



# THE HEIGHT MASTER PLAN *for* WASHINGTON, DC

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## Federal Interest Report *and* Final Recommendations

The federal contribution to the joint  
Height Master Plan for Washington, DC  
as requested by the U.S. House Committee  
on Oversight and Government Reform

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Prepared by the  
National Capital Planning Commission  
November 27, 2013



## EXECUTIVE SUMMARY

It has been a privilege for the National Capital Planning Commission (NCPC) to jointly lead the Height Master Plan (Height Plan or Height Study), which explores the future of one of the most significant contributors to the form and character of our nation's capital, the federal Height of Buildings Act (Height Act). The Plan, requested by the Honorable Darrell Issa, Chairman of the U.S. House Committee on Oversight and Government Reform, explores potential strategic changes to the Height Act that both protect national interests and meet important long-term goals for the District of Columbia. Chairman Issa requested a joint study between the NCPC, which includes both federal and District representatives, and the Mayor of the District of Columbia. The District Office of Planning (DCOP) led the effort on behalf of the District.

This year-long study reaffirmed the importance of the Height Act and revealed important findings:

- As the capital of the United States, Washington is a unique place with its own authentic character and identity. For more than a century, the Height Act has played a central role in shaping Washington's unmistakable and symbolic skyline. The Height Act also fosters an open, pedestrian scale that is enjoyed by residents of the District of Columbia, the nation's citizens, and the millions of visitors who come here annually. The form of the capital city is a national trust and a legacy for future generations.
- Washington, DC is one of the great planned capital cities of the world. Since its founding, the U.S. Congress has acted as the steward of the capital city's form, including on matters related to building height. Through the Height Act, Congress has ensured that the image and experience of the capital city reflects the preeminence of our democratic institutions, now and into the future. These actions fulfill the early planning vision for a magnificent capital city, as set forth by our nation's founding fathers.
- The visual modeling work conducted as part of the Height Study demonstrates potential for significant adverse impacts to national resources from increasing building heights, particularly within the L'Enfant City. The Height Act is tightly linked to form, character, and experience of the L'Enfant City, including the views and setting of the U.S. Capitol, the White House, the National Mall, the ceremonial streets and avenues, and many national parks and resources throughout this area. Mindful of the Committee's guidance to proceed carefully within the L'Enfant City,<sup>1</sup> NCPC strongly recommends no changes to the Height Act here.

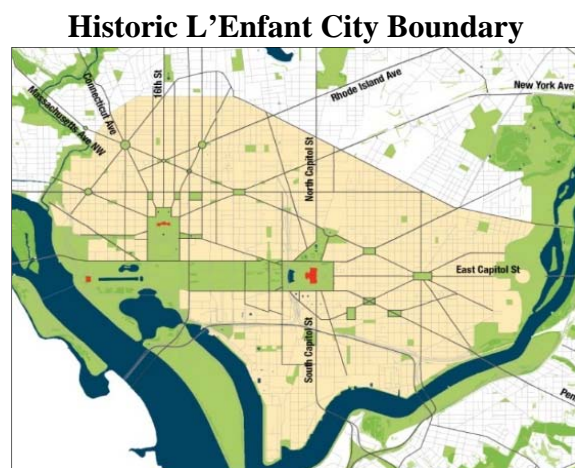


Image: District of Columbia Office of Planning

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

**View from the steps of the U.S. Capitol showing the setting provided by the U.S. Capitol Grounds and the National Mall**

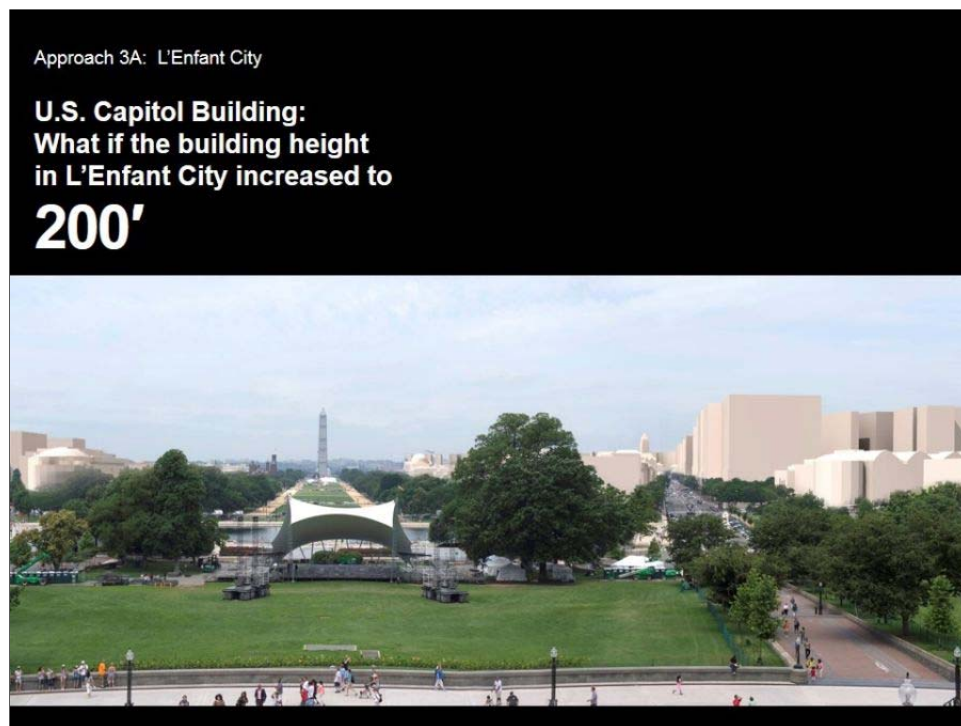
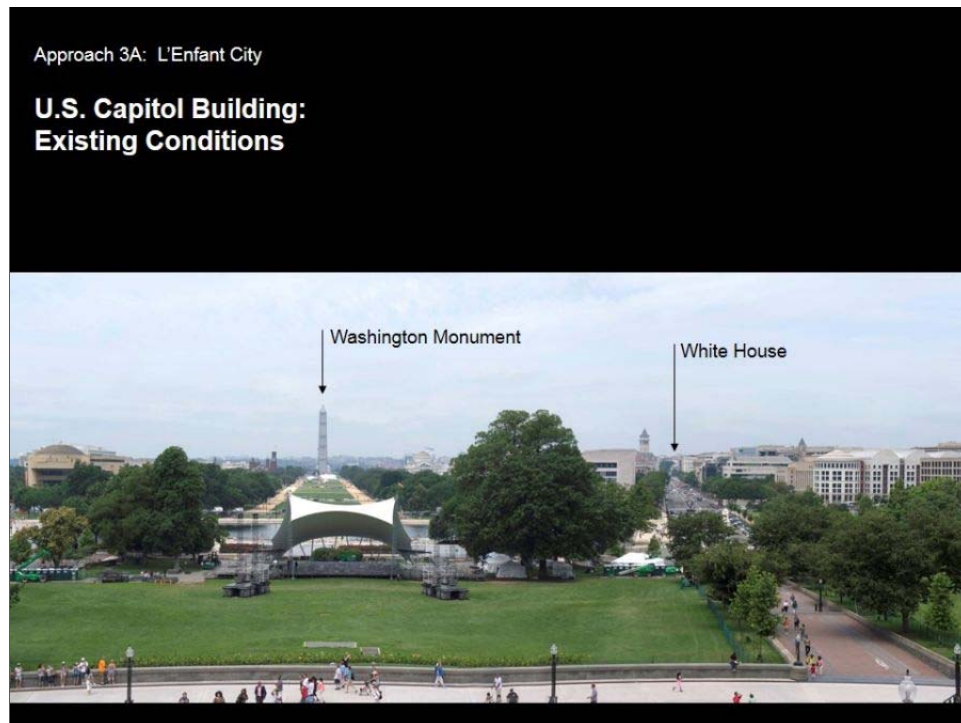


Image: District of Columbia Office of Planning

These ‘before and after’ images from the District’s visual modeling study illustrate the impact of increased building heights on panoramic, skyline and street-level views. The modeling demonstrates potential for significant adverse impacts to national resources, particularly within the L’Enfant City.



## View South on North Capitol Street to the U.S. Capitol



Image: District of Columbia Office of Planning

The District's visual modeling study shows that even increasing building heights to 160' under the ratio proposal begins to diminish the presence of the U.S. Capitol dome.



## View Southeast from Arlington National Cemetery

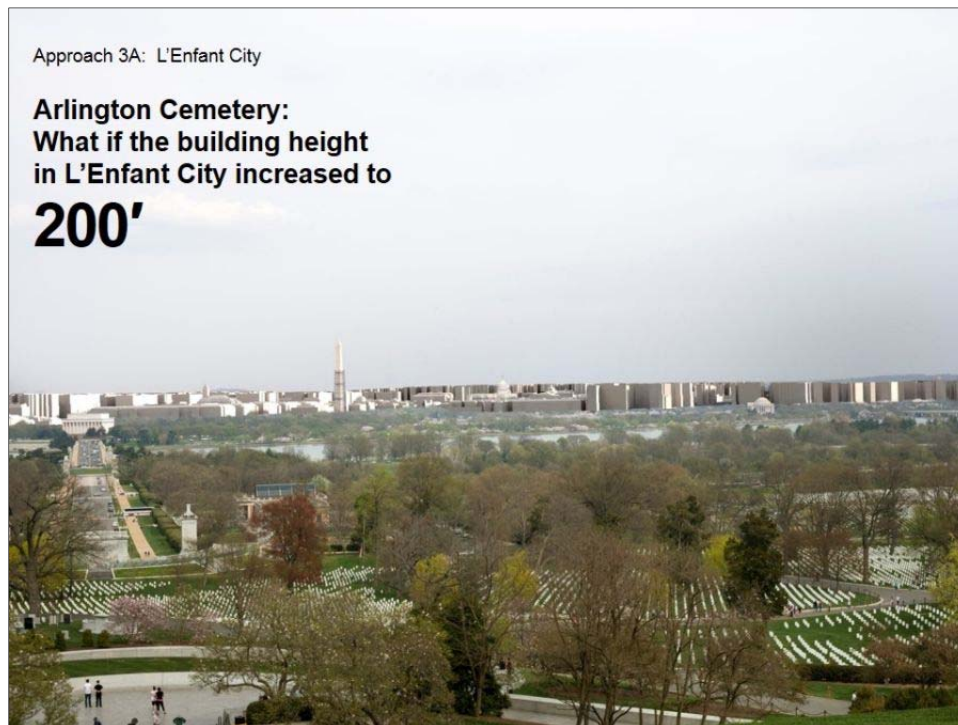
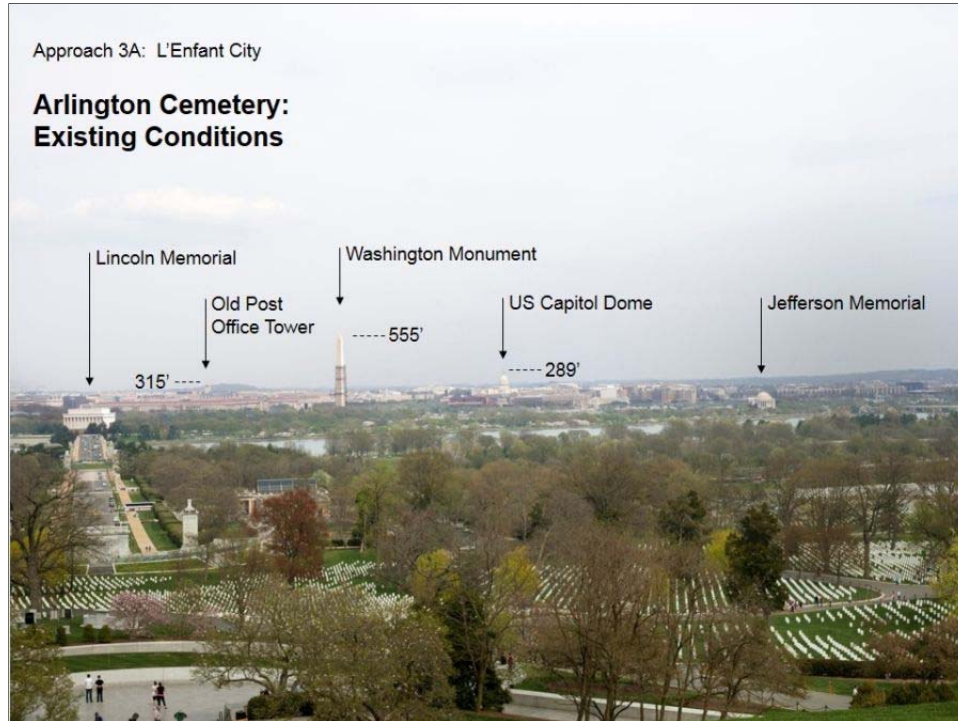


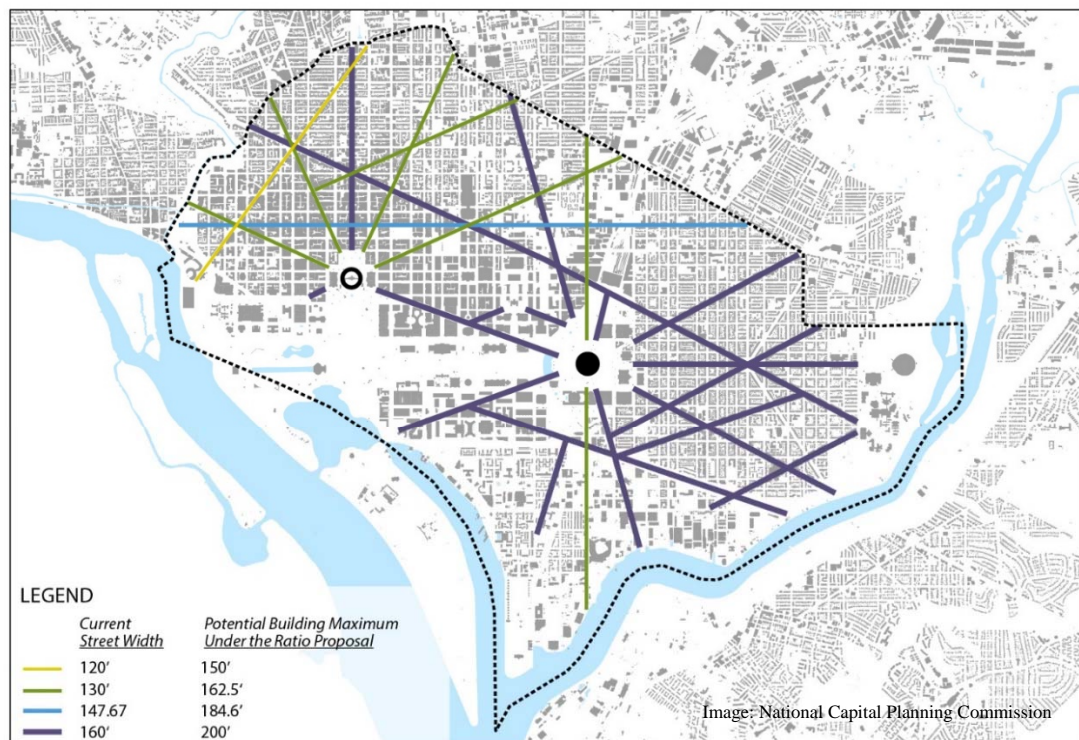
Image: District of Columbia Office of Planning

Unobstructed panoramic views of nationally significant structures and symbols is a defining feature of Washington's internationally recognized skyline.

The District, however, targets specific streets and avenues within the L'Enfant City for increased height. Two central reasons NCPC does not support the District's recommendation to implement a ratio proposal within the L'Enfant City are:

1. First, the District's ratio proposal would allow greater height precisely where it is least appropriate, primarily on streets framing views of the U.S. Capitol and the White House. Buildings along these avenues should be scaled in deference to these symbolic structures. Other streets targeted for increased height under this recommendation are located in the Capitol Hill historic residential neighborhood. The visual modeling studies show potential for adverse impacts to these views and settings under the ratio proposal, which replaces a predictable regulatory framework with a new approach in some of the most nationally significant parts of the city.

**District's Ratio Approach:  
Impacted Streets within the Historic L'Enfant City**



*A map of the streets where building maximums would increase under the Ratio Proposal within the L'Enfant City. Many of these terminate on the U.S. Capitol and White House or are located in the Capitol Hill historic neighborhood.*

2. Second, the District’s own analysis shows that most of the city’s current capacity to grow is primarily located *outside of* the L’Enfant City. However – unlike its street-specific recommendation within the L’Enfant City - the District is *not* proposing any geographically specific or targeted locations where increased building height would be appropriate outside of the L’Enfant City. As a general principle, the L’Enfant City should not be the first place identified to accommodate future growth through height changes.
- Although many federal interests and national resources are concentrated within the L’Enfant City, there are numerous federal interests outside of the L’Enfant City. Several examples include federal headquarters and facilities, such as Saint Elizabeths; diplomatic areas such as the International Chancery Center; and national parks, such as the Civil War Defenses of Washington and Rock Creek Park. Although these federal resources tend to be less concentrated, they must be protected now and in the future.
  - Upholding the Height Act and meeting the District’s goals for growth are not mutually exclusive. Today, the District has development capacity throughout the city within the limits of the Height Act. In other words, local municipal zoning is often more restrictive than the limits under the Height Act and the District has room to grow within the current federal limits.
  - Over the long-term, the Commission believes that there may be opportunities for strategic changes to the Height Act in areas outside of the L’Enfant City where there is less concentration of federal interests. However, the Commission recommends detailed, and joint planning work through the *Comprehensive Plan for the National Capital* prior to proposing any changes to the law. By contrast, the District recommends amending the law today to allow for a process where targeted areas are identified and authorized to exceed the limits under the Height Act outside the L’Enfant City through the *Comprehensive Plan*.

NCPC’s recommendation responds to overwhelming public feedback in favor of completing the comprehensive planning prior to considering any amendments to the Height Act in the areas outside of the L’Enfant City. According to public testimony and comments from federal stakeholders, three commonly cited reasons for additional study include:

1. The public viewed the Height Plan as a starting point of future work, and encouraged continued study, public engagement, and the need to thoughtfully tie any alterations in building heights to a fully-vetted future growth strategy.
2. The capacity information and growth forecasts included in the District’s Height report have not yet been incorporated into established, city-wide planning guidance, including the District Elements of the *Comprehensive Plan*. The established vetting process associated with an update to the District Elements weighs specific proposals for growth with neighborhood-level implications. Many residents argued that the *Comprehensive Plan* should be updated prior to considering amendments to the Height Act outside of the L’Enfant City.



3. From a federal interest perspective, the current Federal Elements of the *Comprehensive Plan* should also be updated prior to an amendment to the Height Act in the areas outside of the L’Enfant City. The policies in the current Federal Elements do not include specific protections for federal resources that anticipate a change to the Height Act in the areas outside of the L’Enfant City. A future update to the Federal Elements should more clearly protect federal interests on matters related to height.
- NCPC consulted with 17 federal agencies to identify how and whether amending the Height Act would impact federal interests, including mission and operations. A full description of their feedback is located in Part 1 of this report. First, it was generally noted from a federal operational and mission perspective, the Height Act continues to meet the essential interests and needs of the federal government. For example, 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 hoteling<sup>2</sup>) and mission needs. In the short term, agencies aim to use existing federal assets more effectively to meet future needs.<sup>3</sup> It was also noted that 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.
  - To support more active uses of penthouses, NCPC is recommending amendments related to human occupancy.
  - To ensure that the Height Act is current with modern building regulation, NCPC provides comments and recommendations about specific antiquated provisions related to fire safety.

## Final Recommendations

1. To protect the integrity of the form and character of the nation's capital, the federal Height Act should remain in place and no changes should be made to the formula or approach for calculating allowable building height.
2. There may be some opportunities for strategic change in the areas outside of the L’Enfant City where there is less concentration of federal interests. However, additional study is required to understand whether strategic changes to the Height Act would impact federal interests within this area.
3. The city's most significant viewsheds, to include without limitation, those to and from the U.S. Capitol and the White House, should be further evaluated and federal and local protections established, which include policies in the Federal and District Elements of the *Comprehensive Plan*.

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<sup>2</sup> 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.

<sup>3</sup> 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.

4. Amend the Height Act to allow for human occupancy in existing and future penthouses, with the following restrictions:
  - Include specific protections related to sightlines for select federal buildings including but not limited to, the U.S. Capitol and White House.
  - Support communal recreation space on rooftops by allowing human occupancy in roof structures, where use of those structures is currently restricted under the Height Act to mechanical equipment, so long as the facade of these structures continue to be set back from exterior building walls at a 1:1 ratio.
  - Impose an absolute 20 foot maximum height and a limitation of one story for penthouse structures above the level of the roof, which must contain within all mechanical equipment and elevator, stair and other enclosures, with no additional construction allowed above the penthouse roof for any purpose.
5. Delete Sections 2-4 of the Height Act, as contained at 36 Stat 452, chap 263, sec 2-4 (1910), which solely relate to fireproof construction. These proposed deletions are antiquated fire and safety requirements that have been updated and incorporated into modern day codes by the District of Columbia.

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## APPENDICES

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### Appendix A: Key Correspondence

- House Committee Chairman Issa letter to NCPC Chairman Bryant & DC Mayor Gray (October 3, 2012)
- Response from NCPC Chairman Bryant to Congressman Issa (November 1, 2012)
- Response from DC Mayor Gray to Congressman Issa (November 2, 2012)

### Appendix B: Public Engagement and Feedback

- Public Engagement and Feedback Summary
- DC Council hearing compiled written testimony & letters (October 28, 2013)
- NCPC Public hearing compiled written testimony & letters (October 30, 2013)
- NCPC Special Meeting compiled written testimony & letters (November 19, 2013)
- Phase 2 Public Meeting comments and submitted documents (*Volume II*)
- Phase 1 Public Meeting comments and submitted documents
- Public comment portal submissions all phases
- Miscellaneous Attachments

### Appendix C: Study Work Products

- Case Study Research

### Appendix D: Background Resources

- 1910 Height of Building Act
- 1899 The Building Height Act
- The Schedule of Heights of Buildings Adjacent to Public Buildings

### Appendix E: Commission Actions

- Executive Director's Recommendation - Preliminary Findings and Evaluation (September 12, 2013)
  - Commission Actions - Preliminary Findings and Evaluation (September 12, 2013)
  - Executive Director's Recommendation - Final Recommendations (November 19, 2013)
  - Commission Actions - Final Recommendations (November 19, 2013)
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## **PART 1: OVERVIEW**

### **1.1 Introduction**

Great cities evolve in a way that is authentic to their history and their aspirations. If authenticity is built on those characteristics that make each city unique, surely the human-scaled, horizontal character associated with the capital city's building heights and its unmistakable, symbolic skyline, are integral elements of the city's DNA. Equally authentic to Washington's character is the tradition of long-range planning that asserts the capital's cityscape must be more than the random result of economic activity over time; rather, we aspire to a more explicit civic form. Built Washington – situated and scaled to respond to the natural environment – has emerged as both a place of form and experience for the residents of the District of Columbia, the nation's citizens, and the millions of visitors who come here annually.

In this context, the year-long process to develop the Height Master Plan (Height Plan) may be viewed as an important contribution to a dialogue about Washington's long-range plans to manage growth and development, and the role that building height plays within that conversation. This complex and multi-dimensional conversation about the city's growth cuts across both federal and District goals related to urban form, security, economic development, and infrastructure. The Height Plan also included the question of who or what entity should manage building heights, which is different from a discussion about building height limits per se. Here, the Height Plan gave voice to questions related to Home Rule as well as the role of the U.S. Congress, federal agencies and federal law in protecting the form and character of the capital city.

The fundamental qualities and national resources that contribute to Washington as the nation's capital must be protected now and into the future. For more than a century, the Height Act has shaped Washington's skyline and cityscape. The physical urban form of this purpose-built capital city reflects the nation's democratic ideals and provides a unique, special experience for residents and visitors. This legacy is in no small part due to the Height Act. The Height Study confirmed that the horizontal skyline, views, and street-level character shaped by the Height Act is a fundamental and valued urban design principle.

At the same time, cities evolve and Washington must also respond to 21<sup>st</sup> century demands and opportunities. After decades of population decline, the District has had an uptick in residential growth. In 2012, there was an estimated 630,000 residents, up from 570,000 in 2000, but well below the District's peak population of 800,000 in 1950.<sup>4</sup> And, the District may continue to grow more populous and dense in the decades to come. Like all cities, it must address changing development trends, manage long-term growth, provide necessary infrastructure and services, and balance a variety of interests.

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<sup>4</sup> 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/>



Understanding specific projections and targets for the city's growth in relation to the current Height Act limits is critical. However, a discussion of when, whether, and how the District may reach full build-out under the existing Height Act is not the only question, nor is it perhaps the central question. Perhaps a more fundamental question is by what process is it appropriate for that dialogue to occur and ultimately how should decisions related to the District's long-term growth and building heights be made? Both NCPC staff and the District agree that the comprehensive planning process, which is already required by federal statute,<sup>5</sup> is one appropriate vehicle to articulate the District's goals for growth, including questions of building height. And it is also an appropriate vehicle to articulate federal interests and concerns.

The Commission believes that there may be opportunities for strategic changes to the law in areas outside of the L'Enfant City where there is less concentration of federal interests. However, the Commission recommends sufficiently detailed, and joint planning work through the *Comprehensive Plan for the National Capital* prior to proposing any changes to the law. This includes an update to the District Elements of the Comprehensive Plan to account for the new growth forecasts as outlined in the District's Height Report; and it also includes an update to the Federal Elements that more clearly protects federal interests on matters related to height. The Commission is prepared to continue this effort through the currently established comprehensive planning process as well as additional planning study and analysis, but does not support amending the law today.

## **1.2 The Height Master Plan: Key Tasks and Decision-Points**

On July 19, 2012, representatives of NCPC, the District of Columbia, civic groups, and business representatives testified before the U.S. House of Representatives Committee on Oversight and Government Reform, Subcommittee on Health Care, District of Columbia, Census and the National Archives. In the District's 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 District's tax base.

Subsequently, Committee Chairman Darrell Issa wrote to the Mayor of the District of Columbia and the Chairman of 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."<sup>6</sup>

In the months following the letter's receipt, the District of Columbia Office of Planning and NCPC worked together on the requested Height Master Plan. They developed a work plan and agreed to three core principles for the development of alternatives.

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<sup>5</sup> See, 40 U.S.C. §§8712-8713 (2013).

<sup>6</sup> See letter from Chairman Darrell Issa to the Hon. Vincent Gray and Mr. Preston Bryant, Jr. dated October 3, 2012.

NCPC led the public process in close coordination with the District of Columbia. NCPC maintained a robust on-line presence for the joint study. A dedicated website displayed all study materials, posted public comments and media articles, and shared modeling images. Many residents and local organizations provided feedback both verbally and in writing.

A compilation of all public comments received as part of the Height master Plan initiative may be found in Appendix B of this report.

NCPC and the District organized the Height Master Plan into three phases:

During the first phase, NCPC developed case studies on the approaches used to manage building height in peer cities domestically and around the world. 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 updated the digital model of the city using GIS technology. The model was used to illustrate various conceptual strategies for modifying building height. A series of alternative approaches for modifying height were then shown using a combination of the digital model and aerial photography of selected illustrative sites, and views. For their studies, the District used designations in the currently adopted District Elements of the Comprehensive Plan to exclude most low and medium density residential neighborhoods, and selected illustrative sites to model areas currently designated for medium and high density development. Visual simulations of building heights were modeled to a maximum height of 200 feet within the L'Enfant City, and no more than 225 feet in areas beyond. A selection of images from the modeling were presented at five public meetings throughout the second phase, while the entire index of 356 images was posted online for public review and feedback.

The third phase commenced with the presentation of draft findings and recommendations at the meeting of the National Capital Planning Commission on September 12, 2013.

#### *Preliminary Recommendations*

NCPC released the following draft preliminary recommendations on September 12:

1. NCPC noted opportunities to amend the Height Act to allow penthouse occupancy and/or more active uses throughout the city.
2. There are federal interests outside of the L'Enfant City and beyond the edge of the Topographic Bowl, however, they are less concentrated. There may be opportunities for strategic changes to the Height Act in this area, however those changes (specific, geographic or procedural) are undefined.

The District released the following draft recommendations on September 24:

1. Amend the Height Act to implement a ratio approach of 1:1.25 within the L'Enfant City.
2. Implement viewshed protections.
3. Eliminate the Height Act outside the L'Enfant City and allow local zoning and the Comprehensive Plan to govern maximums.

### NCPC - Final Recommendations

The Commission approved the following final recommendations on November 19:

1. To protect the integrity of the form and character of the nation's capital, the federal Height Act should remain in place and no changes should be made to the formula or approach for calculating allowable building height.
2. There may be some opportunities for strategic change in the areas outside of the L'Enfant City where there is less concentration of federal interests. However, additional study is required to understand whether strategic changes to the Height Act would impact federal interests within this area.
3. The city's most significant viewsheds, to include without limitation, those to and from the U.S. Capitol and the White House, should be further evaluated and federal and local protections established, which include policies in the Federal and District Elements of the Comprehensive Plan.
4. Amend the Height Act to allow for human occupancy in existing and future penthouses, with the following restrictions:
  - Include specific protections related to sightlines for select federal buildings including but not limited to, the U.S. Capitol and White House.
  - Support communal recreation space on rooftops by allowing human occupancy in roof structures, where use of those structures is currently restricted under the Height Act to mechanical equipment, so long as the facade of these structures continue to be set back from exterior building walls at a 1:1 ratio.
  - Impose an absolute 20 foot maximum height and a limitation of one story for penthouse structures above the level of the roof, which must contain within all mechanical equipment and elevator, stair other enclosures, with no additional construction allowed above the penthouse roof for any purpose.
5. Delete Sections 2-4 of the Height Act, as contained at 36 Stat 452, chap 263, sec 2-4 (1910), which solely relate to fireproof construction. These proposed deletions are antiquated fire and safety requirements that have been updated and incorporated into modern day codes by the District of Columbia.

### A Note about NCPC's Final Recommendations

The Commission recognized in its draft preliminary recommendations (released in September) that there may be opportunities for strategic change outside the L'Enfant City (See Appendix E). The District, in its draft report, proposed eliminating the Height Act in this area and identifying areas for change through the comprehensive plan process. While the Commission did not support eliminating the Height Act in this area, it contemplated the possibility of using the existing federally-legislated *Comprehensive Plan* as a means to identify future areas of strategic change. The plan is comprised of elements prepared by the District and NCPC and is subject to NCPC and Congressional review. However, the existing adopted *Comprehensive Plan* itself was not developed with the expectation of Height Act changes and does not incorporate or respond to any of DCOP's recently released, and as yet unvetted, growth forecasts. Some federal agencies, the District's legislative branch, and testifying District residents raised strong concerns that no changes to the Height Act should occur until the process had been fully reviewed and a fully-updated plan adopted. This convinced the Commission that amending the Height Act to use the approach was inappropriate at this time.



### 1.3 Basis For Recommendations

This Report provides findings relative to current and future federal interests in the Height Act and final recommendations regarding whether strategic changes are appropriate and how those changes should be undertaken.

NCPC's recommendations and findings related to federal interests considered:

a. Legislative history related to heights and the federal interest

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 buildings.<sup>7</sup> More than a century ago, Congress imposed restrictions on the height of buildings culminating in the 1910 Height Act. Originally adopted as a fire and life safety measure, the Height Act has resulted in Washington's unmistakable skyline; open streets and carefully framed national parks; and a setting which emphasizes 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." It was noted that the Height Act shaped Washington's form and provides the setting in which Americans experience the capital city and its symbols.

In response, the House Committee on the District of Columbia and its Government Operations Subcommittee included provisions intended to protect federal interests.<sup>8</sup> 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."<sup>9</sup>

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<sup>7</sup> See Residence Act of 1790.

<sup>8</sup> See 92 Cong. Rec. Sept. 1993 (statement of Rep. Adams).

<sup>9</sup> 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).

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.<sup>10</sup>

For more information about the Legislative History and Home Rule, See Part 6 of this report.

- b. Guidance from an October 3, 2012 letter from Chairman Issa requesting the study  
In response to an October 3, 2012 request 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.”<sup>11</sup> 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 – now and in the future — as well as the importance of a thriving, economically stable city.

- c. In-depth discussions with federal stakeholders regarding federal facilities and operations and future national and federal development needs  
Throughout the Height Master Plan, NCPC consulted with representatives from the following federal agencies and organizations. Agencies were selected due to their significant land holding, assets, and/or other mission-critical or operational needs potentially affected by proposed changes to building heights.

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<sup>10</sup> See DC Act 8-329. See Public Law 102-11.

<sup>11</sup> See letter from Committee Chairman Darrell Issa, dated October 3, 2012 in Appendix A.

Consultations and facilitated discussions were held with the following:

- Advisory Council on Historic Preservation
- Architect of the Capitol
- Arlington National Cemetery
- Armed Forces Retirement Home
- Interagency Security Council
- Smithsonian Institution
- U.S. Commission of Fine Arts
- U.S. Department of Defense
- U.S. Department of the Interior
- U.S. Department of State
- U.S. Department of Homeland Security
- U.S. General Services Administration
- U.S. Marine Corps
- U.S. Navy - NAVFAC
- U.S. Secret Service
- Metropolitan Washington Airports Authority
- Washington Metropolitan Area Transit Authority

*Note: Agency and organization consultation should not be construed to suggest concurrence on recommendation(s) included in this document.*

There were a number of common themes from the discussions with federal agencies and related organizations. They identified federal interests that tie directly to Washington's role as the seat of the federal government. Federal interests expressed and defined at these discussions include, but are not limited to, the following:

- The settings of iconic federal buildings and their grounds such as the White House, the U.S. 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 the open space above the streets up to building height limits, considered protected cultural resources under the National Register of Historic Places<sup>12</sup>
- The Topographic Bowl, including natural ridgeline setting it provides and the cultural and natural resources it contains
- Federal agency headquarters and offices, national memorials, commemorative works, museums, cultural institutions, national parks, and diplomatic missions
- Matters related to physical security, communications, and emergency response
- Matters related to current and future infrastructure and capacity
- Federal operations
- Matters related to specific agency missions, such as protecting national parks

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<sup>12</sup> For more information, see the National Register Nomination Form:  
<http://pdfhost focus.nps.gov/docs/NRHP/Text/97000332.pdf>

d. Federal interests in the symbolic, historic and urban design form of the national capital as articulated in the three core principles guiding development of the Height Master Plan

To reflect Congressional guidance on the study's direction and the importance of protecting national resources, the Mayor of the District of Columbia and the Chairman of the NCPC agreed to the following principles to guide development of the Height Master Plan:

- Ensure the prominence of federal landmarks and monuments by preserving their views and setting
- Maintain the horizontality of the monumental city skyline
- Minimize negative impacts to significant historic resources, including the L'Enfant Plan<sup>13</sup>

For a discussion of the three core principles, go to Part 5 of this report.

e. The District of Columbia's draft report

The District of Columbia's draft report included the following recommendations:

- Implement a ratio approach of 1:1.25 within the L'Enfant City
- Eliminate the Height Act outside of the L'Enfant City and allow the District Elements of the Comprehensive Plan to determine maximum heights
- Implement viewshed protections

The District's draft report also included an economic feasibility analysis particularly focused on adding height to additional buildings and new construction; new forecasts for population growth; a capacity study; and a discussion of the District's goals for housing and economic development.

f. Matters related to equity and the public interest

In general NCPC and DCOP aim to protect the public's interest, which is particularly challenging given the many constituencies who are interested and/or directly affected by the heights of buildings, including residents, landowners, developers, local and federal agencies, among others. Today, the Height Act is applied uniformly city-wide, and thus it has offered a predictable regulatory framework and environment. Amending the Height Act – for example by formula or boundary – may impact certain constituencies and the partners understand that it is important to remain sensitive to this should changes to the Act be contemplated moving forward. A future update to the *Comprehensive Plan* is one appropriate city-wide planning process to understand and incorporate the views of these diverse constituencies. It is also an appropriate process to articulate broad goals for public benefits that may occur as a result of changes to the Height Act. For example, the District has recommended linking changes to building height to achieving public goals, such as better design, affordable housing, or infrastructure funding.

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<sup>13</sup> The L'Enfant Plan is the original plan for the city of Washington and generally covers the boundaries of the original Washington City.

- g. Public comments, letters, and testimony collected throughout all phases of the study  
The release of separate reports by NCPC and the District of Columbia resulted in the most intensive phase of public feedback. While the public provided views representing passionate opinions on both sides of the building height debate, nearly all formal comments recognized the importance and impact of the Height Act on Washington's form, image, and development. An overwhelming number of formal comments supported upholding the federal law throughout the city.

Consistent themes and concerns were expressed through each phase of the study, including housing affordability, infrastructure capacity, protection of historic and cultural resources, balancing capital city and local character, and the acknowledgement of the trade-offs of any proposed change.

Staff compiled and reviewed all online submissions, formal letters, and spoken testimony provided to NCPC, the District of Columbia Office of Planning, and the DC Council. Due to the fact that the draft reports were released separately, with separate comment periods, some comments were collected more than once. A compilation of all submissions and formal feedback is included within.

It is important to note, while formal opportunities for public comment were made widely available using a balance of traditional and nontraditional feedback mechanisms, the feedback collected was stratified based on the method of engagement. Those using traditional means to log their opinions at public meetings, submitting letters or delivering testimony, generally opposed changes to the federal law. Those utilizing online resources and social media were generally open to exploring opportunities for strategic changes.

A total of ten public meetings and workshops were hosted at locations citywide -- bringing the conversation to the each of the District's eight wards. Each session was attended by approximately 75 to 100 individuals.

Citizens of 16 states and nine countries submitted more than 300 online comments.

124 formal letters and written testimony were offered in direct responses to the draft recommendations released in Phase 3. Sources of these letters and testimony include three Height master Plan meetings, specifically DC Council committee hearing held on October 28, a public hearing hosted by NCPC on October 30, and the final project commission meeting held by NCPC on November 19. This tally does not include comments submitted via the online public comment portal.

An analysis of these 124 formal contributions follows:

- 57 individual residents testified or submitted written formal comments.
  - 14 supported / 43 against any changes to the Height Act
- 38 civic associations testified or submitted written formal comments.
  - 2 supported / 36 against any changes to the Height Act

- 25 issue and advocacy groups testified or submitted written formal comments, including the American Institute of Architects, the Coalition for Smarter Growth, the Historic District Collation, and the National Trust for Historic Preservation.
  - 2 supported / 23 against any changes to the Height Act
- 4 development and business groups, while not advocating “formal” positions, supported exploring Height Act changes. These included the Developers Roundtable, the Greater Washington Board of Trade, the DC Building Industry Association, and The BF Saul Company/Goulston & Storrs.

A summary of public feedback and general themes regarding NCPC’s and the District’s draft recommendations follows.

*General Comments/Themes*

- Federal law offers greater protection, particularly at the neighborhood level, than District control
- No compelling case for change
- Limited support for the Home Rule argument or the ratio approach
- Concerns about precedent
- Desire for a joint report

*Housing and Infrastructure*

- Recognized need for additional affordable housing, unclear how
- Growth impacts on capacity and maintenance of infrastructure
- Growth could be used to extract public benefits to improve communities

*Economics (reactions regarding the District’s economic forecast):*

- The city’s shape and form is an economic driver
- Solid case to address affordable housing and attract residents and new businesses.
- Desire to verify assumptions and data before determining how best to grow

*Urban Design/Capital Character*

- The Height Act is a city defining urban design characteristic (a locally and nationally)
- District’s skyline is distinctive -- “we’re not New York and don’t want to be”
- Desire to maintain, Washington’s “airy and light-filled streets”
- Maintain symbolic prominence of national civic features and landmarks
- Use process to overcome uninspired building design/architectural excellence

*Protection of the L’Enfant City*

- Near unanimous support for protection of the L’Enfant City  
(Although there was some discussion over who should protect this resource)

A compilation of all formal written feedback is included within Appendix B.



## **PART 2: EVALUATION OF FEDERAL INTERESTS**

The evaluation of the federal interests below is designed to fully articulate the underlying rationale for the following final Commission recommendations:

### **FINAL Recommendations 1-3**

- 1. To protect the integrity of the form and character of the nation's capital, the federal Height Act should remain in place and no changes should be made to the formula or approach for calculating allowable building height.**
- 2. There may be some opportunities for strategic change in the areas outside of the L'Enfant City where there is less concentration of federal interests. However, additional study is required to understand whether strategic changes to the Height Act would impact federal interests within this area.**
- 3. The city's most significant viewsheds, to include without limitation, those to and from the U.S. Capitol and the White House, should be further evaluated and federal and local protections established, which include policies in the Federal and District Elements of the Comprehensive Plan.**

### **2.1 Capital City Character**

From within Washington, DC or across the Potomac River in Virginia, the long views of the skyline are a hallmark of the capital city's distinctive character. Although fire and life safety was an important factor in the Height Act's initial adoption, its continuing contribution over 100 years has established an urban design legacy, providing Washington

#### **Images of Long Views of the Washington Skyline**



Images: Wikimedia Commons

with a unique character that emphasizes the city's role as the nation's capital. The combination of the broad widths of the L'Enfant Plan streets, and the cap on building heights established by the Height Act, has resulted in a city where private and commercial streets have a distinctly different character from the city's ceremonial avenues, and where the skyline is punctuated not by commercial skyscrapers but by civic landmarks and monuments. This approach creates a fitting and fundamentally unique urban character where buildings housing private commercial and residential uses provide a backdrop for the nation's most treasured civic structures. It also provides settings and views around public spaces, national memorials and museums, iconic buildings, democratic institutions and federal facilities. This character provides a carefully crafted backdrop for important festivals and ceremonies, such as Fourth of July celebrations and the Presidential Inaugural parade. These activities serve not only as local community gatherings but as important national attractions that contribute significantly to the local economy.

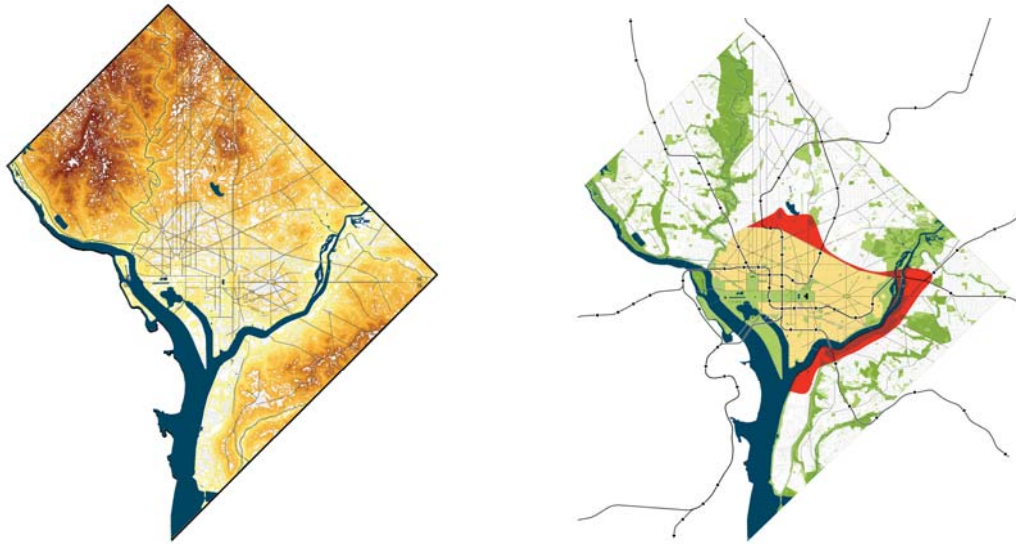


*Nationally significant events, such as the Fourth of July and Presidential Inaugurals become both local community gatherings and important visitor attractions. Image: White House*

From many of the city's elevated locations and at the end of many of its grand boulevards, one can often catch a glimpse of the low green hills that provide the natural setting for the L'Enfant City. These hills comprise what has come to be known as the Topographic Bowl, and include the Arlington Ridge, the Anacostia Hills, Rock Creek Park, and the Civil War Defenses of Washington. This natural setting was integral to L'Enfant's original plan, and because most of these sites are under the control of U.S. National Park Service, they are protected from direct development. It is important that the views to and from the Topographic Bowl, however, be protected from visual intrusions.

Beyond the L'Enfant City and Topographic Bowl, where the federal presence is less concentrated and private development is less intense, the Height Act has thus far been less of a factor in defining the city's character.

### **Images of Washington's Topographic Bowl, an elevated ridge around Washington's Historic L'Enfant City**



*Note: The Arlington Ridge, located across the Potomac River in Virginia, is not shown.*

Image: District of Columbia Office of Planning

#### **Visual Analysis:**

Visual modeling provided by the District of Columbia were used to understand potential impacts of proposed modifications to the Height Act on the character of Washington, both inside and outside the L'Enfant City. Analysis was based on the visual modeling images (limited to conceptual massing), the three core study principles (outlined in Part 5), and relevant policies in the existing *Federal Elements of the Comprehensive Plan*.

Examples of relevant policies in the *Federal Elements of the Comprehensive Plan* related to Capital City character include:

1. Exhibit the preeminence of the United States, protect the grandeur of the nation's capital and provide an exceptional visitor experience.
2. Preserve and enhance the character, reciprocal views, and physical connections within the network of the L'Enfant Plan streets and reservations.
3. Preserve the symbolic significance of the National Mall to reinforce and enhance its special role in the image of the nation's capital.
4. Protect reciprocal views between the L'Enfant City and the rim of the Topographic Bowl from inappropriate intrusions.
5. Ensure Washington's landmarks remain accentuated within the skyline.
6. Maintain a proportional relationship between street widths and building heights to preserve characteristic openness of the street rights of ways.
7. Preserve integrity and perception of topographic influences inherent in the L'Enfant Plan.
8. Preserve nationally significant historic districts, structures and cultural landscapes.

## **The District's Building Height Proposal within the L'Enfant City**

### *An Evaluation of the District's Recommendation to Implement a Ratio Approach for Determining Building Height Within the L'Enfant City*

The 1910 Height Act mandates a 1:1 ratio between the width of the right-of-way and the maximum building height on residential streets (maximum height of 90 feet), and a 1:1 ratio plus 20 feet of height for commercial streets (maximum height of 130 feet). The draft recommendations issued by the District of Columbia on September 24, 2013, proposed replacing this methodology with a ratio of 1:1.25 between the street right-of-way and the maximum building height on commercial streets, identified in the District's Recommendation as the Ratio Approach.

NCPC staff analyzed which streets would be impacted by the Ratio Approach. The chart below illustrates the allowable height on streets with a right-of-way 80 feet wide would be unchanged; the allowable height on streets with a right-of-way of less than 80 feet would be reduced; and the allowable height on streets with a right-of-way of more than 80 feet would be increased. The increase of allowable height on streets with rights-of-way between 80 and 110 feet would be relatively minor, but on streets with rights-of-way exceeding 110 feet the changes become significant.

**Allowable Height On Streets Based On Ratio Approach**

Width of Right-of-Way	Existing Height Limit $H = W + 20'$ , 130' cap	Proposed Height Limit 'Ratio' Proposal $H = W \times 1.25$	Proposed Change
70'	90'	87.5'	-2.5'
80'	100'	100'	0
85'	105'	106.25'	+1.25'
90'	110'	112.5'	+2.5'
110'	130'	137.5'	+7.5'
120'	130'	150'	+20'
130'	130'	162.5'	+32.5'
147.67'	130'	184.6'	+54.6'
160'	130' <sup>14</sup>	200'	+70'

Based on the widths of the original L'Enfant rights-of-way, most of these streets wider than 110 feet are the diagonal avenues named after states.<sup>15</sup> The only street with a 120 foot right-of-way is New Hampshire Avenue, NW, which links Dupont and Washington Circles. The streets with 130 foot rights-of-way include North and South Capitol Streets and most of the streets that focus on the White House. K Street is an anomaly, being the only L'Enfant street with a right-of-way of 147.67 feet. The following map identifies street widths of 120', 130', and 147.67 in the original L'Enfant rights-of-way.

<sup>14</sup> The 1910 Height Act limits the height of buildings on all streets but Pennsylvania Avenue to 130 feet, except on the north side of Pennsylvania Avenue between 1<sup>st</sup> and 15<sup>th</sup> Streets, NW, where a greater height of 160 feet is permitted. This chart is not intended to include Pennsylvania Avenue, which will be evaluated separately.

<sup>15</sup> There are streets such as Constitution and Independence Avenues whose current widths exceed 110 feet that were not included in this analysis because they were widened after the establishment of the L'Enfant Plan, such as during the implementation of the McMillan Commission Plan beginning in the 1920s.



### Map of Streets Width of 120', 130', and 147.67' Right-Of-Ways

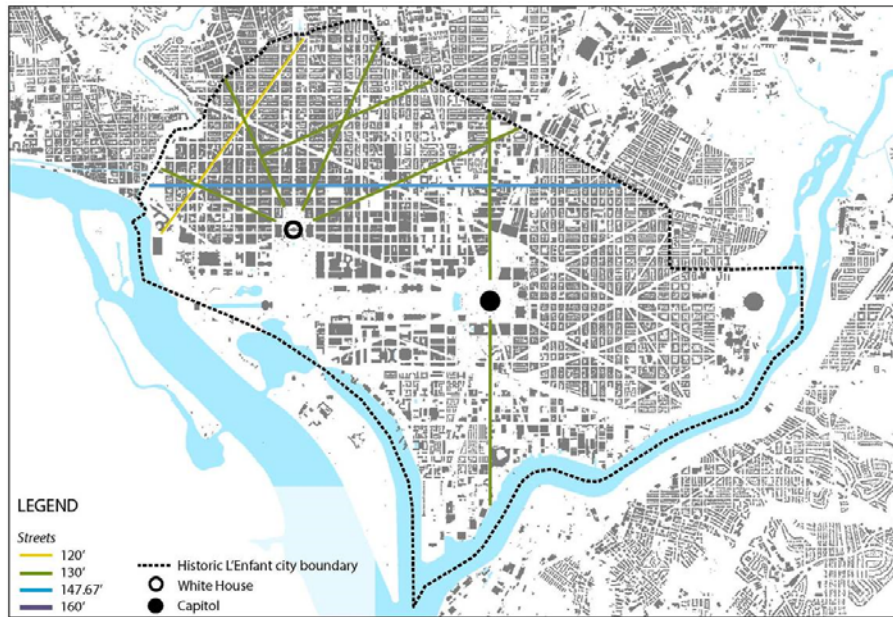


Image: National Capital Planning Commission

This analysis reveals a clear hierarchy among L'Enfant Streets, with the most important streets being the 160 foot wide streets and those that are focused on the U.S. Capitol, followed closely by the 130 foot wide streets and those that are focused on the White House. This hierarchy is confirmed by the nomination form for the L'Enfant Plan to the National Register of Historic Places, which cites the viewsheds along these avenues as being of particular significance. The streets with 160 foot rights-of-way include 16<sup>th</sup> Street, NW north of the White House, Pennsylvania Avenue, Massachusetts Avenue, and other avenues that are focused on the U.S. Capitol are shown in the map below.

### Map of Streets Width of 160' Right-Of-Way

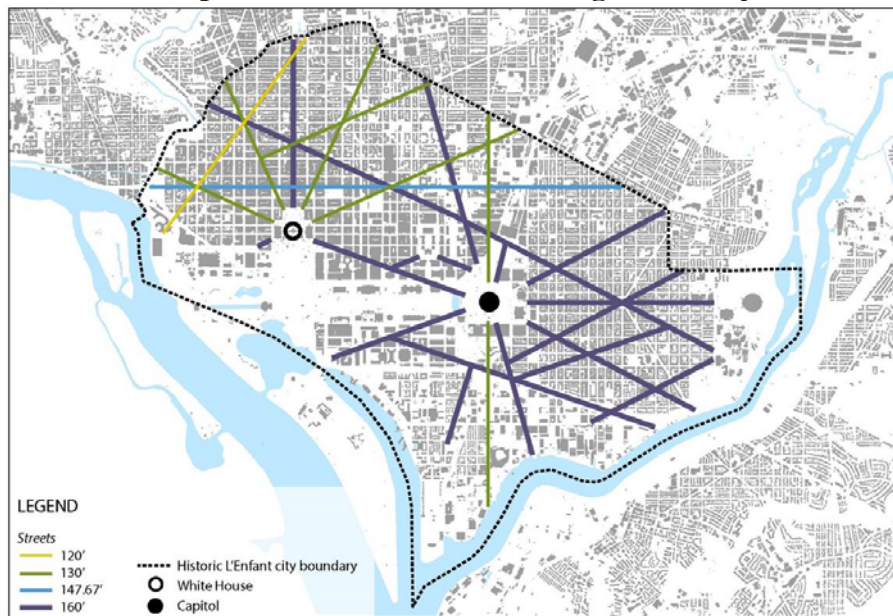


Image: National Capital Planning Commission

### Evaluation of the Existing Character of Selected L'Enfant Streets

The next phase of NCPD's analysis focused on the existing character of the various L'Enfant streets. The city's traditional downtown is concentrated between Pennsylvania and Massachusetts Avenues, NW to the south and north, and Mt. Vernon Square and Washington Circle to the east and west. While the 130 foot cap limits the height on diagonal avenues through the area, such as Connecticut Avenue north of K Street (130 feet wide) and New York Avenue east of the White House (also 130 feet wide), the orthogonal north-south and east-west streets (with the exception of K Street, as noted above) are 110 feet wide or less and thus would not be significantly affected by the Ratio Approach. The street sections on these largely commercial streets have a vertical, or "portrait" character which, for the reasons noted above, would not be changed by the Ratio Approach. By contrast, the city's broader, more historically significant avenues have a more horizontal or "landscape" character, by virtue of the Height Act which caps their height to something less than their width. This is illustrated in the following images.

#### **Example of a Vertical Street Section Character** *Commercial street, with predominantly private uses*

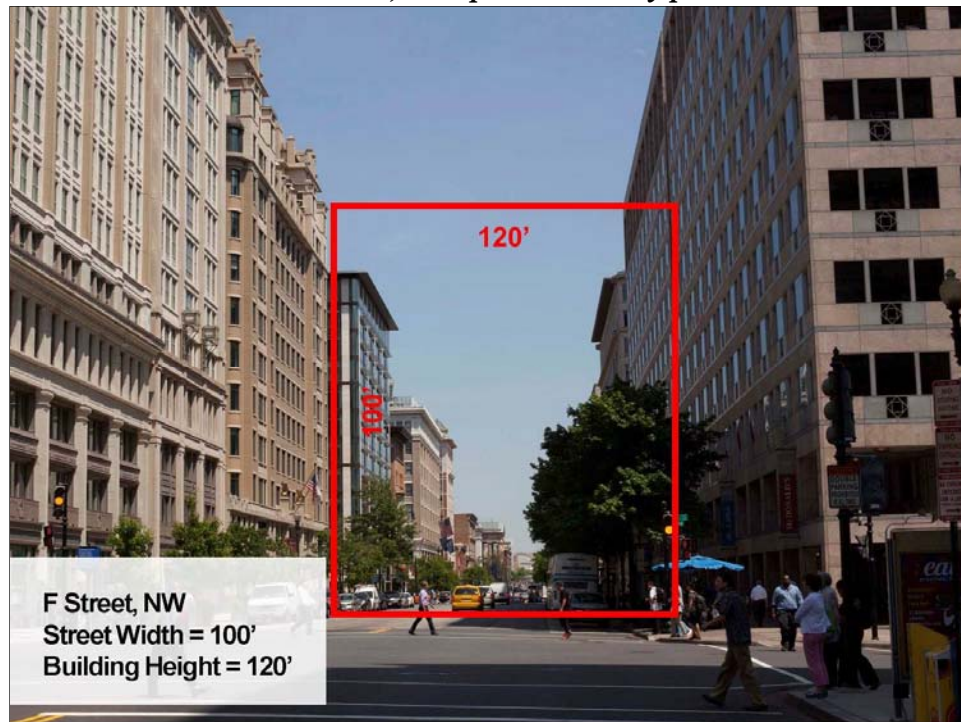


Image: District of Columbia Office of Planning



### Example of an Existing Horizontal Street Section Character

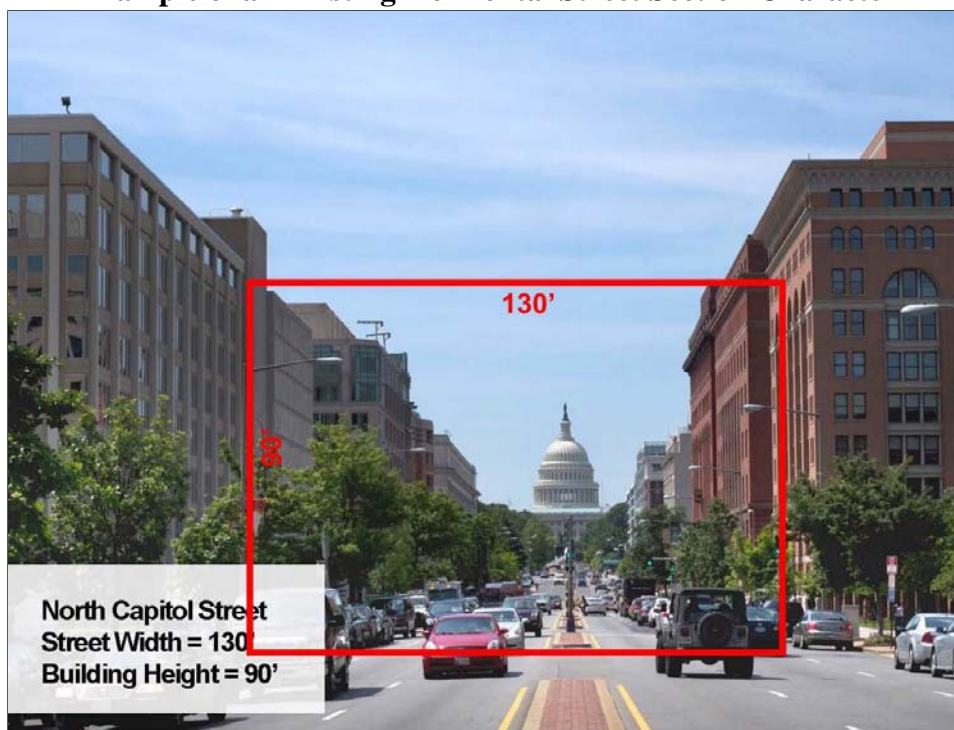


Image: District of Columbia Office of Planning

North Capitol Street has a horizontal street section character with buildings framing views to the U.S. Capitol dome and cited as significant to the L'Enfant Plan. Existing by-right zoning limits building heights to 90 feet. The existing horizontal character of North Capitol Street would change as a result from increased heights, as shown in the images that follow. At 130 feet, which is currently allowed under the Height Act and current Planned Unit Development Standards, the street would result in a squared street section. Using the District's Ratio Approach, North Capitol Street changes to a vertical street section, a fundamental shift from its character today. The preeminence of the dome is somewhat diminished by the increased height.

### North Capitol Street

*Horizontal character changes when heights increase to 130' and 160'*

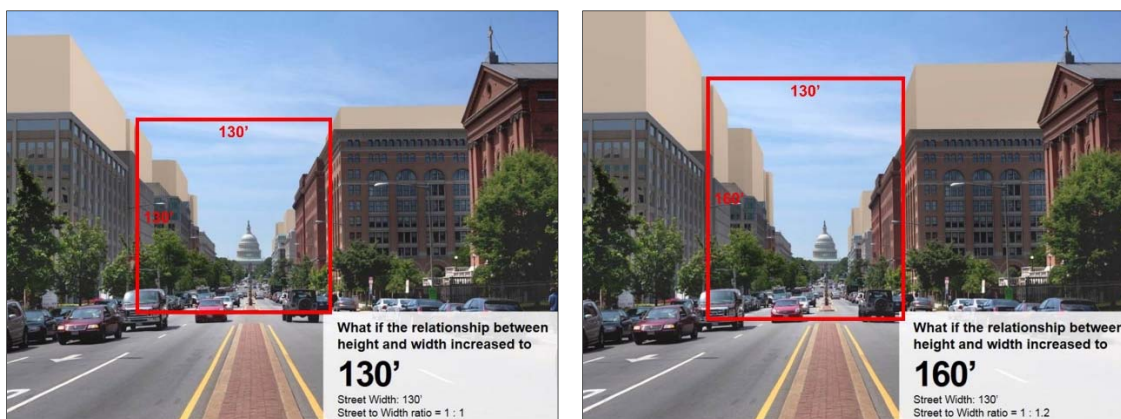


Image: District of Columbia Office of Planning

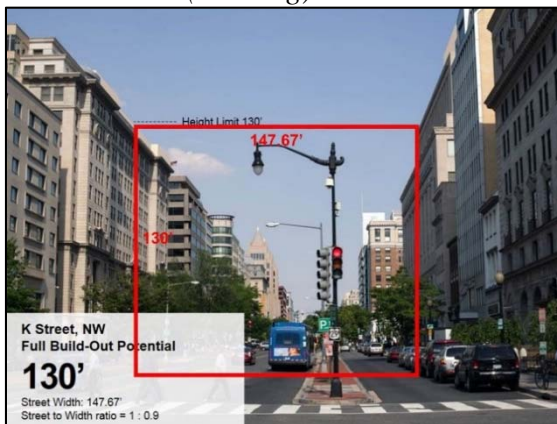
The analysis showed that the proposed Ratio Approach would significantly alter the character of the diagonal avenues and streets with significant viewsheds. NCPC staff determined that the Ratio Approach would adversely affect federal interest because it would eliminate this significant difference in character between the city's commercial streets, where private development predominates, and the avenues where public and civic buildings tend to be located.

It is important to note that this horizontal street section holds even (or especially) on Pennsylvania Avenue where, it is frequently noted, the Height Act allows building heights up to 160 feet in certain areas. One would assume, therefore, that there are places along the Avenue where the street section is square or nearly so. However, because the Pennsylvania Avenue Redevelopment Plan limits heights to provide symmetry with the lower buildings that make up the Federal Triangle, there are, in fact, no buildings with 160 foot façades that front directly on Pennsylvania Avenue. There are buildings that reach 160 feet in height between 13<sup>th</sup> and 15<sup>th</sup> Streets, but they front on Freedom Plaza, not Pennsylvania Avenue. Between 13<sup>th</sup> Street and 10<sup>th</sup> Streets, NW, the Pennsylvania Avenue Plan prepared by the Pennsylvania Avenue Development Corporation (1974) limits new construction to 135 feet for the first 100 feet north of the building line. East of 10<sup>th</sup> Street NW, the maximum height varies but is as low as 110 feet.

It is also important to note the one exception to the rule of commercial streets having generally vertical street sections and civic avenues having generally horizontal street sections. That exception is K Street, as shown in the image below, is an anomaly due to its unusual 147.67 foot width.

### K Street, NW

*(Existing)*



*(Modeled at 160')*

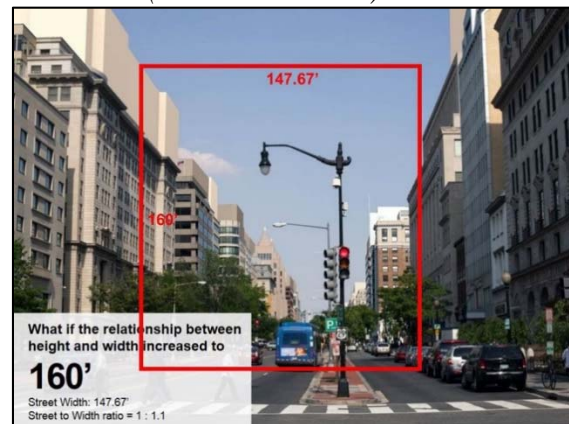


Image: District of Columbia Office of Planning



Finally, in consideration of the District's goal for additional development capacity, NCPC staff identified areas where significant additional building height was possible under the Ratio Approach. It is also important to note that only a few of the streets that would be impacted under the District's proposed ratio approach are actually located in areas currently designated for medium and high density growth in the *District Elements* of the *Comprehensive Plan*. Thus, gains in additional capacity to the city would be limited under this Ratio Approach. The limited additional gains are illustrated on the following images.

**Map of L'Enfant City Showing Significant Federal Interests  
Overlaid by L'Enfant Streets that are of sufficient width  
to allow additional height under the Ratio Approach**

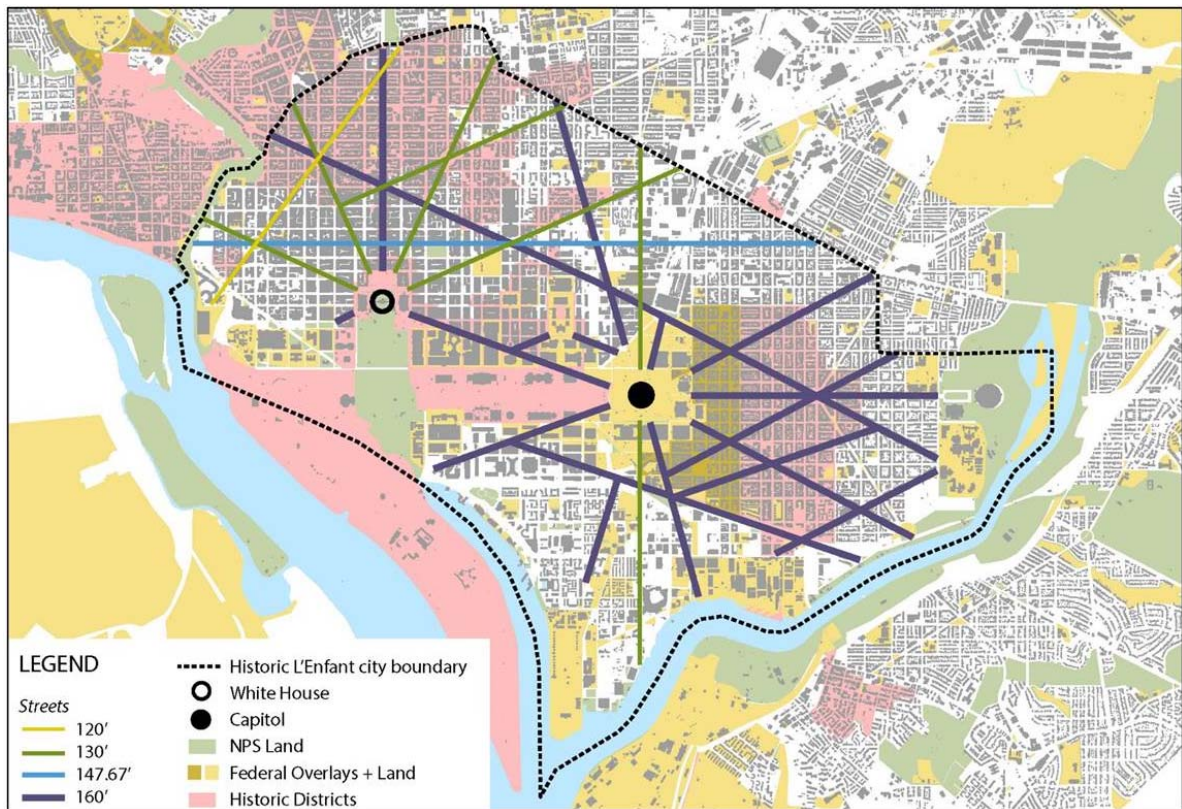


Image: National Capital Planning Commission

**Areas Designated for Medium and High Density Growth**  
*(with the deletion of L'Enfant Streets with significant viewsheds\*)*

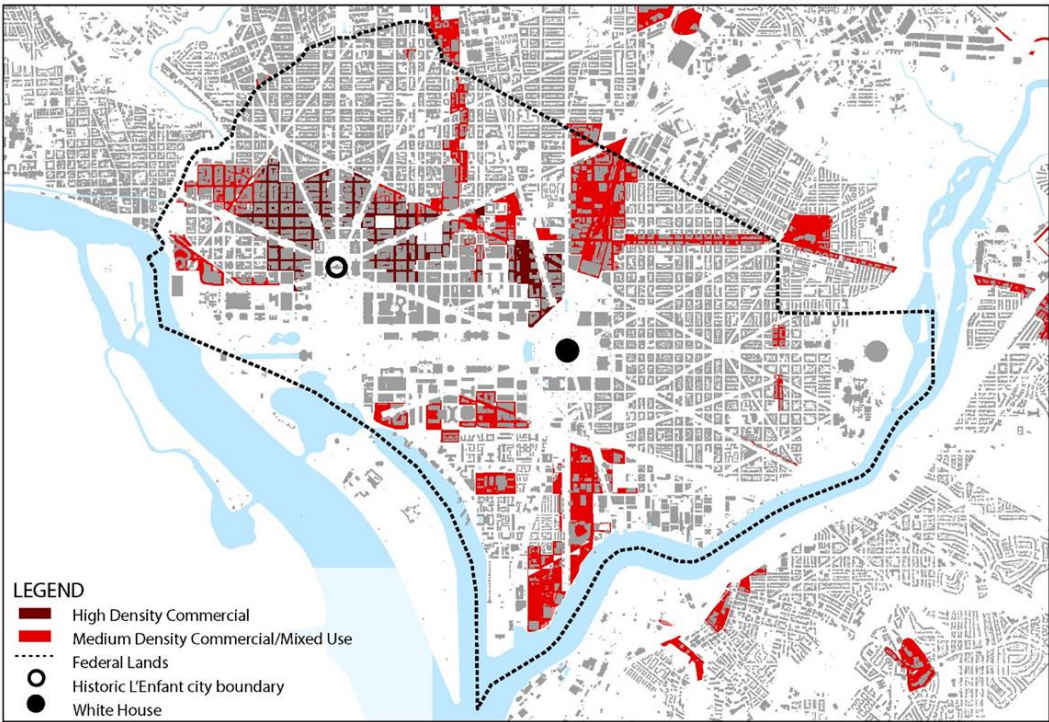


Image: National Capital Planning Commission

**L'Enfant Streets that Would Allow  
Additional Height Under Ratio Approach\***

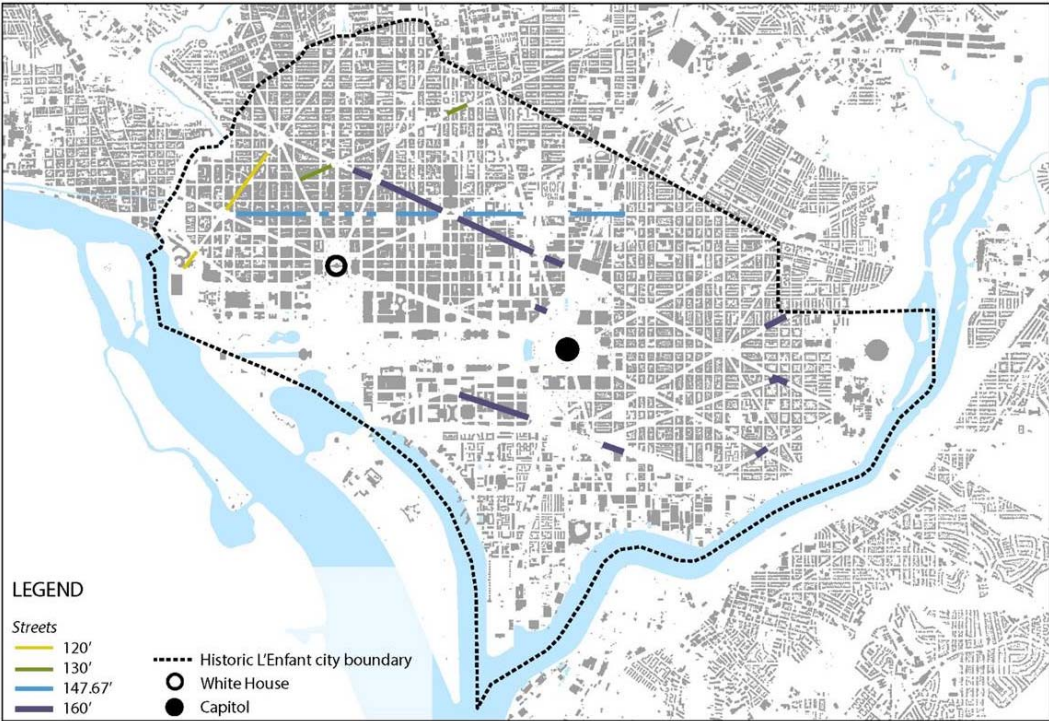


Image: National Capital Planning Commission



*\*Note: L'Enfant Streets that have been identified as having significant viewsheds in the nomination of the L'Enfant Plan for inclusion in the Federal Register of National Historic Places, or that are otherwise protected by virtue of federal jurisdiction (Pennsylvania Avenue) or location in historic districts were not considered.*

#### Additional Protections for Viewsheds and Vistas within the Current Height Act

Finally, the visual models prepared by the District of Columbia and the impact analysis detailed herein on the Ratio Approach have demonstrated to NCPC staff that there may be important vistas within the L'Enfant City that may be *insufficiently* protected by the Height Act. One such example has been noted, where framed views to the U.S. Capitol along North Capitol Street are cited as significant to the L'Enfant Plan. Prior to the Home Rule Act, the maximum height allowed along North Capitol Street was 90 feet<sup>16</sup>, and this is the maximum allowed by-right under current zoning; however, a Planned Unit Development (PUD) in this area could be approved at a height of up to 130 feet. This would be consistent with the Height Act but could have an adverse effect on this significant L'Enfant vista if it were to be constructed in place of any of the existing buildings south of H Street. Existing legal protections provided by federal representation on the Zoning Commission (which constitutes a minority of Commission members) and review by the National Capital Planning Commission (which is advisory) may currently be insufficient to prevent such adverse impacts.

Another example is along 16<sup>th</sup> Street north of the White House where heights have historically been limited to 90 feet but existing PUD standards could allow building heights of up to 130 feet. As illustrated in the District's visual modeling, this could have adverse effects on an iconic view of the White House as viewed from the Jefferson Memorial.

#### **Impacts to Iconic Views of the White House from the Jefferson Memorial**

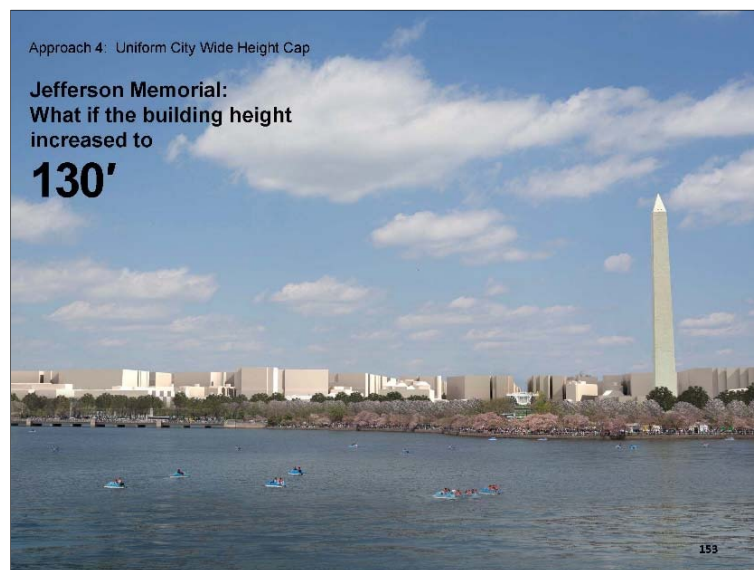


Image: District of Columbia Office of Planning

<sup>16</sup> Lewis, Harold. A New Zoning Plan for the District of Columbia: Final Report of the Rezoning Study. November 9, 1956.

View of White House looking north from the Jefferson Memorial, across the Tidal Basin, shows the White House dwarfed by 130 foot buildings on 16<sup>th</sup> Street, NW, a height allowed today per the Districts PUD standards.

NCPC acknowledges that the District of Columbia already has local protections in place to protect important viewsheds, but finds that the federal government has a long-term responsibility to define and protect these important federal resources and their setting. This report therefore recommends further study of these critical viewsheds and the development of new protections, if necessary, through amendments to the Federal and District Elements of the *Comprehensive Plan for the National Capital*, the District of Columbia Zoning Map and Regulations, or other federal actions.

### **The District's Proposal for Outside of the L'Enfant City**

#### **An Evaluation of The District's Preliminary Proposal:**

##### **Eliminate the Height Act Outside the L'Enfant City**

The 1910 Height Act makes no distinction between the areas in and outside the L'Enfant City. It applies equitably to the entire District of Columbia. The draft recommendations issued by the District on September 24, 2013, proposed the elimination of Height Act restrictions beyond the boundaries of the historic L'Enfant City and instead, recommended that decisions in this area be left to the District of Columbia through amendments to the District Elements of the *Comprehensive Plan for the National Capital*. First, it is important to note that many District residents expressed concerns about whether the comprehensive planning process can adequately protect local neighborhoods and communities. Many opposed amending the Height Act to address future growth. Second, from a federal interest perspective, NCPC acknowledges that the federal government has an effective "line item veto" over the District Elements. However NCPC finds that there has been insufficient study of impacts to national resources, such as critical viewsheds and federal agency operations outside the L'Enfant City, that would result from eliminating the Height Act. Today, the *Comprehensive Plan* does not anticipate major amendments to the Height Act. Thus, without this information the federal government cannot effectively protect its own interests in this area.

The Armed Forces Retirement Home is one federal resource for which critical viewsheds have been studied extensively. The 2008 Master Plan for the Armed Forces Retirement Home (AFRH) included a Historic Preservation Plan that identifies viewsheds from the Home that are critical to its period of historic significance (1842-1951).



## Critical Viewsheds for the Armed Forces Retirement Home 2008 Master Plan for the Armed Forces Retirement Home

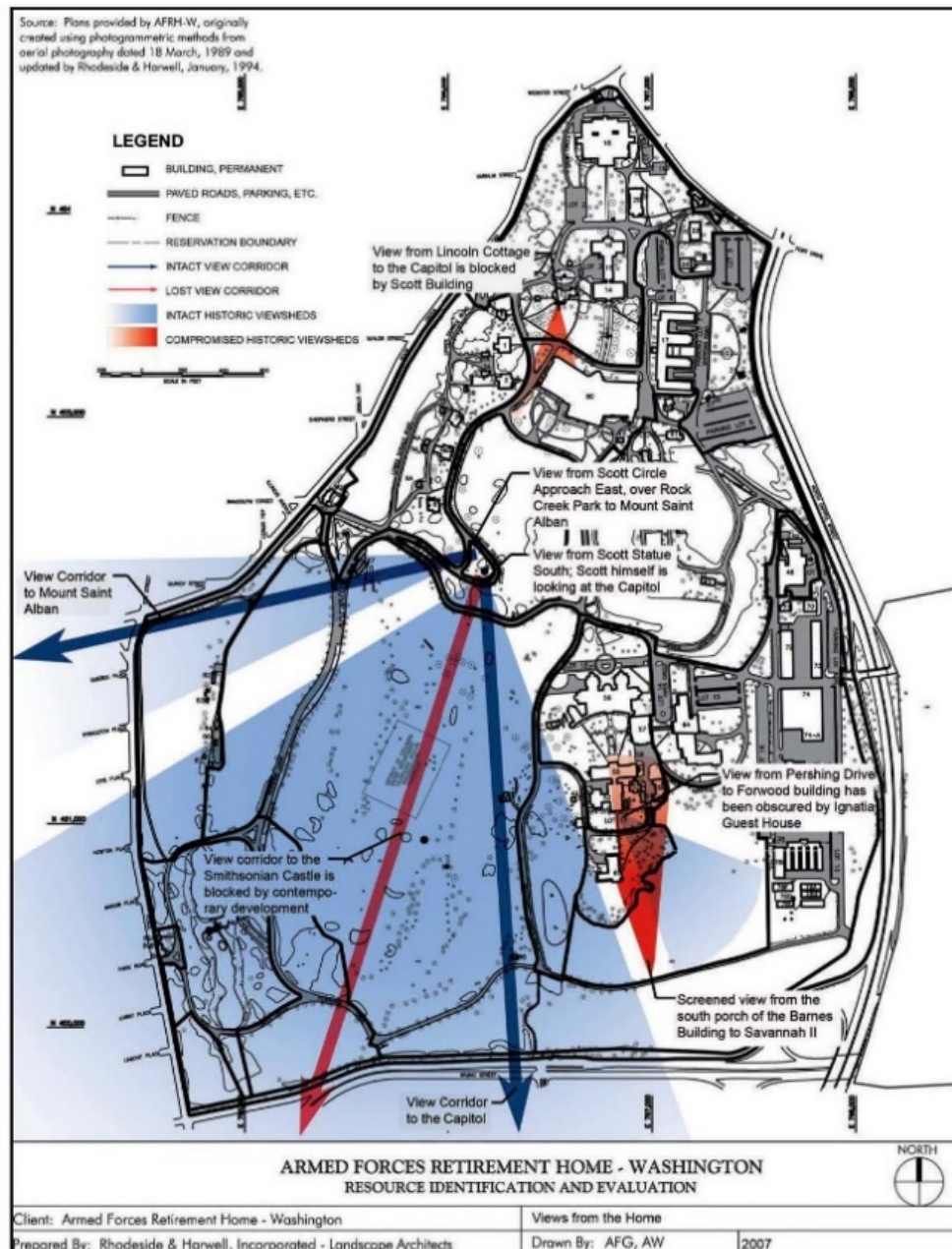


Image: AFRH 2008 Master Plan, prepared by Rhodeside and Harwell, Landscape Architects

The Master Plan used the information developed for the Historic Preservation Plan, along with topographical information, to define building height restrictions for new development proposed on the southern portion of the AFRH. While these studies do not address building heights outside the AFRH that would adversely affect federal interests, they do provide an example of how those interests could be identified, studied and defined.

### Armed Forces Retirement Home Master Plan – View Corridor

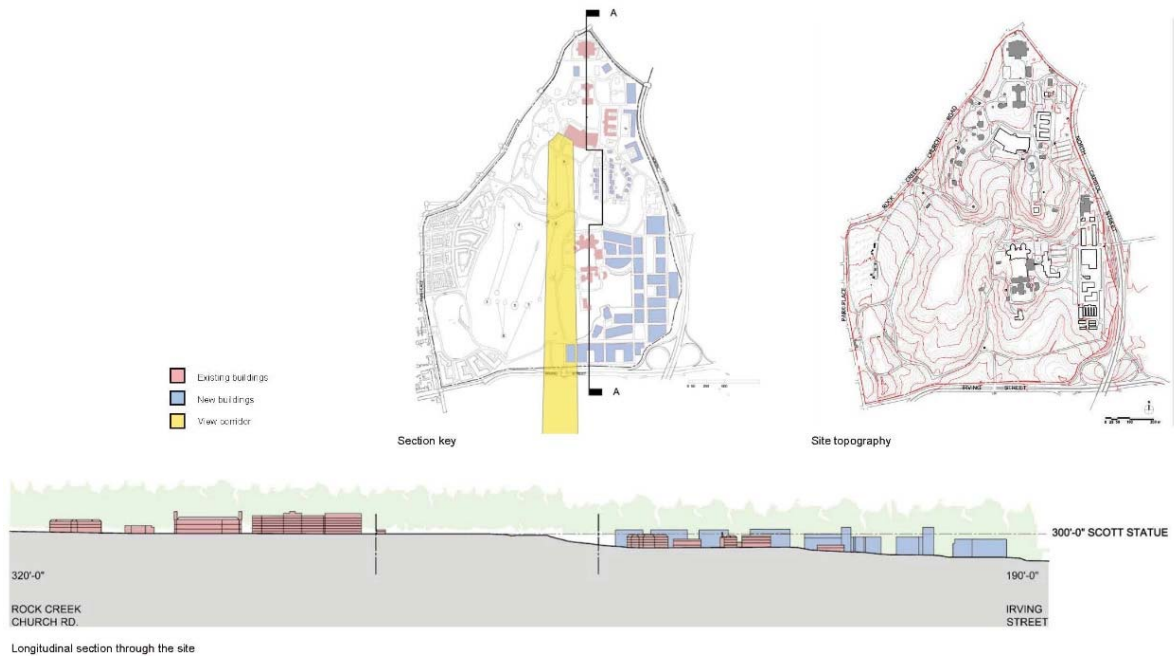


Image: AFRH 2008 Master Plan, prepared by Rhodeside and Harwell, Landscape Architects

#### An Evaluation of The District's Final Proposal:

Amend the Height Act to allow for targeted exceptions to the law through the Comprehensive Plan process in the areas outside the L'Enfant City

NCPC acknowledges that there may be opportunities for strategic change outside of the L'Enfant City where there is less concentration of federal interests. However, the Commission recommends sufficiently detailed, and joint planning work through the *Comprehensive Plan for the National Capital* prior to proposing any changes to the law. This includes an update to the *District Elements of the Comprehensive Plan* to account for the new growth forecasts as outlined in the District's draft recommendations. It is important to note, however, a majority of District residents through public testimony expressed concerns about ensuring that citizens have ample opportunity to review and provide comments through this process.

Furthermore, this report recommends that NCPC staff update the *Federal Elements of the Comprehensive Plan* to identify and, as appropriate, map federal facilities, interests, and views that may be affected by changing building heights (such as the example above for the Armed Forces Retirement Home). NCPC should coordinate with the District and federal agencies on appropriate tools, such as zoning overlays, to provide height restrictions as necessary to protect federal and non-federal historic properties.

## Key Findings

- 2.1.a 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 preeminence of our civic and democratic institutions and national icons, including a lasting, symbolic skyline recognized around the world. Only the federal establishment – by mission - will prioritize and protect these and other national interests in perpetuity.
- 2.1.b 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, White House, Washington Monument, National Mall, national parks, and other nationally significant civic and cultural resources. Increases may also impact the character of historic L'Enfant streets and public spaces.
- 2.1.c Due to the concentration of federal interests within the L'Enfant City and the determination that the District's proposed changes to the formula for calculating allowable building height would have an adverse impact to character defining features of the L'Enfant Plan, no changes should be made to the formula for calculating allowable building height under the Height Act within the L'Enfant City.
- 2.1.d 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, thus impacts to federal and local interests must be explored in more detail. 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.
- 2.1.e There is a need for further study to identify and define potential impacts of additional building height on federal interests outside the L'Enfant City. This work should be accomplished and incorporated into the Federal Elements of the *Comprehensive Plan for the National Capital*.
- 2.1.f 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.

## 2.2 Security

The findings in this section are based on NCPC's interviews with offices from the following agencies:

- U.S. Department of Homeland Security
- U.S. General Services Administration
- U.S. Secret Service
- U.S. Department of State
- Naval District Washington
- U.S. Capitol Police
- Interagency Security Committee

### Overview

As the capital of the United States, Washington is home to many top level federal government institutions and national symbols. The security of these buildings and symbols, their occupants and visitors, and communication network is of paramount concern. In rare, but significant exceptions, the security and privacy of specific individuals or offices, such as the Executive Residence, is also a concern.

Numerous federal agencies and multiple federal security services operate within the District of Columbia. As part of this study, NCPC engaged the federal security community to identify areas where security requirements and taller buildings conflict. During the consultation phase of this study, federal agencies raised security concerns about changing heights within or in the areas around federal facilities. Because of the nature of the subject matter, not all security issues will be publicly identified and addressed in this study.

### *Context and Vicinity: Neighborhood*

An increase in building heights surrounding a federal facility could create additional lines of sight to and from secured facilities. Agencies will likely reevaluate existing security measures to protect and address new sight-lines. There will be costs associated with the evaluation and any responsive measures.

### *Context and Vicinity: Wireless Infrastructure and Telecommunications*

According to comments from the security community, raising building heights may interfere with some segments of the city's wireless infrastructure for fire/life/rescue services and telecommunications. The Topographic Bowl allows microwave-based communication links to crisscross the city between hospitals, fire stations, police stations, downtown, and other communication nodes. Taller buildings that block the visibility of these nodes would have costly impacts, requiring either the construction of tall, unsightly radio towers or acquiring new communication sights to re-route communications around any future obstructing building. Also, as urban canyons get deeper, there may be impacts to police and ambulance vehicle radios at street level. Finally the space above some narrow point-to-point routes across the city is already heavily used today by the city and supporting

federal entities. If taller buildings are considered, there may be costs associated with enhancing this infrastructure.

*Context and Vicinity: Specific Restrictions for Certain Land Uses*

There may be specific land uses, such as foreign embassies and chanceries, that require special consideration related to building heights. The question is two-fold. One, should there be specific restrictions that limit buildings heights of foreign embassies and chanceries? And two, should there be special consideration for buildings *around* foreign embassies and chanceries? Additional consultation with the Department of State and security agencies may be appropriate.

*Site Specific: Physical Building Security*

Many federal agencies follow security standards developed by the Interagency Security Committee (ISC). The ISC Security Design Criteria require that security measures be based on a building - specific risk assessment resulting in a level of protection. The level of protection is determined by tenant mission, adjacent facilities and targets, significance of the facility, and building size and location. Security measures are developed to meet each agency's needs within the confines of the building's defined urban setting. Although some federal agencies have security standards that differ from or supplement the ISC criteria, all criteria generally address the same types of threats and countermeasures.<sup>17</sup>

An increase in building heights could potentially impact the existing physical building security measures already in place. Agencies will likely reevaluate potential impacts to existing security if their building or surrounding buildings were to increase in height.

Security Challenges and Issues

- Increased in heights may pose new and/or increased threats from “over-watch” (line of sight) positions that provide new and improved platforms from which enhanced electronic surveillance can occur.<sup>18</sup>
- While agencies have the ability to monitor, detect, mitigate or defeat and respond to these potential new threats, subsequent actions could result in new and un-programmed costs to those agencies for necessary threat assessment; design, acquisition, and installation of counter-measures; personnel payroll costs and training costs for equipment operation and for any required responses.<sup>19</sup>

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<sup>17</sup> The Site Security Design Guide, U.S. General Services Administration Public Buildings Service, June 2007.

<sup>18</sup> Interagency Security Committee (ISC) Membership Query, September 2013

<sup>19</sup> Ibid

- New agency concept of operations (CONOPS), establishment of new security plans, and standard operating procedures, increased recurring capability exercises, impacts to ongoing security system maintenance and upgrades could all result from responding to increases in building heights near federal installations.<sup>20</sup>
- Some land use types, such as chanceries, embassies and lands under control of foreign governments may not be appropriate for increased height.

### Key Findings

- 2.2.a 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.
- 2.2.b It may be appropriate to limit height for certain types of land uses, such as foreign embassies.

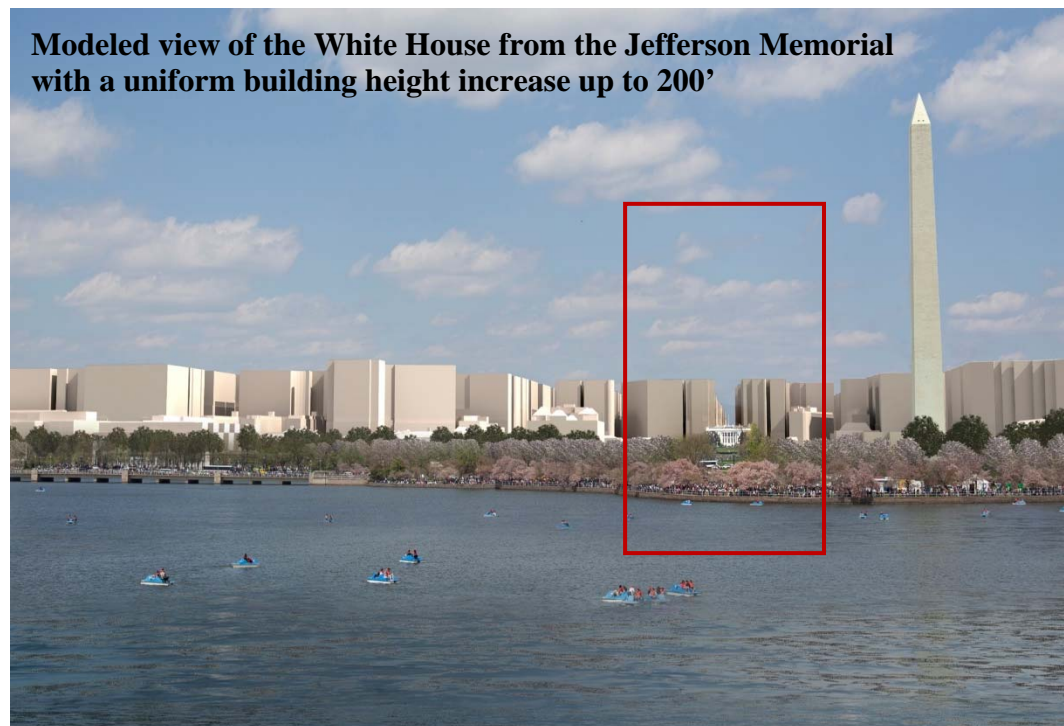


Image: District of Columbia Office of Planning

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<sup>20</sup> Ibid



## 2.3 Infrastructure

### Overview

Taller buildings could impact infrastructure capacity if they result in greater density. These impacts may affect services ranging from sewer and water, storm water management, road and transit capacity and other utilities and services. Like many American cities, Washington's infrastructure is aging and requires repair or replacement. Particularly in various locations in the L'Enfant City (including the commercial core), road, transit and sewer infrastructure is at capacity and efforts are underway to fund improvements to these systems. The Washington Metropolitan Area Transit Authority (WMATA), for example, has an \$11 billion Capital Needs Inventory to upgrade and maintain current infrastructure.<sup>21</sup> In addition, many of these systems have costs, customer demand, and operational considerations that are regional in scale.

While adequate infrastructure is a federal interest, given the time and funding constraints, this study does not evaluate specific infrastructure evaluation and recommendations. Agencies responsible for these services – and jurisdictions that contribute to demand – should be consulted for specifics regarding impacts to capacity and funding.



Image: Wikimedia



Image: DC WASA

<sup>21</sup> WMATA has requested \$1.5 billion in federal funding for Metro over 10 years for capital improvements and critical maintenance. In addition, the 2012 Metro Forward Plan is a 6-year, \$5 billion improvement program designed to enhance the transit experience for passengers. The program includes renovation and rebuilding of infrastructure and track, new railcars and buses, and upgraded technology.

## Issues

- Federal agencies and District residents alike expressed concerns about the impacts of increasing heights on infrastructure. Future study should be conducted in consultation with agencies and companies that operate services and utilities in Washington, DC to assess impacts of additional height on infrastructure and develop mitigation strategies. These studies should be conducted at the local level prior to allowing increased density.
- If properly structured, incremental development (and increases in height) may help fund improvements to infrastructure. Even if a program is established, it is unclear whether the height increases at the margins under consideration during this study could pay for investments in the short or long term. Additional study is required.
- In at least one of the visual modeling cluster approaches, the District of Columbia proposed additional height near Metrorail stations and high density locations. Public comments reflected concerns about limited capacity at some core Metrorail stations, while others were concerned that greater heights at Metro-adjacent locations might also prioritize limited infrastructure funding away from underserved neighborhoods.

## Key Findings

- 2.3.a 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.

## 2.4 Federal Development Trends

From its beginning, the nation's capital has been planned for the special purpose of serving as the seat of the federal government. It is not intended to be completed in the life of one administration, or one generation, but to be built over time. Although federal employment, workplace, land and other operational trends have varied over the past decades, the federal government continues to have a large presence, and Washington will long remain as the seat of the national government.

Direct federal employment in Washington, DC over the last seventy years has been relatively constant (around 200,000), fluctuating in response to broader national activities and interests, and this trend is anticipated to continue into the future. While the number of federal employees has remained stable, the city's overall employment has steadily increased, so federal employees represent a smaller percentage, dropping from nearly 50 percent in 1950 to 28 percent in 2000.

The federal workplace is constantly evolving in response to new laws, policies, and regulations, as well as broader technological and workplace changes. To address budget and policy interests in more efficient space use and 'freezing the footprint,' agencies are finding ways to off-set additional growth, co-locate with other agencies, consolidate offices as well as physically changing workspaces to potentially eliminate underutilized space. Consistent with a broader, technology-driven trend towards more mobile workspaces, the federal government is maximizing the use of office space, resulting in an increase to the number of workers within the space. The U.S. General Services Administration provides guidance to federal agencies in this area.

The federal government today remains the major employer and occupier of buildings (owned and leased) in the District of Columbia. While current trends may result in decreases to the overall federal footprint or in demand for leased space, the specific impacts to Washington are less clear. For example, emphasis on owned rather than leased space, space-efficient renovations, and proximity to transit hubs may actually consolidate regional federal operations and workers within Washington.

The federal government workplaces in the District of Columbia have historically been concentrated in the downtown core. However, recent federal office development includes the Department of Transportation headquarters in Southwest Washington, the Bureau of Alcohol, Tobacco, Firearms and Explosives headquarters in Northeast Washington, and the Department of Homeland Security headquarters in Anacostia. All are outside of traditional downtown federal enclaves and often serving as catalysts in distressed or emerging markets and anchoring development around Metrorail stations. These facility location choices support NCPC policies for federal development to extend into all quadrants of the city, in support of local development goals as well as federal objectives.

We anticipate a steady, continuing need to accommodate requests for new and expanding foreign missions; new memorials, museums and monuments; and locations for national events and First Amendment activities.

Many of the federal government's current and long term future needs for land and space can be accommodated on existing federally owned properties, through renovation, redevelopment, and more efficient use of existing federal properties. There may be specific needs requiring new land or space, just as there may be specific federally-owned sites that may be repurposed or disposed of. In recent years, the federal government has provided the District government with significant amounts of redeveloped land to meet local development goals. While changes to building height requirements may allow for more density for federal development projects, they do not represent, cumulatively, the impetus for any federally-driven changes to the Height Act.

### Key Findings

- 2.4.a 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 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.<sup>22</sup> Therefore, it cannot be said that the federal interest is limited to any certain area within the District, now or in the future.
- 2.4.b The economic vitality of the national capital is also a federal interest. The federal government transferred federal lands and property to support local goals for growth and community development.<sup>23</sup> The District of Columbia has enjoyed 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.<sup>24</sup> After decades of population decline, the District had a recent dramatic uptick in residential growth, although still below its peak population of 800,000 residents.<sup>25</sup> The District ended fiscal year 2012 with a budget surplus of \$417 million.<sup>26</sup>

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<sup>22</sup> 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).

<sup>23</sup> 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).

<sup>24</sup> See the Washington Business Journal, August 26, 2013: [http://www.bizjournals.com/washington/breaking\\_ground/2013/08/dc-has-nations-lowest-office-vacancy.html](http://www.bizjournals.com/washington/breaking_ground/2013/08/dc-has-nations-lowest-office-vacancy.html)

<sup>25</sup> See the Washington Post, December 20, 2012: <http://www.washingtonpost.com/blogs/mike-debonis/wp/2012/12/20/census-dc-added-30000-residents-in-27-months/>

<sup>26</sup> 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>

- 2.4.c 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 hoteling<sup>27</sup>) 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.<sup>28</sup>

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<sup>27</sup> 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.

<sup>28</sup> 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.

## **2.5 Federal Historic Resources**

The findings in this section are based on meetings with the historic preservation community, including representatives from both federal, local, and neighborhood organizations. Agencies and organizations represented during meetings scheduled as part of this study include:

- Committee of 100 on the Federal City
- The National Trust for Historic Preservation
- D.C. State Historic Preservation Office
- D.C. Preservation League
- U.S. Department of the Interior
- Neighborhood community groups and associations (various)
- U.S. General Services Administration

### Overview

Washington is one of the most unique planned, purpose-built capital cities in the world. Protecting and enhancing that legacy is an important part of historic preservation in the nation's capital. Historic preservation concerns related to building height cannot easily be categorized along jurisdictional lines (federal, local, and neighborhood). The purpose of this discussion is to highlight federal interests related to preservation. Many community organizations, neighborhoods, and other groups have expressed concerns about the impacts of raising height on the scale and character of neighborhoods. Important historic resources related to federal lands and resources include, but are not limited to:

- Plan of the City of Washington (includes the L'Enfant Plan and McMillan Plan);
- Nationally Significant Landmarks (such as the U.S. Capitol, White House, Washington Monument, Lincoln Memorial, Jefferson Memorial, and Pennsylvania Avenue); and
- Historic Buildings, Districts, Sites, and Cultural Landscapes listed in the National Register of Historic Places and/or D.C. Inventory of Historic Sites.

### Image of Historic Resources Map<sup>29</sup>

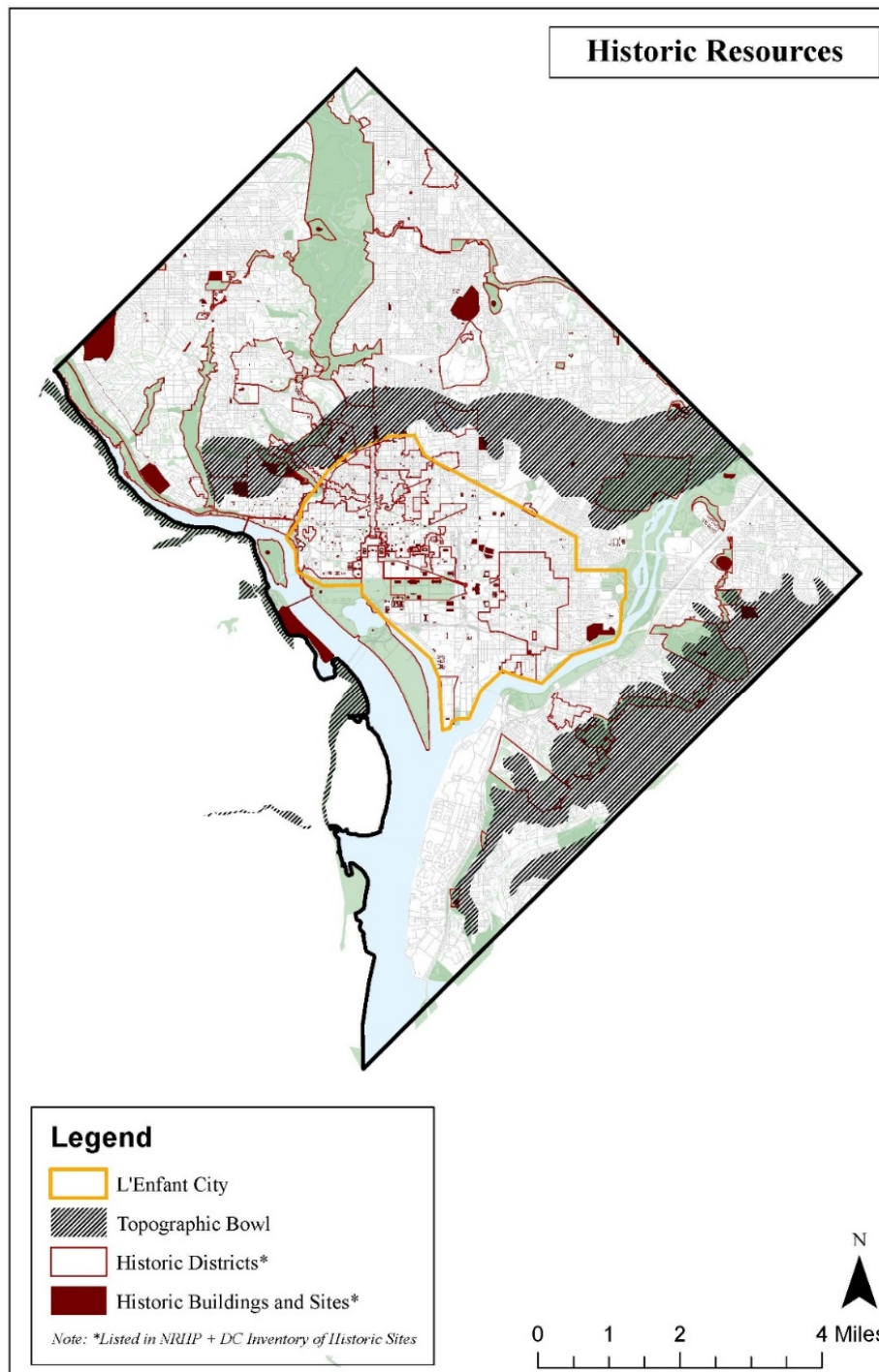


Image: National Capital Planning Commission

<sup>29</sup> This map is provided for illustrative purposes only. It does not reflect an official position or conclusion of the National Capital Planning Commission. No conclusions or decisions to act or refrain from acting should be made based on this map without conducting an independent analysis with reference to the original source information.



## **The Significance and Use of Washington’s Ceremonial Spaces: Historic Marches on Washington**

**Jobs and Freedom, 1964 (National Mall)**



Image: National Archives

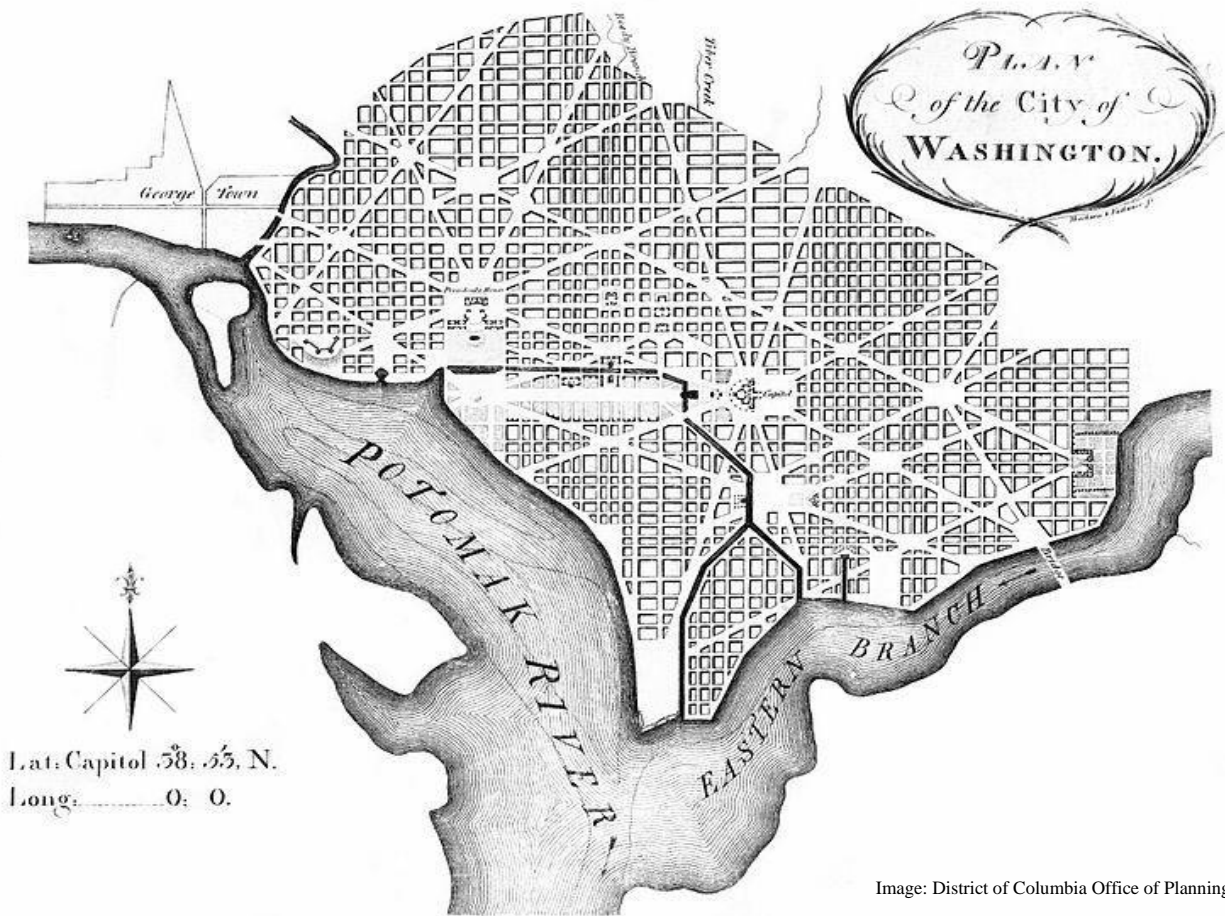
**Women suffragists marching on Pennsylvania Avenue, 1913**



Image: Library of Congress

### Issues

Collectively, the McMillan Plan and the L’Enfant Plan are known as the Plan of the City of Washington and together they established an urban design framework that is unique to the nation’s capital. The L’Enfant Plan of 1791 established the basic form of the city including the National Mall, the street grid, public spaces, and the location of the White House and U.S. Capitol Building. With the location of the U.S. Capitol on a prominent site at the center of his plan, L’Enfant divided the city into four quadrants and designed a system of diagonal avenues superimposed on an orthogonal grid. The avenues were to be “wide, grand boulevards, lined with trees, and designed in such a manner that would visually connect topographical sites throughout the city.” At these sites important structures, monuments, and fountains were to be constructed. The result of L’Enfant’s design was a plan with ceremonial spaces and grand boulevards that respected the natural contours of the land in a picturesque manner which created a system of open spaces and parks where the orthogonal grid and diagonal avenues intersected. The open space and vistas that were established by the L’Enfant Plan were as integral to the design of the city as the street network and configuration. Views of the Potomac River from the White House and the U.S. Capitol were intended to be expansive and convey the powers of the Legislative and Executive Branches of government.



The plan developed by the Senate Park Commission in 1903, known as the McMillan Plan, formalized the design of the National Mall, created federal precincts such as the Federal Triangle, and established key national parks such as Rock Creek Park. The McMillan Plan was built upon the Baroque ideals of the L'Enfant Plan and reinforced the idea of grand public spaces and civic buildings based on the City Beautiful Movement. The McMillan Plan was concerned with "...two main problems: the building of a park system and the grouping of public buildings. By connecting existing parkland and carrying the park system to the outlying areas of the District and across the river as far as Mount Vernon and Great Falls, it addressed the regional character of the city." The McMillan Plan built upon principles of the L'Enfant Plan and focused on restoring the National Mall as originally envisioned by L'Enfant as an uninterrupted green space.

The L'Enfant Plan and McMillan Plan are significant historic resources listed in the National Register of Historic Places. According to the description included in the nomination form, the landmarked area includes the streets and reservation within the plan's boundaries "and the airspace above this matrix up to the legal height limit in the city."

The view-sheds and vistas established by the framework of the L'Enfant Plan and reinforced by the McMillan Plan are character-defining features of the Plan of the City of Washington. This includes views along the National Mall and views across the Ellipse between the Jefferson Memorial and White House, but it also includes views along avenues such as Pennsylvania, New Jersey, Maryland, Virginia, Massachusetts, Louisiana, and New Hampshire. In addition, views along orthogonal streets such as East, North, and South Capitol Streets, 16<sup>th</sup> Street, Constitution Avenue, and Independence Avenue are character-defining vistas in the city. Views along axial streets such as 23<sup>rd</sup> Street between Washington Circle and the Lincoln Memorial or P Street between Dupont and Logan Circle are also important and character-defining features of the plan.

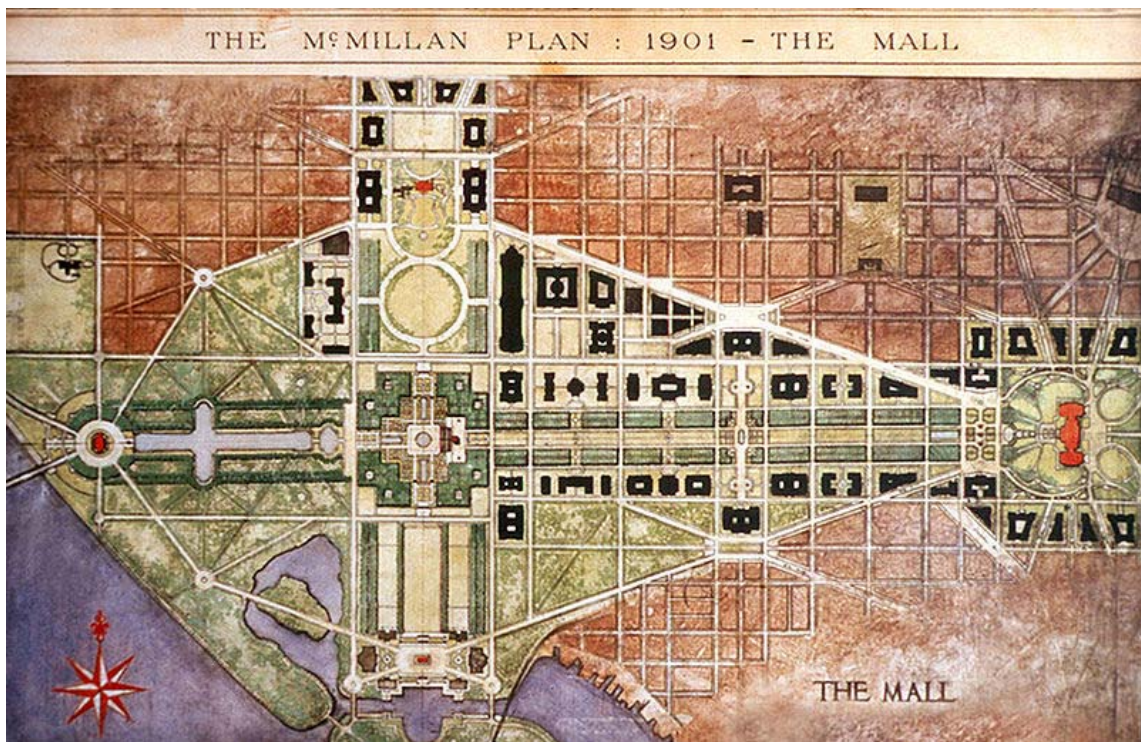


Image: nps.gov

#### *Plan of the City of Washington*

Any changes to the Height Act could impact or alter these views by introducing new elements that may disrupt or narrow view-sheds, thus potentially causing adverse effects on the Plan of the City of Washington. In addition, changes to the Height Act change the streetscape's character, and alter L'Enfant's vision of grand boulevards and public spaces, thereby causing adverse effects on the Plan of the City of Washington.

*Nationally Significant Landmarks*

The city's historic layout physically shows the functional relationship of the three branches of government, including the views to and from the White House and the U.S. Capitol. The complementary relationship between the home of the president and the city is symbolized by views toward the White House that are just as dramatic as those from the mansion's north door or the south portico. The surrounding urban development has become dominant to the scale of the White House as a building, but the distinctive setting of the Executive Mansion within President's Park emphasizes its importance, and the open space reinforce a sense of dignity and power. Washington's horizontal skyline is part of its unique character, and provides a backdrop for public buildings of national significance such as the U.S. Capitol and the Washington Monument. The horizontality of the city allows these landmarks to stand out and emphasizes their importance and symbolism. Changes to the Height Act could impact the scale of nationally significant landmarks, their setting, and alter or reduce their symbolic meaning.

*Resources Outside of the L'Enfant City*

There are many historic resources located outside of the Topographic Bowl but within the District of Columbia. For example, the Civil War Defenses of Washington, erected during the Civil War to protect the nation's capital, are prominent resources located outside of the Topographic Bowl. Due to their location, views from these National Park Service sites towards one another as well as into the city contribute to their historic significance and preserving and protecting these view-sheds was recognized by the McMillan Park Commission and is an important part of their history. In the early 1900s, the McMillan Park Commission proposed that this area be memorialized in a unified system connected by a scenic, uninterrupted parkway. Examples of other historic resources outside the L'Enfant City include:

- Frederick Douglass House
- The Armed Forces Retirement Home and Lincoln Cottage
- St. Elizabeth's
- The Naval Observatory

Views to and from these resources contribute to their significance. Depending on the location and proposed changes to the Height Act, the setting of these resources may be impacted. Altering the setting of these historic resources, including views to and from the sites could diminish their importance.





Image: Wikimedia Commons  
Frederick Douglass Home



Image: afrrh.gov  
Armed Forces Requirement Home

### *Topographic Bowl*

The topographic setting of the Plan of the City of Washington is important because of L'Enfant's plan to take advantage of the flat area located in the center of a surrounding, triangle-shaped Topographic Bowl and the intersection of two rivers. One of the central components of the L'Enfant Plan was wide, grand boulevards, lined with trees, designed in such a manner that would visually connect topographic sites throughout the city. Important structures, monuments, and fountains were to be erected at these sites and views to and from the sites were integral to the L'Enfant Plan. Increases in building heights could potentially impact the visual connection of topographic sites throughout the city and potentially diminish their importance.

### **Washington's Topographic Bowl**



Image: District of Columbia Office of Planning

## Issues

- Historic preservation groups expressed concerns about any future processes that would authorize exceptions to the Height Act by a federal agency (such as NCPC's review and approval of any changes through the Comprehensive Plan process) and whether this would constitute an undertaking as defined in Section 106 of the National Historic Preservation Act and its implementing regulations. Actions by NCPC or any other federal agency constituting a federal undertaking would need to comply with the requirements of Section 106 prior to approving any approach.

## Key Findings

- 2.5.a Individual facilities, landscapes and vistas—especially those listed on the National Register of Historic Places—also represent federal interests. The greatest concentration of these 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. There are important historic resources outside the Topographic Bowl, including the Lincoln Cottage and the Frederick Douglass House.



## 2.6 Additional Federal Interests

In general, a range of additional, often site-specific, matters should be taken into consideration when considering changes to the Height Act. Examples include:

- Existing design guidelines, master plans, or other agreements related to federal lands, buildings, or other properties.
- Overlays or other restrictions that protect specific buildings, places, operations, or people. Examples include: the Capitol Interest Overlay District within the District's Zoning Code or special protections related to flight paths near airports.
- Viewshed protections.

In general the communities and organizations that operate in and around an area under consideration for increased height should be consulted for more specific guidance.

**Figure: Examples of location specific interests.**  
**Zoning Map of the District of Columbia, Capitol Interest Overlay District** <sup>30</sup>

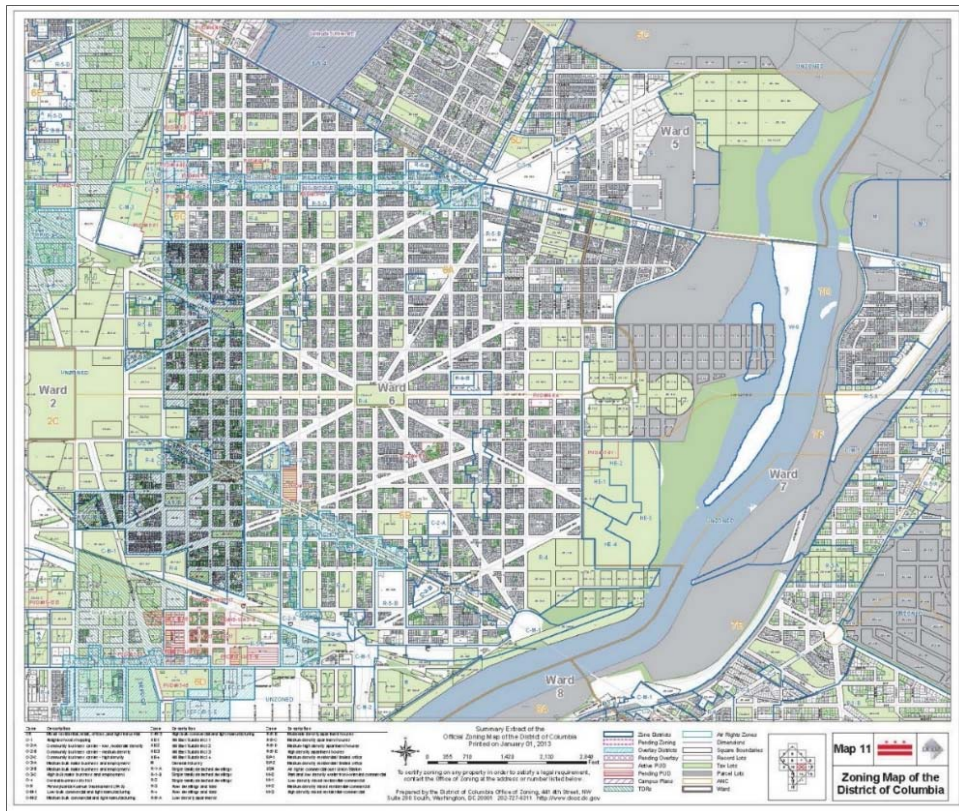


Image: District of Columbia Office of Zoning

<sup>30</sup> This map is being provided for information and illustrative purposes only. It does not reflect an official position or conclusion of the National Capital Planning Commission. No conclusions or decisions to act or refrain from acting should be made based on this map without conducting an independent analysis with reference to the original source information.

### Regan National Airport Flight Paths <sup>31</sup>

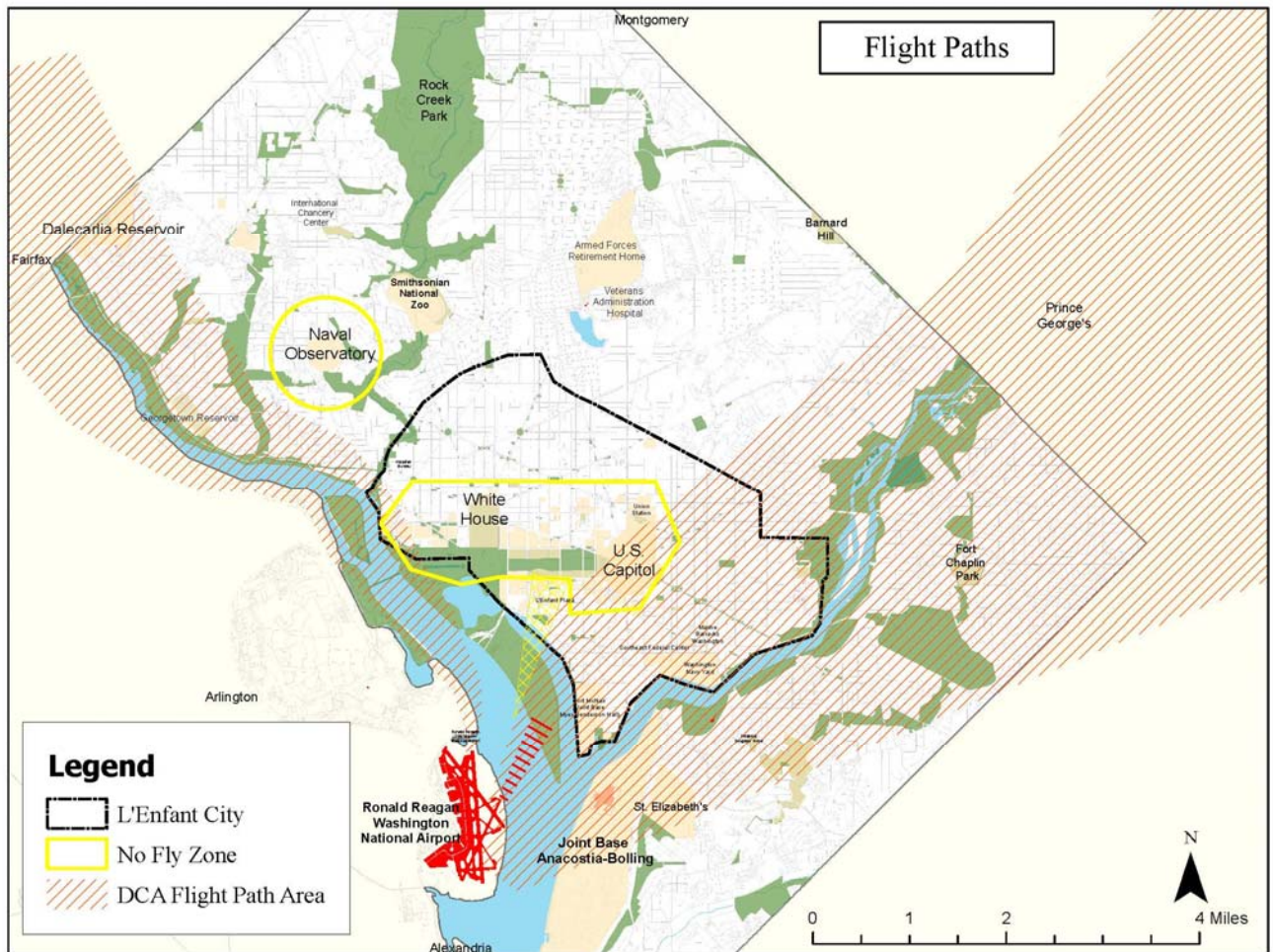


Image: National Capital Planning Commission  
Data: Metropolitan Washington Airports Authority

<sup>31</sup> This map is being provided for illustrative purposes only. It does not reflect an official position or conclusion of the National Capital Planning Commission. No conclusions or decisions to act or refrain from acting should be made based on this map without conducting an independent analysis with reference to the original source information.

### A Note About Viewshed Protection and Overlays

Note: for an additional discussion of viewsheds within the context of the capital city character, go to page 11.

The city has many significant viewsheds, including, but not limited, those to and from the U.S. Capitol and the White House. The visual modeling studies demonstrate impacts to some federal resources if full build-out occurred under the current Height Act. NCPC notes that certain existing view-sheds may require further protection than is currently offered through the Height Act. NCPC agrees with the District's recommendation to implement additional view-shed protections. All options for protecting these resources over the long term – whether through the *Comprehensive Plan* or other regulatory tools, such as a zoning overlay, should be considered.

NCPC acknowledges that existing District of Columbia regulations and review already offer protection for several important view-sheds, but recommends that the federal government further define and protect these critical federal resources. NCPC therefore recommends further study to define these federal resources, identify their related viewsheds, and develop necessary protections through amendments to the *Federal and District Elements of the Comprehensive Plan* and as appropriate, changes to the District of Columbia Zoning Map to ensure the zoning map is not inconsistent with the *Comprehensive Plan*.

### Key Findings

- 2.6.a 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.
- 2.6.b The city's most significant viewsheds, to include without limitation, those to and from the U.S. Capitol and the White House, should be further evaluated and federal and local protections established, which include policies in the Federal and District Elements of the Comprehensive Plan.

## **PART 3: EVALUATION OF ISSUES RELATED TO PENTHOUSES**

The discussion below provides information and analysis that supports the following final recommendation:

**FINAL Recommendation 4: Amend the Height Act to allow for human occupancy in existing and future penthouses, with the following restrictions:**

- **Include specific protections related to sightlines for select federal buildings including but not limited to, the U.S. Capitol and White House.**
- **Support communal recreation space on rooftops by allowing human occupancy in roof structures, where use of those structures is currently restricted under the Height Act to mechanical equipment, so long as the facade of these structures continue to be set back from exterior building walls at a 1:1 ratio.**
- **Impose an absolute 20 foot maximum height and a limitation of one story for penthouse structures above the level of the roof, which must contain within all mechanical equipment and elevator, stair other enclosures, with no additional construction allowed above the penthouse roof for any purpose.**

### Discussion

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.<sup>[1]</sup> It is important, however, to note the certain potential implications of any changes to penthouse restrictions. Changing the regulation to allow occupancy is a fundamental conceptual change resulting in income- and tax-producing useable area above the limits of the Height Act. This change introduces new economic forces that may alter the existing practice of keeping penthouses small to a new incentive to maximize penthouse volumes and make them expressive. Subsequent zoning and *Comprehensive Plan* updates must be sensitive to this change.

Because this amendment will result in new economic incentives, NCPC recommends that the current 1:1 setback be maintained, a 20 foot maximum height and a limitation of one story for penthouses be imposed, and require mechanical structures be included within that maximum height. These steps are consistent with the currently proposed updates to the District Zoning Regulations and will protect the broad federal interest in the form of the city, particularly within the L'Enfant City.

### Background Related to Penthouses

Throughout the world, accessible rooftop amenities such as green roofs and community areas, have become an industry best practice and are highly desirable. 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 above the height limit,

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<sup>[1]</sup> See testimony of Harriet Tregoning before The House Committee on Oversight and Government Reform, July 19, 2012.



effectively limiting their use for anything other than mechanical equipment. Permitting a broader range of active uses—if properly implemented and with certain restrictions—does not appear to affect federal interests in most instances.

#### Examples of Current Restrictions Related to Penthouses

The Height Act includes the following provisions that relate to penthouses:

- **One-to-one setbacks**
  - *...Penthouses, ventilation shafts, and tanks shall be set back from the exterior walls distances equal to their respective heights above the adjacent roof...*
- **Limits on occupancy**
  - *...Such structures when above such limit of height shall be fireproof, and no floor or compartment thereof shall be constructed or used for human occupancy above the top story of the building upon which such structures are placed...*
- **Objects allowed on rooftops**
  - *Spires, towers, domes, minarets, pinnacles, penthouses over elevator shafts, ventilation shafts, chimneys, smokestacks, and fire sprinkler tanks may be erected to a greater height than any limit prescribed in this Act...*

Examples of current local zoning<sup>32</sup> that relate to penthouses:

- **One-to-one setbacks**
  - *630.4 If housing for mechanical equipment or a stairway or elevator penthouse is provided on the roof of a building or structure, it shall be erected or enlarged as follows:  
(b) It shall be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located...*
- **Limits on occupancy**
  - *411.1 To exercise a reasonable degree of architectural control upon roof structures in all districts, housing for mechanical equipment, stairway and elevator penthouses, and, when not in conflict with An Act To Regulate the Height of Buildings in the District of Columbia...on apartment building roofs, penthouses for (a) storage, showers, and lavatories incidental and accessory to roof swimming pools or communal recreation space located on that roof; and (b) other enclosed areas, within the area permitted as a roof structure, used for recreational uses accessory to communal rooftop recreation space, shall be subject to conditions and variable floor area ratio credit specified in this section.*

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<sup>32</sup> As per D.C. Municipal Regulations (DCMR), Chapter 11



- **Objects allowed on rooftops**

- 2906.1 Rooftop penthouses not intended for human occupation, such as penthouses over mechanical equipment, a stairway, or an elevator shaft...
- 2906.4 Spires, towers, domes, pinnacles, or minarets serving as architectural embellishments, ventilator shafts, antennas, chimneys, smokestacks, or fire sprinkler tanks ...

- **Number of penthouse enclosures**

- 411.3 All penthouses and mechanical equipment shall be placed in one (1) enclosure, and shall harmonize with the main structure in architectural character, material, and color.

- **Height of 18'6" (Important note: The Zoning Commission is currently considering a proposal to increase this height to 20 feet.)**

- 2906.2 Such a penthouse shall not exceed eighteen feet, six inches (18 ft., 6 in.), in height above the roof upon which it is located. Mechanical equipment shall not extend above the permitted eighteen foot, six inch (18 ft., 6 in.), height of the housing.
- 2906.4 Spires, towers, domes, pinnacles, or minarets serving as architectural embellishments, ventilator shafts, antennas, chimneys, smokestacks, or fire sprinkler tanks may be erected to a height in excess of that which this section otherwise authorizes.



Image: District of Columbia Office of Planning

## **PART 4: EVALUATION OF TECHNICAL CORRECTIONS AS PROPOSED IN THE HEIGHT STUDY**

The evaluation of the federal interests below is designed to fully articulate the underlying rationale for the following final recommendation:

**FINAL Recommendation 5: Delete Sections 2-4 of the Height Act, as contained at 36 Stat 452, chap 263, sec 2-4 (1910), which solely relate to fireproof construction. These proposed deletions are antiquated fire and safety requirements that have been updated and incorporated into modern day codes by the District of Columbia.**

### **Technical Amendments**

Because it was originally drafted in response to fire and safety concerns raised by the construction of the city's first "skyscraper," the first four sections of the Height Act are focused primarily on the use of non-combustible materials for buildings over a certain height. For example, the Height Act includes the following provisions that relate to non-combustible construction:

- **Fireproof materials required**
  - *...All buildings in the District of Columbia, including buildings of every kind, class, and description whatsoever, excepting churches only, hereafter erected, altered, or raised in any manner as to exceed sixty feet in height shall be fireproof or noncombustible...*
- **Hotels, etc.**
  - *Hotels, apartment houses, and tenement houses hereafter erected, altered, or raised in any manner so as to be three stories in height or over and buildings hereafter converted to such uses shall be of fireproof construction up to and including the main floor...*
- **Theaters**
  - *Every theater hereafter erected and every building hereafter converted to use as a theater, and any building or the part or parts thereof under or over the theater so erected or the buildings so converted, shall be of fireproof materials throughout...*

The District of Columbia and federal agencies including the Architect of the Capitol, General Services Administration, National Park Service, and Department of State have adopted life and safety codes published by the International Code Council (ICC). The ICC was established in 1994 as a non-profit organization dedicated to developing a single set of comprehensive and coordinated national model construction codes.<sup>33</sup> Arguably, these more comprehensive and professionally-developed codes have superseded the need for life safety codes developed by Congress over 100 years ago. This report therefore recommends that these sections of the Height Act be eliminated.

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<sup>33</sup> International Code Council. <http://www.iccsafe.org/AboutICC/Pages/default.aspx>

## **PART 5: OVERVIEW OF THE HEIGHT MASTER PLAN STUDY**

### **5.1 Purpose of the Height Master Plan Study**

In November 2012, the National Capital Planning Commission (NCPC) and the DC Office of Planning (DCOP) announced a joint Height Master Plan to explore the impact of strategic changes to the federal Height of Buildings Act of 1910 (Height Act).

Congressman Darrell Issa, Chairman of the U.S. House Committee on Oversight and Government Reform, held a hearing on July 19, 2012 entitled “Changes to the Height Act: Shaping Washington, D.C., For the Future.” Representatives of NCPC, the District of Columbia, civic groups, and business representatives testified before the U.S. House of Committee on Oversight and Government Reform, Subcommittee on Health Care, District of Columbia, Census and the National Archives. In the District’s 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 District’s tax base.

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.”<sup>34</sup> 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...”

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<sup>34</sup> See letter from Committee Chairman Darrell Issa, dated October 3, 2012 in Appendix A.

## 5.2 Three Core Principles

The Congressional request articulated 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 national resources, the District and NCPC mutually agreed to the following three core principles to guide the Height Master Plan<sup>35</sup>:

- *Ensure the prominence of federal landmarks and monuments by preserving views to them and their settings.*

The image of Washington, DC as the national capital is often defined by its important landmarks and monuments. The Washington Monument, the Jefferson Memorial, the Lincoln Memorial, the US Capitol, and the White House dominate the landscape within the core of the city. Views of these as well as lesser monuments, such as the statues of Civil War generals that anchor many of the city's circles and squares, are framed by views along the city's avenues. The consistent height of private buildings creates a backdrop for these civic and cultural buildings. These views were conceived by Pierre L'Enfant as part of the city's original design and have been reinforced by the Height Act. They are essential to our nation's image and identity and therefore are a pre-eminent federal interest.



Image: District of Columbia Office of Planning



Image: ABC News

<sup>35</sup> These principles were agreed upon by the Chairman of the National Capital Planning Commission and the Mayor of the District of Columbia. See communications dated October 3, 2012 from NCPC, the District of Columbia and the House Committee on Oversight and Government Reform in Appendix A.





Image: District of Columbia Office of Planning  
Aerial view looking south along 16<sup>th</sup> Street, NW

- *Maintain the horizontality of the existing monumental city skyline.*

The skylines of most major American cities are distinguished by tall buildings or skyscrapers. The central business districts of these cities feature tall buildings that are often hundreds of feet in height, creating a “vertical” skyline. These buildings demonstrate the power and prestige of commercial enterprise in the United States. Prominent city halls and state capitol buildings notwithstanding, the majority of the tall buildings dominating American cities’ skylines are corporate office towers. Examples include the Transamerica Building in San Francisco, the Comcast Center in Philadelphia, the Willis Tower (formerly Sears Tower) and John Hancock Center in Chicago, and the Empire State and Chrysler Buildings in New York City.

Washington’s skyline is unique among American cities in that it differs from this vertical style. Because of the uniform heights prescribed by the Height Act, Washington’s skyline is horizontal. This horizontality allows the U.S. Capitol and the Washington Monument to dominate the skyline in the area where government institutions are concentrated, and civic institutions such as the National Cathedral and the Basilica of the National Shrine of the Immaculate Conception to dominate outside the city center.

With the visual predominance of these civic and cultural buildings, Washington’s unique skyline becomes a symbolic, public skyline. No private building is a focal point. This symbolic character of the skyline is an essential part of Washington’s identity and therefore a federal interest. The city was founded as the nation’s capital and a symbol of democracy; it did not spring from commercial interests as did most other U.S. cities.



Because of this important quality of Washington’s skyline, any potential changes to the Height Act must not allow private buildings to overshadow the prominence of civic buildings, nor should changes in building height alter the role that private buildings play as a horizontal backdrop.



Image: District of Columbia Office of Planning

- *Minimize the impacts to nationally significant historic resources, including the L'Enfant Plan.*

Because of Washington’s heritage as the capital city, the city is the location for numerous historic resources of national significance. These resources include iconic gathering spaces such as the National Mall and important buildings such as the White House and U.S. Capitol. Historic resources also include the sites of important events from the nation’s history. These include such sites as the Lincoln Cottage at the Armed Forces Retirement Home and Cedar Hill, the home of Frederick Douglass. The L’Enfant Plan, developed by Pierre L’Enfant in 1791, is a significant historic resource and is listed in the National Register of Historic Places. The L’Enfant Plan and the McMillan Plan of 1901 are collectively referred to as the Plan of the City of Washington.

The character and setting of these historic resources can be impacted by adjacent urban fabric. Altering building heights can change historic views to and from historic sites. Tall buildings adjacent to smaller historic buildings or spaces can overshadow, dominate, and destroy the historic character of those locations. As such, any changes in building heights must be mindful of such impacts. Furthermore, building form must properly relate to the hierarchy of the L'Enfant streets and the important role that historic views, public spaces and street widths play in the overall character of the L'Enfant City.

### 5.3 Height Study Scope and Methodology

**The Height Study is organized into three phases. Public meetings were held in each phase. At least one meeting was held in each of the city's eight wards. Below is a summary of each phase:**

#### Phase 1

During Phase 1, the partners developed essential background information to frame issues, identify federal and local interests, document important cultural and historic resources, and developed an understanding of best planning practices related to height. Key tasks included:

- A. Documented federal interests and consulted representatives from the following federal agencies. Note: Consultation should not construed to suggest concurrence on recommendation(s) included in this document.
  - Architect of the Capitol / Capitol Police
  - U.S. Department of State
  - U.S. Commission of Fine Arts
  - U.S. Department of Defense (local installations)
  - U.S. Department of Homeland Security
  - U.S. General Services Administration
  - U.S. Department of the Interior, National Park Service
  - U.S. Secret Service
- B. Consulted representatives from non-profits, other organizations, and local communities. Examples included:
  - The Committee of 100 on the Federal City
  - DC Building and Industries Association
  - Downtown DC Business Improvement District
  - The National Trust for Historic Preservation
  - Local neighborhood associations

C. Conducted foundational background research.

- Case studies were conducted for foundational background research of other cities related to height. The case studies were intended to inform the ongoing public discourse on the height of buildings in Washington DC. They provided context to the local discussion by summarizing the regulatory approaches taken by other world cities and the motivations behind them. The studies also described the relevant evolution of height regulations and offered lessons learned to inform the Height Plan.
- Specific cities were selected because of their status as either a national capital, a center of cultural identity, an economic engine, or a combination thereof. The cities studied include London, Paris, Barcelona, Vancouver, and San Francisco. For more information, see Appendix C.

D. NCPC and DCOP hosted four public meetings during Phase 1.

Phase 2

During Phase 2, DCOP prepared two studies to inform the Height Study: a visual modeling study and an economic feasibility analysis. Key tasks included:

A. Conducted a visual modeling study.

- The study is organized by several approaches:
  - No Change to Height Act: “Full Build-out”
  - Change in Penthouse Restrictions
  - Street Width Relationship “Ratio Proposal”
  - Raise Height in Selected Areas: “Clusters”
  - Change Height Cap City Wide: “Uniform Height Increases”
- The study demonstrates a range of possibilities for what potential strategic changes to building height might look like from a number of vantage points citywide, including street-level, aerial, and skyline views from within and outside the L’Enfant City.
- The visual modeling studies do not identify specific areas for potential increased height. Rather, they focus on laying out several approaches for managing height and the areas modeled vary depending on the approach. The modeling study is only a visual study of impacts.
- The visual modeling study did not include any changes to federal properties, historic landmarks and sites, low density areas in historic districts, all remaining low density areas including residential neighborhoods; institutional sites and public facilities.

- The visual modeling study did not include an analysis of infrastructure impacts of increased heights nor is it a zoning analysis.
- All of the modeled views are available online at <http://www.ncpc.gov/heightstudy>.

B. Conducted an Economic Feasibility Analysis.

- The study looked at the effects or limitations of construction costs at various height-level alternatives and made some preliminary economic projections of the consequential effects of changes in building height at the same height alternatives.

C. NCPC and DCOP hosted five public meetings throughout the city.

Phase 3

A. NCPC released its draft report and recommendations for public review.

The third phase commenced with the presentation of draft findings and recommendations at the NCPC meeting on September 12, 2013. NCPC preliminary recommendations recognized:

- (1) Opportunities to amend the Height Act to allow penthouse occupancy and/or more active uses throughout the city.
- (2) There are federal interests outside of the L'Enfant City and beyond the edge of the Topographic Bowl, however, they are less concentrated. There may be opportunities for strategic changes to the Height Act in this area, however those changes (specific, geographic or procedural) are undefined in the preliminary recommendations.

B. District of Columbia released draft recommendations.

The District released its draft report and recommendations on September 24, 2013 for public review. The District also released new growth forecasts and capacity analyses as part of their report. The District's preliminary recommendations proposed:

- (1) Amending the Height Act to implement a ratio approach of 1:1.25 within the L'Enfant City.
- (2) Implementing viewshed protections.
- (3) Eliminating the Height Act outside the L'Enfant City and allow local zoning and the Comprehensive Plan to govern maximums. Federal representation on the zoning commission (40%) and approval of the District Comprehensive Plan is sufficient to protect federal interests.

C. The public had opportunities to provide public input on the separate NCPC and District of Columbia draft recommendations:

- NCPC hosted an informational public meeting on September 25, 2013. The District of Columbia Council Committee of the Whole held a public hearing on October 28, 2013.
- NCPC conducted a formal public hearing on October 30, 2013.

D. NCPC's released the draft final staff recommendations on November 17, 2013, recommending the following:

- (1) The Height Act should remain in place (within the L'Enfant City)
- (2) Height Act should remain in place (outside the L'Enfant City) unless and until the District completes an update to the District Elements of the Comprehensive Plan where targeted area(s) that meet specific planning goals and also do not impact federal interests are identified.
- (3) View-shed protections should be further evaluated and established through the Comprehensive Plan.
- (4) Amend the Height Act to allow for human occupancy in existing and future penthouses, with restrictions.
- (5) Nominal updates to the Height Act to ensure sections are relevant given present day technologies.

The Commission amended the staff recommendations and authorized transmittal of the following final recommendation to Congress at the November 19, 2013 Special Commission Meeting. Public testimony was also accepted at the meeting.

Final Commission Recommendations for Transmittal to the U.S. House Committee on Oversight and Government Reform

- (1) To protect the integrity of the form and character of the nation's capital, the federal Height Act should remain in place and no changes should be made to the formula or approach for calculating allowable building height.
- (2) There may be some opportunities for strategic change in the areas outside of the L'Enfant City where there is less concentration of federal interests. However, additional study is required to understand whether strategic changes to the Height Act would impact federal interests within this area.
- (3) The city's most significant viewsheds, to include without limitation, those to and from the U.S. Capitol and the White House, should be further evaluated and federal and local protections established, which include policies in the Federal and District Elements of the Comprehensive Plan.
- (4) Amend the Height Act to allow for human occupancy in existing and future penthouses, with the following restrictions:
  - Include specific protections related to sightlines for select federal buildings including but not limited to, the U.S. Capitol and White House.



- Support communal recreation space on rooftops by allowing human occupancy in roof structures, where use of those structures is currently restricted under the Height Act to mechanical equipment, so long as the facade of these structures continue to be set back from exterior building walls at a 1:1 ratio.
  - Impose an absolute 20 foot maximum height and a limitation of one story for penthouse structures above the level of the roof, which must contain within all mechanical equipment and elevator, stair other enclosures, with no additional construction allowed above the penthouse roof for any purpose.
- (5) Delete Sections 2-4 of the Height Act, as contained at 36 Stat 452, chap 263, sec 2-4 (1910), which solely relate to fireproof construction. These proposed deletions are antiquated fire and safety requirements that have been updated and incorporated into modern day codes by the District of Columbia.

## **PART 6: THE HEIGHT ACT AND PLANNING REGULATION**

### **6.1 Introduction to the Height Act**

One of the most common myths about the Height Act is that it is based on the height of the U.S. Capitol dome or the Washington Monument. In fact, the Height Act is based on the width of the street and includes a maximum height. The Height Act essentially limits the maximum height of commercial buildings to 130 feet and residential structures to 90 feet. It is applied city-wide.

The federal government has been involved in regulating building heights in the nation's capital since 1791 when President George Washington established the District's first limitations on building heights. Correspondence between President Washington and Thomas Jefferson indicate that early building height regulations limiting private buildings to 40 feet were intended to aid in controlling fires and to provide for the "openness and convenience"<sup>36</sup> of the federal city. Although the regulations were subsequently suspended, concerns about openness and fire safety were recurring themes in later building heights discussions.

In 1894, construction of the 12-story, 164-foot Cairo building resulted in the tallest privately owned residential structure in the District of Columbia. When the permit was issued for the Cairo Hotel (now a private residence building), located at 1615 Q Street, NW, there were no laws or regulations prohibiting a private structure of that height. Neighbors filed several complaints claiming that the building posed a fire hazard and limited light and air.

Although the Cairo project moved forward, the neighbors' concerns about fire hazards and impacts to their properties prompted lawmakers to prohibit future projects of that height. In 1899, the U.S. Congress passed a height law that restricted heights in the District of Columbia to generally the width of the street at the building front. In addition, the 1899 Act established maximum height limits of 90 feet in residential areas and 110 feet in commercial areas. In addition, 160-foot wide business streets and avenues were limited to a maximum height of 130 feet. Spires, towers, and domes could be erected to a greater height than the limit proscribed, when approved by the Commissioners of the District of Columbia.<sup>37</sup>

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<sup>36</sup> Committee on the District of Columbia, House of Representatives, Building Height Limitations, 1976, 94<sup>th</sup> Cong., 2<sup>nd</sup> sess., Washington, DC: Government Printing Office, 6-8.

<sup>5</sup> Act of March 1, 1899, ch. 322, 30 Stat. 922 (1899).

### **The Cairo Building**



Image: District of Columbia Office of Planning

In 1910, Congress amended the 1899 Act to provide more comprehensive height regulations. The resulting law is commonly referred to as the Building Height Act of 1910 (Height Act).<sup>38</sup> The Height Act remains in effect today and includes the following restrictions:

- Mixed use or commercial areas: buildings may be as high as the width of the street plus 20 feet, but may not exceed 130 feet.
- Residential areas: heights are limited to 90 feet.
- Pennsylvania Avenue between First Street, NW and Fifteenth Street, NW: buildings can rise to 160 feet.<sup>39</sup>

Recognizing that a handful of federal buildings were of particular importance, the Height Act included a provision requiring a Schedule of Heights that restricted building heights for buildings on private lands near certain federal buildings.<sup>40</sup>

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<sup>38</sup> Act of June 1, 1910, ch. 263, Pub. L. N. 61-196, 36 Stat. 452 (1910) codified at D.C. ST. §§ 6-601.01-6-601.09 (2001).

<sup>39</sup> Act of June 1, 1910, ch. 263, Pub. L. No. 61-196, 36 Stat. 452 (1910) codified at D.C. ST. 6-601.05 (2001).

<sup>40</sup> Act of June 1, 1910, ch. 263, § 5, Pub. L. No. 61-196, 36 Stat. 452, 453 (1910) codified at D.C. ST. §6-601.05(f) (2001).

## Illustration of the Existing Height Act Ratio on Commercial Streets

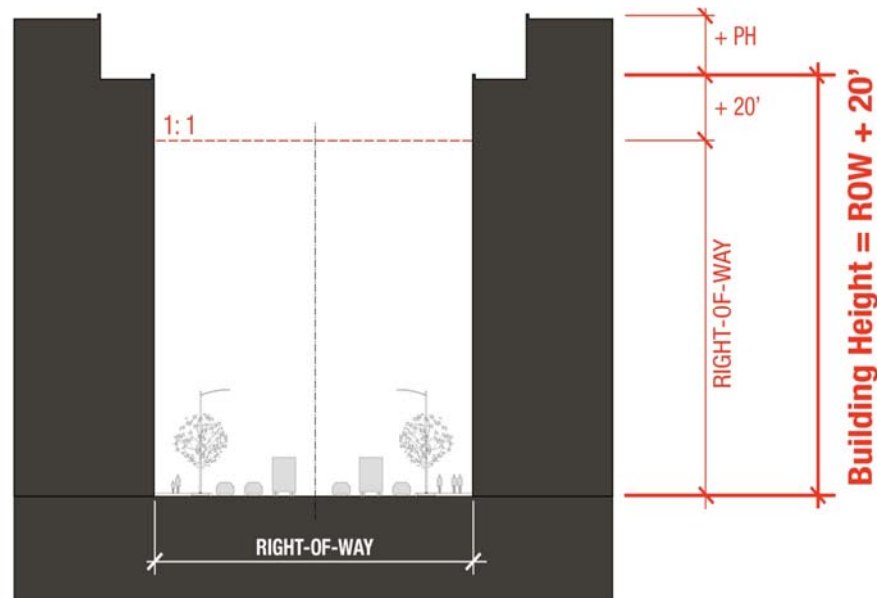


Image: District of Columbia Office of Planning

### 6.2 Amendments to the Height Act

The U.S. Congress amended the Height Act on eight occasions since its initial passage.<sup>41</sup> Once Congress raised the maximum height of residential buildings by five feet.<sup>42</sup> An additional amendment permitted residential buildings to have ten versus eight stories within the overall 90-foot maximum height limitations.<sup>43</sup> Five amendments provided exemptions for specific buildings. For more information, see Appendix D.

### 6.3 The Schedule of Heights

The Height Act requires a Schedule of Heights that places further height restrictions on buildings situated near identified federal buildings. The Schedule of Heights is administered by the District of Columbia, specifically the Zoning Administrator in the Department of Consumer and Regulatory Affairs. Identified federal buildings currently include, among others, the U.S. Supreme Court, the U.S. Treasury Building, and the Library of Congress' Jefferson Building. A listing of specific restrictions associated with the Schedule of Heights may be found in Appendix D.<sup>44</sup>

<sup>41</sup> See, Act of December 30, 1910, Pub. L. No. 61-329, ch. 8, 36 Stat. 114 (1910); Act of May 20, 1912, Pub. L. No. 62-156, ch.124; 37 Stat. 114 (1912); Act of June 7, 1924, Pub. L. No. 68-262, ch. 340, 43 Stat. 647 (1924); Act of February 21, 1925, Pub. L. No.68-455, ch.289, 43 Stat. 961 (1925); Act of April 16, 1926, Pub. L. No.69-127, ch. 150, 46 Stat. 258 (1926); Act of April 29, 1930, Pub. L. No.71-175, ch. 220, 46 Stat. 258 (1930); Act of March 24, 1945, Pub. L. No. 79-22, ch. 37, 59 Stat. 38 (1945); Act Of September 22, 1961, Pub. L. No.87-281, 75 Stat. 583 (1961) codified at D.C. ST. §§ 6-601.01, 6-601.05(c), (h) (2001).

<sup>42</sup> Act of May 20, 1912, Pub. L. No. 62-156, ch.124, sec 1; 37 Stat. 114 (1912) codified at D.C. ST. § 6-601.01(2001).

<sup>43</sup> Act of September 22, 1961, Pub.L. No. 87-281, 75 Stat. 583, (1961) codified at D.C. ST. § 6-601.05(c) (2001).

<sup>44</sup>11 D.C. Mun. Regs., tit. 11, Appendix G (May 12, 1958); as amended by the Schedule of Height of Buildings Amendment Act of 1998, effective April 20, 1999 (D.C. Law 12-234; 46 D.C. Reg. 4147 (May 7, 1999)). See Final Rulemaking published at 47 D.C. Reg. 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 D.C. Reg., 8335, 8528 (October 20, 2000).

## 6.4 Federal Regulation of Height and Limitations on Home Rule

*“ . . . Washington belongs to 160 million people in this nation, not a mere fraction of them who happen to live within its borders. When Americans come here, they’re not vacationing in just another city. New York and Chicago are more entertaining; Miami and Phoenix are more healthful; Los Angeles is more glamorous. They come because this is the city that symbolizes the workability and the greatness of representative government. They come because this is the city whose streets have been walked by 36 Presidents. They come because every sidewalk and every building rings with the names of greatness: La Follette, Taft, Calhoun, Clay, Webster, Marshall, Norris, and a hundred others. Washington visitors come to stand outside the gates of the Executive Mansion—and to wish its occupant well even though they may have voted against him. And that is why they come; not to visit a city but to experience government. . . ”<sup>45</sup>*

*“Washington intended this to be a federal city, and it is a federal city, and it tingles down to the feet of every man, whether he comes from Washington, or Los Angeles, or Texas, when he comes and walks these city streets and begins to feel that, ‘This is my city; I own a part of this Capital . . . ’”<sup>46</sup>*

The legislative history of the Home Rule Act for the District of Columbia is clear on two points—Congress intended to give the District of Columbia meaningful Home Rule, but at the same time it was essential to limit Home Rule and the powers of the local government in recognition of the city’s purpose and role as the nation’s capital.<sup>47</sup> Thus, the legislative history is replete with statements regarding the city’s unique status, the need to preserve, “the dominance of our national city, because this is our national city”, and the fact that “the capital . . . is not just the capital of those who live here because it is not theirs alone [but] belongs to every citizen in the country.”<sup>48</sup> Further, frequent mention is made to President Taft’s statement that the framers of the Constitution, “intended to have the representatives of all people in this country control this one city and to prevent it being controlled by the parochial interest, by the parochial opinion that would necessarily govern men who did not look beyond the city to the grandeur of the national, and this as a representative of that Nation.”<sup>49</sup>

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<sup>45</sup> Home Rule for the District of Columbia 1973-1974, Background and Legislative History of H.R. 9056, 9682, and Related Bills Culminating in the District of Columbia Self-Government and Governmental Reorganization Act Approved December 24, 1973 (Public Law 93-198) Chapter III - Preparation for House Floor; Rules Committee Hearings; House Floor Debate and Chapter IV -- Passage in the Senate (Chapter III-IV), p. 2163.

<sup>46</sup> Home Rule for the District of Columbia 1973-1974, Background and Legislative History of H.R. 9056, 9682, and Related Bills Culminating in the District of Columbia Self-Government and Governmental Reorganization Act Approved December 24, 1973 (Public Law 93-198) Chapter II – Full Committee Markup (Chapter II) , p. 156.

<sup>47</sup> Chapter II, p. 1359; Chapter III-IV, pp.1769, 2114, 2153-2154, 217, and 2205.

<sup>48</sup>Chapter III-IV, p. 2118.

<sup>49</sup> *Id* at 2100, 2183; See also, Home Rule for the District of Columbia, Background and Legislative History of H.R. 9056, 9682, and Related Bills Culminating in the District of Columbia Self-Government and Governmental Reorganization Act Approved December 24, 1973 (Public Law 93-198) Chapter V – Conference Committee: Final Adoption and Chapter VI Three Amendments in 1974 (Chapter IV-VI), p. 3026.



Sentiments like these reflect Congressional intent to build safeguards into the Home Rule Act to protect the “Federal” or national interest. Such recognition emerged at the outset of deliberations and was not some afterthought or defense mechanism to thwart opponents of Home Rule. Prior to its consideration of Home Rule legislation, the Subcommittee on Government Operations and its Chairman, Representative Brock Adams of Washington, acknowledged the issue of protecting the federal interest was of considerable importance.<sup>50</sup> Accordingly, the Subcommittee engaged in extensive early research in the form of letters to Congressmen, public hearings open to all interested parties, expert and non-expert alike, and dialogue with local and federal government officials to define the federal interest and seek recommendations on the manner in which, and the institutions by which, the federal interest would be protected from encroachment by local government actions and activities.<sup>51</sup>

The issue of building heights emerged early on as a cognizable federal interest to be withheld from the local government in order to protect, among others, the beauty and “the primacy of the Capital.”<sup>52</sup> Thus, House Discussion Draft No. 1 was amended by the Subcommittee to include express language prohibiting the Council from enacting, “any act or regulation which permits the building of any structure within the District of Columbia in excess of the height limitations contained in section 5 of the Act of June 1, 1910, and in effect on the date of enactment of this Act.”<sup>53</sup> From the time of its introduction, this language survived three house discussion drafts, six bills introduced in the House and became Section 602(a)(6) of the final Home Rule Act to emerge from reconciliation of divergent House and Senate bills.<sup>54</sup> This language remains the law today and will continue as such unless or until Congress determines otherwise. Moreover in the voluminous compendium of the Legislative History of the Home Rule Act, there is no indication of criticism of this reservation or efforts to undermine its inclusion.

The recognition of height as a federal interest emerged in the context of a discussion of how planning and zoning authority should be allocated between the federal and local government, the appropriate entity to protect the federal interest, and the geographic area within which the federal interest required protection.<sup>55</sup> In this discussion, the National Capital Planning Commission (NCPC) was consistently in the forefront. The House

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<sup>50</sup> Chapter II, pp. 1694-1695.

<sup>51</sup> Home Rule for the District of Columbia 1973-1974, Background and Legislative History of H.R. 9056, 9682, and Related Bills Culminating in the District of Columbia Self-Government and Governmental Reorganization Act Approved December 24, 1973 (Public Law 93-198) Chapter I – Subcommittee Markup Session (Chapter I), pp. 7-12; Chapter III, pp. 1694-1695.

<sup>52</sup> Chapter I, p. 214.

<sup>53</sup> *Id.* at 302.

<sup>54</sup> Chapter V, p. 3168.

<sup>55</sup> Chapter I, pp. 134, 157, 162-163, 166-167, 215-216, 294, 290-297-299, 302, 439-442, 486-490, 550, 601-602, 626-627, 637-644, 683-685, 718-720, 768, 781-784, 812-814 and 852-856; Chapter II, pp. 1015-1025, 1074, 1181-1182, 1233-1236, 1357, 1380-1382, 1406-1415, 1425, 1447, 1451, 1457, 1459, 1463, 1474, 1594-1595, 1589, 1635, 1636, 1641-1642 and 1654; Chapter III-IV, pp. 1679, 1698, 1739, 1789, 1813-1814, 2168, 2175, 2192-2193, 2418-2421 and 2515-2516; Chapter V-VI, pp. 2886, 2892-2894, 2900, 2910-2913, 2915-2917, 2923-2925, 3012, 3022, 3033, 3041, 3050-3051, 3053-3054, 3062, 3085-3086, 3100-3101, 3557 and 3562-3565.

Subcommittee, the Committee on District of Columbia and ultimately the entire House and Senate recognized the need to bifurcate planning within the District of Columbia and to vest local planning in the Mayor, primarily in the form of District preparation of the local elements of the comprehensive plan.<sup>56</sup> However, to prevent encroachment on the federal interest, NCPC was given line-item veto power over amendments to the District's Comprehensive Plan. This veto power has been used multiple times during prior Comprehensive Plan updates over the last twenty years. NCPC's advisory review of Zoning Commission actions was also incorporated into the Home Rule Act.<sup>57</sup>

A most interesting aspect of the legislative history pertains to the proposed government entity -- alternatively dubbed the Federal or National Interest Review Board or the Federal Interest Preservation Board (Federal Interest Board) -- intended to define and serve as arbiter in federal-local disputes regarding federal interests.<sup>58</sup> Early House drafts of proposed Home Rule legislation, recognizing the importance of protecting the federal interest, elevated its protection by creating a seven member body, comprised of four federal and three local government appointees, to ascertain and render advice to Congress, the President, the Council and the Mayor on actions necessary to protect the national interest.<sup>59</sup> The early legislative drafts conferred extensive authority on this body including among others, the authority to "review, study, and investigate the organization and methods of operation, and the proposed or effective policies, rules, regulations and procedures, and practices of the District of Columbia Government, including without limitation those of the Council, the Mayor, the courts, and the departments, bureaus, agencies, boards and commissions, offices, independent establishments and instrumentalities thereof" and periodically report its findings.<sup>60</sup>

The primary and consistent concern regarding the Federal Interest Board focused on the need for a separate entity charged with the task of protecting the federal interest, and specifically whether such an entity created a duplicative bureaucratic organization competing with existing organizations with a demonstrated ability to perform this task.<sup>61</sup> Congressmen commenting on this aspect of the Home Rule legislation repeatedly pointed to NCPC as the entity currently functioning to protect the federal interest, and the agency to which people in the community looked as the "guardian of the Federal Interest."<sup>62</sup> By Discussion Draft 3, House subcommittee members endorsed this later approach and relegated the important task of defining and protecting the federal interest to NCPC, where it remains today.<sup>63</sup>

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<sup>56</sup> *Id.*

<sup>57</sup> Chapter I, pp. 292, 545, 719 and 856; Chapter II, pp. 1383, 1018, 1020, 1451, 1459, 1474, 1635 and 1654; Chapter III-IV, pp. 1739 and 219; Chapter V-VI, pp. 2916, 3012, 3054, 3086 and 3165-3166,

<sup>58</sup> Chapter I, pp. 101, 549 and 626.

<sup>59</sup> *Id.* at 101.

<sup>60</sup> *Id.* at 103.

<sup>61</sup> *Id.* at 549.

<sup>62</sup> Chapter I, p. 294.

<sup>63</sup> *Id.* at 833-834.

Congress also considered a geographic element integral to the protection of the federal interest and worked to define a specific subarea of the city where the federal interest predominated and federal jurisdiction would trump local control. Several alternative legislative proposals offered to the House Subcommittee on Government Operations and the House Committee on the District of Columbia proposed different forms and approaches to the creation of a federal enclave resulting in the creation and definition of the National Capital Service Area in the final bill passed by the House.<sup>64</sup> This area was intended as a federal enclave with little to no local component and within which the federal government would regulate its activities and provide many of its own such as police services to be provided by a combined force of the Capital Police, the National Park Service Police, and the Federal Protective Service.<sup>65</sup> While included in the final Home Rule Act, this idea never gained much traction and today remains little more than a “paper” federal enclave.<sup>66</sup>

Notwithstanding the creation of a federal enclave in the Home Rule Act, it is worth noting one proposed House approach to this issue. In an alternative House bill introduced by Congressman Broyhill from Virginia during Committee deliberation, Broyhill proposed the creation of a federal enclave and a “L’Enfant Trust Area” to ensure federal protection of the areas of the L’Enfant city outside the defined federal enclave.<sup>67</sup> The concept and precise language proposed by Broyhill recognized the significance of the L’Enfant Plan and its status as an important, if not critical, federal interest. Specifically, the Broyhill version provided:

Sec. 106. (a) The Congress finds that --

- (1) the lands and structures within, and the design of, the original city of Washington, as envisioned by Pierre Charles L’Enfant possess unique historic, cultural, natural, scenic, ecological and other values;
- (2) there is a national interest in reserving these values in trust for future generations;
- (3) these values could be irretrievably damaged and lost through ill-planned development; and
- (4) it is necessary and desirable that the owners, public and private, be responsible for preserving these values . . .<sup>68</sup>

The bill expressly authorized NCPC to plan for this important area and to serve as the sole planning agency, exclusive of any local planning activity, within the defined trust area.<sup>69</sup>

While the concept of the L’Enfant Trust area failed to garner any support in the Home Rule Act ultimately passed by the House or the final reconciled House and Senate version that

<sup>64</sup> Chapter III-IV, 1706, 1787-1788, 1801, 1806, 1818, 1824-1825, 2098, 2130 and 2388-2401; Chapter V-VI, pp. 2876, 2907, 2918, 3020, 3039, 3041, 3050-3052, 3059, 3066-3067, 3068 and 3558.

<sup>65</sup> Chapter III-IV, pp. 2393 and 2497; Chapter V-VI, pp. 3020 and 3181.

<sup>66</sup> Chapter III-IV, pp. 1852-1853; Chapter V-VI, pp. 3180-3185.

<sup>67</sup> Chapter III-IV, pp. 1852-1853.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

became law, the adopted House Bill did include language amending the purpose of the NCPC. In addition to serving as the Federal planning agency for the Federal Government, NCPC's purpose extended to "conservation of important historic and natural features" of the National Capital Region.<sup>70</sup> As an important historic feature, subsequently listed on the National Register of Historic Places in 1997, this language recognizes the federal interest inherent in the L'Enfant Plan.

The Legislative History of the Home Rule Act reflects a thoughtful, deliberate and measured Congressional response to the challenge of responding to federal and local interests. The final law reflects a balanced approach of providing meaningful Home Rule to the citizens of the District of Columbia within the confines and strictures necessary to preserve the national purpose, identity, and character of the city. Because height limitations were an integral part of the city's national character from its founding, Congress identified height as a federal/national interest in the Home Rule Act to be withheld from local government regulation. Understanding that only agencies and organizations set up to respect and prioritize national interests could be entrusted to offer long-term protections of national resources, Congress ensured a stewardship role over the form of the capital city by designating NCPC as the guardian of federal interests. And while the concept of an exclusive federal enclave was incorporated in the Home Rule Act, the fact that it was never acted upon in practice suggests, as many members of the House and Senate believed, that the federal city cannot be neatly defined to allow an exclusive division of functions geographically between the federal and local government. Instead the concept of federal interest extends throughout the entire City albeit more focused in some areas than others.<sup>71</sup>

## 6.5 The Height Act, Comprehensive Planning, and Local Zoning

While the Height Act provides maximum heights city-wide, local regulation at the neighborhood level is often more restrictive. Local zoning is guided by the broad land use guidance in *The Comprehensive Plan for the National Capital*, which guides Washington's long-term development. The *Comprehensive Plan for the National Capital* is a statement of principles, goals, and planning policies for the growth and development of the national capital. It is comprised of two parts—the Federal Elements and the District of Columbia Elements (District Elements).

The Federal Elements address matters related to federal properties and federal interests in the National Capital Region. The Federal Elements are prepared pursuant to Section 4(a) of the National Capital Planning Act of 1952 (now codified at 40 U.S.C. § 8722). The Federal Elements are currently being updated and a new Urban Design Element will be included in the revised document. The Federal Urban Design Element will provide guidance related to the quality of the function, form and design of Washington's public realm. The Element describes key qualities that support the city's distinguished character as the nation's capital, including the resources that are important to the federal government. The Comprehensive Plan guides NCPC's actions on plans and proposals submitted for its review. The Commission's comprehensive planning function involves preparing and

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<sup>70</sup> Chapter V-VI, p. 3134.

<sup>71</sup> *Id.* at 3050.

adopting the Federal Elements, as well as reviewing the District Elements for their impact on the federal interest.

The District Elements contain 13 Citywide Elements that provide goals, objectives and policies for land use issues that impact the whole city, e.g. transportation, environment, parks and open space, arts and culture. There are also 10 Area Elements which provide goals, objectives and policies that are specific to geographic areas of the city.

### Comprehensive Plan for the National Capital



The following summarizes the process for preparation and adoption of the District Elements of the Comprehensive Plan:

- DCOP leads updates to the *District Elements of the Comprehensive Plan*; NCPC staff consult during development.
- The Mayor submits proposed legislation to amend the *District Elements*.
- The City Council holds public hearings; two votes. The Mayor approves the legislation.
- After the Mayor approves the *District Elements*, the District submits it to NCPC for federal interest review and approval.
- NCPC sends written comments and recommendations regarding federal interests to the City Council.
- The City Council modifies (as needed) and approves the *District Elements*.
- NCPC certifies the updates to the *District Elements*.
- The District submits the updated *Comprehensive Plan* to Congress.
- Congress has a thirty day review before the updated *District Elements* becomes law.



Subsequent zoning regulations, including those regarding building heights, must not be inconsistent with both the Federal and District Elements of the Comprehensive Plan. However, it is important to note that updates to zoning maps and amendments are not self-executing. If the Comprehensive Plan is updated, a specific application must be made to the Zoning Commission to update local regulations. The five-member board has two federal representatives from the U.S. Department of the Interior and the Architect of the Capitol. NCPC has advisory review over zoning and map updates.

The District of Columbia Zoning Regulations govern land use, density, height, and bulk characteristics of property in the city, and the Zoning Map identifies designated zoning for all city land. All construction or rehabilitation on private land must conform to the requirements imposed by the District of Columbia Zoning Regulations and Zoning Map or seek relief before the appropriate bodies. The Zoning Regulations stipulate the building height limits for various zoning districts, which vary from the single-family residential zones to the high-density mixed-use downtown zoning districts.<sup>72</sup> The maximum height for buildings allowed through the Zoning Regulations cannot exceed the height restrictions in the Height Act.

### Image of Current Zoning Height Limits

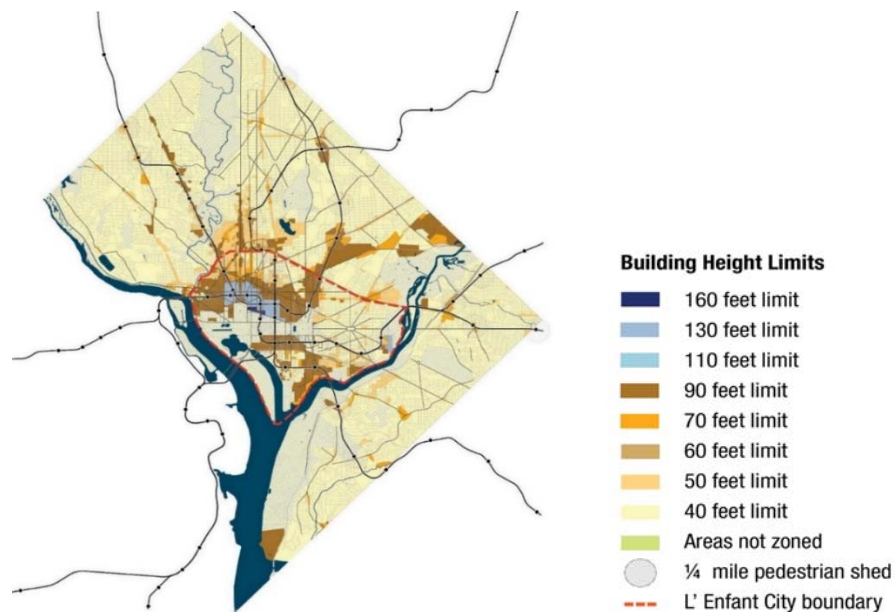


Image: District of Columbia Office of Planning

<sup>72</sup> See, D.C. Mun. Regs. tit. 11 (2009).

The DCOP, the District's central planning agency, prepares zoning text and zoning map amendments for submission to the Zoning Commission. The Development Review Division also reviews applications for Planned Unit Developments, amendments to the Zoning Regulations or Zoning Map (which come before the Zoning Commission), variances, or special exceptions (which come before the Board of Zoning Adjustments) for consistency with District policies and the *District Elements*.

Finally, the federal government plays a role in planning and regulating development in Washington. NCPC and the U.S. Commission of Fine Arts (CFA) have jurisdiction over specific federal projects and also work in coordination with the District of Columbia to plan for the city. NCPC and CFA enforce the Height Act through their project review functions. The Architect of the Capitol (AOC) reviews projects within an overlay in and around AOC lands. For more information about the regulatory process, see Appendix D.

To help ensure zoning is consistent with the *Comprehensive Plan*, NCPC is a member of the Board of Zoning Adjustment (BZA). The BZA is an independent, quasi-judicial body. It is empowered to grant relief from the strict application of the Zoning Regulations (variances), approve certain uses of land (special exceptions), and hear appeals of actions taken by the Zoning Administrator at the District of Columbia Department of Consumer and Regulatory Affairs. The BZA's five members consist of three Mayoral appointees, a rotating member of the District of Columbia Zoning Commission, and a designated representative of the NCPC. In cases where the BZA is performing functions regarding Foreign Mission and Chancery applications, the composition of the Board shall consist of the three Mayoral appointees, the Director of the U.S. National Park Service or his designee, and the Executive Director of the NCPC.