



Executive Director's Recommendation

Commission Meeting: September 12, 2013

PROJECT
Height Act Study

Washington, DC

NCPC FILE NUMBER

6886

SUBMITTED BY

Staff of the National Capital Planning
Commission

PROPOSED ACTION

Authorization to release preliminary
findings and evaluation for public
comment

REVIEW AUTHORITY

40 U.S.C. § 8711 (e) (2)

ACTION ITEM TYPE

Staff Presentation

PROJECT SUMMARY

This Executive Director's Recommendation (EDR) includes preliminary findings and an evaluation related to federal interests and the 1910 Height of Buildings Act (Height Act). This EDR reflects the federal portion of the "Height Master Plan," which NCPC is jointly conducting with the District of Columbia. The House Committee on Oversight and Government Reform requested a joint study in October 2012. The federal perspectives outlined in this EDR are documented in a separate report, which will be forwarded to the Commission under separate cover. Staff requests that the Commission release the preliminary findings, evaluation, and report related to federal interests for a 30-day public comment period.

RECOMMENDATION

The Commission:

Requests authorization to release preliminary findings and evaluation for public comment.

PROJECT REVIEW TIMELINE

Previous actions	None
Remaining actions (anticipated)	<ul style="list-style-type: none">- Findings are available for 30 day public comment ending October 14, 2013.- Special Commission Meeting to accept public testimony (October 2, 2013).- Approval of final recommendations (November 7, 2013).

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| | <ul style="list-style-type: none">- Transmittal to the U.S. House Committee on Oversight and Government Reform (November). |
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09/10/13

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I. PROJECT SUMMARY

For more than a century, the federal Height of Buildings Act of 1910 (“Height Act”) has shaped Washington’s unmistakable skyline. It is a skyline not dominated by corporate towers, but a cityscape that reinforces symbolic civic spaces and structures. The physical urban form of this purpose-built capital city reflects many democratic ideals. The Height Act has protected the setting and views to and from the National Mall, the institutions of our democracy, and our national memorials and parks. It also contributes to a street-level urban design character that includes broad sunlit streets, well-defined, consistent street walls, and carefully framed parks and memorials.

The law is simple, equitable, and has distributed development to all parts of the city rather than concentrating growth to a single high-rise cluster. It contributes to a stable and predictable real estate development climate. While the Height Act provides a maximum cap on building height in Washington, the District of Columbia establishes local requirements that further control height and design. Local zoning is often more restrictive than the Height Act.

In response to an October 3, 2012 request from the U.S. House Committee on Oversight and Government Reform, NCPC and the District of Columbia undertook technical studies and public outreach to “examine the extent to which the Height of Buildings Act of 1910 continues to serve federal and local interests, and how changes to the law could affect the future of the city.”¹ The Committee noted the following in its introduction:

“The character of Washington’s historic L’Enfant City – particularly the Monumental Core – establishes the city’s iconic image as our capital. Any changes to the Height of Buildings Act that affect the historic L’Enfant City should be carefully studied to ensure that the iconic, horizontal skyline and the visual preeminence of the U.S. Capitol and related national monuments are retained.”

The Committee also encouraged:

“...the exploration of strategic changes to the law in those areas outside the L’Enfant City that support local economic development goals while taking into account the impact on federal interests, compatibility to the surrounding neighborhoods, national security concerns, input from local residents, and other related factors...”

Through this direction, the Congressional request articulates the important federal stewardship responsibility to protect the symbolic and cultural significance of the nation’s capital for all Americans, as well as the importance of a thriving, economically stable city.

To reflect Congressional guidance on the importance of protecting these national resources, the District and NCPC mutually agreed to the following principles to guide the Height Master Plan:

¹ See letter from Committee Chairman Darrell Issa, dated October 3, 2012 in Appendix A.

- Ensure the prominence of federal landmarks and monuments by preserving their views and setting
- Maintain the horizontality of the monumental city skyline; and
- Minimize negative impacts to significant historic resources, including the L'Enfant Plan.²

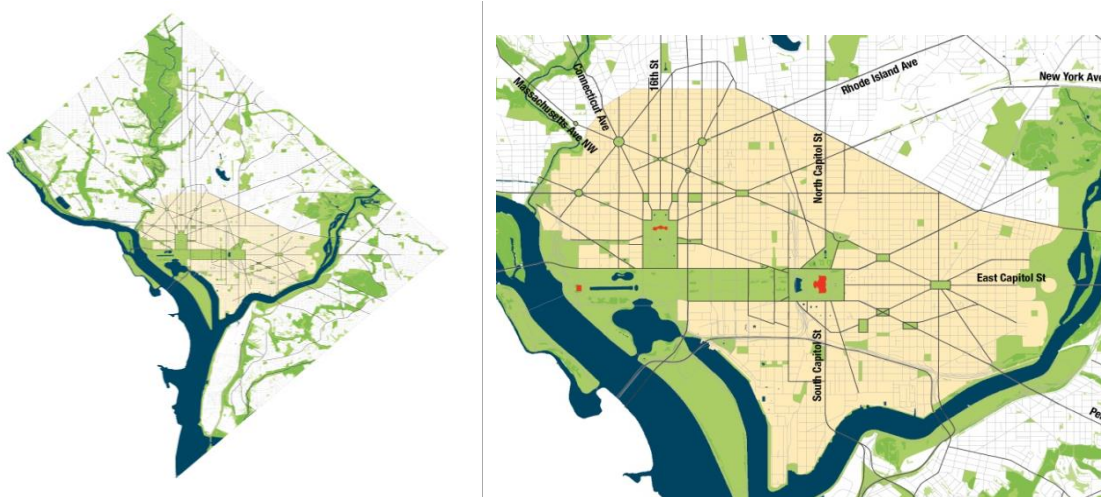


Figure 1: The Boundaries of the L'Enfant City

This EDR provides findings relative to current and future federal interests in the Height Act and an evaluation based on visual modeling for public review and comment. NCPC's review of the federal interests served by the Height Act considered: legislative history; guidance from the October 3, 2012 letter; the three principles; in-depth discussions with federal stakeholders regarding federal facilities and operations; future national and federal development needs; federal interests in the symbolic, historic and urban design form of the national capital; and public comments.

The EDR and report is not a joint report with the District of Columbia. While NCPC and the District have worked collaboratively, as of this publication date, the District has not identified a preferred approach(es) to strategically changing the Height Act; nor has it has provided completed detailed urban design and economic studies that support a preferred approach. Consequently, the analyses and findings presented in this EDR regarding any strategic changes to the Height Act are broadly based on the information provided so far, and are conservatively framed to protect long-term federal interests in our national capital.

² The L'Enfant Plan is the original plan for the city of Washington and generally covers the boundaries of the original Washington City.

The District has prepared visual modeling analyses that are a useful first step in assessing urban design impacts; however, the models are limited to conceptual approaches and have been organized to illustrate broadly framed urban design examples. To the extent possible, NCPC has evaluated the visual models for potential impacts to federal interests. While the District has provided draft information from a market-based economic study, sufficiently detailed, peer-reviewed data has not yet been publically released. Such study may include existing capacity, future growth projections, or the effectiveness of any approach to change heights and how this approach would address local development needs.

Federal Interests – Legislative History and Considerations

- The form and character of the capital city have been a federal interest since 1790, when the Congress authorized the President to oversee the defining of its boundaries, the layout of its streets, and the construction of its first public buildings³. More than a century ago, Congress imposed restrictions on the height of buildings culminating in the 1910 Height Act. Originally adopted as a fire safety measure, the Height Act has resulted in Washington's unmistakable skyline; open streets and carefully framed national parks; and a setting that frames views to and from preeminent national institutions and symbols.
- Most significantly, the U.S. Congress strongly reaffirmed the federal interest as it relates to the heights of buildings during preparation of the District of Columbia Self-Government and Governmental Reorganization Act (Home Rule Act) in 1973.
- As the Home Rule Act was developed, members of Congress expressed concerns as to whether the bill adequately protected the interests of the federal government and a desire to ensure that the District of Columbia "remains a capital for all American citizens." In response, the House Committee on the District of Columbia and its Government Operations Subcommittee included specific provisions intended to protect federal interests.⁴ Among these provisions is one that reserves to Congress the right to repeal any act passed by the Council, and another that states that the Council shall have no authority to "enact any act, resolution or rule which permits the building of any structure within the District of Columbia in excess of the height limitations contained in Section 5 of the Height Act."⁵

³ See Residence Act of 1790.

⁴ See 92 Cong. Rec Sept. 1993 (statement of Rep. Adams).

⁵ See District of Columbia Home Rule Act, Pub. L. No. 93-198, tit. 6, sec. 602(a)(6); 87 Stat 774, 813 (December 24, 1973).



Figure 2: The National Mall-Aerial

- Since passage of the Home Rule Act, Congress has considered additional matters related to building height. For example, in 1991 it disapproved a City Council action that amended the Schedule of Heights to allow building height in excess of the Height Act.⁶
- As the seat of the federal government, a range of additional federal interests include:
 - the settings of iconic federal buildings and grounds such as the White House, the Capitol, the Washington Monument, the Jefferson and Lincoln Memorials, and the National Mall.
 - the elements of the L'Enfant Plan, including reservations, vistas, streets, and open space above the streets up to building height limits, which are also considered protected cultural resources under the National Register of Historic Places.⁷

⁶ See DC Act 8-329. See Public Law 102-11.

⁷ For more information, see the National Register Nomination Form:
<http://pdfhost.focus.nps.gov/docs/NRHP/Text/97000332.pdf>

- federal agency headquarters and offices, national memorials and museums, national parks, and diplomatic missions.
- matters related to security, infrastructure, and federal operations.

Overview of the Height Study

- On July 19, 2012, representatives of the District of Columbia testified before the House of Representatives Committee on Oversight and Government Reform, Subcommittee on Health Care, District of Columbia, Census and the National Archives. In their testimony, representatives advocated more active uses of penthouses subject to Height Act regulation than is currently allowed, and an increase in overall building heights to accommodate future growth and enhance the city's tax base.
- Subsequently, Committee Chairman Darrell Issa wrote to the Mayor of the District of Columbia and the Chairman of the NCPC to "encourage the exploration of strategic changes to the Height Act in those areas outside the L'Enfant City that support local economic development goals while taking into account the impact on federal interests," and requested that "NCPC work with the District to formulate and submit to the Committee a joint proposal for such work."⁸
- In the months following the letter's receipt, the District of Columbia Office of Planning (DCOP) and NCPC worked together on the requested study. They developed a work plan and core principles for the development of alternatives (as described on page 2).
- NCPC and DCOP organized the work into three phases. During the first phase, NCPC developed case studies on the ways that cities around the nation and the world have regulated building heights. During this period, the District and NCPC conducted a series of public meetings to brief the public on plans for the study, and sought input on issues shaping federal and local interests.
- During the second phase, the District developed an economic feasibility analysis and a digital model of the city using GIS technology to illustrate various conceptual strategies for modifying building height.
- A series of alternative approaches for modifying height were then shown using the digital model, illustrative sites, and view locations. For their studies, the DCOP used designations in the *Comprehensive Plan* to exclude most low and medium density residential neighborhoods, and selected illustrative sites to model from areas currently designated for medium and high density development.
- NCPC and DCOP presented the modeling studies at five public meetings during the second phase. Many residents and local organizations provided feedback both verbally and in writing. The public comments received during phases one and two may be found in the Appendix.

⁸ See letter from Chairman Darrell Issa to the Hon. Vincent Gray and Mr. Preston Bryant, Jr. dated October 3, 2012.

- According to the schedule presented during the first phase, the third phase is currently scheduled to commence with the presentation of draft findings at the meeting of the National Capital Planning Commission on September 12. The Commission may authorize the release of the draft findings and any recommendations for a thirty day public review and comment period, followed by a special public meeting on October 2 to take public testimony.
- The Commission is scheduled to take a final action to approve the report at its meeting on November 7. The report, including recommendations, is scheduled to be submitted to the Congressional Committee following the November meeting.

Study Findings Related to Federal Interests

1. Based on its actions beginning in 1790 and continuing until as recently as 1990, the U.S. Congress has identified the design of the City of Washington and the District of Columbia as an abiding federal interest, and reserved to itself the right to amend building height restrictions under the 1910 Height Act. Through these actions, Congress has acted as steward of the capital city's form for generations of Americans and ensured that the image and experience of the capital city reflects the pre-eminence of our civic and democratic institutions and national icons, including a lasting, symbolic skyline recognized around the world. Only the federal establishment can protect these and other national interests in perpetuity.
2. Individual facilities, landscapes and vistas—especially those listed on the National Register of Historic Places—also represent federal interests. The highest concentration of these cultural resources is located in the L'Enfant City but they also extend beyond the original L'Enfant boundaries. The L'Enfant City was laid out on a relatively flat area surrounded by low hills. Those low green hills, now known as the Topographic Bowl, remain largely in federal ownership. The Civil War Defenses of Washington, St. Elizabeths, and Arlington National Cemetery are all part of the Topographic Bowl and there is a federal interest in protecting the views to and from them. Outside the Topographic Bowl, the extent of the federal interest becomes less concentrated and more focused, but sites such as the Naval Observatory, most of Rock Creek Park, the Armed Forces Retirement Home and Lincoln Cottage, and the International Chancery Center are all significant federal interests.



Figure 3: Monumental Core Skyline at Night

3. The federal government continues to invest in neighborhoods in a way that is designed to meet both agency needs and local economic goals. NCPC's 1997 *Extending the Legacy Plan* calls for new federal offices and national museums and memorials to seek out locations throughout the city. Three of the most recent federal development projects, including two cabinet level headquarters, are located outside of traditional federal precincts as a way of promoting neighborhood investment.⁹ Therefore, it cannot be said that the federal interest is limited to any certain area within the District, now or in the future.
4. Based on the visual modeling work conducted as part of the Height Study, changes to the Height Act within the L'Enfant City and within the topographic bowl may have a significant adverse effect on federal interests. These include the views and setting of the U.S. Capitol, Washington Monument, National Mall, national parks, and other nationally significant civic and cultural resources. Increases may also impact the character of L'Enfant streets and public spaces.

⁹ These include headquarters for the U.S. Department of Homeland Security (DHS), the U.S. Department of Transportation (DOT), and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).

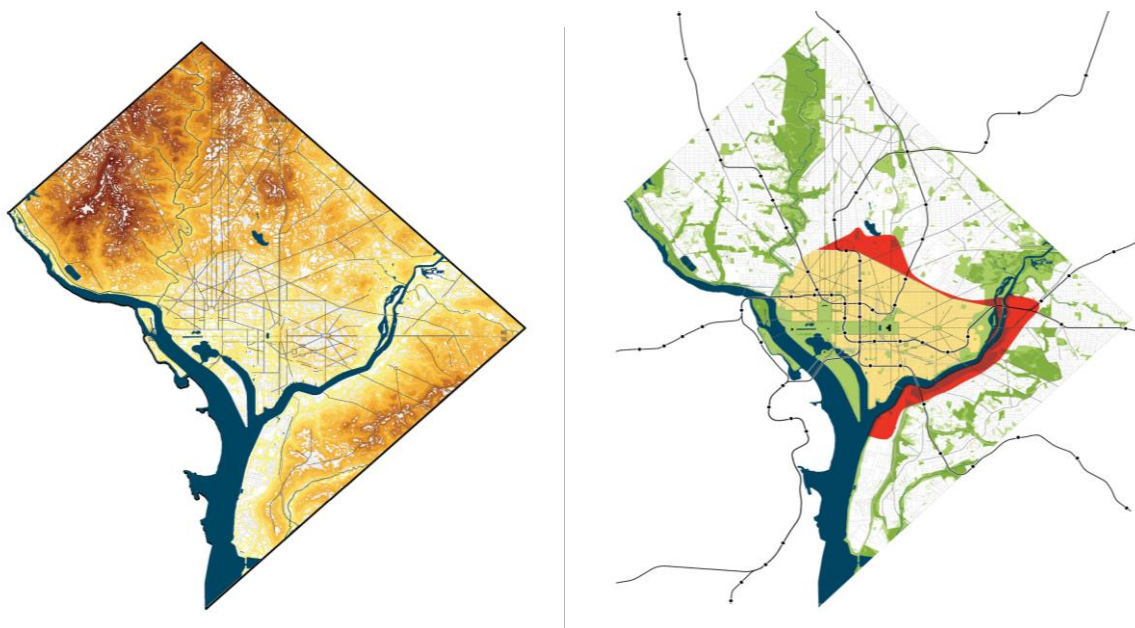


Figure 4: Images of Washington's Topographic Bowl, an elevated ridge around Washington's Historic L'Enfant City (Left: High points in dark brown)

5. Federal interests requiring review and protection are also present outside of the L'Enfant City and beyond the edge of the Topographic Bowl, but they are less concentrated. However, in conducting their visual modeling studies, the District has excluded much of this area from review. It is also of note that today, local zoning across much of this part of the city is well below the limits established in the current Height Act.
6. The visual modeling studies demonstrate impacts to some federal resources if full build-out occurred under the current Height Act. Viewshed protections merit further study.
7. The economic vitality of the national capital is also a federal interest. The federal government has transferred federal lands and property to support local goals for growth and community development.¹⁰ The District of Columbia has had one of the nation's strongest commercial and residential development markets, and its stability has made it consistently one of the most desirable real estate investment markets.¹¹ After decades of population decline, the District has had a recent dramatic uptick in residential growth,

¹⁰ See the Title III of the Federal and District of Columbia Government Real Property Act of 2006, Pub. L. 109–396, 120 Stat. 2711 (2006) (D.C. Lands Act).

¹¹ See the Washington Business Journal, August 26, 2013:

http://www.bizjournals.com/washington/breaking_ground/2013/08/dc-has-nations-lowest-office-vacancy.html

although still below its peak population of 800,000 residents.¹² The District ended fiscal year 2012 with a budget surplus of \$417 million.¹³

8. From a federal operational and mission perspective, the Height Act continues to meet the essential interests and needs of the federal government and it is anticipated that it will continue to do so in the future. There is no specific federal interest in raising heights to meet future federal space needs. Like the private market, the federal government's demand for office space is cyclical, and will be affected in the future by changing technology, workplace practices (such as telework and hoteling¹⁴) and mission needs. In the short term, agencies anticipate a flatline in demand for office space and will be seeking to use existing federal assets more effectively to meet future needs.¹⁵
9. Additional federal interests that should be considered include:
 - Security. Security figures prominently in how federal agencies design and program federal facilities. Localized threat assessments are strongly linked to evaluating the neighboring buildings and environs of federal facilities. Any uniform increases in the height of buildings near most federal agencies may result in costs associated with new security evaluations, such as assessments of new lines of sight to and from federal facilities.
 - Infrastructure. Infrastructure in the National Capital Region, including transportation, is a federal interest. Large or uniform increases in height may impact the city's infrastructure. Due to timing and funding constraints, this study does not specifically analyze infrastructure impacts nor provide recommendations to mitigate those impacts. Representatives from federal agencies and local residents alike expressed strong concerns about impacts to infrastructure from increases in height.
 - Other site specific matters such as existing design guidelines or agreements related to or that affect federal lands, resources and property. For example, flight paths in and around areas under consideration for increases in heights should be considered. The relevant agencies and/or airport authorities should be consulted for site specific comments related to federal interests.

¹² See the Washington Post, December 20, 2012: <http://www.washingtonpost.com/blogs/mike-debonis/wp/2012/12/20/census-d-c-added-30000-residents-in-27-months/>

¹³ See press release dated January 29, 2013: <http://mayor.dc.gov/release/mayor-vincent-c-gray-and-cfo-natwar-m-gandhi-announce-significant-surplus-and-sustained>

¹⁴ Hoteling is a management practice of providing office space to employees on an as-needed rather than on the traditional, constantly reserved basis. The goal is to reduce the amount of space required by an organization and to ensure that employees can access office resources and technology when necessary.

¹⁵ For more information, see Section 3 of the Office of Management and Budget Memorandum (OMB) M-12-12, Promoting Efficient Spending to Support Agency Operations, "Freeze the Footprint" policies.

Conclusion

As requested by the Committee, several potential opportunities for strategic change are outlined below.

1. The Height Act and District of Columbia Zoning Regulations include guidance and restrictions related to the use and form of penthouses. The Height Act currently prohibits human occupancy in penthouses regulated by the Height Act, effectively limiting their use for anything other than mechanical equipment. Permitting a broader range of active uses in most parts of the city – if properly implemented and with certain restrictions – does not appear to affect federal interests in most instances. And, as noted in the District of Columbia's testimony before the House Committee on Oversight and Government Reform, allowing occupancy of penthouses may also increase the city's tax base.¹⁶ Any strategic changes to the Height Act's restrictions related to penthouses should consider the following key goals:
 - Include specific protections related to sightlines for select federal buildings, such as the U.S. Capitol and White House.
 - Support communal recreation space on rooftops by allowing human occupancy in roof structures, as defined in District Zoning Regulations, where use of those structures is currently restricted under the Height Act to mechanical equipment, so long as those structures continue to be set back from exterior walls at a 1:1 ratio.
 - Prevent creation of multiple floors within penthouses, or stacking of penthouses atop penthouses.
2. There may be some opportunities for strategic change in the areas outside of the L'Enfant City and beyond the edge of the topographic bowl where there is less concentration of federal interests. However, based on the current *Comprehensive Plan* designations, the District has excluded much of this area from study, and only provided limited analysis of illustrative sites. More specific direction from the District and additional study is required to understand whether strategic changes to the Height Act would impact federal interests within this area.

II. REPORT RELATED TO FEDERAL INTERESTS AND THE HEIGHT ACT

A report related to federal interests and the Height Act will be forwarded under separate cover.

¹⁶ See testimony of Harriet Tregoning before The House Committee on Oversight and Government Reform, July 19, 2012.