and local government may work together to apply for designation of a river or stream. Under the Scenic Rivers Act, review of public development projects such as roads and utilities on sites adjacent to designated rivers is heightened; and technical assistance and education is offered to landowners. The Ohio Scenic Rivers Act specifically provides that a private owner's property rights cannot be restricted by any political subdivision based on a wild, scenic, or recreational river declaration, and that such a declaration does not expand or abridge the regulatory authority of any governmental agency or political subdivision over the area. The restrictions imposed by a wild, scenic, or recreational river declaration are applicable to political subdivisions on public development projects, as noted above. See the ODNR web page on Scenic River designations, noted in Resources below. The program also provides monitoring and biological survey study to assist with maintaining stream health and the scenic quality of the river. For more information, see the Resources.

- **Designation of scenic byways provides another tool for scenic protection.** The National Scenic Byway Program is part of the U.S. Department of Transportation, Federal Highway Administration. Established under the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, the program is a collaborative effort established to help recognize, preserve and enhance selected roads throughout the United States. The Ohio Department of Transportation's Scenic Byway Program is a grassroots effort designed to increase the focus on Ohio's history and intrinsic resources. The intent of this program is to



Ohio & Erie Canal Lock 30 North,
Peninsula
(photo: Kevin Payravi, Wikimedia Commons)

preserve, enhance and protect the states intrinsic resources for visitors and residents of the state by designation of highway, roads and streets as scenic byway corridors. Through partnerships with communities, organizations and government agencies we can combine our efforts to promote travel, recreation and to enhance and provide stewardship for the features that distinguish the designated byways. With this collaboration it is hoped that we can establish a balance between conservation and land use that heightens the experience of traveling designated byways while improving the communities quality of life. Ohio offers 27 Scenic Byways, 5 which have received a National designation. Byways are established by identifying intrinsic qualities that represent Ohio's outstanding resources that are deserving of recognition. Because these resources are the foundation of the program, criteria is established to ensure their preservation, protection, and enhancement.

- **Historic landscapes can have significant scenic quality and are often protected via historic protection tools.** See the Historic Protection chapter for more information.

- **Communities should address the following points when developing scenic protection regulations.**

- **Ways that scenic quality is affected:** Scenic areas can be affected by the removal of key visual elements, such as historic structures and landscapes, and also by the addition of incompatible visual elements, such as billboards and inappropriately designed structures. In areas where scenic quality has been determined to be of high priority, design guidelines can help to address these concerns.

- **The setback approach:** A typical scenic protection regulation defines the boundaries of the protected area, and specifies permitted and prohibited uses within those boundaries. This works very much like a setback regulation, and includes the same basic requirements including variance criteria and procedures, grandfathering, and monitoring for compliance

- **Public education and involvement:** Designation of the boundaries and rules for uses are of key importance to property owners. An education program that helps property owners to understand the benefits to their property values of the regulation is important to gain support for the regulation.

- **Review Board:** Similar to a historic protection regulation, a reviewing body is usually established which reviews proposed development changes and structures within the protected area, and makes recommendations to the planning commission about

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Protecting Views with Conservation Development

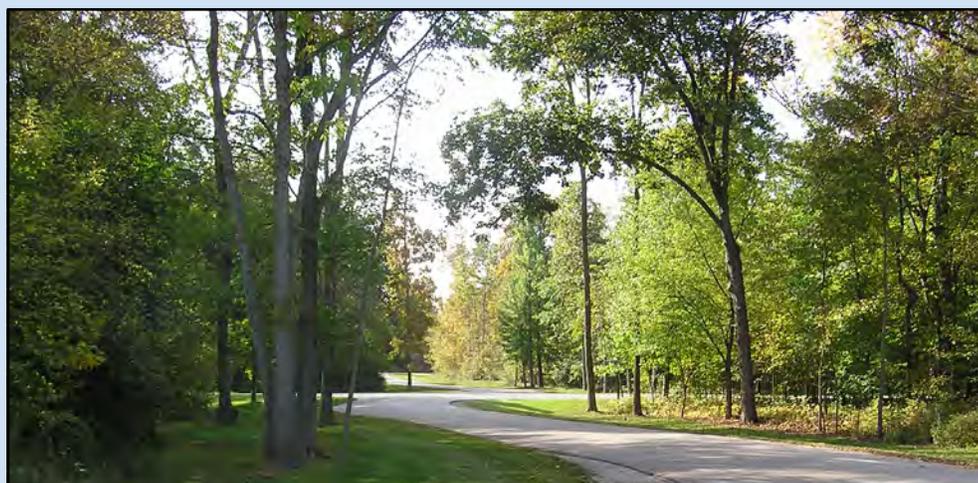
Conservation Development can offer the opportunity to meet the development potential of a site, while protecting critical open space, including scenic areas along public roads. The photo to the right is the entry to Hidden Creek in Jefferson, Ohio, which protects the view from the road.

(photo: Kirby Date)



A new road in Hidden Creek.

(photo: Kirby Date)



Rolling Meadows Development entry drive in Hiram, Ohio.

(photo: Kirby Date)





*Field of Gray-headed Coneflowers along the "Prairie Grass Trail" from Cedarville, Ohio to London, Ohio
(Photo: John E. Silvius)*

project approval.

• **Major utility elements.** In Ohio there are specific rules governing the role of local government in the siting and appearance of major utility elements such as cell phone towers, wind and solar facilities, and drilling/mining facilities. Refer to organizations in the resources for more information.

• **Township authority:** In Ohio the case law is not clear about the authority of townships to engage in scenic protection regulations. Townships should consult with their solicitor and/or County Prosecutor for specific recommendations.

Recommendations

1. It is recommended that communities consider scenic issues in comprehensive planning. Specific viewsheds of high priority to the community should be identified, and the case made for protection from an economic and quality of life standpoint. Specific scenic assets should be designated, and appropriate tools for protection of each asset should be identified.
2. Communities should be aware of existing scenic byways and scenic river designations within their jurisdictions, and understand the associated stewardship programs that may be opportunities for collaboration. Consideration may be given to new designations for deserving rivers and byways in the planning area.
3. Designated scenic resource areas can be protected by adopted zoning provisions to address scenic area preservation. Included in such a regulation should be criteria for design review setbacks, enforcement, and penalties.
4. In addition to design review criteria, detailed design guidelines for structures, landscapes, and other elements of the built environment should be developed as appropriate to communicate visual priorities to residents, businesses and developers.
5. Communities may want to consult with their local land trusts, historic society, and landowners about the potential for scenic easements to protect high priority scenic areas and districts.
6. Communities should be aware of opportunities to provide input on the siting and design of major utility and mining facilities, and foster positive and early communication. Scenic resource provisions in the community comprehensive plan will assist in communicating community priorities to the parties involved.

Example Regulations

The following example regulations are intended to provide an example of how to establish protection of scenic areas and viewsheds. The first model on visual management corridors is from Wisconsin and is a framework to help direct development and redevelopment activities along highways. The main focus of this model is on design guidelines. Provided within the discussion are several examples of types of development that can be used to maintain environmental sensitivity and aesthetic compatibility. The second model given is a billboard regulation from Missouri. It details permitted and prohibited uses, along with general design and construction standards. Examples are also included from Philipstown, NY and Redmond, Washington.

To our knowledge, scenic protection laws have not yet been implemented in Ohio, and we have included examples from other states as a result. Communities exploring the use of scenic protection restrictions should be especially careful to work with their legal advisor and/or law director to ensure that their code language is in compliance with Ohio state laws. In particular, provisions for regulation of signage within a scenic corridor vary widely from state to state, and require expert legal advice as the constitutional right of free speech can be affected if the code is not worded carefully.

Scenic Missouri Model:

<http://scenicmo.org/public/resources/modelbillboardord.pdf>

Philipstown, NY (Chapter 175 Section 15 Scenic Protection and Overlay District):

<http://philipstown.com/government/building-department/town-code>

Redmond, WA (Shoreline Master Program):

<http://www.zoningplus.com/regs/redmond/codetext.aspx?mode=2&xRef=1&index=1993>

Wisconsin, Sheboygan County model: <http://www.balancedgrowth.ohio.gov/Portals/0/BLLUP/Toolkit/scenic1.pdf>

Refer to the Example Regulations Matrix for a comparison of these codes. <http://balancedgrowth.ohio.gov/BestLocalLandUsePractices/BestLocalLandUsePracticeChapters.aspx#Matrices> (Under "Matrices" choose " Scenic Protection".)

Use of the Guidance and Example Regulations

This example guidance and/or regulations **should never be adopted without careful legal review** to assure that they are adapted to fit the authority and needs of the specific governmental body. They may need to be adapted for use by the specific type of local government and must be independently evaluated against potentially applicable federal or state law. **The law director/ solicitor, county prosecutor or other appropriate qualified legal counsel should always be consulted prior to adoption of any enforceable measures** based upon this guidance document to insure compliance and consistency with any applicable state and federal law, and to consider potential legal ramifications and liability in the implementation of the laws or rules to be adopted. Questions about the models and guidance can be directed to the Ohio Balanced Growth Program.

Resources

Community Planning Program, Cleveland State University, 2121 Euclid Avenue, UR 26B, Cleveland, OH 44115-2214; Tel: 216-687-5477; Web: <http://urban.csuohio.edu/cpp/>

Ohio Department of Transportation, Division of Planning, Scenic Byway Program, <http://www.dot.state.oh.us/OhioByways/Pages/default.aspx>

Ohio Department of Natural Resources, Division of Watercraft, Ohio Scenic Rivers Program <http://watercraft.ohiodnr.gov/scenicrivers>

Scenic America; Tel: 202-543-6200; Web: <http://www.scenic.org/>

Scenic Ohio; Tel; 330-865-9715; Web: <http://www.scenicohio.org>

National Trust for Historic Preservation, Tel: 800-944-6847; Web: <http://www.preservationnation.org/>

For additional references cited, see the Bibliography in the Appendix, <http://balancedgrowth.ohio.gov/BestLocalLandUsePractices/BestLocalLandUsePracticeChapters.aspx>

Sun setting over the Hocking River along the Ohio University bike path at the west end of Athens, Ohio.
(Photo: athensohioviewshed.org)