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May 2, 2007

Mayor, City Council, Board & Commission Members:

Enclosed is the response of the Heritage Society of Austin (HSA) to the Public Comment Draft Report of the Downtown Commission regarding the legally protected Capitol view corridors.

Included in this response is a comprehensive review and timeline chronicling the quarter-century of history of the Capitol view corridors, and supporting materials detailing that:

- the Commission utilizes subjective criteria, incomplete research, and questionable rationales in reaching their recommendations;
- the Commission is structurally inappropriate for performing this duty, how impacted registered neighborhood associations or organizations were not involved, and how recommendations contradict adopted neighborhood plans;
- the Commission advocates a legal position in the Report that is contrary to the public interest and of the City of Austin;
- Commission members may have misused their positions of public trust conferred upon them by the City Council and the citizens of Austin;
- the Commission's exercise displays an unfortunate lack of respect and commitment to the responsible developers who have made substantial investment-backed decisions respecting the corridors; and
- specific responses of HSA to the recommended elimination or revision of eleven of the 30 view corridors, including HSA's response to the recommendation to eliminate the most significant corridor benefiting East Austin.

HSA appreciates the opportunity to provide this response for your review, and respectfully requests you give it every consideration.

Sincerely,

Heritage Society of Austin's Capitol View Corridor Committee  
On behalf of the Heritage Society of Austin, Inc.



HERITAGE  
SOCIETY OF  
AUSTIN

P.O. BOX 2113  
AUSTIN, TEXAS 78768  
512-474-5198  
FAX 512-476-8687



Motivated by the potential loss of the view that he cherishes, this inspired artwork is submitted by Luke Wesley Allen, a 4-year old native Austinite. Luke loves sharks, astronauts, dinosaurs, and the view of the Texas Capitol he sees every day on his way to the University of Texas Child Development Center.

**RESPONSE OF THE HERITAGE SOCIETY OF AUSTIN TO THE PUBLIC  
COMMENT DRAFT REPORT OF THE DOWNTOWN COMMISSION  
OF THE CITY OF AUSTIN<sup>1</sup>**

**I. Introduction**

The Heritage Society of Austin (“HSA”) appreciates the opportunity to provide this response to the Public Comment Draft Report (“Report”) issued by the Downtown Commission of the City of Austin (“Commission”) regarding the Capitol view corridors (“CVC”).

HSA has served the Central Texas community for over 50 years as the premier organization dedicated to the preservation of historic treasures, working to ensure the connection between our collective past and future. HSA has contributed to the preservation of more than 300 valuable properties like the Driskill Hotel, the Paramount Theater, the Governor's Mansion and the Bremond Block.

Following a summary, this response is organized to address three specific issues raised by the Report. HSA will first address the importance and history of the view corridors. Next, this response will address the limitations, both structural and substantive, of the Commission and the process it utilized. Finally, this response will provide specific comments to each recommended modification or elimination of view corridors contained in the Report.

**II. Summary**

With the privilege that the City enjoys of being the seat of state government and of hosting the historic Capitol building, comes the responsibility of preserving views of the structure for all Texans. For a quarter-century, the CVCs have served exceptionally well in this regard, garnering respect from responsible members of the development community as evidenced by their substantial investment-backed decisions to honor the

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<sup>1</sup> HSA is joined in this Response by a number of organizations including, but not limited to, Preservation Texas, Inc., the Abilene Preservation Alliance, the El Paso Historical Commission, the Galveston Historical Foundation, the Greater Houston Preservation Alliance, Historic Amarillo, Historic Fort Worth, Historic Houston, Historic Mesquite, Historic Tyler, Historic Waco, Preservation Dallas, the San Antonio Conservation Society, Victoria Preservation, Inc., the Williamson County Historical Commission, and others.

corridors. In late 2006, a Committee of the City's Downtown Commission initiated a "review" of the corridors. Because of its limited membership and provincial scope, the Commission was not well suited to perform this important task, and the Commission's involvement is inconsistent with the traditional delegation of corridor issues by the City. There are also significant and important questions raised by the participation of some members of the Commission with regard to the standards of conduct enumerated by the City Code.

Despite repeated assertions to utilize an objective cost-benefit analysis to assess the corridors, an anecdotal and subjective review was employed, and the necessary research appears to be wanting. Nonetheless, the Commission's report recommends the elimination or revision of a number of corridors, including eliminating the single most significant corridor benefiting East Austin. It appears that recommendations were considered and adopted with no notice or involvement from a number of impacted registered neighborhood associations or organizations. Some recommendations appear to directly contradict the wishes of the residents and the Council as evidenced in adopted neighborhood plans. Consistent with the findings of the economic impact study commissioned by the City prior to their enactment in 1984, the Report does not cite a single private development that has failed to locate in downtown Austin due to a view corridor, nor does it cite a dime of lost tax revenues due to these protections.

Some of the rationales offered for eliminating certain corridors in the Report are highly questionable. One such rationale embraced is that existing view corridors should be eliminated or modified to dismiss current violations of the City Code or State Statute. This logic grants a "free pass" to those who may have violated the corridor protections. If the City embraces this argument, it would seem to establish a negative precedent and create an obtuse incentive – rewarding those in direct violation of the Code or Statute with significant and valuable entitlements, producing a result that is patently unfair to the responsible developers who have respected the view corridors.

Next is the rationale that foliage growth demands the elimination of various corridors. The enforcement remedies included in both City Code and State Statute speak solely to the "construction of a structure" within the corridors as a prohibited activity – neither includes any reference to seasonal foliage or any other naturally occurring obstruction. It

also contradicts the 1983 Capitol View Preservation Study of the City that specifically recognized and accepted that vegetation and foliage may potentially obstruct a view for “part of the year” – yet that view remained worthy of protection.

The third rationale cited is that views from I-35 create a safety hazard. This is directly contrary to the reasoning behind creating the I-35 corridors (and preserving other roadway views) and has no factual basis. A City of Austin-initiated analysis of Texas Department of Public Safety crash records on I-35 in Travis County reviewed the driver factors contributing to crashes on I-35. Not a single incident cited an alluring view of the Capitol as a factor in any crash or accident on I-35.

In summary, for close to 25 years, responsible developers have made significant investment-backed decisions, respecting the view corridors. The corridors have worked well to balance the people’s demonstrated love of their Capitol with encouragement of downtown growth and density, evidenced by the finding in the report of no displaced private development or lost tax base resulting from the corridors. HSA is strongly committed to vigorous downtown development and to enhancing the public enjoyment of historic sites and structures – we believe these goals are not mutually exclusive. We find that the elected leadership of this City believes this as well.

The review offers some recommendations consistent with this balance, and HSA embraces them. But the review also proposes the wholesale elimination or revision of various corridors based upon subjective findings, incomplete research, questionable rationales, with little or no input from those directly impacted. HSA strongly rejects these recommendations, and urges the Commission and Council to do the same.

### **III. Importance and History of the View Corridors**

The legal protections afforded by the view corridors, based both in State Statute and the City’s Code of Ordinances, have existed for close to 25 years and have been the primary mechanism for ensuring continued views of the Capitol – Austin and the State of Texas’ most prized and recognized symbol.

The State Capitol is the face Austin presents to millions of visitors and a monument identifying our City around the world. HSA has consistently supported the broad goal of

urban revitalization and applauds the City's efforts to infuse a strong residential component to downtown – but no great American city has revitalized its downtown by sacrificing its most cherished and significant historic features.

The Capitol is a tremendous asset to the City of Austin, but it belongs to more than just the residents of downtown Austin or of the City as a whole – it belongs to all Texans. With the privilege that the City enjoys of being the seat of state government and of hosting the historic Capitol building, comes the responsibility for preserving views of the structure for all Texans. It is for this reason (and in response to the Commission's actions) that Preservation Texas, Inc., a statewide partner of the National Trust for Historic Preservation, has listed the view corridors of the Capitol as one of *Texas' Most Endangered Historic Places of 2007*.<sup>2</sup>

**With the privilege that the City enjoys of being the seat of state government and of hosting the historic Capitol building, comes the responsibility of preserving views of the structure for all Texans. For a quarter-century, the CVCs have garnered the respect of responsible members of the development community as evidenced by their substantial investment-backed decisions to honor the corridors.**

In addition, HSA's sister preservation organizations, in cities and counties across the state, have voiced their opposition to elimination or revision of the view corridors such as those recommended by the Commission. Those organization include, but are not limited to, the Abilene Preservation Alliance, the El Paso Historical Commission, the Galveston Historical Foundation, the Greater Houston Preservation Alliance, Historic Amarillo, Historic Fort Worth, Historic Houston, Historic Mesquite, Historic Tyler, Historic Waco, Preservation Dallas, the San Antonio Conservation Society, Victoria Preservation, Inc., the Williamson County Historical Commission, and others.

The existing legal protections for State Capitol View Corridors were first established in 1983 by then-State Senator Lloyd Doggett and State Representative Gerald Hill.<sup>3</sup> These protections have evolved over time and have weathered economic boom and bust. They currently may be found as Chapter 3151 of the Government Code.<sup>4</sup> The protections

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<sup>2</sup> See "*Most Endangered Places 2007*", Report of Preservation Texas, Inc., available at <http://www.preservationtexas.org/endangered/2007.htm>

<sup>3</sup> Senate Bill 176; Acts 1983, 68<sup>th</sup> Leg., Ch. 50; Art. 6145-13, Vernon's Texas Civil Statutes.

<sup>4</sup> Recodified by House Bill 2812; Acts 2001, 77<sup>th</sup> Leg., Ch. 1420.

have been revisited sparingly to address the unique revitalization of Austin’s 11<sup>th</sup> Street Corridor, the ongoing redevelopment of Mueller Airport, and a now-completed addition to Darrell K Royal-Texas Memorial Stadium.<sup>5</sup> The state law protections establish 30 Capitol View Corridors.<sup>6</sup>

**The Report does not cite a single private development that has failed to locate in downtown Austin due to a view corridor, nor does it cite a dime of lost tax revenues due to these protections.**

The City of Austin Code of Ordinances establishes 26 City Capitol View Corridors, 20 of which are identical to those existing in state law, and six that protect the same views but with slight variations of their technical measurements.<sup>7</sup> State law establishes that in the instance of a variation between state and municipal CVC regulations, the stricter requirements will prevail.<sup>8</sup> The four CVCs established by the State but not the City cover State-owned properties (LBJ Library Corridor; North Congress at MLK Boulevard Corridor; Memorial Stadium Practice Center Corridor; and University of Texas Swim Center Corridor).<sup>9</sup>

A comprehensive timeline providing a chronological overview of key events in the view corridors is included as Appendix “A” of this Response.

#### **IV. The Downtown Commission’s Role and Findings**

The Downtown Commission of the City of Austin is an advisory body created under the City of Austin Code of Ordinances (“Code”). The Commission consists of 21 members appointed by the Council and representing various stakeholder groups.<sup>10</sup> The scope of the Commission is limited to that of the downtown area, defined as north of Town Lake, east of Lamar Boulevard, south of MLK Boulevard, and west of I-35.<sup>11</sup>

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<sup>5</sup> Sec. 3151.003, Government Code.

<sup>6</sup> Sec. 3151.002, Government Code.

<sup>7</sup> See City of Austin Code of Ordinances (“Code”), Ch. 25-2, Appendix A.

<sup>8</sup> Sec. 3151.053, Government Code.

<sup>9</sup> Sec. 3151.002, Government Code.

<sup>10</sup> See Code, Sec. 2-1-231-233.

<sup>11</sup> City of Austin Resolution No. 20051215-056.

### **a. The Commission's Limited and Provincial Scope**

Because of the structural limitations of the Downtown Commission, the Report fails to provide a full picture of the value of the view corridors. A review of the history of the City's implementation of the view corridors displays that this issue has consistently been trusted for review and action to a body with citywide authority, vision and accountability. The reasons for utilizing such a body become evident upon review of the Report.

Even under the most generous of interpretations, only six of the 35 possible view corridors originate and terminate within the downtown area.<sup>12</sup> The remaining 29 view corridors are specifically designed to provide protected views for those outside of the downtown area. Because of the structural limitations of the Commission, there was no formal involvement or representation of persons or entities with a direct interest in these corridors. Further, there appeared to be no effort by the Commission to inform and involve those with a significant interest in the specific corridors to participate.

**Because of its limited membership and provincial scope, the Commission was not well suited to perform this important task, and the Commission's involvement is inconsistent with the traditional delegation of corridor issues by the City. There are also significant and important questions raised by the participation of some members of the Commission with regard to the standards of conduct enumerated by the City Code.**

For example, the Commission report concludes that CVC 10 should be completely eliminated.<sup>13</sup> CVC 10 originates at Pleasant Valley Road and Lakeshore Boulevard and serves as the most substantial view corridor benefiting East Austin. The CVC impacts nine downtown blocks to the west of I-35 and over 32 blocks, zoned primarily residential, and substantial areas of Town Lake Park, all located east of I-35. There are a number of registered neighborhood associations and organizations that are impacted by this view corridor, such as the Southeast Austin Neighborhood Alliance, El Concilio – Coalition of Mexican American Neighborhood Associations, the Montopolis Area Neighborhood Alliance, the Guadalupe Neighborhood Development Corporation,

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<sup>12</sup> These are CVCs 2, 3, 12, 14, 15 and 28.

<sup>13</sup> Pages 30-31, Downtown Commission Public Comment Draft Report ("Report"), March 29, 2007.

the Holly Street Association, and the Organization of Central East Austin Neighborhoods (OCEAN).

Unfortunately, the structural limitations of the Commission mean that none of these groups were formally represented when this recommendation was considered and adopted. Despite being registered with the City of Austin, it appears that these organizations were not formally informed by the City of the review, nor did the Commission expressly seek their input.

Further, residents of the neighborhoods impacted by CVC 10 have participated in the comprehensive neighborhood planning process. The Holly Neighborhood Plan was adopted in December of 2001, and the East Cesar Chavez Neighborhood Plan was adopted in May of 1999. Neither adopted neighborhood plan nor Future Land Use Map (FLUM) indicates any desire on behalf of these neighborhoods that the existing view corridor be eliminated. The removal of CVC 10 appears to be contrary to the expressed desires of these residents in their adopted plans and FLUMs to retain the existing character of their neighborhoods.<sup>14</sup>

And this is not a limited circumstance. Not only do an overwhelming majority of the Commission-reviewed CVCs originate outside of the downtown area, a majority of the Commission-recommended revisions to existing CVCs impact neighborhoods and residents who had no formal involvement or notice of the Commission review. These include, in addition to CVC 10, CVCs 7 (MoPac Bridge), 8 (South Lamar at La Casa), and 23 (Mueller Airport).<sup>15</sup>

Because of the structural limitations of the Downtown Commission, the Report fails to provide a full picture of the value of the view corridors to persons who visit our city or who work, reside or simply enjoy the corridors in neighborhoods beyond the provincial scope of the Downtown Commission.

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<sup>14</sup> See Holly Neighborhood Plan, p. 5, Final Plan Part 1, available at <http://www.ci.austin.tx.us/zoning/holly.htm>; East Cesar Chavez Neighborhood Plan, p. 7, Final Plan part 1, available at <http://www.ci.austin.tx.us/zoning/ecc.htm>.

<sup>15</sup> See Pages 24, 27, 31, and 52, Report.

## **b. Subjective Criteria, Incomplete Research, Questionable Rationales**

The genesis of the Report is a memorandum issued by the Commission itself on August 3, 2006, with a conclusory proclamation of the CVCs as “the single largest restriction to development in downtown Austin.”<sup>16</sup> The Commission then initiated a review of the corridors, trumpeting its desire to employ a cost-benefit analysis as the basis of its review. This objective-type of criteria was highly and repeatedly touted in the press as the basis of the review. For example, the Chairman of the Development Committee repeatedly expressed the intent of the Committee in “evaluating the views, grading each one and determining how much each costs the [C]ity to preserve.”<sup>17</sup> This criteria was expressly affirmed as the basis of the review again on January 15th.<sup>18</sup>

Sometime between the Chairman’s public statements and the time in which the Report was released, the criteria touted were summarily abandoned. In its place, the Commission incorporated an anecdotal and wholly subjective review “based mainly on the quality of the views . . . compared to an intuitive ‘*feel*’ for the impact on development activity.”<sup>19</sup> (emphasis in original)

Adding to the ad hoc and subjective outcomes, the Commission also made repeated references to the re-evaluating the corridors “consistent with the original methodology” and criteria employed.<sup>20</sup> Yet, the Commission, on the same page, admits, “[it] has no knowledge of the ultimate process by which the final selections were made.”<sup>21</sup>

**Despite repeated assertions to utilize an objective cost-benefit analysis to assess the corridors, an anecdotal and subjective review was employed, and the necessary research appears to be wanting. Nonetheless, the Commission’s report recommends the elimination or revision of a number of corridors, including eliminating the single most significant corridor benefiting East Austin.**

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<sup>16</sup> Memorandum from Downtown Commission, p. 3, available at <http://www.ci.austin.tx.us/downtown/default.htm#dcomm>.

<sup>17</sup> Houston Chronicle, *Preservationists Tout Laws Protecting the Sight Lines of Pre-Eminent Texas Symbol, but Developers Say Some are Costing More Than They’re Worth*, Lisa Falkenberg, December 31, 2006; see also Los Angeles Times, *Fight Brews Over Views of Texas Capitol*, Lianne Hart, January 14, 2007.

<sup>18</sup> San Antonio Express News, *What’s the View Worth?*, Lisa Falkenberg, January 15, 2007.

<sup>19</sup> Pages 5-6, Report.

<sup>20</sup> Page 5, Report.

<sup>21</sup> *Id.*

As discussed above, the view corridors protecting the Capitol are too important to be evaluated solely based upon subjective and anecdotal standards. HSA submits that invoking the use of “methodology” or “criteria” does not merely make it so – the Commission-proposed eliminations or revisions of existing view corridors deserve more than a subjective viewing of a picture and applying an ad hoc *‘feel’* for its impact.

The Report offers a number of questionable rationales for eliminating or revising the view corridors: foliage from shrubs or trees, the Capitol view as a dangerous safety hazard for drivers, and excusing current violators of the existing City and State protections.

Natural foliage is cited numerous times as a rationale in the Report. But both the City and State protections afforded to the view corridors expressly state what they are intended to avoid – the “construction of a structure” within the corridors.<sup>22</sup> Specifically, the enforcement remedy included in both City Code and State Statute speaks solely to such construction as a prohibited activity – neither includes any reference to foliage or any other naturally occurring obstruction. Consistent with this, the 1983 Capitol View Preservation Study performed by the Planning Department and cited in the Report specifically recognized and accepted that vegetation and foliage may potentially obstruct a view for “part of the year” – yet that view was worthy of protection.<sup>23</sup> It certainly may be concluded that vegetation or foliage can be maintained or pruned with some frequency, certainly more often than built structures go away.

Foliage growth, beyond being naturally occurring, is seasonal and temporary. To assert and establish a precedent that foliage is a valid rationale for eliminating or modifying a view corridor is inconsistent with the Report’s own cited evidence as to the original methodology for corridor creation, depends on a pedantic interpretation, and may open the door for other, similar arguments. For example, under this rationale, a string of days or weeks of poor weather clouding a view from a certain point may become valid

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<sup>22</sup> Sec. 3151.051, Government Code.

<sup>23</sup> See *Capitol View Preservation Study*, City of Austin Planning Department, February 1983 Draft, Pages 11 and 30, recommending inclusion of the view from the French Legation, acknowledging “the view is partially screened by foliage for part of the year.” This recommendation formed the basis for the adoption of CVC 4.

reasoning for elimination of a view corridor. HSA strongly encourages the City to reject this logic.

**The 1983 Capitol View Preservation Study of the City specifically recognized and accepted that vegetation and foliage may potentially obstruct a view for “part of the year” – yet that view remained worthy of protection.**

The Commission has cited “driving safety” as well. This argument – literally presented by the Committee Chairman as “taking your life into your hands . . . if you glance to seek a peek” at the Capitol via a view corridor.<sup>24</sup> This rationale depends on an assumption that the only person capable of enjoying a view corridor from a thoroughfare is the driver. This is a novel argument that is inconsistent with the original intent to establish certain view corridors along major thoroughfares to ensure visibility of the City’s most valued feature.<sup>25</sup> Needless to say, of the estimated 160,000 to 225,000 vehicles utilizing I-35 each day, many of these vehicles contain more than one occupant, and these occupants can safely enjoy a view of the Capitol.<sup>26</sup> Many of these passengers have fond memories and recollections of the views of the Capitol from these roadways.

To assess non-anecdotal information regarding the safety of I-35, the City of Austin initiated an analysis of Texas Department of Public Safety crash records on I-35 in Travis County.<sup>27</sup> Analysis was performed by the Trans Texas Alliance under a grant from the National Highway Traffic Safety Administration, administered by the Texas Department of Transportation. When posed the question of what driver factors contributed to crashes on I-35, the analysis concluded, in descending order, that following too closely, excessive speed, driving while intoxicated, and failing to yield right-of-way as a contributing factor in crashes. Not a single incident cited an alluring view of the Capitol as a factor in any crash or accident on I-35 during the year of study.<sup>28</sup>

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<sup>24</sup> Dallas Morning News, *Austin Rethinks Pink Dome Limits; Rules Bar Developers from Blocking Capitol View in 35 Places*, Karen Brooks, February 2, 2007.

<sup>25</sup> See *Capitol View Preservation Study*, City of Austin Planning Department, February 1983 Draft, Page 10, stating that two of the four categories of views proposed are “roadway” views specifically designed to provide views from Austin thoroughfares.

<sup>26</sup> Austin American Statesman (“Statesman”), *Getting There: Taming the Beast that is I-35*, Ben Wear, August 10, 2006.

<sup>27</sup> Austin City Connection, *I-35 Crashes and Injuries*, available at <http://www.ci.austin.tx.us/trafficsafety/i35.htm>

<sup>28</sup> Id.

The logic of this rationale appears to put in question the efficacy of the 650 billboards currently in service along Austin’s roadways – the sole purpose of these billboards being to compete for the limited attention of drivers.<sup>29</sup> In sum, as evidenced by the City’s own analysis, this rationale is a solution in search of a problem, and HSA encourages rejection of this logic.

**Some of the rationales offered for eliminating certain corridors in the Report are highly questionable, including that existing view corridors should be eliminated or modified to dismiss current violations of the City Code or State Statute. This logic grants a “free pass” to those who may have violated the corridor protections.**

The Report also advances an argument that existing view corridors should be eliminated or modified to dismiss current violations of the City Code or State Statute. As discussed above, the enforcement mechanisms contained in both provisions are triggered by the “construction of a structure” within a protected corridor. HSA strongly encourages the rejection of this logic that rewards those who have violated the protections with a “free pass” and significant and valuable entitlements. For example, the Report identifies CVC 12 as partially obstructed by a billboard, and directly obstructed by an office building and a hotel.<sup>30</sup> The Report identifies similar obstructions – violations of Code and Statute – with respect to CVCs 8 and 15, and a recommendation to modify the corridors accordingly.<sup>31</sup> Instead of encouraging enforcement of the enacted City ordinance and State law, the Commission recommends modifying the corridor to remove the portions of the corridor where the view is illegally obstructed. If the City embraces this argument, it would seem to establish a negative precedent and create an obtuse incentive – rewarding those whom the Commission found to be in direct violation of the Code and Statute. It also appears to produce a result that is patently unfair to the responsible developers who have respected the view corridors. Because it rewards those who have violated our Code and Statutes, HSA strongly urges the City to reject this rationale and encourages the City to seek more effective options to enforce compliance, if necessary.

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<sup>29</sup> Austin Business Journal, *Billboard Rules Under Review*, Colin Pope, February 25, 2005.

<sup>30</sup> Page 34, Report.

<sup>31</sup> Pages 37 and 26, Report.

Finally, many of the recommendations for elimination or revision proposed in the Report depend upon a fundamental misunderstanding of the purpose and function of a view corridor. The Commission appears to embrace – with no authority cited – the belief that the sole purpose and function of a view corridor is to provide a single view of the Capitol from a single physical point. This interpretation is applied consistently throughout the Report, evidenced by the use of the term “vantage point” and the belief that a single photograph is capable of measuring the full quality and value of an entire corridor.<sup>32</sup>

There is no basis for this interpretation, and significant support that suggests otherwise. The 1983 Capitol View Preservation Study performed by the Planning Department and cited in the Report specifically recognized and accepted that each corridor may contain *multiple* viewpoints, allowing and encouraging the viewing of the Capitol not merely at the single point of origination, but throughout the corridor.<sup>33</sup> For example, the single view corridor proposed by the Study to be oriented to Waterloo Park contained no less than five recognized viewpoints within the corridor, and the supporting text of the Study states that “viewpoints are *numerous and varied* throughout the [corridor] . . .”<sup>34</sup> The single view corridor oriented to Wooldridge Park contained, according to the Study, no less than six recognized viewpoints.<sup>35</sup> The State legislative history also clearly displays the intent that a corridor serves a broader purpose and function than to preserve a single view from a single physical point. The bill analysis for the 1985 legislation states that “thousands of [persons] who . . . enjoy a splendid view of the Capitol from . . . the proposed corridors would also be protected.”<sup>36</sup>

The Commission’s interpretation, applied throughout the Report and weaved into its recommendations, is contrary to the materials displaying the intent of the City and State in crafting the protections and gives short shrift to the corridors. HSA strongly urges the

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<sup>32</sup> The concept and term “vantage point” is used consistently throughout the Report, and specifically on Page 5 to demonstrate how the Commission attempted to “remain consistent with the original methodology.” It should be noted that the term is never used in entire methodology section of the Study.

<sup>33</sup> Capitol View Preservation Study, City of Austin Planning Department, February 1983 Draft, Page 11 (stating “Each corridor contained a variety of view types and viewing situations”).

<sup>34</sup> *Id.*, Page 22 (emphasis added).

<sup>35</sup> *Id.*, Page 23.

<sup>36</sup> See House Study Group Bill Analysis, Senate Bill 644, May 1, 1985, Page 2.

Commission and Council to reject this interpretation, and its application to the corridors under review.

**c. Legal Position Advocated is Contrary to City, Public Interest**

The Downtown Commission report includes statements categorizing the view corridors as a potential “taking” – the legal doctrine that would require “just compensation” from a governmental entity to a landowner for the regulatory burdening of property.<sup>37</sup> In 1984, the City engaged outside legal counsel – at significant cost – specifically to advise the City on the question of whether the view corridors constituted a compensable burden.<sup>38</sup> The conclusion was that they did not.<sup>39</sup> In 1985, legislation expanding the number of protected view corridors contained a provision granting property owners three years to secure a transfer of development or construction rights resulting from any burden created for a corridor.<sup>40</sup> There is no indication that *any* property owner sought relief under this provision.

**The opinion offered by the Commission appears to be offered without knowledge of (or in disregard of) the substantial evidence of caution employed by the City and State to ensure legal soundness of the view corridor regulations, as well as being counter to the holding of the United States Supreme Court in its landmark *Penn Central* decision.**

There has never been a legal challenge to the view corridor regulations as a “taking” despite a number of threats before enactment.<sup>41</sup> The opinion offered by the Commission appears to be offered without knowledge of (or in disregard of) the substantial evidence of caution employed by the City and State to ensure legal soundness of the view corridor regulations, as well as being counter to the holding of the United States Supreme Court in its landmark *Penn Central* decision.<sup>42</sup>

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<sup>37</sup> Page 5, Report.

<sup>38</sup> Statesman, *Capitol View*, Editorial, March 20, 1984.

<sup>39</sup> Statesman, *Council Enacts Height Ordinance to Ban Blocking Capitol Views*, Tony Tucci, August 3, 1984.

<sup>40</sup> Senate Bill 644, 69<sup>th</sup> Texas Legislature, Enrolled Version, Section 5.

<sup>41</sup> See Statesman, *The Capitol Dome – Remember That View?*, Ray Mariotti, May 13, 1982.

<sup>42</sup> *Penn Central Transportation v. New York City*, 438 U.S. 104 (1978).

The City should not adopt or embrace a legal theory contained in a narrative report that places the City’s view corridors, dominance district or its historic preservation programs in legal jeopardy. As is discussed more fully below, it should be recognized that the opinion in the Report is offered by persons who may have standing to bring an action against the City under this legal theory. HSA strongly urges the deletion of this language, or in the alternative, inclusion of the legal research to appropriately establish the basis for the conclusion embraced by the Commission.

**d. Downtown Commission Members and the City Ethics Code**

As discussed above, the City of Austin Downtown Commission is an advisory body created under the Code.<sup>43</sup> The Commission consists of 21 members appointed by the Council and representing various stakeholder groups.

The Commission initiated a review of the existing view corridors and delegated the task to the Downtown Development Committee. This Committee considered the removal or modification of the protected Capitol views.

A member of the Commission (and the Committee), as a Council appointee, is considered to be a City Official, as that term is defined in the Code.<sup>44</sup> The Code establishes a prohibition on conflicts of interest of such appointees. It states:

“A City Official or employee may not participate in a vote or a decision on a matter affecting a person, entity, or property in which the official or employee has a substantial interest.”<sup>45</sup>

Some members of the Commission have substantial real estate holdings in the downtown area and have long been involved in the downtown Austin real estate market. Some members are currently involved in a development project intended to create a retail, entertainment, residential and hotel district along Waller Creek adjacent to the Austin Convention Center and IH-35. According to marketing information of this

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<sup>43</sup> Sec. 2-1-131, Code of Ordinances of the City of Austin (Code).

<sup>44</sup> Sec. 2-7-2(3), Code.

<sup>45</sup> Sec. 2-7-63, Code.

project, it is a joint venture between companies owned by two Commission members. Also according to this information, two CVCs (15 and 17) limit development of the project.<sup>46</sup>

The Code defines “substantial interest” in real property as an equitable or legal ownership with a market value of \$5,000 or more.<sup>47</sup> The property aggregated to form the project discussed above has an appraised market value, according to public documents, far exceeding the legal threshold in the Code.<sup>48</sup> Parcels of this project, according to the Travis Central Appraisal District, are listed under various ownership entities, as well as of Commission members, individually. The standards of conduct enumerated in the Code provide that “No city official or employee shall transact any business in his official capacity with any interest in which he has a substantial interest.”<sup>49</sup>

**If this Report is ultimately issued and forwarded to Council, HSA strongly urges Council to affirm their commitment to the spirit and the letter of the City’s ethical standards enumerated in its Code by declining to set the precedent of embracing this Report.**

The Report issued by the Commission on March 29, 2007, includes a recommendation to “revise” the southern boundary of CVC 15 – effectively eliminating the portion of the corridor limiting development of the project identified above. The Commission also recommends revisions to CVC 17, the second corridor impacting the project.<sup>50</sup>

It is important to stress that the comments offered by HSA are not intended to impugn any members of the Commission or its staff, and it is for this reason that names of individual Commission members are not cited in this response. HSA does not relish being placed in the situation of highlighting this information. But unfortunately, as is presented in the information above, it appears some Commission members may have misused their positions of public trust conferred upon them by the City Council and the citizens of Austin, failing to uphold the minimal standards of conduct and conflict of

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<sup>46</sup> See information available at [http://www.knightrealestate.com/view\\_listing.asp?ID=25](http://www.knightrealestate.com/view_listing.asp?ID=25).

<sup>47</sup> Sec. 2-7-2(11), Code

<sup>48</sup> Market value as determined by the Travis Central Appraisal District of parcels identified as “A1, B, C, D, G, E and F” of Waller Creek Commons on promotional materials.

<sup>49</sup> Sec. 2-7-62(A), Code.

<sup>50</sup> See Pages 37, 41, Report.

interest provisions of the Code. Violation of these provisions, beyond potentially exposing public officials to fines or other penalties, contributes to the corrosive effect of diminishing the public’s trust of its appointed City officials.<sup>51</sup>

It appears that the Commission attempted to self-tailor a remedy to mitigate the impact of potential conflicts by including a “disclosure” section in the text of the report.<sup>52</sup> This “disclosure” only serves to raise additional questions and concerns – there is no legal authority or basis for such a statement. The Code is clear – a Commissioner, as a city official, “may not participate in a vote or a decision on a matter affecting a person, entity, or property in which the official or employee has a substantial interest.”<sup>53</sup>

Because of the high ethical standards the City has enumerated in its Code and that the City seeks to embrace through its actions, HSA strongly urges the Commission to reassess its role and the appearance it creates in the issuance of this Report. If this Report is ultimately issued and forwarded to Council, HSA strongly urges Council to affirm their commitment to the spirit and the letter of the City’s ethical standards enumerated in its Code by declining to set the precedent of embracing this Report.

#### **e. Unfortunate Signal of Lack of Commitment**

Finally, the message conveyed by the Commission (and the City, by extension) is an unfortunate one, signaling a lack of respect for the previous enactments of the Council and a lack of commitment to protecting the existing views of the State Capitol.

The Report implies a pejorative picture of the view corridors as hastily conceived and enacted, hindering the development of downtown Austin to its full potential. The years of study and review, of internal City boards, task forces and commissions, and external consultants, that led to the unanimous adoption of the view corridors by the City Council on August 2, 1984, is reduced in the Report to a one-sentence description: “The

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<sup>51</sup> Sec. 2-7-999, Code.

<sup>52</sup> See Pages 7, 8, Report.

<sup>53</sup> Sec. 2-7-63, Code.

Downtown Commission has no knowledge of the ultimate process by which the final selections were made.”<sup>54</sup>

**Unfortunately, the signal sent by the proposed elimination or revision of existing corridors has, in the past, encouraged more to seek to whittle away at the Capitol views, having the opposite effect of the stated goal of the Commission and City – to encourage downtown infill development.**

To the contrary, the facts and public record demonstrate substantial time and effort dedicated to this process. The City invested many years (by some accounts, over a decade) and significant financial resources to design and craft an ordinance establishing the view corridors.<sup>55</sup> The Council specifically charged the Planning Commission with crafting proposals to address the corridors on no less than three separate occasions, and enacted a moratorium on applicable permits to ensure full deliberation and consideration of the various proposals.<sup>56</sup> The Council expended hundreds of thousands of dollars on outside consultants and special legal counsel to prepare and review proposals.<sup>57</sup> The Council created and charged a specific Task Force with finding an appropriate mechanism to balance downtown growth with protection of the Capitol.<sup>58</sup> In fact, upon the adoption to the initial view corridor ordinance by the Council, after hearing testimony on the time spent on the effort and the loss of views during that period from Mount Bonnell, Auditorium Shores, St. Edward’s University, Taniguchi Gardens and most of Zilker Park, Mayor Roy Mullin stated the obvious: “We can’t be accused of rushing into this.”<sup>59</sup>

The view corridors were also enacted with broad community support. The only group voicing opposition were those seeking *stronger* development controls such as a

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<sup>54</sup> Statesman, *Council Enacts Height Ordinance to Ban Blocking Capitol Views*, Tony Tucci, August 3, 1984; Page 5, Draft Report.

<sup>55</sup> See Statesman, *Even Glimpses of the Capitol Would Be Nice*, Ray Mariotti, July 12, 1984.

<sup>56</sup> See Austin Citizen, *McClellan, Cooke ‘eye’ Capitol Law*, staff, June 28, 1978; Letter of Debbie Darden, Texans to Save the Capitol, March 1985; Dallas Morning News, *Construction Hides View*, George Kuempel, October 4, 1981; Statesman, *Groups Urge Limits on Building Height*, Janet Wilson, August 6, 1982.

<sup>57</sup> See Statesman, *Capitol View Protection to be Examined Today*, Robert Cullick, May 30, 1984; Statesman, *Capitol View*, Editorial, March 20, 1984.

<sup>58</sup> See Statesman, *Council Avoiding Capitol View Act*, Editorial, June 18, 1983.

<sup>59</sup> Statesman, *Council Enacts Height Ordinance to Ban Blocking Capitol Views*, Tony Tucci, August 3, 1984.

blanket 120' height limit throughout a broader Capitol dominance district that included the entire central business district.<sup>60</sup> As an alternative to this blanket approach, the development community and the Chamber of Commerce supported the adoption of the 26 view corridors.<sup>61</sup> The Council adopted the corridors unanimously.<sup>62</sup> When considered by the Texas Legislature, the view corridors were enacted – first in 1983 and again in 1985 – by a unanimous Senate and with only one naysayer in the House of Representatives.<sup>63</sup>

**The corridors have worked well for close to 25 years to balance the people's demonstrated love of their Capitol with encouragement of downtown growth and density, evidenced by the finding in the report of no displaced private development or lost tax base resulting from the corridors.**

Unfortunately, the signal sent by the proposed elimination or revision of existing corridors has, in the past, encouraged more to seek to whittle away at the Capitol views.<sup>64</sup> And the potential that corridors may be modified by City action may have the opposite effect of the stated goal of the Commission and City – to encourage downtown infill development.<sup>65</sup> Just the consideration by the City of weakening the legal protections has drawn significant, front-page coverage in nearly every major daily newspaper in Texas, and even in national publications.<sup>66</sup> The potential that corridors that have been respected for close to a quarter-century could be relieved (by elimination or revision) may serve to cause those willing to make substantial investment-backed decisions in downtown

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<sup>60</sup> This position was expressed by former Texas Attorney General Waggoner Carr, who criticized the City for “dilly-dallying for precious years” stating: “Now we’re down to protecting the Capitol only in certain corridors – the ordinance doesn’t go far enough, as far as I’m concerned, because I’d like to see the entire scene protected as it now exists rather than to let more high buildings be built between the view corridors.” Dallas Times Herald, *A Capitol Encircled by Glass and Metal; Historic Building Under Siege*, Virginia Ellis, September 9, 1984.

<sup>61</sup> See *Id.*; see also Statesman, *Even Glimpses of the Capitol Would Be Nice*, Ray Mariotti, July 12, 1984.

<sup>62</sup> Fort Worth Star Telegram, *View of Capitol to be Preserved*, Staff, August 4, 1984.

<sup>63</sup> Report of Senate Engrossing Clerk, SB 176, April 25, 1983 and Report of Senate Engrossing Clerk, SB 644, May 8, 1985.

<sup>64</sup> See Statesman, *Capitol View Debate Still Going Strong; After UT's Approval, Others Line Up to Take Shot at Protected View*, Suzanne Gamboa, April 23, 1997.

<sup>65</sup> See Page 1, Report.

<sup>66</sup> See Houston Chronicle, *Preservationists Tout Laws Protecting the Sight Lines of Pre-Eminent Texas Symbol, but Developers Say Some are Costing More Than They're Worth*, Lisa Falkenberg, December 31, 2006; Los Angeles Times, *Fight Brews Over Views of Texas Capitol*, Lianne Hart, January 14, 2007; San Antonio Express News, *What's the View Worth?*, Lisa Falkenberg, January 15, 2007; Dallas Morning News, *Austin Rethinks Pink Dome Limits; Rules Bar Developers from Blocking Capitol View in 35 Places*, Karen Brooks, February 2, 2007.

development to wait or delay, acting on the signal that pending action by the City or State may grant additional entitlements. HSA believes this to be a very unfortunate message and a potentially negative consequence of this exercise. Austin attracts investment and development in large part due to our unique history and stature as the beloved Texas Capitol, rather than in spite of the constraints of the corridors. We must preserve this uniqueness and beauty, whether in our built or natural environment, for future generations.

### **V. Specific Recommendations**

**CVC 3 (Wooldridge Park):** The Report contains a significant amount of information regarding the impacts of this view corridor on Blocks 126 and 108. Both blocks are obviously underdeveloped, and most of the constrained sites on these blocks are owned by Travis County and were acquired with CVC 3 in place. The Report states that CVC 3 has “created difficulties for Travis County officials, some of whom have expressed interest in locating a new courthouse on Block 126,”<sup>67</sup> The Report recommends deletion or modification of CVC 3 to allow redevelopment of Blocks 126 and 108 by the County.

The importance of CVC 3 needs to be placed in context. Block 126 is directly adjacent to the Governor’s Mansion, and the State has made substantial financial investments to ensure the appropriate treatment of the Mansion and its grounds, and to preserve Capitol views from the Mansion and Wooldridge Park.

For example, the Legislature scuttled plans for the construction of a 10-story building on 11<sup>th</sup> between Congress Avenue and Colorado in 1972. Recognizing that the proposed structure “would make the Governor’s Mansion look like an outhouse,” the Legislature directed Parks & Wildlife to purchase the site for the development of an urban park.<sup>68</sup> In another example, the State took the highly unusual step of initiating a condemnation action in 1984 against the owners of the tract on 11<sup>th</sup> between Colorado and Lavaca Streets after the City had permitted a luxury hotel for the site. The State eventually paid

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<sup>67</sup> Pages 14-15, Report

<sup>68</sup> See Houston Chronicle, *Austin Planners Try Again to Save View of Capitol*, Anne Marie Kilday, October 4, 1981.

\$2.5 million for the privately held tract to ensure it would not be developed in a manner inappropriate to the Mansion.<sup>69</sup> This tract is directly within the view that, shortly thereafter in 1985, was established by the City and State as CVC 3. Of course, the controversial construction of the 25-story Westgate Building in 1965 directly north of this tract is consistently cited as a primary reason for the enactment of the City and State protections.<sup>70</sup>

Now is not the time to alter CVC 3. The County has only now begun the vital process of engaging the public with regard to an additional civil courthouse and its location, making consideration or rejection of Block 126 or other sites impossible at this point. No plans or renderings have been offered to interested parties such as the State of Texas (including the Texas Historical Commission, State Preservation Board, Office of the Governor, or Department of Public Safety), HSA, the Downtown Area Neighborhood Association (DANA), or downtown property owners adjacent to the County complex and Wooldridge Park. The County, as the political subdivision closest to this decision, has specifically declined to pursue deletion or modification of CVC 3 at this time.<sup>71</sup> At the request of the County, members of HSA, DANA, other interested parties and community organizations have committed to participating in this process.

As such, the City should respect the County's decision not to pursue deletion or modification of CVC 3 at this time, and respect those who have committed to give their substantial time and effort to determine the appropriate use of Blocks 126 and 108. For this and all of the reasons stated above, HSA encourages reconsideration and rejection of this recommendation at this time.

**CVC 7 (MoPac Bridge):** The Report makes a number of recommendations regarding the two view corridors that originate at the MoPac Bridge.

These recommendations impact neighborhoods and residents who had no formal involvement or notice of the Commission review. These organizations include the Zilker Neighborhood Association, South Bank Alliance, South Central Coalition, Old West

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<sup>69</sup> Houston Chronicle, *State Decides to Purchase Lot Near Capitol for \$2.5 Million*, Staff, August 13, 1983.

<sup>70</sup> See Capitol View Preservation Study, City of Austin Planning Department, February 1983 Draft, Page 6.

<sup>71</sup> See Transcript, Travis County Commissioners Court, February 20, 2007, Item 32, available at [http://www.co.travis.tx.us/commissioners\\_court/agendas/2007/02/vs070220.asp](http://www.co.travis.tx.us/commissioners_court/agendas/2007/02/vs070220.asp).

Austin Neighborhood Association, Old Austin Neighborhood, Clarkesville Community Development Corporation, and the West End Austin Alliance.

It should also be noted that the recommendation cites the opportunity for taller developments along West 5<sup>th</sup> and 6<sup>th</sup> Streets west of Lamar as a rationale for eliminating part of the MoPac Bridge CVCs.<sup>72</sup> The potential for taller developments along this stretch of 5<sup>th</sup> and 6<sup>th</sup> appear to be wholly inconsistent with goals enumerated in the Old West Austin Neighborhood Plan adopted in June of 2000.<sup>73</sup>

The rationale offered for amending this corridor includes increased foliage. Both the City and State protections afforded to the view corridors expressly state what they are intended to avoid – the “construction of a structure” within the corridors. Neither includes any reference to foliage or any other naturally occurring obstruction. Foliage growth, beyond being naturally occurring, is seasonal and temporary. Focusing on foliage ignores the breadth and depth of the MoPac corridor views. HSA strongly encourages the City to reject this logic.

This corridor has also been respected, at significant cost to taxpayers. In September of 1995, Travis County planners realized that the design for the proposed Criminal Justice Center protruded into CVC 7. The Commissioners Court ultimately directed project staff to make necessary revisions to accommodate the corridor, at a cost of up to \$1 million. This was achieved by moving the tower at the top of the 11-story facility.<sup>74</sup>

For all of these reasons, HSA encourages reconsideration and rejection of this recommendation.

**CVC 8 (South Lamar at La Casa):** The Report makes a rather novel recommendation regarding CVC 8, to move the viewpoint further south on Lamar.

Again, this recommendation impacts neighborhoods and residents who had no formal involvement or notice of the Commission review. These organizations include the South Central Coalition, Zilker Neighborhood Association, South Lamar Neighborhood

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<sup>72</sup> Page 24, Report.

<sup>73</sup> Old West Austin Neighborhood Plan, Pages 23-26 (Part 8), available at <http://www.ci.austin.tx.us/zoning/owa.htm>

<sup>74</sup> See Statesman, *Dome Deals Project Trouble*, Nina Reyes, November 8, 1995.

Association, Bouldin Creek Neighborhood Association, Old Austin Association and the West End Alliance.

There is also a neighborhood plan that has been initiated and is in progress for this area, the combined South Lamar Neighborhood Planning Area. This effort began in earnest in October of 2005. At the first meeting held – and consistently from that point forward, the participants in crafting the neighborhood plan have expressed their desire for “preserving views from South Lamar to downtown and the Capitol.”<sup>75</sup>

The Report cites two rationales for elimination or modification of this corridor – the view is “obscured by foliage” and “cluttered with signs.”<sup>76</sup> Both the City and State protections afforded to the view corridors expressly state what they are intended to avoid – the “construction of a structure” within the corridors. Neither includes any reference to foliage or any other naturally occurring obstruction. Foliage growth, beyond being naturally occurring, is seasonal and temporary. HSA strongly encourages the City to reject this logic.

The other rationale offered is that existing view corridors should be eliminated or modified to dismiss current violations of the City Code or State Statute, here because the view is allegedly “cluttered with signs.” As discussed above, the enforcement mechanisms contained in both provisions are triggered by the “construction of a structure” within a protected corridor. Signs – unlike structures – can and do move, and enforcement appears to be the appropriate remedy as opposed to rewarding those who have violated the protections with a “free pass” and significant and valuable entitlements.

Further, this recommendation may impact the existing entitlements of persons who have had no notice that their properties may potentially be burdened by a view corridor. This is because the proposal extends the view corridor beyond its current boundaries. It is impossible to ascertain the implications of this recommendation to extend this corridor because it offers no coordinates or other technical information allowing for its objective review by property owners or other interested parties. Today, after almost three decades of central city growth and increased property values, it is highly questionable to add more views in such a speculative and ill-defined manner.

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<sup>75</sup> See South Lamar Combined Neighborhood Planning Area First Workshop Results, October 1, 2005, p. 6, available at <http://www.ci.austin.tx.us/zoning/slcnpa.htm>.

<sup>76</sup> Page 26, Report.

For all of these reasons, HSA encourages reconsideration and rejection of this recommendation.

**CVC 10 (Pleasant Valley Road at Lakeshore Drive):** The Report recommends that CVC 10 should be completely eliminated.<sup>77</sup>

CVC 10 originates at Pleasant Valley Road and Lakeshore Boulevard and serves as the most substantial view corridor benefiting East Austin. The CVC impacts nine downtown blocks west of I-35 and over 32 blocks, zoned primarily residential, and substantial park land, all located east of I-35. There are a number of registered neighborhood associations and organizations that are impacted by this view corridor, such as the Southeast Austin Neighborhood Alliance, El Concilio – Coalition of Mexican American Neighborhood Associations, the Montopolis Area Neighborhood Alliance, the Guadalupe Neighborhood Development Corporation, the Holly Street Association, and the Organization of Central East Austin Neighborhoods (OCEAN).

Unfortunately, the structural limitations of the Commission mean that none of these groups were formally represented when this recommendation was considered and adopted. Despite being registered with the City of Austin, it appears that these organizations were not expressly informed by the City of this review, or the Commission simply did not seek their input.

Further, residents of the neighborhoods impacted by CVC 10 have participated in the comprehensive neighborhood planning process. The Holly Neighborhood Plan was adopted in December of 2001, and the East Cesar Chavez Neighborhood Plan was adopted in May of 1999. Neither adopted neighborhood plan nor FLUM indicates any desire on behalf of these neighborhoods that the existing view corridor be eliminated. The removal of CVC 10 appears to be contrary to the expressed desires of these residents

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<sup>77</sup> Page 31, Report (It should be noted that the recommendation on page 31 of the report appears to contradict the discussion on page 7 of the report categorizing the recommended treatment of CVC 10 as a “technical correction”. Elimination is *not* a technical correction. It should also be noted that the report contains no text under the heading of “Effect”.)

in their adopted plans and FLUMs to retain the existing character of their neighborhoods.<sup>78</sup>

The recommendation to eliminate this view concludes “[t]he cost of preserving the view in terms of lost tax base and missed opportunity for infill development on both side of I-35 appear substantial.”<sup>79</sup> This is an odd conclusion considering the Commission’s decision “that any economic analysis was beyond the scope of the Commission’s work.”<sup>80</sup> Further, the Report offers not a single example of a “missed opportunity” for infill development stifled by CVC 10.

The recommendation cites landscaping and mature native trees obstructing the protected view. Both the City and State protections afforded to the view corridors expressly state what they are intended to avoid – the “construction of a structure” within the corridors. Neither includes any reference to foliage or any other naturally occurring obstruction. Foliage growth, beyond being naturally occurring, is seasonal and temporary. There are many areas of East Austin from which the Capitol is visible thanks to this corridor, not just one. HSA strongly encourages the City to reject this logic.

The recommendation appears to be inconsistent with the findings of the City’s Town Lake Corridor Study, prepared by the Town Lake Task Force and adopted by Council in 1985. The Study, the most comprehensive review of planning for Town Lake, specifically cites this view corridor as vital to maintaining the visual context of the waterfront in relation to the city. A specific recommendation of the Study was to *add more* view corridors – and certainly not to eliminate corridors.<sup>81</sup> (emphasis added)

Finally, the description of the view frame included in the report directly contradicts the recommendation – stating that along the hike and bike trail the view can be enjoyed between willow trees.<sup>82</sup> This is an important view corridor benefiting the City’s Town Lake Park and the East Austin community. For all of these reasons, HSA strongly encourages reconsideration and rejection of this recommendation.

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<sup>78</sup> See Holly Neighborhood Plan, p. 5, Final Plan Part 1, available at <http://www.ci.austin.tx.us/zoning/holly.htm>; East Cesar Chavez Neighborhood Plan, p. 7, Final Plan part 1, available at <http://www.ci.austin.tx.us/zoning/ecc.htm>.

<sup>79</sup> Page 31, Report.

<sup>80</sup> Page 6, Report.

<sup>81</sup> See City of Austin Town Lake Corridor Study (1985), Pages 17 and 28, Policy Recommendation 6.01.

<sup>82</sup> Page 31, Report.

**CVC 12 (North Bound I-35 b/t Police Building and 10th):** The Report recommends that CVC 12 be revised to eliminate at least half of the view corridor, based upon the rationale that the corridor is obstructed by a billboard and two buildings.<sup>83</sup>

Instead of encouraging enforcement of the enacted City ordinance and State law, the Commission recommends modifying the corridor to remove the portions of the corridor where the view is illegally obstructed. As discussed above, the enforcement mechanisms contained in both City and State CVC provisions are triggered by the “construction of a structure” within a protected corridor. HSA strongly encourages the rejection of this logic – rewarding those who have violated the protections with a “free pass” and significant and valuable entitlements. If the City embraces this argument, it would seem to establish a negative precedent and create an obtuse incentive – rewarding those whom the Commission determined to be in direct violation of the Code and Statute. It also appears to produce a result that is patently unfair to the responsible developers who have respected the view corridors.

The report recommends the modification of CVC 12 to eliminate its northern horizontal reach, citing that a “hotel has been built near I-35 in the northern portion of the view.” The hotel referred to is the Austin Sheraton Hotel located at 701 East Eleventh Street. The site plan for this project was approved and released by the City in 1983.<sup>84</sup> This hotel was designed and constructed prior to the establishment of CVC 12 by either the City or the State in 1985. The developers of this hotel project, recognizing the City’s strong desire to preserve much of the yet-to-be-enacted corridor, made a substantial effort in their design to maximize the development potential of the tract while respecting the view. To eliminate the horizontal reach of this view corridor at this time based upon this rationale may send the signal that the City’s commitment to the view corridors is capricious, especially after the developer of this property made such substantial investment-backed decisions.<sup>85</sup> As a reward for their efforts, the owners of this tract would possess a structure with a limited ability to be modified to take advantage of the increased entitlement, but with an appraisal for land valued at its full, unburdened development potential.

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<sup>83</sup> Page 34, Report.

<sup>84</sup> Case No. RZ-83-039, December 5, 1983.

<sup>85</sup> The improvements on this property are currently valued at over \$20 million.

For the reasons stated above, HSA strongly encourages reconsideration and rejection of this recommendation.

**CVC 15 (North Bound I-35 b/t 3<sup>rd</sup> and Waller Creek Plaza):** The Report recommends that CVC 15 be revised to eliminate the southern horizontal reach of the view corridor, based upon the rationale that two billboards and a building obstruct the corridor.

As discussed above, the enforcement mechanisms contained in both City and State CVC provisions are triggered by the “construction of a structure” within a protected corridor. The Report identifies specific obstructions – violations of both City and state law – with respect to CVC 15, and a recommendation to modify the corridor.<sup>86</sup> HSA strongly encourages the rejection of this logic – rewarding those who have violated the protections with a “free pass” and significant and valuable entitlements. Instead of encouraging enforcement of the enacted City ordinance and State law, the Commission recommends modifying the corridor to remove the portions of the corridor where the view is illegally obstructed. If the City embraces this argument, it would seem to establish a negative precedent and create an obtuse incentive – rewarding those who the Report found to be in direct violation of the Code and Statute. It also appears to produce a result that is patently unfair to the responsible developers who have respected the view corridors.

For the reasons stated above with respect to CVC 12 and CVC 15, HSA strongly encourages reconsideration and rejection of this recommendation.

**CVC 19 (Red Bud Trail):** The Report recommends the practical elimination of the horizontally broader City view corridor for the substantially thinner State corridor.

Again, this recommendation impacts neighborhoods and residents who had no formal involvement or notice of the Commission review. This recommendation impacts a number of organizations, including the Stratford Drive Neighborhood Association, Old West Austin Neighborhood Association, Old Enfield Homeowners Associations,

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<sup>86</sup> Page 37, Report.

Clarkesville Community Development Corporation, West Austin Neighborhood Group and the West End Austin Alliance.

HSA does not believe the residents, neighborhoods and organizations impacted by this modification have been properly engaged in this process. For this reason, HSA encourages reconsideration and rejection of this recommendation.

**CVC 23 (Mueller Airport):** The Report recommends the revision of the view corridor to the former control deck of the Mueller Airport Tower. As a practical matter, the redevelopment of Mueller is exempt from enforcement, but all legal remedies remain for any structure constructed not upon the Mueller site within the existing corridor.

Again, this recommendation impacts neighborhoods and residents who had no formal involvement or notice of the Commission review. This recommendation impacts a number of organizations, including the Mueller Neighborhoods Coalition, Cherrywood Neighborhood Association, Chestnut Addition Neighborhood Association, Blackland Neighborhood Association, Swede Hill Neighborhood Association, Organization of Central East Austin Neighborhoods (OCEAN) and People Organized in Defense of Earth and her Resources (PODER).

HSA does not believe the residents, neighborhoods and organizations impacted by this modification have been properly engaged in this process. For this reason, HSA encourages reconsideration and rejection of this recommendation.

**CVC 25 (Oakwood Cemetery):** The Report recommends a technical change only to reflect a proper elevation.

HSA finds this to be a reasonable and positive recommendation and does not oppose its adoption.

**CVC 27 (LBJ Library):** The Report recommends a revision to exclude the portion of the view corridor obstruction by the expansion of the Darrell K. Royal Memorial Stadium. As a practical matter, the redevelopment of Darrell K. Royal Memorial Stadium is exempt from enforcement, but all legal remedies remain for any structure constructed not upon the Stadium site within the existing corridor.

HSA believes it best to err on the side of caution with respect to amending a view corridor in this fashion. This view corridor has no impact on private development, and no compelling rationale is contained in the Report for its partial elimination. For this reason, HSA encourages reconsideration and rejection of this recommendation.

## **VI. Conclusion**

HSA appreciates the opportunity to provide this response to the Report issued by the Downtown Commission of the City of Austin regarding the Capitol view corridors. HSA will continue to study the view corridors in question to better understand the detailed view corridor ramifications and will share our findings with all interested parties. We appreciate the City's commitment to preserving the Capitol views over the past 25 years – and hopefully in preserving them for many more to come.

## APPENDIX “A”

The following timeline provides a chronological overview of key events in the protection of the State Capitol and the enactment of the City and State view corridors:

- In **1888**, the Texas State Capitol building is completed, the centerpiece of the layout and then “skyline” of the City.
- In **1931**, citing the height and prominence of the Capitol, the City of Austin established a zoning ordinance limiting building height to 200 ft., with a limited exception allowing for additional height with an increased setback.
- In **1963**, the developers of the Westgate Building utilized this setback exception on the block directly west of the Capitol to build to 239 ft.
- In **1968**, the setback exception is again employed to construct Dobie Mall to 299 ft.
- In **1972**, the State Highway Department (now TxDOT) unveiled plans for a 10-story building blocking views of the Capitol at 11<sup>th</sup> and Congress Avenue, on the site of the previous Capitol. Recognizing that the structure “would have made the Governor’s Mansion look like an outhouse,” the Texas Legislature scuttled the plans by threatening to buy the site for the development of an urban park.<sup>87</sup>
- In **1973**, the Austin City Council adopts a resolution expressing their support for the preservation of views of the State Capitol.<sup>88</sup> City staff begins reviewing methods to achieve this goal.
- In **1978**, Mayor Carole McClellan and Council member Lee Cooke direct staff to begin work on an ordinance to “restrict building heights and protect the ‘visual corridors’ leading to the Capitol.”<sup>89</sup> City staff studies possible mechanisms but the Council takes no action.
- In **1979**, the Planning Commission, citing the loss of irreplaceable Capitol views, unanimously recommends a 120’ height limitation for the downtown area after extensive public hearings.<sup>90</sup> The Council declines to act.

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<sup>87</sup> Houston Chronicle, *Austin Planners Try Again to Save View of Capitol*, Anne Marie Kilday, October 4, 1981.

<sup>88</sup> San Antonio Express News, *Views of Capitol May be Saved*, Robert Heard, July 11, 1984.

<sup>89</sup> Austin Citizen, *McClellan, Cooke ‘eye’ Capitol Law*, staff, June 28, 1978.

<sup>90</sup> See Letter of Debbie Darden, Texans to Save the Capitol, March 1985.

- In **1980**, the Planning Commission again recommends a 120’ height limitation for the downtown area. The Council hires a team of internationally known zoning experts at a cost of \$170,000 – the team recommends a 120’ height limitation.<sup>91</sup> The Council again declines to act.
- In **1981**, the Planning Commission asks for a study to map out eleven Capitol view corridors and for recommended mechanisms for protecting those lines of view.<sup>92</sup> The Planning Commission endorses the proposal, but the Council takes no action.
- Also in **1981**, the Council approves a temporary moratorium on new buildings over 200’ tall in proximity to the Capitol to give City boards and commissions an opportunity to propose methods to protect views of the Capitol.<sup>93</sup>
- In **1982**, the City approves a 398’ “wedding cake” tower at 6<sup>th</sup> and Congress again under the setback exception. The City permitted the project (now One American Center), which survived legal challenges and community opposition.<sup>94</sup>
- Also in **1982**, members of the Austin City Council, citing the lack of action by their colleagues, propose to submit a referendum to the voters regarding protection of Capitol views. A majority of the Council rejects the submission of the proposal to the voters.<sup>95</sup>
- Also in **1982**, the Council creates the Downtown Revitalization Task Force to further study and make additional recommendations regarding view preservation. The Task Force, chaired by Alan Taniguchi, recommends doing away with setback exceptions for all zoning categories, and the creation of a Capitol dominance district.<sup>96</sup>
- In **1983**, recognizing the threat created by the City’s permissive regulations and dilatory approach to protecting the Capitol, the Texas Legislature establishes the first Capitol view corridors in state statute to protect two of the most revered and cherished views of the State Capitol. The legislation, sponsored by Senator Doggett and Representative Hill, is enacted by a vote of 31-0 in the Senate and 133-1 in the House.<sup>97</sup> A second bill by Senator Washington to prohibit buildings taller than 600’ above sea level within 1.25 miles of the Capitol dome passes the Senate, but fails to win final support in the House.<sup>98</sup> House Speaker Gib Lewis directs the House Cultural and Historic Resources Committee to prepare

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<sup>91</sup> Id.

<sup>92</sup> Dallas Morning News, *Construction Hides View*, George Kuempel, October 4, 1981.

<sup>93</sup> Statesman, *Groups Urge Limits on Building Height*, Janet Wilson, August 6, 1982.

<sup>94</sup> See *Texans to Save the Capitol, Inc. v. Board of Adjustment of the City of Austin*, 647 S.W.2d 773 (Tex.App.—Austin 1983).

<sup>95</sup> See Letter of Debbie Darden, *Texans to Save the Capitol*, March 1985.

<sup>96</sup> See Statesman, *Save Capitol’s View with Circle, Panel Says*, staff, May 14, 1982.

<sup>97</sup> Report of Senate Engrossing Clerk, SB 176, April 25, 1983.

<sup>98</sup> See Statesman, *Bill to Save Capitol Views Clears Hurdle*, Bruce Hight, May 10, 1983.

legislation protecting views for the 1985 Session, and Rep. Terrell Smith bluntly warns the Austin City Council that if they did not act to save views of the Capitol, the Texas Legislature would.<sup>99</sup>

- Also in **1983**, the Downtown Revitalization Task Force, borrowing on a technique pioneered in London and Montreal, proposes construction limitations for certain public view corridors. The Task Force asks the Council to endorse the view corridor concept and order a study of the legal and economic implications of implementing it. The Task Force studies 30 view corridors.<sup>100</sup>
- Also in **1983**, the State of Texas initiates a condemnation lawsuit against the owners of the property on 11<sup>th</sup> between Colorado and Lavaca. The State eventually pays \$2.5 million to block a proposed luxury hotel permitted by the City that would block views of the Capitol from the Governor's Mansion and Wooldridge Park.<sup>101</sup>
- In **1984**, the City Council commissions a 6-month, \$50,000 study on the economic impact of the proposed Capitol view corridor ordinance, engaging Economics Research Associates of Los Angeles. The City also engages the law firm of Longley & Maxwell to review the legal implications of the proposal.<sup>102</sup> The consultants eventually advised the City that there would be no economic impact and that the proposal would not expose the City to legal liability.<sup>103</sup>
- Also in **1984**, two additional high-rise proposals are approved by the Council and draw ire -- the 435' One Congress Avenue Plaza and a 200' structure at Nueces and 15<sup>th</sup> Streets.<sup>104</sup>
- In **1984**, the Austin City Council, acknowledging the Legislature's strong desire for protection of the Capitol, belatedly establishes nine view corridors in City Code. Described as a 'first step' in protecting the Capitol views after over a decade of study, the ordinance is adopted *unanimously* by the Council.<sup>105</sup>

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<sup>99</sup> Dallas Times Herald, *A Capitol Encircled by Glass and Metal; Historic Building Under Siege*, Virginia Ellis, September 9, 1984.

<sup>100</sup> See Wichita Falls Times, *Austin Tries to Stop Capitol 'Cover-Up'*, Bruce Millar, June 12, 1983; see also Statesman, *Capitol View Protection Plan Goes to Council*, Tony Tucci, June 16, 1983.

<sup>101</sup> See Houston Chronicle, *State Decides to Purchase Lot Near Capitol for \$2.5 Million*, Staff, August 13, 1983.

<sup>102</sup> Statesman, *Capitol View*, editorial, March 20, 1984; see also Austin American Statesman, *Capitol View Protection to be Examined Today*, Robert Cullick, May 30, 1984.

<sup>103</sup> See Statesman, *Council Enacts Height Ordinance to Ban Blocking Capitol Views*, Tony Tucci, August 3, 1984.

<sup>104</sup> See Statesman, *15<sup>th</sup> Street Condominium Plan Feared Barrier to Capitol View*, Robert Cullick, July 26, 1984; Statesman, *Capitol Squeeze Growing Tighter*, Editorial, April 26, 1984.

<sup>105</sup> See Statesman, *Council Enacts Height Ordinance to Ban Blocking Capitol Views*, Tony Tucci, August 3, 1984.

- In **1985**, the City broadened the scope of the ordinance by designating 17 additional view corridors, for a total of 26. The City ordinance, again adopted unanimously, provides broad discretion for variances.<sup>106</sup>
- In **1985**, the Texas Legislature, citing construction that “threatens to obliterate the view of the Texas Capitol to the detriment of the people of Texas visiting or passing by their Capitol City” establishes 28 additional view corridors in state law. The Act, sponsored by Senators Barrientos and Washington and Representative Emmett, includes language added by Representative Guerrero to allow for a period of time for impacted property owners to seek transfers of development or construction rights. The bill is ‘enthusiastically supported’ by the City Council.<sup>107</sup> The legislation is enacted by a vote of 29-0 in the Senate and 133-1 in the House.<sup>108</sup>
- In **1987**, the State Purchasing & General Services Commission asks the Legislature to exempt a “mistake” in the design of a parking garage encroaching 9’ into the view corridor protecting Waterloo Park. The exemption is opposed as setting a “precedent for developers in other protected view corridors to seek an exemption.” The Texas House overwhelmingly affirms their commitment to the view corridors and rejects the bill exempting the parking garage. The State expends over \$200,000 in design and construction to conform the project.<sup>109</sup>
- In **1988**, the State proposed a 12-story state office building for the northeast corner of 15<sup>th</sup> and Lavaca, encroaching 43’ over the City’s Capitol dominance district height limitations. The State ultimately passed on constructing the building, under pressure from state lawmakers who had been critical of the City for not preserving Capitol views, and opted to purchase the One Capitol Square structure across Lavaca.<sup>110</sup>
- In **1989**, a stealth effort by the State Purchasing and General Services Commission to exempt all State government buildings from view corridor and dominance district restrictions was attempted during the legislative session. The effort was exposed and soundly defeated.<sup>111</sup>
- In **1995**, the State Preservation Board completed a significant and unprecedented restoration of the State Capitol.
- In **1997**, the City’s Downtown Commission affirmed its Downtown Neighborhood Plan, a compilation created by over a decade of study, embracing a long-term comprehensive vision for Downtown Austin. The Plan specifically

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<sup>106</sup> See Statesman, *3 Capitol Views Added to Protected List*, Peggy Vlerebome, February 15, 1985.

<sup>107</sup> Statesman, *Capitol Views*, Editorial, April 13, 1985.

<sup>108</sup> Report of Senate Engrossing Clerk, SB 644, May 8, 1985.

<sup>109</sup> Statesman, *House Affirms Law Protecting Capitol View; Plans for Half-Built Parking Ramp, Not Height Limits, Must Change*, John C. Henry, July 19, 1987.

<sup>110</sup> Statesman, *Planned State Office Building Over Capitol Height Limit*, July 2, 1988.

<sup>111</sup> Statesman, *Amendment Would Exempt Building From Capitol ‘View’ Rule*, Bruce Hight, May 19, 1989.

noted, in reviewing the conditions that made Austin “one of the strongest and most attractive downtowns of any city in Texas” that “the remaining Capitol views be preserved” and that the existing Capitol View Corridors and Town Lake create a triangle establishing where “the highest intensity, highest value development in the region should be encouraged.”

- In **1997** and **2003**, the Capitol View Corridor provisions were amended by the Legislature to address limited and unique public development needs (revitalization of Austin’s 11<sup>th</sup> and 12<sup>th</sup> Street Corridors (1997), the redevelopment of Mueller Airport (2003), and an addition to Darrell K Royal-Texas Memorial Stadium (1997)).