Out of the Closet and Onto the Coast: Aesthetic Zoning as Visual Resource Management

David J.L. Blatt

The North Carolina Supreme Court has recently endorsed the view that aesthetics alone is a proper basis for the exercise of police power in coastal communities. Still, if certain regulatory precautions are not taken, it is possible that important scenic resources will remain unprotected. This investigation provides a theoretical defense for broadening and systematizing the application of aesthetic zoning techniques.

David J.L. Blatt is a Master's candidate in the Department of City and Regional Planning at the University of North Carolina at Chapel Hill, majoring in Land Use and Environmental Planning. He received a Juris Doctorate Degree from Yale University in 1985.

The North Carolina coast is a special place. Its distinctive regional character is a source of pride and identity for local residents and for the entire state. The coast contains unique economic, cultural, historic, environmental, and recreational resources of tremendous value, and these values have received legislative recognition under the Coastal Area Management Act of 1974. However, CAMA's two-pronged approach of state supervision of local land use plans, with designation of Areas of Environmental Concern for direct state regulation, could allow some important coastal values to fall through the regulatory cracks.

For coastal residents and others concerned with protecting the unique scenic resources of the coast, two very different disciplines offer guidance: the legal doctrines of aesthetic zoning, and the visual resource and analysis techniques of the landscape architecture and environmental design professions. Aesthetic zoning concepts, paradigmatically applied to restrict junkyards and billboards, have a long and well-recognized pedigree, and the North Carolina Supreme Court has recently endorsed the majority view that aesthetics alone is a proper basis for the exercise of the police power. Though aesthetic zoning is now established legal doctrine in North Carolina as in most other places, it remains problematic, undermined by the lack of a consistent theoretical foundation.

Visual resource management and landscape analysis, by contrast, are long on theory but short on operationalization and implementation. Many studies have attempted to design inventory and classification systems for scenic resources, to create indices of visual quality, and to discern public preferences for different types of landscapes. None of the classification systems or visual assessment methods have gained universal acceptance, but the essential concept of treating scenic landscapes as visual public resources can serve as the missing foundation for a systematic application of aesthetic zoning techniques.

The Aesthetic Zoning Concept

Though aesthetic zoning is now out of the closet in North Carolina and accepted in principle by most state courts, it may not yet be out of the woods. Legal commentators have continued to criticize the theoretical foundations of aesthetic zoning, sometimes for the same reasons raised by the early courts: the incoherence of aesthetics as a substantive due process goal of the police power, the subjectivity and lack of procedural due process in regulatory standards, and potential conflicts with First Amendment rights of free expression.[1]

Though "aesthetics" is recognized as a valid regulatory objective, caselaw merely states, but does not satisfactorily explain, the public's substantive

due process interest in beauty. "Proponents of aesthetic zoning have difficulty defining the precise nature of the interest they are protecting and the evil they are seeking to address. Lacking such a definition they have tended to defend aesthetic zoning ordinances on the grounds that aesthetic regulations help preserve property values, promote tourism, and prevent destruction of interesting neighborhoods, historic sites, and scenic areas."[2] The elusive nature of the harm aesthetic zoning aimed to put right was a major reason why aesthetics had difficulty establishing its constitutionality in the first place.[3] Unlike the physical, tangible nuisances and externalities which originally justified zoning regulation, visually unattractive development has no palpable ill effect on the community, but is solely a matter of perception (social or individual). Consequently, aesthetic zoning advocates must fall back on arguments that aesthetic surroundings, like art, are valuable for their own sake and need no corollary justification.[4]

Courts seem to implicitly accept assertions that aesthetic regulation has a positive effect on the general welfare, thus begging the question of how legislatures can define the public interest in aesthetics and how far the police power can go in regulating visual appearance. An easy answer is that the public aesthetic interest might be supplied simply by the preferences of the public, as enacted by the legislature—a sort of "reasonable man" standard of community aesthetic consensus. Junkyards and billboards are the best examples, since everyone but their owners finds them distasteful, but serious questions arise when there is not a substantial degree of social consensus.[5]

A more compelling justification for regulating the visual environment has been suggested by Professor John Costonis, who explains at length that aesthetic zoning (like historic preservation) is not really aesthetic at all.[6] The traditional approach to aesthetic zoning, which he terms the "visual beauty" rationale, is bankrupt as a constitutional justification for visual regulation. Costonis instead suggests hat aesthetic regulation is often implicitly, and should be openly, rooted in "community stability-identity" considerations.[7] According to this theory, the features of the visual environment convey both cognitive and emotional meanings to the community, based on the functional and nonfunctional associations of the visual features.[8] "By virtue of its semiotic properties, the environment also plays a socially integrative and, hence, identity-nurturing role. . .therefore, the environment is a visual commons impregnated with meanings and associations that fulfill individual and group needs for identity confirmation."[9]

In other words, visual resources are not valuable as a source of beauty—concepts of beauty and ugliness are superfluous—but as a source of community character and values which define a home, a neighborhood, a region. Planners and environmental designers have long known that the environment affects behavior, for instance that street and building configuration can discourage crime.[10] Accordingly, billboards and junkyards do not generate hostility simply because they are ugly, or even because of their uses (functional associations), but because they convey the message (in a nonfunctional association) that the surrounding neighborhood is seedy, cheap, and unhealthy. The stability-identity rationale also explains opposition to attractive but incongruous modern architecture, and the preservation of historic but architecturally unpleasant buildings.[11]

stability-identity considerations

Furthermore, the frivolity and subjectivity arguments applied to the visual beauty form of aesthetic zoning are practically neutralized in the community identity context. Preserving community identity, character, and stability is a significant if sometimes elusive goal, pregnant with implications for individual mental well-being and community behavior patterns. Consequently, when visual resources can be identified as important to a community's character and self-image, a local government would be fully justified on substantive due process grounds in regulating to protect these visual resources. Secondly, since the visual environment by definition reflects community character and identity, there will necessarily be some consensus on what buildings, views, and landscapes ought to be preserved, though the precise elements of visual identity mix may be difficult to articulate in words or in legal classifications.[12] Consequently, it should be possible to articulate concrete regulatory standards rationally related to the goal of community identity.

visual resources as a source of community character

In practice, the visual beauty and stability-identity rationales are often commingled as alternate justifications, but community character is a distinct concept, based upon a public good rather than a nuisance/externality theory of the police power regulation. Community identity zoning seeks to conserve the visual environment as a public resource and to protect a common heritage, rather than to restrict the unpleasant, ugly side effects of private land use. Even by itself, the stability-identity

Waterfront view protection.

rationale is by no means purely theoretical; there are many cases in which justifications of community character and quality of life have been articulated as "corollary" to aesthetic values, so that "aesthetics" has become a surrogate for community character factors, just as property values, health and safety, and tourism were considered surrogates for aesthetic factors. If the community stability-identity rationale is a valid justification for the exercise of the police power when disguised behind the visual beauty banner of aesthetic regulation, community character is more emphatically constitutional when openly proclaimed.

problems

Though the community stability-identity rationale is more logically satisfying than the visual beauty approach, Professor Costonis still sees serious problems with this form of aesthetic regulation. Defining the nature of community character as applied to individual visual features will still be difficult, and the process of definition includes risks that visual regulation will be used to advance the narrow interests of community elites or will infringe on First Amendment rights of free expression. But Costonis' analysis of aesthetic regulation does not consider how the community character and identity rationale applies to a natural landscape like the North Carolina coast. In the coastal context, the landscape architecture and design techniques of visual resource management can answer the criticisms of aesthetic zoning and provide a theoretically sound justification for regulating the visual environment in the public interest.

Visual Resource Management and Impact Assessment

The systematic study of visual and scenic resources, though enjoying many literary antecedents such as Thoreau and Aldo Leopold,[13] began to take shape with the growth of the modern environmental movement in the 1960s. At that time, many people conceptualized the natural environment in aesthetic or amenity terms, and many environmental issues and controversies focused on preserving specific scenic landscapes. The National Environmental Policy Act of 1969 (NEPA), with its ringing resolve to "assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings,"[14] was a frequent inspiration and provided a mandate to include visual impact assessment in the environmental impact analysis process applied to managing government lands and projects.[15]

Now that environmentalism and environmental concerns have matured to focus primarily on human health, ecological sustainability, and other functional, non-amenity problems, the landscape architecture and environmental design professions have refined the techniques and concepts of visual resource management as a separate field.[16] The visual analysis disciplines have not yielded any standard method to measure or evaluate scenic beauty, though several researchers have tried. But the insights of visual resource management, like the community character/cultural stability rationale form of aesthetic zoning, are more sophisticated than a simple definition of what is beautiful and what is ugly. Instead, visual resource management provides a perspective on how to regulate a public resource—the coastal landscape—by answering important questions about the visual components of community character and identity. Broadly speaking, we can divide visual resource management methods into three categories: an inventory and classification of the visual features of a landscape, surveys of landscape perceptions and preferences among the population, and visual impact assessments of future development alternatives.

Coastal Visual Resource Regulation

Aesthetic zoning has always been concerned with regulating the privately built environment, while visual resource management is oriented to planning and management of public landscapes. Aesthetic zoning, even when explicitly directed at preserving community character and identity, has practical and

theoretical problems in describing what community character is and in isolating the visual elements which comprise it. Just as the courts which first upheld aesthetic zoning on the basis of untested "corollary justifications" of property values, tourism, and glittering generalities about community aesthetic sensibilities, modern courts which recognize the community character/identity impetus behind visual regulation must still rely on purely speculative assertions that the measure in question will actually enhance community character and identity. By using the insights of visual resource management, legislators who enact visual control measures and courts which review them no longer need make uninformed assumptions. Visual resource inventories, assessments of citizens' preferences and perceptions, and visual impact assessment provide systematic methods to identify and safeguard the particular visual features which create a community identity.

Visual resource management techniques, for their part, often seem to exist in a vacuum of purely academic interest, or in consultants' plans which are never implemented. Much work in the field has revolved around the continuing refinement of assessment, survey, and simulation techniques without following through on any concrete implementation. If visual resource management ever aspires to have a significant impact on the effect of private development on the coast or any other landscape, it must operate through the strong arm and long reach of the police power.

Granting the general usefulness of landscape analysis in police power regulation, it may appear that the real utility of visual resource management methods is in urban architectural controls and neighborhood preservation, the current frontiers of aesthetic zoning. At first blush visual resource management seems to add no dimensions to regulation of the natural environment, especially the coastal area, which already has a well-established regulatory regime. In response, this paper argues that visual resource management has a place on the coast for two basic reasons. First, specific visual regulation is necessary in areas like the North Carolina coast because the existing environmentally-oriented regulatory system is inadequate to protect specifically visual resources; secondly, it is the coast's visual resources which are the prime ingredient of the region's social, economic, and cultural values.

The first proposition means that preservation of scenic landscape resources is not necessarily subsumed under environmental protection. Of course, much environmental legislation does include an amenity-aesthetic perspective, and this thread has been woven into the fabric of coastal legislation from NEPA to the Coastal Zone Management Act. But aside from local sign ordinances and historic districts, there is no specific visual landscape regulation in the coastal area.

The basic framework of CAMA does contain provisions which might serve as the basis for scenic landscape regulation. The section defining state-regulated Areas of Environmental Concern (AEC) states that AECs may include "fragile or historic areas, and other areas containing environmental or natural resources of more than local significance, where uncontrolled or incompatible development could result in major or irreversible damage to important historic, cultural, scientific, or scenic values or natural systems."[17] However, the regulations implementing this section do not directly address "scenic values." Title 15.07H .0500 of the North Carolina Administrative Code defines Natural and Cultural Resource AECs to include coastal complex natural areas, unique coastal geologic formations, significant coastal archeological resources, and significant coastal historic architectural resources.[18] These categories might, but need not necessarily include areas of purely visual appeal; in any case, only one AEC in this category, an archeological site, has been designated.[19]

state-regulated Areas of Environmental Concern

Under the use standards for all natural/cultural AECs, no development permits may be granted unless the development is found to cause "no major or irreversible damage to the stated values of a particular resource," including, inter alia, "Development shall be consistent with the aesthetic values of a resource as identified by the local government and citizenry."[20] As the Hatteras Island study suggests, the landscape values and perceptions of locals and outsiders may differ, so it is rather bizarre that local residents should define the aesthetic values of a scenic resource which must, by statutory definition, be of extralocal significance. This peculiar contradiction indicates that little if any thought has been devoted to the systematic regulation of visual resources.

systematic study of scenic resources

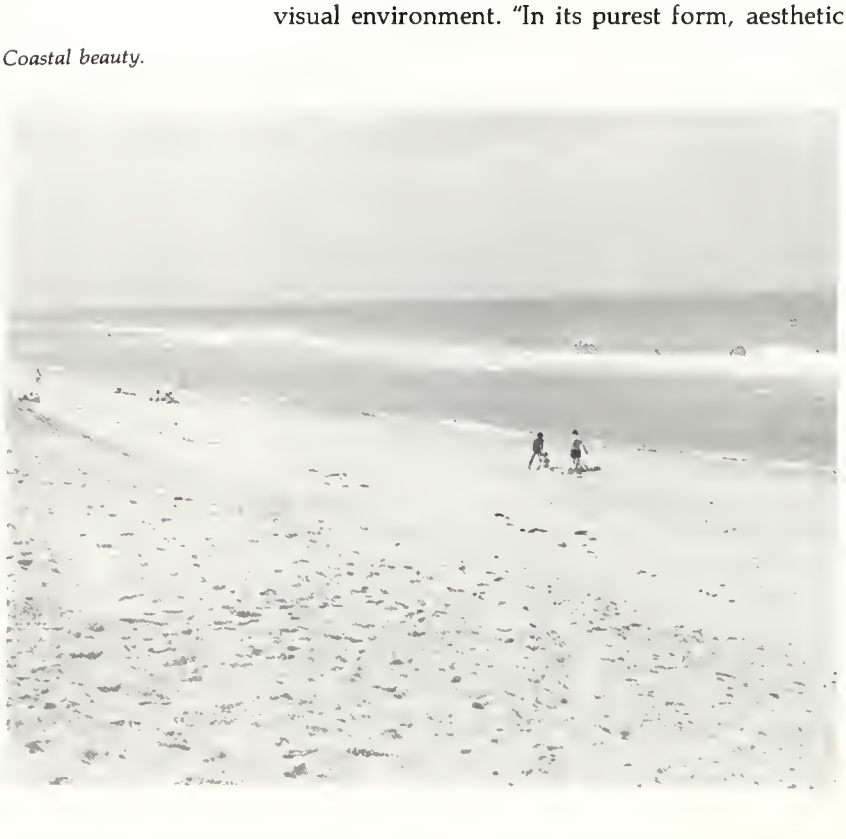
Despite the lack of regulations specifically tailored to scenic landscapes, it is also possible that CAMA's other regulatory provisions, especially those aimed at safeguarding ecological processes and at mitigating the effects of natural hazards, might have a cumulative side effect of protecting visual resources

as well. Since the scenic values of the coast are predominantly natural, a rough visual resources management strategy would simply be to prevent development in scenic areas. The policy prescriptions for several other types of AECs – to preserve the ecological integrity of wetlands, barrier islands, estuaries, and beach systems, or to protect life and property in natural hazard areas, for instance – also involve restricting development. Consequently, coastal visual resources might be protected as an unintended "corollary benefit" of preserving a natural site for non-visual reasons.

Separate treatment for visual regulation is necessary for two reasons. First, environmental features which serve important ecological functions may not be perceived as aesthetically or visually appealing. Wetlands, with their pleasing environmental connotations of diversity and fertility, were formerly described as swamps, with rather different connotations. In Zube and McLaughlin's study of the attitudes of Virgin Islanders, the residents' perceptions of what was beautiful generally reflected environmental resources of ecological value, with the notable exceptions of salt ponds, which were seen as ugly yet fulfilled important wildlife habitat functions.[21]

Conversely, and more importantly, ecological factors do not completely dictate the appearance of the visual environment. "In its purest form, aesthetic regulation is called into being by the nonfunctional association of resources. . .Nonaesthetic land use and environmental regulation in its purest form deals with a resource's functions and its functional associations."[22] The functional preservation of natural systems for habitat preservation, ecological protection, or hazard mitigation can set outer bounds on the quantity or level of coastal development, but only visual impact regulation can affect the form, visual quality, and appearance of development. Environmental regulations aimed at the functions of ecosystems will not do the whole job. If a site's carrying capacity can support a certain intensity of development in terms of dwelling units per acre or number of recreational visits, any environmental controls on the functional associations of development will not affect the shape and placement of buildings, the obstruction of views, the architectural congruity of the buildings with their surroundings, or the screening of intrusive and objectionable elements.

Coastal beauty.



Both visual and ecological aspects of the coastal environment deserve to be considered on their own merits, and unless the separate importance of visual resources to community character and identity is recognized, it may well undercut the political and legal status of environmental protection. For many years environmentalism labored under the burden of its early association with nonfunctional, outdoorsy aesthetic and amenity perspectives, but it is now widely recognized that environmental issues are far from being luxuries. They concern essential, functional natural systems which provide life-support services. If coastal advocates and residents cannot articulate a legal rationale for opposing development which would be visually intrusive, impair their sense of community, and dilute their cultural identity, they may have no alternative but to distort functional ecologically-oriented regulations in order to find a cognizable legal basis for their position.[23]

People should be able to justify protecting the visual character of the coast directly, without resorting to disingenuous arguments about storm hazards or fragile ecosystems, thereby devaluing the hard-won gains of environmental regulation. Such a subterfuge would be reminiscent of the early days of aesthetic zoning, when billboards were cited as depreciating property values, impairing traffic safety, and encouraging vice and vagrancy simply to justify legal protections of the visual integrity of neighborhoods.

A visual regulatory approach is needed for the North Carolina coast because the nonfunctional associations of coastal visual resources are actually more important than functional associations to many people. The average North Carolinian, unless a fisherman, sailor, or marine biologist, is unlikely to mention biological productivity or water systems management when speaking of the coast. Instead, the identity and character of the coast—save for the sound, smell, and recreational possibilities of the ocean—reside in the vistas of unbroken horizons, of dunes and shores showing the ceaseless energy and dramatic contrast of the boundary between land and water. The imprint of man on the coast, too, reflects the presence of the sea. Fishing villages, piers, lighthouses, docks, and boardwalks, also signify the visual identity of the coast. It is because we see these things that we think of the coast as a distinct and special region, and a place where people go to escape the constrictions of their daily lives against the background of endless sea and sky.

It is obvious that views of the ocean, sounds, beaches, and dunes are major tourist attractions and economic resources. Beachfront hotel rooms, cottages, and condominiums command premium prices, while towns with charming and historic waterfronts are tourist meccas. Moreover, the economic value of non-visual resources—recreational facilities, restaurants and hotels, fishing piers, bathing and surfing beaches—is considerably enhanced by the overall scenic character of the surrounding landscape. It is the way the landscape looks that draws people to the coast and creates its distinctive milieu, and it is the definable visual resources of this environment which should be protected through visual impact regulation.

Once we accept that specifically visual regulation has a place on the coast, the next issue is why it should take the form of police power zoning instead of its traditional applications in planning and the management of government properties and projects. Simply put, if the coastal visual environment is to be protected, regulation is essential. State and local governments can influence development patterns in many ways, but they can only influence development's appearance through visual regulation or publicly-owned projects. Aside from existing state and federal parklands, where the natural landscape is largely preserved, the public sector on the North Carolina coast does not dominate the landscape as the federal government does in many western states where many visual resource management techniques have been applied.[24] Instead, the danger to coastal community character and identity comes from private-sector development pressures, which will continue to be considerable even under the CAMA regulatory constraints. Police power regulation, or some form of aesthetic zoning, is the only possible means to control the visual form of private development on a community-wide scale. Thus, the regulatory challenge is to integrate new development into the existing visual environment of the coast without adulterating the special qualities that attracted development in the first place.

visual resource management

Coastal visual resource management should use the police power also because visual impact regulation now has a solid legal foundation. The statutory mandate of CAMA, combined with the North Carolina aesthetic zoning caselaw, furnishes the ingredients which can be assembled into a coherent rationale for regulating the visual resources of coastal communities. The first place to start for developing visual impact regulation is not the aesthetic zoning landmark of **State v. Jones**, however, but the historic preservation approach of **A-S-P Associates**.

Jones, which established a flexible, case-by-case balancing test to determine the validity of aesthetic zoning, is unfortunately an example of the confused "visual beauty" approach, with all the lurking problems of deciding why and how to regulate the beautiful. For instance, the **Jones** opinion expressed approval of cases in other jurisdictions which treated junkyard regulation as a matter of beauty vs. ugliness, based on "modern societal aesthetic considerations such as concern for environmental protection, control of pollution, and prevention of unsightliness."[25] By contrast, the "preservation of the character and integrity of the community, and promotion of the comfort, happiness, and emotional stability of area residents," were only "corollary benefits."[26]

By retaining the traditional conception of visual regulation as a matter of aesthetic sensibility and civic beauty, **Jones** fundamentally misconstrues the nature of visual impact regulation. Though its result represents the modern majority rule, **Jones**'s rationale is exactly backwards. Community character and identity are the real raisons d'être of visual regulation, while "aesthetics" in terms of beauty and ugliness is a misleading surrogate. Junkyards are not restricted because they are ugly or even functionally harmful, but because the semiotic values of their nonfunctional associations are negative—they make people feel bad about their neighborhood. The same

motivations are at work in restrictions on mobile homes, billboards, and other common targets of aesthetic zoning.

historic preservation

Visual resource regulation in North Carolina finds a better analogy in the historic district statute in A-S-P Associates, which presents a systematic justification for controlling the appearance of development. In A-S-P, substantive due process was satisfied by accepting the "educational, cultural, and economic values" of community stability and identity as proper goals of the police power.[27] Procedural due process was satisfied by the application of definite, recognized exterior appearance standards by an expert review board; the ordinance did not try to define beauty or impose an abstract aesthetic standard, but regulated visual appearance by reference to the existing visual context. Because the historic district regulations were only concerned with exterior visual appearance, and established a standard of congruity with identifiable elements of the recognized Victorian style, the ordinance was found rationally related to the approved goal.[28]

The historic district analogy may already be applied in a less-than-historic context, with special appearance controls aimed at preserving the visual character of a community.[29] Statutory support can be found in N.C.G.S. 160A-451 et seq., which allows counties and municipalities to create advisory appearance commissions "to promote programs of general community beautification" and make plans and studies of the visual resources of the community.[30] Chapel Hill has taken a lead role in exploiting the quasi-historic visual regulation approach, having employed restrictive appearance districts, sign ordinances, and entranceway plans to preserve its much-ballyhooed "Village Atmosphere" in the face of strong growth pressures. In places like Chapel Hill, the semiotics of the visual environment are a major part of the local quality of life, and comprise the essence of community identity.

applying the model to the coast

The historic district model, with community identity as its goal and definable contextual standards as means, applies **a fortiori** to the coast, where the natural character of the visual environment helps stifle the standard criticisms of aesthetic zoning. In terms of substantive due process, the context of coastal landscapes threatened by development defines both the need for police power visual regulation and the objectives of that regulation. The natural visual resources of the coastal area are universally appreciated and represent a basic consensus about identity-creating resources which should be protected. Since nature is the guide, potential charges of exclusivity and imposing elite aesthetic sensibilities, such as are sometimes leveled against Chapel Hill, will be defused. Moreover, governments will not have a carte blanche to enact any form of architectural control or development restriction in the name of preserving the visual identity of the coast. Nor can they retain arbitrary, standardless discretion to decide what forms of development are or are not consistent with the coastal character. Instead, visual resource management techniques create a rational nexus between community identity ends and police power means by explicating the links between specific landscape features and the resulting sense of place. Viewsheds and vistas of sea and shore serve as natural referents from which objective regulatory standards can be derived.

First Amendment problems are also alleviated because the coastal landscape is a pre-existing public resource, a "visual commons," not a forum for individual architectural expression. The visual forms of the urban built environment can arguably be considered a sort of architectural Speakers' Corner in which individual expression combines to create a community character. The value and character of the coastal landscape, by contrast, is predominantly natural. These landscape attributes comprise a public good which can be infinitely and indefinitely shared by viewers, but which is "consumed" by intrusive or incompatible development. Too many buildings trying to take advantage of ocean views can destroy the landscape for all—a true Tragedy of the Commons situation. Consequently, to the extent that building design and the visual form of development are protected expression at all, the non-speech aspects of coastal development far outweigh the First Amendment interests at stake.[31] Finally, the hackneyed "corollary benefits" of visual regulation—preserving property values and promoting tourism—are undeniably genuine in the coastal context, where the visual appeal of the landscape is the mainstay of the entire local economy.

The legal institutions which might be created to implement coastal visual controls depend on how the inventory classifies landscape resources, whether it emphasizes uniqueness or typicality. From a statewide perspective, almost all of the coastal landscape is unique, but in the context of the coastal region alone, much smaller and more discrete areas stand out as "of greater than local significance." Consequently, coastal visual resource management be-

comes a state versus local issue. On one hand, local government and residents have the most intimate knowledge and the largest stake in the identity- and character-creating features of the landscapes of their own communities, and their views should be respected as provided in the CAMA regulations. On the other hand, the North Carolina coast is a state and national resource, whose regional character provides a sense of place and fulfillment to many more people than the permanent residents. Many local governments and residents may be more sympathetic to (or be the same people as) real estate interests and more willing to pursue intensive development, and their views on the visual resources of the coast may not coincide with those of other North Carolinians.[32]

The tendency of local governments to take a parochial approach to a common resource, and their lack of expertise in planning and land use, are some of the reasons why the CAMA framework was originally enacted. Because CAMA has been fairly successful in balancing state-local tensions, and increasing local governments' awareness and capacity to deal with coastal planning issues, while protecting the broader public interests in coastal resources, visual resources management should also be able to fit under the CAMA umbrella. The statute itself provides sufficient authority, even a mandate, for protecting the scenic resources of the coast, but new implementing regulations are necessary to properly construct a visual impact regulatory program.

Like other coastal policies, visual resource management can be implemented through CAMA's dual approach of state-regulated AECs and state supervision of local coastal plans. First, the Natural/Cultural AEC regulations of 15 N.C. Admin. Code .07H.0500 should be amended to include a specific scenic or visual component, creating a scenic AEC within which major and minor development would be reviewed and permitted just like any other AEC. Scenic AECs should be designated as viewsheds, identifying vistas of and from capes, inlets, and marshes of particular quality and from state and national parks, wildlife sanctuaries, and other protected lands. All of the designated viewsheds would be of extralocal significance. State-determined standards must control the designation and management of landscapes of special quality; otherwise, allowing the visual context to be determined by "local government and citizenry" would subvert the notion of preserving the landscape resource for the larger public.

The use standards for scenic AECs should generally provide that no development will be permitted which substantially impairs the visual attributes of the landscape as determined by the Office of Coastal Management at the time of designation. This textual incongruity standard is much like existing AEC use standards and thus would be legally sufficient standing alone, but it could also be supplemented with quantitative measures of how many degrees of vision may be impaired, whether the development is visible from certain points, or whether visual access to the shore or other sights is compromised. For major development permit applications, OCM might require the full range of visual impact assessment techniques, such as before-and-after sketches, photos, or models, to further specify the effects of property development on particular visual resources. OCM should also develop in-house expertise in visual impact assessment, landscape evaluation, and perceptual and preference surveys in order to carry out its own scenic assessments and to give technical assistance to local governments.

visual resource management on the coast

Indeed, if coastal landscape protection is to succeed, local programs must play a vital role, just as with the other policies of CAMA. The coastal landscape is simply too vast for the state to regulate alone, and the proper state role in any case should be limited to those visual features which are of more than local significance. Moreover, as evidenced by waterfront historic districts and sign ordinances, many coastal communities seem quite willing to take regulatory steps to protect the visual symbols of character and identity. To spur further action, CAMA's local planning regulations at 15 N.C. Admin. Code .07B.0200 should be amended to require a visual resource management element to be included in local coastal plans. Local government authority to exercise their police powers for visual regulation comes from the result of **State v. Jones** and the rationale of **A-S-P Associates**.

organizing visual programs around the viewshed concept

Local visual programs should be based on their own landscape inventories, organized around the viewshed concept. Visual regulation ordinances could be enacted in the form of a viewshed overlay zone taken from a viewshed map and applied to points and paths of scenic significance, as identified by local residents. The precise jurisdictional boundaries of viewsheds are not as important as landscape architects think, because the regulatory requirements would be contextual performance standards and not burdensome specification requirements.

An Aesthetic Resource.

Applicants for development permits in the viewshed zone would be required to show a minimal impact on sight lines, views of dunes or beaches, forest background, or other visual features; in general, minimal visual intrusion. This can be accomplished either by scaling down buildings or clustering them with other development, or by screening fixtures with vegetation. Permit applicants should have latitude in devising methods to integrate development with the landscape, but they should also bear the burden of showing that their proposal would comply with the applicable visual standards.[33] Specifically, local visual impact regulations could include jurisdiction-wide height and bulk reductions, screening of intrusive development, underground utility lines, and architectural standards, making the entire community a protected visual resource area without having to provide a possibly disingenuous historical nexus. However, if a historic district already exists, the locality could easily integrate its visual regulations as part of the historic appearance controls. Also, beach access programs could begin to consider visual access as well as physical access to the shore.

Conclusion

As development pressures increase on the North Carolina coast, those who cherish the area will realize that the coastal landscape – its visual resources – deserves separate attention and protection if the special identity of the coastal region is to be preserved. When legislators take up this issue, they should avoid the temptation to turn to the orthodox aesthetic zoning doctrine embodied by **State v. Jones**. Instead, policymakers should realize that a pleasing appearance is not desirable for its own sake as an aesthetic experience, but because the visual environment can signify the character and identity of an area: the regulatory theory of **Costonis** and **A-S-P Associates**.

When trying to identify the nature and composition of the visual components of community character, the law should turn even farther away from its own time-worn, untested assumptions, and be guided instead by the design professions' techniques of visual resource management. Landscape inventories, perception and preference evaluations, and visual impact assessments indicate what is important in the coastal landscape, and by so doing can justify and illuminate the precise application of police power regulation to protect significant viewsheds and other ingredients of the coastal character.

Though mutually unfamiliar, law and landscape analysis can each supply the deficiencies of the other discipline. Aesthetic zoning law needs a theory to rationally determine how and where to regulate

visual resources, and visual resource management needs a concrete regulatory application in order to affect the overall appearance of private development. More importantly, joining aesthetic zoning and visual resource management would not only help preserve the priceless visual riches of the North Carolina coastal landscape, but would set an example for other places. The coast is not the only region of particular visual quality, and North Carolina is only one of many states which embraces the validity of aesthetic zoning. Visual regulation might begin to protect the character and identity of mountain ridges, river valleys, and other special places across the country, including the urban historic districts which first pointed the way. By fusing aesthetic zoning with visual resource management, North Carolina can take pride not only in a matchless coastal landscape, but also in a method of protecting it. □

NOTES

1. Costonis, supra n.2; Rowlett, supra n.6; Ziegler, supra n.7; Note, Aesthetic Regulation and the First Amendment, 3 Va. J. Nata. Res. L. 237 (1984); Note, **State v. Jones**: Aesthetic Regulation – From Junkyards to Residences? 61 N.C. L. Rev. 942 (1983).
2. Rohan, supra n.2 at 16-33-4 (citation omitted).
3. Costonis, supra n.2 at 413-8.
4. Note, Beyond the Eye of the Beholder, supra n.21 at 953.
5. Ziegler, supra n.7; Note, Aesthetic Regulation: **State v. Jones**, 14 N.C. Cent, L. Rev. 239, 246 (1984).
6. Costonis, supra n.2.
7. Another commentator, Edward Ziegler, refers to this rationale as the "derivative human values" theory. Ziegler, supra n.7; Rathkopf, **The Law of Zoning and Planning**, §14.02(6).
8. Costonis, supra n.2 at 392.
9. Costonis, supra n.2 at 418-9 (emphasis in original).
10. S. Greenberg & W. Rohe, Neighborhood Design and Crime: A Test of Two Perspectives, 50 J. Am. Planning Assn. 48 (1984).
11. Costonis, supra n.2 at 420-24.
12. At least without the visual resource management techniques discussed.
13. R. Litton, Descriptive Approaches to Landscape Analysis, in report of National Conference on Applied Techniques of Analysis and Management of the Visual Resource, Incline Village, Nevada, April 23-25, 1979, at 78-9. This conference was a significant milestone in the development of the visual resource management field. R. Smardon & J. Felleman, The Quiet Revolution in Visual Resource Management: A View from the Coast, 9 Coastal Zone Mgmt. J. 211, 213 (1982).
14. §101(b)(2).
15. Note, Beyond the Eye of the Beholder, supra n.2 at 1457; S. Scauman, On A Clear Day in Ogunquit, Maine, 9 Coastal Zone Mgmt. J. 313 (1982); R. Andrews, Landscape Values in Public Decisions, Report of Conference, supra n.40 at 686; K. Craik & N. Feimer, Setting Technical Standards for Visual Assessment Procedures, Report of Conference, supra n.40 at 93; L. Ortolano, **Environmental Planning and Decision Making** (New York: John Wiley & Sons 1984) at 305; E. Zube & K. Craik, Indices of Perceived Coastal Quality, 11 Coastal Zone '78 1008 (1978); E. Keller & J. Bedford, Research Design to Evaluate Scenic Resources in North Carolina, N.C. Office of State Planning (1974) at 1. 16 Smardon & Felleman, supra n.40; Ortolano, supra n.42.
16. Fischman, Visual Impact Assessment: A Review of the Methodologies and Literature as Applied to the North Carolina Coastal Zone, Center for Urban and Regional Studies, UNC-CH (Jan. 1986). This paper could hardly have been written without the assistance of Gail Fischman in making available the sources from her study. The reader is urged to consult her paper for a more detailed discussion and review of the visual resource management literature.
17. N.C.G.S. §113A-113(b)(4).
18. 15 N.C. Admin. Code §.07H.0504.
19. Telephone conversation with Robin Smith, Office of Coastal Management 8/4/86. The site is Permuda Island, designated at 15 N.C. Admin. Code §.07H.509(e).
20. 15 N.C. Admin. Code §.07H.050(1)(c).
21. Zube & McLaughlin, supra n.58 at 369-70; see also Andrews, supra n.40 at 688.
22. Costonis, supra n.2 at 429.
23. In addition, environmentalists may be wary of weakening their position by advocating protection of mostly-scenic resources. See Ris, supra n.53, at 307.
24. Andrews, supra n.40; Boster, supra n.45.
25. 305 N.C. at 529-30, 290 S.E.2d at 680.
26. 305 N.C. at 530, 290 S.E.2d at 681.
27. 298 N.C. at 216, 258 S.E.2d at 450.
28. See Note, Beyond the Eye of the Beholder, supra n.2 at 1452-6.
29. Note, Aesthetic Regulation, supra n.25 at 253-4.
30. N.C.G.S. §160A-452.
31. Alternatively, coastal landscape regulation could be seen as a content-neutral time, place, and manner regulation on a regional scale; restricting all forms of incompatible development but only within coastal viewsheds.
32. See Hegenbarth & Shaw, supra n.64.
33. It should be noted that the appearance commissions authorized by N.C.G.S. §160A-451 would probably not be able to assume the permit review functions directly, since **State v. Jones** forbids aesthetic regulation to be delegated to bodies without statutory police power authority. 305 N.C. at 351, 290 S.E.2d at 681. Consequently, the town council or other governing body might want to use a visual advisory commission, with or without professional qualifications for membership. It is unlikely that many coastal communities have any residents qualified in landscape planning and design, pointing up the need for OCM expertise and assistance.