



Planning Commission Report

Meeting Date: March 8, 2012

Subject: **Resolution Adopting Trousdale View Restoration Guidelines**
Review and adopt guidelines that would implement the Trousdale View Restoration Ordinance adopted by the City Council on December 6, 2011.
PROJECT APPLICANT: City of Beverly Hills

Recommendation: That the Planning Commission conduct the public hearing, close the public hearing and adopt the resolution approving the Trousdale View Restoration Guidelines.

REPORT SUMMARY

The Planning Commission reviewed draft Trousdale View Restoration Guidelines at a study session on December 19, 2011 and again reviewed the draft guidelines at a public hearing on January 12, 2012. The public hearing was continued to March 8, 2012 to allow additional time to finalize the document to ensure it is as complete and user-friendly as possible. The draft View Restoration Guidelines reflect Planning Commission comments made at the previous hearings and are attached for Planning Commission review and approval.

DISCUSSION

The Guidelines include many attachments that consist largely of application forms, notice templates and sample documents to assist residents in navigating the City's view restoration process. Staff recommends that the Planning Commission include a condition in the proposed resolution approving the Guidelines to allow the Director of Community Development to approve changes to the attachments. This will prevent delays in the view restoration process and allow staff to improve the attachment documents as staff gains experience with the process. Any major changes would still be brought forward to the Planning Commission. Staff further recommends that the Planning Commission include a condition in the resolution allowing staff to make the following changes to the Guidelines without Planning Commission approval:

- Add graphics intended to better explain the process to residents;
- Revise the Guidelines only to reflect amendments to the Trousdale View Restoration Ordinance adopted by the City Council. For example, it is anticipated that the City Council will revise the View Restoration Permit application notice requirement to be consistent with the Planning Commission's recommendation that notices should only be mailed to parties named in the View Restoration Permit Application. Staff would like the ability to reflect this change in the Guidelines without Planning Commission approval.

Staff will provide a draft resolution reflecting the above recommendations prior to the Planning Commission meeting. In addition, some of the attachments to the Guidelines are not included with this report and will be provided prior to the meeting - most importantly, the proposed Trousdale landscape standards.

ENVIRONMENTAL ASSESSMENT

This project is an implementation action of the previously adopted Trousdale View Restoration Ordinance, for which a Negative Declaration was adopted after the project was assessed in accordance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City and no significant environmental impacts were identified.

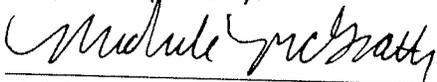
PUBLIC NOTICE

Legal notice of public hearing was published on December 30, 2011 in the *Beverly Hills Courier* and a notice was published in the *Beverly Hills Weekly*, two newspapers of local circulation. The public hearing was continued from that date to January 12, 2012, February 9, 2012, February 23, 2012 and to March 8, 2012.

RECOMMENDATION

It is recommended that the Planning Commission conduct the public hearing, close the public hearing and adopt the resolution approving the Trousdale View Restoration Guidelines.

Report Prepared By:



Michele McGrath, Acting Principal Planner



Trousdale View Restoration Guidelines

View Restoration Guidelines

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View Restoration Guidelines

1. Purpose

The Trousdale View Restoration Ordinance was adopted by the City Council on December 6, 2011 (**Attachment 1**). The intent of the ordinance is to encourage Trousdale neighbors to reach early resolution when addressing restoration of views that have been substantially disrupted by foliage growth on neighboring properties. The purpose of the View Restoration Guidelines is to assist Trousdale property owners in understanding and using the Trousdale View Restoration Ordinance. The Guidelines provide a step-by-step guide to the view restoration process adopted in the City's ordinance. Neighbors may find compromise solutions outside of the City's view restoration process; however, if a property owner wishes to preserve the opportunity to apply to the City for a decision in a view restoration case, the City's view restoration process must be followed. A public hearing is considered a last resort to resolve view blockage issues, in part because of increased cost and time for all property owners. To encourage early resolution of disputes, the process is set up so that Foliage Owners do not incur any cost if they participate in the early steps of the process, but Foliage Owners do incur cost if a View Owner is granted a View Restoration Permit by the Planning Commission.

Neighbors are advised that while the ordinance is intended to help restore views, the ordinance also acknowledges a balance between views and the importance of residential privacy and security, maintaining the garden quality of the City, insuring the safety and stability of the hillsides, and trees and vegetation in the City as an integral part of a sustainable environment. Neighbors are advised to be mindful of other neighbors' concerns, to be cordial, and are encouraged to find compromise solutions.

Please note that the ordinance only protects views of the Los Angeles area basin. This includes city lights and views toward the ocean but does not include ridges or canyons not located in a line of sight to the Los Angeles area basin.

The Guidelines reference sections of the Trousdale View Restoration Ordinance which is part of the Beverly Hills Municipal Code (BHMC), Sections 10-8-101, *et seq.*, and available online at the City's website, www.beverlyhills.org. The City's website includes a webpage for the Trousdale View Restoration Ordinance and all applicable documents, all of which can be accessed at [include web link here for View Restoration web page].

View Restoration Guidelines

2. Alternative Dispute Resolution

Private Agreements. Neighbors are encouraged to resolve view obstruction issues among themselves. Neighbors may agree to allow foliage to grow higher than the limits set in the Trousdale View Restoration ordinance so long as there are no health and safety issues (e.g. maintaining trees that are diseased and unstable or foliage that blocks traffic visibility) and so long as the foliage is not maintained in violation of other City codes, such as the City's hedge height regulations, so that it negatively impacts neighbors. **Attachment 2** to the Guidelines is a private agreement template neighbors may use and modify to suit their needs. The City would not be a party to private agreements and would not monitor or enforce such agreements.

To encourage private agreements, the ordinance allows a View Owner who enters into a private agreement with a neighboring Foliage Owner pursuant to the Initial Neighbor Outreach or Mediation steps, to resume the City's view restoration process if the private agreement proves unsuccessful (see Section 6. "Continuation of View Restoration Process after Agreement").

Binding Arbitration. Neighbors have the option, at any time, to agree to binding arbitration as an alternative to the City view restoration process. Additional information on the arbitration process (alternative dispute resolution) is available through the following source:

Los Angeles County Superior Court - <http://www.lasuperiorcourt.org/adr/forms/LAADR005.pdf>

View Restoration Guidelines

3. Key Terms

The Guidelines use a number of terms defined in the Trousdale View Restoration Ordinance (Section 10-8-102). Two key terms are defined below and the most commonly referenced terms are included in a Glossary as **Attachment 3** to the Guidelines.

VIEW OWNER: Section 10-8-102 (Q) of the View Restoration ordinance define View Owner as follows:

VIEW OWNER: Any owner or owners of real property in Trousdale Estates that has a protectable view and who alleges that the growth of foliage located on a property within five hundred feet (500') of their property is causing substantial disruption of a protectable view. "View Owner" shall include one or more owners of the same property.

The terms "foliage" and "protectable view" are defined in Attachment 3. As stated in the definition above, the foliage alleged to disrupt the view must be located on a property within 500 feet of the View Owner's property. The 500-foot distance is measured from the edge of the View Owner's property. Even if only a small portion of a neighboring property is within 500 feet of the View Owner's property, foliage on all parts of that neighboring property may be subject to the ordinance. A View Owner may need professional assistance to determine if particular foliage blocking a view is located on a Trousdale property with 500 feet of the View Owner's property.

FOLIAGE OWNER: Section 10-8-102 (E) of the View Restoration ordinance define Foliage Owner as follows:

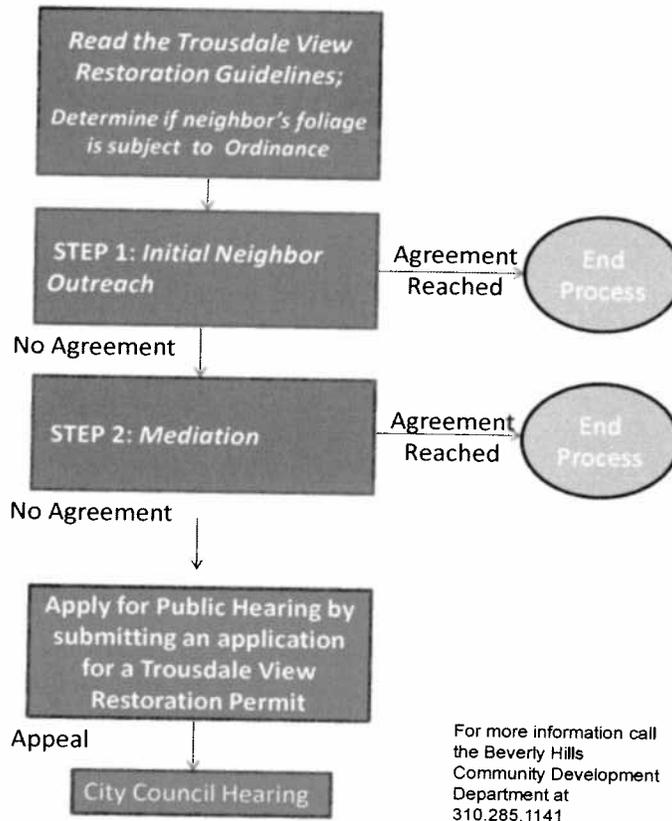
FOLIAGE OWNER: An owner of real property in Trousdale Estates upon which is located foliage that is subject to an action filed pursuant to this article and which property is within five hundred feet (500') of a view owner's property. "Foliage owner" shall reference one or more owners of the same property.

View Restoration Guidelines

4. Trousdale View Restoration Process Overview

View Restoration Process Flow Chart

BHMC Title 10, Chapter 8



Enforcement: The Trousdale View Restoration Ordinance provides for one-time enforcement of a City View Restoration Permit decision; however, once enforcement escalates to a City prosecution process, the City's enforcement costs will be paid by the permit applicant (View Owner). The cost could be substantial to the View Owner if the Foliage Owner declines to comply with the City's decision. Each View Owner will have the opportunity to provide input for the City's consideration on whether to pursue prosecution if enforcement reaches that stage.

Litigation: The Trousdale View Restoration Ordinance includes indemnification language that requires an applicant to pay the City's litigation costs if a City decision made on behalf of that applicant is litigated. This cost could be substantial for all parties. It is noted that the City Council is reviewing ways to reduce the financial burden of this requirement on applicants.

View Restoration Guidelines

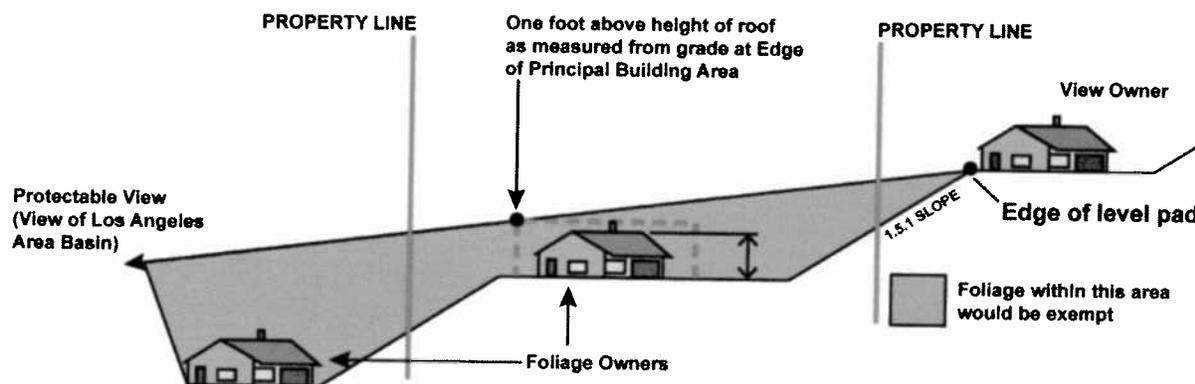
5. View Restoration Procedures

Determine if neighbor's foliage is subject to the ordinance

5 A. Safe Harbor Exemption

Not all foliage is subject to the Trousdale View Restoration Ordinance. To create more certainty for property owners, the ordinance defines an area on each property, called the "Safe Harbor Area," where foliage is exempt from the Ordinance. (See illustration below)

Safe Harbor Area



Prepared by the Community Development Department

In the illustration above, the View Owner is at the upper right and all foliage growing in the green area is exempt from the Trousdale View Restoration Ordinance, as it relates to the pictured View Owner. The intent was to exempt foliage that is unlikely to substantially disrupt a View Owner's view.

See **Attachment 3** (Glossary) for definitions of "Safe Harbor Plane" and "Safe Harbor Area."

It is the responsibility of the View Owner to pay for any surveys necessary to determine the Safe Harbor Area. A Safe Harbor Survey will be required as part of an application to the Planning Commission for a Trousdale View Restoration Permit.

View Restoration Guidelines

Step 1: Initial Neighbor Outreach

Property owners who wish to use the City's view restoration process must complete Initial Neighbor Outreach and Mediation, before an application may be made for a City public hearing.

5 B. Initial Neighbor Outreach (See **Attachment 4** for related forms)

Initial Neighbor Outreach consists of the following steps:

1. Contact Foliage Owner(s)

View Owners are encouraged to contact Foliage Owner(s) by telephone or in person, if possible; however, if agreement is not reached through informal contact, the View Owner must send a notice by certified mail to the Foliage Owner(s). The notice must be sent to the Beverly Hills street address for the particular property. In addition, the notice must be sent to the official mailing address as represented on the Los Angeles County Assessor's rolls. A View Owner may contact the City at 310.285.1141 for assistance in determining a Foliage Owner's official mailing address so long as the View Owner is able to identify on a map the property on which the foliage is located. It is noted that a view owner may need professional assistance to determine if particular foliage blocking a view is located on a particular Trousdale property and whether that property is located within with 500 feet of the View Owner's property.

2. Notice to Foliage Owner(s)

The Initial Neighbor Outreach notice shall be on the City's form or in a substantially similar format (Notice Template is **Attachment 4a**). The notice must be signed by the View Owner or the View Owner's authorized representative. The notice shall contain the following:

- General description of the View Owner's claim of disruption of a protectable view (identify direction of the view, the foliage alleged to block the view)
- Remedy sought by the View Owner (foliage to be trimmed, removed, etc.; any proposal to replace foliage)
- A good faith estimate of the cost of the remedy and an offer to pay that cost.¹
- An offer to meet with the Foliage Owner.

It is also recommended that the View Owner provide photographs to the Foliage Owner that illustrate the alleged view disruption.

¹ This requirement was included for two reasons: 1) acknowledges that the benefits of view restoration generally accrue to the View Owner rather than the Foliage Owner; and, 2) an early offer to pay by the View Owner is an incentive to the Foliage Owner to cooperate at this step to come to a mutually agreeable solution.

View Restoration Guidelines

3. Foliage Owner's Response

A Foliage Owner's participation in Initial Neighbor Outreach is voluntary. Each Foliage Owner shall have 30 calendar days from service of written notice to respond to the View Owner unless the Foliage Owner either requests a ten business day extension in writing or a different response period is determined by mutual agreement of the View Owner and Foliage Owner.

4. Agreement Reached

If a Foliage Owner responds to an Initial Neighbor Outreach notice, the View Owner and Foliage Owner should engage in discussion in an attempt to reach a mutually agreeable solution. If agreement is reached, it is recommended that the parties prepare a private written agreement. See page 3 of the Guidelines, "Private Agreement."

5. Apportionment of Cost

- **Procedural Costs.** Any costs associated with obtaining information, mailing the required notice, or preparing an agreement shall be borne by the view owner. The view owner shall pay the cost of a view restoration property survey or tree survey if such a survey is completed.
- **Restorative Action.** The cost of restorative action agreed upon by the View Owner and the Foliage Owner shall be borne by the View Owner unless otherwise agreed to by the Foliage owner.
- **Maintenance Cost.** The cost of subsequent maintenance of foliage on the Foliage Owner's property shall be allocated as agreed upon by the parties.

6. Non-Response or Agreement Not Reached

If the View Owner and a Foliage Owner are unable to resolve the matter, or if a Foliage Owner fails to respond to the notice during the response period, the View Owner may proceed to Step 2: Mediation. To proceed to Step 2, the View Owner shall provide an affidavit, signed under penalty of perjury, indicating either: that the Foliage Owner participated in the initial neighbor outreach that did not conclude in an agreement between the parties; or, non-response of the Foliage Owner (Affidavit is also attached as **Attachment 4b**).

View Restoration Guidelines

Step 2: Mediation

Property owners wishing to continue with the City's view restoration process but unsuccessful in resolving a dispute through the Neighbor Outreach process, must offer to have the dispute mediated. View owners should maintain a copy of the Initial Neighbor Outreach certified letter sent to the Foliage Owner(s), return receipt, and the affidavit attesting to lack of agreement or non-response of the Foliage Owner at the Initial Neighbor Outreach step. These documents will be required if the View Owner eventually applies for a View Restoration Permit hearing before the Planning Commission.

5 C. Mediation (See **Attachment 5** for related forms)

Mediation consists of the following steps:

1. Contact Foliage Owner(s)

View Owners must send a notice by certified mail to the Foliage Owner(s). The notice mailing requirements are the same as for the Initial Neighbor Outreach step (see page 7, "Contact Foliage Owners").

2. Notice to Foliage Owner(s)

The Mediation notice shall be on the City's form or in a substantially similar format (Notice Template is **Attachment 5a**). The notice must be signed by the View Owner or the View Owner's authorized representative. The notice shall contain the following:

- An offer to meet with the Foliage Owner and a mediator.
- General description of the View Owner's claim of disruption of a protectable view (direction of the view, generally identify the foliage alleged to block the view)
- Remedy sought by the View Owner (foliage to be trimmed, removed, etc.; any proposal to replace foliage)
- A good faith estimate of the cost of the remedy.

It is also recommended that the View Owner provide photographs to the Foliage Owner that illustrate the alleged view disruption.

View Restoration Guidelines

3. Foliage Owner's Response

A Foliage Owner's participation in Mediation is voluntary. Each Foliage Owner shall have 30 calendar days from service of written notice to respond to the View Owner unless the Foliage Owner either requests a ten business day extension in writing or a different response period is determined by mutual agreement of the View Owner and Foliage Owner failure to respond shall be considered refusal by the Foliage Owner to participate in mediation.

4. Mediation Session

Each mediation session may involve one or more View Owners and one or more Foliage Owners at the discretion of the parties involved. If Mediation is agreed to by a View Owner and one or more Foliage Owners, each party to the Mediation must provide the following materials to the mediator:

- View Restoration Mediation Information Form (**Attachment 5b**)
- Photos of the Properties:

For View Owners: Photos showing the alleged view, the area on the View Owner's property from which the view is observed, and any other areas or features the View Owner chooses to present.

For Foliage Owners: Photos showing the sight line up to the View Owner's property, photos of the foliage in question, and any other areas or features the Foliage Owner chooses to present.

Photographs should reflect the entire view of the Los Angeles area basin from the View Owner's property as would be seen by the natural eye. Photographs should not be taken with fish eye lenses, zoom lenses or other equipment that distorts the view as seen by the natural eye.

- Any other reports or documents the parties wish to present.

The View Owner may use any mediator mutually agreed to by the View Owner and Foliage Owner(s). Alternatively, a View Owner who wishes to use the City-sponsored mediator (a mediator under contract to the City) shall contact the mediator and submit to the mediator proof of the Initial Neighbor Outreach in the form of a copy of the certified letter sent to the Foliage Owner(s), return receipt, and the affidavit attesting to lack of agreement or non-response of the Foliage Owner. This allows City staff to track use of the City's contract mediator and ensures that parties using the City's contract mediator are bona fide view restoration applicants.

The mediator shall not have the power to issue binding orders for restorative action but shall strive to enable the parties to resolve their dispute.

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5. Agreement Reached

If an agreement is reached between the parties as a result of mediation, the mediator will encourage the participants to prepare, and can assist in the preparation of, a private agreement for the parties to sign. See page 3 of the Guidelines, "Private Agreement."

6. Apportionment of Cost

Unless otherwise agreed to by the parties, costs shall be apportioned according to the following:

- **Procedural Costs.** Any costs associated with obtaining information, mailing the required notice, or preparing an agreement shall be borne by the view owner. The view owner shall pay the cost of a view restoration property survey or tree survey if such a survey is completed.
- **Restorative Action.** The cost of restorative action agreed upon by the View Owner and the Foliage Owner shall be borne by the View Owner unless otherwise agreed to by the parties.
- **Maintenance Cost.** The cost of subsequent maintenance of foliage on the Foliage Owner's property shall be allocated as agreed upon by the parties.

7. Non-Response or Agreement Not Reached

If the View Owner and a Foliage Owner are unable to resolve the matter through mediation, or if a Foliage Owner fails to respond to the mediation notice or to participate in the mediation process, the View Owner may proceed to file for a View Restoration Permit. To proceed to a View Restoration Permit application, the View Owner shall provide an affidavit, signed under penalty of perjury, indicating either: participation by the Foliage Owner in mediation but lack of agreement; or, non-response of the Foliage Owner (Affidavit is also attached as **Attachment 5c**).

View Restoration Guidelines

6. Continuation of View Restoration Process after Agreement

To encourage private agreements, the ordinance allows a View Owner who enters into a private agreement with a neighboring Foliage Owner pursuant to the Initial Neighbor Outreach or Mediation steps, to resume the City's view restoration process if the private agreement proves unsuccessful.

A View Owner may resume the City's View Restoration process at the next step after which a private agreement was entered into, provided that less than two years have passed since the date of the private agreement. For example, if neighbors reach agreement at the Initial Neighbor Outreach step and that agreement is not maintained, the View Owner may proceed to the Mediation step so long as the View Owner can show completion of the Initial Outreach step.

7. Permit Required For Removal of Certain Trees

Please note that trees in the City are protected by the City's ordinance regulating the removal or damage of certain trees on private, single-family residential property. Before any trees are damaged or removed, please consult Beverly Hills Municipal Code Section 10-3-2901. A copy of the City's Tree Removal Permit Application for the removal of protected trees is attached and includes a summary of the City's tree preservation regulations (**Attachment 6**). This application must be completed and submitted to the City's Building Department if any protected trees may be damaged or removed pursuant to an Initial Neighbor Outreach or Mediation process. One of the permitted reasons for removing a protected tree is that "The protected tree proposed for removal is obstructing an existing view of the Los Angeles area basin from a habitable building on the property where such tree is located."

View Restoration Guidelines

8. City Advisory Opinion (See **Attachment 7** for forms)

A View Owner has the option to request a non-binding view restoration opinion from City staff for a fee. A non-binding opinion is for information purposes only and would not affect any subsequent City decisions regarding a view restoration case. This may be an option for View Owners who are unsure if they have a protectable view that is being substantially disrupted and would like an impartial opinion. It may also be an option for View Owners who do not wish to go through a public hearing process. In both cases, the view owner would gain additional information that may be helpful in working with neighbors to resolve view issues.

The fee for a City Advisory Opinion is included on the list of fees attached (**Attachment 10**). This is the minimum required to cover the City's cost to provide a written opinion to the view owner. Please note that City fees change each year, usually on July 1.

The request for a City Advisory Opinion would be made on a form provided by the City. It is noted that the written opinion would be a public document available to anyone who requests it.

If a view owner requests and receives a City Advisory Opinion, the view owner must wait one year (12 months) to apply for a View Restoration Permit. During this 12-month period, the view owner may complete the Initial Neighbor Outreach and Mediation steps and, if there is no resolution, complete a View Restoration Permit application; however, the application may not be submitted until 12 months have elapsed from the date of the City Advisory Opinion.

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9. Trousdale View Restoration Permit Process

Please See **Attachment 8**, the Trousdale View Restoration Permit Application, for forms.

Submitting an Application

If a View Owner completes the Early Neighbor Outreach and Mediation steps without resolving the view problem, and the View Owner wishes to proceed with a public hearing process, the View Owner may complete and submit a View Restoration Permit application form (**Attachment 8a**) to the Community Development Department with the appropriate filing fees (**Attachment 10**). An application may be submitted by only one View Owner but the application may name one or more Foliage Owners. The addition of foliage owners to an application will increase the application fee as more staff time is involved.

Once a Complete View Restoration Permit Application has been Submitted

1. Assigned to Planner

The application will be assigned to a planner. The planner will determine if the application is complete.² The planner will contact the applicant and indicate if the application is complete or incomplete. If incomplete, the planner will provide the applicant a list of missing information in writing. Incomplete applications will not be processed until the application is complete. If the applicant does not submit the necessary information and the application remains incomplete for six (6) months, the City shall administratively withdraw the application and return the application materials to the applicant.

Once an application is deemed complete, the following steps shall occur to process the application and prepare for a Planning Commission hearing.

2. Notification of Foliage Owner(s)

Staff notifies the Foliage Owner(s) in writing, that a formal request for a View Restoration Permit hearing has been filed with the City, attaching a copy of the application, a copy of the View Restoration Guidelines and an authorization form that would allow staff and the Planning

² A View Restoration Permit application is not for a development project and is not subject to the Permit Streamlining Act.

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Commission to visit the Foliage Owner's property. Staff or City officials may visit Foliage Owner's property only with the Foliage Owner's written authorization. The signed authorization may be emailed to staff by the Foliage Owner.

3. Site Visits

Staff schedules and conducts site visits to the View Owner and Foliage Owner properties. If a Foliage Owner does not permit access to his/her property, the Planning Commission shall review the case using other information as may be available, including information provided by the View Owner. Although a Foliage Owner has discretion as to whether to allow staff or City officials onto his/her property, lack of access to the Foliage Owner's property may make it difficult for staff and the Planning Commission to evaluate issues raised by the Foliage Owner when considering an application.

4. Public Notice

Staff prepares and mails notices to all property owners within 500 feet of the View Owner's property at least 30 days prior to the hearing, using the address labels submitted by the View Owner with the application.

It is noted that pursuant to Planning Commission and City Council direction, it is expected that the public notice requirement will be revised to include only the parties to the View Restoration Permit application.

5. Staff Report

Staff prepares a staff report to the Planning Commission that includes the following:

- a. Application
- b. Information on each property involved.
- c. Staff analysis of the findings that must be made to issue a View Restoration Permit.
- d. Photos (also included in surveys required in application).
- e. Staff recommendation.

Staff report is distributed to the Planning Commission, applicant and Foliage Owner(s) the week prior to the public hearing date.

6. Public Hearing

A Planning Commission public hearing is held on the second and fourth Thursdays of each month. The hearing will be preceded by a bus tour, to which members of the public are invited.

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The tour is for the Planning Commission to review the sites involved in the case, and is not an opportunity for interested parties to provide testimony to the Commission. .

The Planning Commission may, at its discretion, require the review of any case by a qualified soils engineer, arborist, landscape architect or other appropriate professionals based on the specific conditions of the case. The applicant shall be responsible for these additional costs. Staff will advise the applicant of the estimated cost for additional expert information. If the applicant refuses to pay for that expense, then the application will be withdrawn by staff.

After all public testimony has been heard from any interested parties, the Planning Commission will close the public hearing and deliberate. Planning Commission decisions must be supported by substantial evidence in the record before the Commission. The Planning Commission reaches a decision by reviewing the required findings that must be made as set out in the ordinance (Section 10-8-106(I)). All of the findings must be made by the Planning Commission before a View Restoration Permit may be granted. (See **Attachment 8b** for the findings.)

When the Commission reaches a decision, a resolution approving or denying the permit will be prepared by staff reflecting the Commission's decision. Resolutions may be prepared in advance of the Planning Commission hearing and revised at the meeting pursuant to Commission direction or may be prepared after the meeting and returned to a subsequent Planning Commission meeting for approval.

7. Resolution: Restorative Action

If the Planning Commission is able to make the required findings and approves a View Restoration Permit, the resolution will include conditions of approval that will specify the Restorative Actions that must be taken to restore the view. This includes specifying foliage, including trees, that need to be trimmed or removed. This may include a long-term foliage maintenance schedule to be incorporated into the conditions of approval. (See **Attachment 9** for Restorative Actions.)

Determination of restorative actions would usually be made based on the tree survey that was part of the application, the site visits and testimony at the hearing. All restorative action must be performed by a licensed and bonded tree or landscape service unless otherwise mutually agreed upon by the parties.

Restorative action may include trimming, culling, lacing, removal or removal and replacement of foliage including trees. The resolution will indicate the period of time within which the restorative actions must be completed taking into consideration the health of the foliage and common nesting seasons.

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8. Notice of Decision

Once the Planning Commission makes a decision and adopts a resolution, staff shall mail a written notice of decision within five days of the decision to the applicant and each Foliage Owner named on the application. Copies of the final resolution will be attached to the notice of decision.

9. Completion of Restorative Action & Apportionment of Cost

It will be the responsibility of the View Owner and Foliage Owner to ensure the Restorative Actions are performed pursuant to the resolution. The responsibility for the cost of the Restorative Action will be specified in the resolution, pursuant to the ordinance:

(1) Procedural Costs. View owner shall bear the cost of application fees and other application costs including the View Restoration Property Survey and Tree Survey and the cost of any other information requested by the reviewing authority.

(2) Restorative Action.

(a) The Foliage Owner shall pay one hundred percent (100%) of the cost of Restorative Action if the Foliage Owner did not participate in mediation and the reviewing authority finds Restorative Action is required.

(b) The View Owner and Foliage Owner shall each pay fifty percent (50%) of the cost of Restorative action if the foliage owner participated in mediation and the reviewing authority finds restorative action is required.

Once the restorative work is performed, staff will document compliance with the resolution with digital photographs. Staff will provide copies of these images to the View Owner and Foliage Owner(s) and will maintain copies with the final resolution in the City's files.

10. Maintenance After Initial Restorative Action

The Foliage Owner shall ensure ongoing compliance with the Resolution and shall pay for subsequent maintenance of the foliage consistent with the View Restoration Permit.

11. Non-Compliance with View Restoration Permit/City Enforcement

If, after a period of time specified in the resolution, the restorative work is not performed, the applicant may request, in writing, that the City proceed with enforcement of the resolution. (See **Attachment 11** for enforcement request template).

The City will enforce the View Restoration Permit to restore a view, but will not be responsible for subsequent enforcement. Any further dispute regarding a Foliage Owner's compliance with a View Restoration Permit may be resolved by a civil action initiated by the View Owner. (See Ordinance section 10-8-108.) In other words, after initial City enforcement, if foliage grows back

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and disrupts the view in violation of a View Restoration Permit, the View Owner may sue the Foliage Owner to gain compliance but the City will not be involved in enforcement of the View Restoration Permit at this point.

The applicant will be responsible for all prosecution costs incurred by the City.

12. Limit on Number of Hearings Annually

Pursuant to the adopted ordinance, the Planning Commission shall conduct no more than ten (10) View Restoration Permit hearings per calendar year. This does not include potential appeals to the City Council. The City will track this figure so applicants and potential applicants are aware of potential waiting periods for a hearing.

13. Appeal to City Council

A decision of the Planning Commission on a view-related permit may be appealed to the City Council within 14 days of the Planning Commission's decision. Appeal forms are available in the City Clerk's office which may be contacted at 310.285.2400. The form must be submitted to the City Clerk within 14 days of the decision with the required fee (See **Attachment 10**). The public hearing process before the City Council would be substantially the same as the public hearing process before the Planning Commission. After considering the written and oral testimony at the appeal hearing, the City Council may take one of the following actions:

1. Affirm the decision of the Planning Commission or make a different decision based on the findings that must be made;
2. Refer the matter back to the Planning Commission to conduct further proceedings.

14. Decisions Intended to Run With the Land (Section 10-8-107)

Decisions regarding view restoration shall be binding on all current and future owners of view owner's property and foliage owner's property, and such decisions must be disclosed by each owner to subsequent owners of the property.

10. Landscape Standards for Trousdale

"The View Restoration Guidelines shall include landscape standards with a list of nuisance trees that should not be planted in hillside view areas."

Attachment 1

Trousdale View Restoration Ordinance

Article 1. Trousdale Estates View Restoration

10-8-101: Purpose And Intent

10-8-102: Definitions

10-8-103: Exemption

10-8-104: Procedures

10-8-105: Continuation Of Process After Agreement

10-8-106: View Restoration Permit

10-8-107: Decisions Intended To Run With The Land; Disclosure

10-8-108: Private Right Of Action; Subsequent Enforcement By View Owner And Attorney Fees

10-8-109: Landscape Standards

10-8-110: Apportionment Of Costs

10-8-101: PURPOSE AND INTENT:

The intent of this article is to restore and preserve certain views from substantial disruption by the growth of privately owned trees, vegetation, or a combination thereof while providing for residential privacy and security; maintaining the garden quality of the city; ensuring the safety and stability of the hillsides; and, acknowledging the importance of trees and vegetation in the city as an integral part of a sustainable environment. It is the further intent to establish a process by which residential property owners in Trousdale Estates may seek to restore and preserve certain views, with an emphasis on early neighbor resolution of view restoration issues. It is also the intent of this article to educate residents to consider the potential to block neighbors' views before planting foliage and in maintaining foliage. It is not the intent of this article to create an expectation that any particular view or views would be restored or preserved. (Ord. 11-O-2616, eff. 1-6-2012)

10-8-102: DEFINITIONS:

Unless the context otherwise requires, the definitions set forth in this section shall govern the construction of this article:

ARBORIST: An individual certified as an arborist by the International Society Of Arboriculture (ISA), or an individual who is currently listed as a consulting arborist by the American Society Of Consulting Arborists (ASCA).

u: A nonbinding opinion rendered by the director of community development or his/her designee, to a view owner who requests such an opinion and pays a fee as set by the city council.

DAMAGE: Any action which may cause death or significant injury to a tree, or which places the tree in a hazardous condition or an irreversible state of decline. Such action may be taken by, but is not limited to, cutting, topping, girdling, poisoning, trenching, grading, or excavating within the drip line of the tree.

FOLIAGE: The aggregate of leaves, branches and trunks of one or more plants. Trees and hedges, including hedges that otherwise meet the standards of the zoning code, are included in the definition of foliage.

FOLIAGE OWNER: An owner of real property in Trousdale Estates upon which is located foliage that is subject to an action filed pursuant to this article and which property is within five hundred feet (500') of a view owner's property. "Foliage owner" shall reference one or more owners of the same property.

FORESTER: An individual licensed in California as a registered professional forester (RPF).

HEDGE: Shall have the same meaning as set forth in section 10-3-100 of this title.

LANDSCAPE ARCHITECT: A landscape architect registered by the state of California.

PRIMARY RESIDENTIAL STRUCTURE: The main structure or building on a site zoned for residential use and used or occupied as a private one-family residence.

PROTECTABLE VIEW: A protectable view may include any view of the Los Angeles area basin from a "viewing area" as defined in this section. The view of the Los Angeles area basin may include, but is not limited to, city lights (Beverly Hills and other cities), ocean, and horizon. The term "protectable view" does not mean an unobstructed panorama of all or any of the above. For purposes of this section, a protectable view shall be determined from a point thirty six inches (36") above the finished grade of the viewing area.

PROTECTED VIEW: A protectable view that has been determined by the reviewing authority to merit restoration.

RESTORATIVE ACTION: Any specific steps taken affecting foliage that would result in the restoration or preservation of a protected view.

SAFE HARBOR AREA: The area below a safe harbor plane.

SAFE HARBOR PLANE: A plane defined by points at the edge of view owner's level pad to points measured from grade at the edge of an adjacent downslope foliage owner's principal building area that is farthest from the edge of view owner's level pad located in a line of sight of a protectable view. The points of the plane on foliage owner's property shall be at a height of one foot (1') above the height of the roof of the primary residential structure on foliage owner's property, not to exceed a maximum height of fifteen feet (15') as measured from grade (see illustration in section 10-8-103 of this chapter). If the downslope property is undeveloped, or if the upslope property's view is over the driveway or "pole" portion of a flag lot, then the maximum height of fifteen feet (15') from grade shall apply.

For the purposes of this definition, the height of the roof of the primary residential structure excludes chimneys, stair or elevator shafts, vent pipes, mechanical equipment, parapets, architectural features that extend above the primary roof elevation, antennas, and other rooftop equipment. If the roof height varies, the height of the roof of the primary residential structure shall be the highest point of the roof of the primary structure.

For purposes of this definition, downslope and upslope properties separated by a public street shall be deemed to be adjacent.

If a view owner's level pad is less than one foot (1') above the height of the roof of the primary residential structure on foliage owner's property, then the safe harbor plane shall be defined as a plane above the foliage owner's level pad at a height of one foot (1') above the height of the roof of the primary residential structure on foliage owner's property.

TREE: A woody perennial plant, consisting usually of a single elongated main stem or trunk and many branches.

TREE SURVEY: A tree survey includes the following information for trees alleged to impair a view and all trees within the vicinity of the alleged view impairing trees as determined by a landscape architect, arborist, or forester:

- A. Species of each tree, based on scientific name, and the common name;
- B. Tree identifying number and location recorded on a map;
- C. Physical measurements of the tree such as height and circumference: tree circumference shall be measured on the primary trunk at a height of four feet six inches (4'6") above natural grade;
- D. Age of the tree;
- E. Report of overall health and structural condition of the tree;
- F. Life expectancy and suitability for preservation;
- G. Potential restorative actions to address trees alleged to disrupt a view, impact of such restorative actions on trees, and long term maintenance activities to prevent future potential view disruption; and
- H. Tree management recommendations.

The survey shall be signed or stamped by a registered landscape architect, arborist or forester.

If a foliage owner does not grant access to his/her property for the purpose of conducting a tree survey, a tree survey report shall be prepared with as much of the above information as possible, using other information sources such as photographs taken from other properties, satellite photographs from commercially available sources, public record permit information for work performed on foliage owner's property, and other similar information sources.

VIEW OWNER: Any owner or owners of real property in Trousdale Estates that has a protectable view and who alleges that the growth of foliage located on a property within five hundred feet (500') of their property is causing substantial disruption of a protectable view. "View owner" shall include one or more owners of the same property.

VIEW RESTORATION GUIDELINES: Guidelines for implementation of the ordinance prepared by the community development department, adopted by the planning commission, and made available to the public.

VIEW RESTORATION PROPERTY SURVEY: A survey completed by a certified professional, such as an ALTA (American Land Title Association) survey, of view owner's site and foliage owner's site that may include calculation of the "safe harbor plane" as defined in this article and any other information or calculations as may be of assistance to a reviewing authority pursuant to this section.

If access to the foliage owner's property is necessary to complete the survey and the foliage owner does not grant access to his/her property for the purpose of conducting the survey, a view restoration property survey report shall be prepared using other information sources such as measurements taken from other properties, photographs taken from other properties, satellite photographs from commercially available sources, public record permit information for work performed on foliage owner's property, and other similar information sources.

VIEWING AREA: An area from which a protectable view is assessed, located on the level pad that contains the primary residential structure. A viewing area shall be a room of the primary residential structure (excluding hallways, laundry rooms, closets and garages), or a patio, deck or landscaped area adjacent to the primary residential structure that does not extend beyond the level pad. There may be one or more viewing areas on a property. The reviewing authority shall establish the viewing area or areas as part of its finding that the view

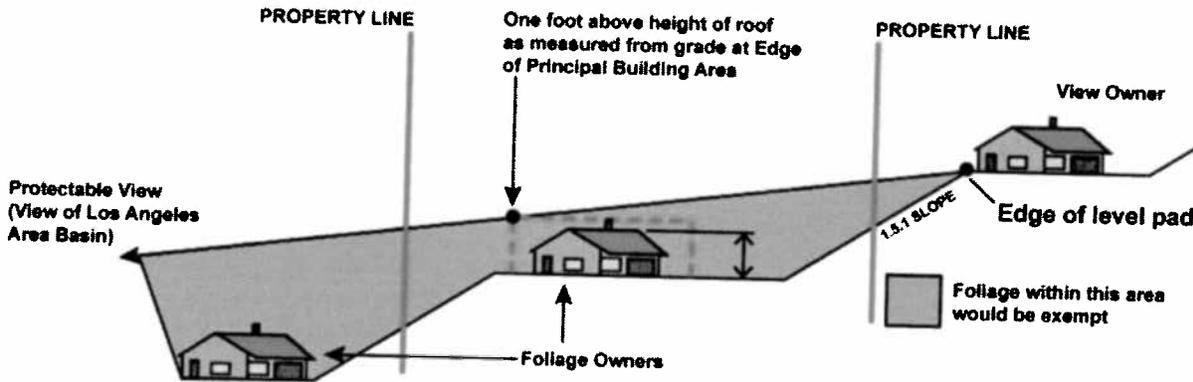
owner has a protectable view. The reviewing authority may designate a location as a viewing area if, in the opinion of the reviewing authority, an average resident would often observe a protectable view from that area. (Ord. 11-O-2616, eff. 1-6-2012)

10-8-103: EXEMPTION:

The provisions of this article shall not apply to foliage where the highest point of the foliage is below a "safe harbor plane" as defined in this article. The exemption applies to foliage on foliage owner's property. Foliage shall be maintained in accordance with all other requirements of this code, including landscape maintenance standards.

SAFE HARBOR AREA

Safe Harbor Area



Prepared by the Community Development Department

(Ord. 11-O-2616, eff. 1-6-2012)

10-8-104: PROCEDURES:

Except for violations of section 10-3-2616 of this title, complaints received by the city regarding foliage blocking views in Trousdale Estates shall be addressed through the view restoration permit preapplication procedures in this article. The procedures in this article will be augmented by the view restoration guidelines.

The procedures set forth below shall be followed in order for a view owner to pursue remedies available in this article. More than one view owner may pursue remedies simultaneously with one or more foliage owners as determined by the parties involved.

- A. Parties' Option To Enter Binding Arbitration; Effect Of Arbitration Decision: Nothing in this article is intended to preclude interested parties from agreeing to resolve the dispute or disputes through binding arbitration, in which case compliance with the procedures set forth in this section shall not be required.

View owners who are subject to a binding arbitration decision shall be precluded from applying for a view restoration permit as to any foliage owner who is a party to the binding arbitration decision.

B. Initial Neighbor Outreach:

1. If a view owner wishes to pursue remedies available in this article, the view owner shall notify each foliage owner in writing of concerns regarding disruption of the view owner's protectable view by foliage on foliage owner's property (the "initial neighbor outreach"). This initial neighbor outreach shall be on a form provided by the city in the view restoration guidelines on file in the city, shall be signed by the view owner, and shall include a signed statement from view owner that view owner or the view owner's representative shall offer to meet with each foliage owner. The initial neighbor outreach notification shall clearly identify the remedy sought by view owner and include a good faith estimate of the cost of the remedy, and an offer to pay that amount.
2. Agreement to participate in the initial neighbor outreach by each foliage owner shall be voluntary, but each foliage owner shall have no more than thirty (30) days from service of written request to respond to the view owner, unless foliage owner requests a ten (10) business day extension in writing or the response period is otherwise extended by mutual agreement of the view owner and the foliage owner. Failure to respond shall be considered rejection by the foliage owner. The initial neighbor outreach should be followed by discussions between view owner and each foliage owner to attempt to reach a mutually agreeable solution.
3. If the view owner and a foliage owner are unable to resolve the matter, or if a foliage owner fails to respond to the initial neighbor outreach, the view owner may proceed with a mediation process. To participate in the city sponsored mediation process, the view owner shall submit to the city proof of the initial neighbor outreach in the form of a certified letter and mailing receipt. If a foliage owner did not respond to the initial neighbor outreach, then the view owner shall also provide an affidavit, signed under penalty of perjury, indicating the nonresponse of foliage owner.
4. If, pursuant to an agreement between the view owner and a foliage owner, the view owner or foliage owner may damage or remove, or cause to be damaged or removed, any "protected tree" as defined in section 10-3-2900 of this title, a tree removal permit must first be obtained in accordance with the requirements of section 10-3-2901 of this title.

C. Mediation:

1. If the parties are unable to reach agreement through the initial neighbor outreach process and the view owner wishes to pursue remedies available in this article, then, as a prerequisite, the view owner shall notify each foliage owner of an offer to mediate. The notice shall be on a form provided by the city in the view restoration guidelines, shall be signed by view owner, and shall include a signed statement from the view owner that the view owner or the view owner's representative shall offer to meet with each potential foliage owner and a mediator. The notice shall clearly identify the remedy sought by the view owner and include a good faith estimate of the cost of the remedy.
2. Acceptance of mediation by each foliage owner shall be voluntary, but each foliage owner shall have no more than thirty (30) days from service of a written request for mediation to accept or reject the offer of mediation, unless the foliage owner requests a ten (10) business day extension in writing or the response period is otherwise extended by mutual agreement of the foliage owner and the view owner. Failure to respond shall be considered rejection. Each mediation session may involve one or more view owners and one or more foliage owners at the discretion of the parties involved.
3. The view owner and each foliage owner shall comply with requirements in the view restoration guidelines regarding submittal of information to the mediator.

4. The mediator shall not have the power to issue binding orders for restorative action but shall strive to enable the parties to resolve their dispute at this stage. If an agreement is reached between the parties as a result of mediation, the mediator will encourage the participants to prepare, and can assist in the preparation of, a private agreement for the parties to sign.
 5. If the view owner and a foliage owner are unable to resolve the matter, or if a foliage owner fails to respond to the mediation notice or to participate in the mediation process as prescribed in the view restoration guidelines, then the view owner may proceed to file for a view restoration permit.
 6. If, pursuant to an agreement between the view owner and a foliage owner, the view owner or foliage owner may damage or remove, or cause to be damaged or removed, any "protected tree" as defined in section 10-3-2900 of this title, a tree removal permit must first be obtained in accordance with the requirements of section 10-3-2901 of this title.
- D. City Advisory Opinion: A view owner may request a nonbinding advisory opinion at any time prior to the view owner filing an application for a view restoration permit in accordance with the requirements of section 10-8-106 of this chapter. If the view owner wishes to pursue the process set forth in section 10-8-106 of this chapter, the view owner must wait twelve (12) months from receipt of the city advisory opinion to file a view restoration permit application. (Ord. 11-O-2616, eff. 1-6-2012)

10-8-105: CONTINUATION OF PROCESS AFTER AGREEMENT:

If the view owner and a foliage owner enter into a private agreement as a result of initial neighbor outreach or mediation before the filing of a view restoration permit application, and that agreement is not adhered to by parties to the agreement, the parties may pursue civil litigation; however, if the view owner wishes to pursue remedies available in this article, then the view owner may continue with the preapplication process at the step after the step at which the agreement was entered into, provided that less than two (2) years have passed since the date of the private agreement. If the view owner wishes to pursue remedies available in this article and more than two (2) years have passed since the date of the private agreement, then the view owner shall begin view restoration procedures with the initial neighbor outreach. (Ord. 11-O-2616, eff. 1-6-2012)

10-8-106: VIEW RESTORATION PERMIT:

- A. View Restoration Permit: After exhaustion of the prehearing steps set forth in section 10-8-104 of this chapter, and upon application by a view owner in a form satisfactory to the director of planning and community development, the reviewing authority may issue a view restoration permit to a view owner with a protectable view as defined in this article where the protectable view from a viewing area is substantially disrupted by "foliage" as defined in this article and the reviewing authority makes all of the findings as set forth in this section.
- B. Reviewing Authority: The reviewing authority for a view restoration permit application shall be the planning commission. If a view restoration permit application includes review of a "protected tree" or trees as defined in section 10-3-2900 of this title, then the reviewing authority may order the removal of the tree or trees pursuant to section 10-3-2902 of this title as part of the restorative action required by a view restoration permit.

C. Application: Application for a view restoration permit shall be in writing on a form prescribed by the director of community development and shall include, but not be limited to, the following information:

1. Proof that view owner has attempted or completed the following procedures as required in this section:
 - a. Initial neighbor outreach; and
 - b. Mediation.
2. Identification of the specific remedy sought by view owner and an estimate of cost.
3. A view restoration property survey documenting that the subject foliage is on foliage owner's property, that the foliage owner's property is within five hundred feet (500') of view owner's property, and the foliage is above the safe harbor plane.
4. A tree survey.

If an applicant does not submit the necessary information and the application remains incomplete for six (6) months after the city, in writing, deems the application incomplete, the director of community development shall deny the application without prejudice, and shall provide notice to the applicant of that determination.

Once a complete application has been received, the city shall send a formal notice of the application to the foliage owner including a copy of the application, a copy of the view restoration guidelines and a request for an invitation to staff and the reviewing authority to visit foliage owner's property with foliage owner's authorization.

D. Verification Of Information: All applicants for a view restoration permit shall submit an affidavit, signed under penalty of perjury, that the information provided in the application and other submitted documents is complete, true, and accurate based on the applicants' knowledge and reasonable investigation.

E. Public Hearing Notice: The reviewing authority shall hold a public hearing concerning each application for a view restoration permit.

Notice of any hearing held pursuant to this section shall be mailed at least thirty (30) days prior to such hearing by United States mail, postage paid to the applicant and all owners and residential occupants of property within five hundred feet (500') of the view owner's and foliage owner's properties, as shown on the latest equalized assessment roll.

F. Public Hearing: The director of community development or the reviewing authority may, at its discretion, require the review or additional review of any view restoration case by a qualified soils engineer, landscape architect, arborist, or other appropriate professional, based on the specific conditions of foliage owner's property. Foliage owner authorization shall be required prior to accessing the foliage owner's property. If foliage owner does not permit access to foliage owner's property, the reviewing authority shall review the case using other information as may be available, including information provided by the view owner.

G. Restrictions And Conditions: In approving a view restoration permit, the reviewing authority may impose such restrictions or conditions, including restorative action, as it deems necessary or proper to restore a protected view; protect the foliage owner's reasonable enjoyment of its property; protect the public health, safety and welfare; or any combination thereof.

- H. Appeals; Effective Date: Any decision of the planning commission made pursuant to this section may be appealed to the city council by view owner or foliage owner pursuant to the provisions set forth in title 1, chapter 4, article 1 of this code. The appeal period shall commence at the date of mailing of the notice of decision.

Any decision of the planning commission made pursuant to this section takes effect fourteen (14) days from the issuance of a notice of decision unless an appeal is filed. If appealed, then the effective day is the date on which the city council acts.

I. Findings:

1. The reviewing authority may issue a view restoration permit to remove or alter foliage on any lot that is all or partly within five hundred feet (500') of a view owner's property if it makes all of the following findings:
 - a. The view owner has a protectable view. The reviewing authority shall determine the viewing area or areas in order to make this finding.
 - b. The view owner has substantially complied with the initial neighbor outreach and mediation procedures of this article.
 - c. The view owner's protectable view is substantially disrupted by foliage on foliage owner's property that is not exempt under section 10-8-103 of this chapter. The following criteria shall be considered in determining whether or not a protectable view is substantially disrupted:
 - (1) Foliage Position Within A Protectable View: Foliage located in the center of a protectable view is more likely to be found to substantially disrupt a view than foliage located on the protectable view's periphery.
 - (2) Foliage Size And Density: Foliage that by virtue of its size and density obstructs a large portion of a protectable view is more likely to be found to substantially disrupt the view than is foliage that obstructs only a small portion of the protectable view. Trees located in close proximity to each other and maintained in such a way as to collectively form an uninterrupted "green barrier" are more likely to be found to substantially disrupt a view than are individual trees.
 - (3) View Diminished By Other Factors: The extent to which the view has been or is diminished by other factors such that removal of the foliage at issue will not substantially restore the protectable view. Other factors that may be considered include, but are not limited to, permitted structures, and foliage that is not on a private property within five hundred feet (500') of the view owner's property.
 - d. With respect to any tree protected pursuant to section 10-3-2902 of this title, removal of the tree will not:
 - (1) Adversely affect the neighboring properties or the general welfare or safety of the surrounding area; or
 - (2) Adversely affect the garden quality of the city.
2. The reviewing authority may allow foliage to substantially disrupt a protectable view if the reviewing authority makes one or more of the following findings:
 - a. The foliage is important to the integrity of an existing landscape plan.

- b. Alteration of the foliage will unreasonably impact the privacy and security of the foliage owner.
- c. Alteration of the foliage will have a substantial adverse impact on stability of a hillside, drainage, or erosion control.
- d. Restoration of the protectable view would not substantially enhance a reasonable person's enjoyment of the view owner's property taken as a whole.

J. Restorative Action: The reviewing authority may, through issuance of a view restoration permit, require restorative action on foliage owner's property. All restorative action must be performed by a licensed and bonded tree or landscape service unless mutually agreed upon by the view owner and the foliage owner. Restorative action may include, but is not limited to, the following:

- 1. Trimming, culling, lacing, or reducing foliage to a height or width to be determined by the reviewing authority but not below the safe harbor plane.
- 2. Requiring the complete removal of the foliage when the reviewing authority finds that the trimming, culling, lacing, or reduction of the foliage is likely to kill the foliage, threaten the public health, safety, or public welfare, or will destroy the aesthetic value of the foliage that is to be pruned or reduced. Removal of a healthy tree not on a list of nuisance trees maintained by the city is to be avoided unless the reviewing authority determines such removal is necessary to avoid substantial disruption of a protected view.
- 3. Requiring replacement foliage when the reviewing authority finds that removal without replacement will cause a substantial adverse impact on one or more of: a) the public health, safety and welfare; b) the privacy of the property owner; c) shade provided to the dwelling or property; d) the energy efficiency of the dwelling; e) the stability of the hillside; f) the health or viability of the remaining landscaping; or g) the integrity of the landscape plan.

K. Notice Of Decision:

- 1. Written Decision Required: The action taken by the reviewing authority shall be set forth in writing.
- 2. Notice Of Decision: Within five (5) days after the issuance of a decision by the reviewing authority, the director of community development shall cause a copy of the decision to be mailed through the United States mail, postage prepaid, to each of the following persons:
 - a. The view owner, using the mailing address set forth in the application;
 - b. Each foliage owner that is named on the application, as listed on a current tax assessor's roll and to the occupant of the foliage owner's property if the foliage owner's address is different than the property on which the foliage is located.

The failure of the person addressed to receive a copy of the decision shall not affect the validity or effectiveness of any decision.

L. Indemnification: View owner shall defend, indemnify and hold harmless the city, its agents, officers, attorneys and employees from any claim, action or proceeding (collectively "action") against the city or its agents, officers, attorneys or employees to attack, set aside, void or annul the entitlements that may be granted by the city through issuance of a view restoration permit, and for any and all costs incurred in enforcing the view restoration permit, except for those costs of enforcement as the city may recover from a foliage owner. Indemnitor shall reimburse the city for any court costs and attorney fees that the city may be required by a court to pay as a result of such action. City may, at its sole and absolute discretion: 1) participate in the defense of such action undertaken by view owner, or 2) retain separate counsel whose attorney fees and costs shall be paid by view owner. Such participation in the defense of such action or the

retention of separate counsel by the city shall not relieve view owner's obligations under this provision. The city shall promptly notify the view owner of any such action.

View owner shall indemnify the city against any and all claims resulting from the issuance, defense, implementation, or enforcement of the view restoration permit. (Ord. 11-O-2616, eff. 1-6-2012)

10-8-107: DECISIONS INTENDED TO RUN WITH THE LAND; DISCLOSURE:

Decisions regarding view restoration shall be binding on all current and future owners of view owner's property and foliage owner's property, and such decisions must be disclosed by each owner to subsequent owners of the property. (Ord. 11-O-2616, eff. 1-6-2012)

10-8-108: PRIVATE RIGHT OF ACTION; SUBSEQUENT ENFORCEMENT BY VIEW OWNER AND ATTORNEY FEES:

The city shall take such action, as appropriate, to ensure initial compliance with a view restoration permit. After an initial determination by the city that a foliage owner has complied with a view restoration permit, any further dispute regarding the foliage owner's compliance with the view restoration permit shall be resolved by a civil action initiated by the view owner.

At any time, before or after an initial determination of compliance with a view restoration permit by the city, any view owner may sue in Los Angeles superior court to enjoin violation of, or compel compliance with, a view restoration permit. The prevailing party in any such civil action between a view owner and a foliage owner shall be entitled to recover its reasonable attorney fees and costs incurred in the litigation. (Ord. 11-O-2616, eff. 1-6-2012)

10-8-109: LANDSCAPE STANDARDS:

The view restoration guidelines shall include landscape standards that include a list of nuisance trees that should not be planted in hillside view areas. (Ord. 11-O-2616, eff. 1-6-2012)

10-8-110: APPORTIONMENT OF COSTS:

It is the intent that procedural fees referenced in this section shall reflect the actual cost of administrative activities required of the city to implement this article. Additional clarification of fees and costs may be included in the view restoration guidelines.

A. Initial Neighbor Outreach:

1. **Procedural Costs:** Any costs associated with obtaining information, mailing the required notice, or preparing an agreement shall be borne by the view owner. The view owner shall pay the cost of a view restoration property survey or tree survey if such a survey is completed.
2. **Restorative Action:** The cost of restorative action agreed upon by the view owner and the foliage owner shall be borne by the view owner unless otherwise agreed to by the foliage owner.
3. **Maintenance Costs:** The cost of subsequent maintenance of foliage on the foliage owner's property shall be allocated as agreed upon by the parties.

B. Mediation:

1. **Procedural Costs:** Any costs associated with obtaining information, mailing the required notice, or preparing an agreement shall be borne by the view owner. The view owner shall pay the cost of a view restoration property survey or tree survey if such a survey is completed.
2. **Restorative Action:** The cost of restorative action agreed upon by the view owner and the foliage owner shall be borne by the view owner unless otherwise agreed to by the parties.
3. **Maintenance Costs:** The cost of subsequent maintenance of foliage on the foliage owner's property shall be allocated as agreed upon by the parties.

C. View Restoration Permit With Public Hearing:

1. **Procedural Costs:** View owner shall bear the cost of application fees and other application costs including the view restoration property survey and tree survey and the cost of any other information requested by the reviewing authority.
2. **Restorative Action:**
 - a. The foliage owner shall pay one hundred percent (100%) of the cost of restorative action if the foliage owner did not participate in mediation and the reviewing authority finds restorative action is required.
 - b. The view owner and foliage owner shall each pay fifty percent (50%) of the cost of restorative action if the foliage owner participated in mediation and the reviewing authority finds restorative action is required.
3. **Maintenance After Initial Restorative Action:** The foliage owner shall pay for subsequent maintenance of the foliage consistent with the view restoration permit.

D. Appeal To City Council:

1. **Procedural Costs:** Appellant shall bear the costs of the appeal application including the appeal fee, public notice cost, and any other application costs.
2. **Restorative Action:** The cost of restorative action resulting from an appeal to the city council shall be apportioned in the same way as the cost of restorative action pursuant to a decision by the planning commission.
3. **Maintenance After Initial Restorative Action:** The foliage owner shall pay for subsequent maintenance of the foliage consistent with the view restoration permit. (Ord. 11-O-2616, eff. 1-6-2012)

Attachment 2

Private Agreement Form

Sample View Restoration Private Agreement

Be it known to all parties that _____ (View Owner's Name) _____ residing at _____ (View Owner's Address) _____ accordingly referred to as "View Owner" and _____ (Foliage Owner's Name) _____ residing at _____ (Foliage Owner's Address) _____ accordingly referred to as "Foliage Owner" on this _____ day of _____, agree as follows:

This Memorandum of Agreement is a private agreement between the parties. The City of Beverly Hills is not a party to this agreement. The parties may add, strikeout or otherwise modify any paragraph or section as necessary to reflect the agreement(s) they reach.

The "Foliage Owner" agrees to the following:

1. _____

2. _____

3. _____

In consideration of the above, the "View Owner" agrees to the following:

1. _____

2. _____

3. _____

The "Foliage Owner" and the "View Owner" agree that when the foliage described in page 1 of this document reaches

Additional Items to Consider:

"Foliage Owner" _____ Date: _____
Signature

"View Owner" _____ Date: _____
Signature

Attachment 3

Glossary of Terms

VIEW RESTORATION GUIDELINES

GLOSSARY OF TERMS

The Guidelines use a number of terms defined in the Trousdale View Restoration Ordinance (Definitions Section). Two key terms are defined below and the most commonly referenced terms are included as Attachment 3.

FOLIAGE: The aggregate of leaves, branches and trunks of one or more plants. Trees and hedges, including hedges that otherwise meet the standards of the Zoning Code, are included in the definition of foliage and may be subject to the Ordinance.

VIEW OWNER: This is a property owner who is alleging that his/her view has been disrupted by foliage on a neighbor's property. This term is defined in the Code as, "Any owner or owners of real property in Trousdale Estates that has a protectable view and who alleges that the growth of foliage located on a property within five hundred feet (500') of their property is causing substantial disruption of a protectable view." A protectable view is defined below. A view owner may need professional assistance to determine if particular trees blocking a view are located on a Trousdale property with 500 feet of the View Owner's property. Trees blocking views that are located on property more than 500 feet from the View Owner's property are not subject to this ordinance. The 500 foot distance is measured from the edge of the View Owner's property. Even if only a small portion of a neighboring property is within 500 feet of the View Owner's property, foliage on all parts of that neighboring property may be subject to the ordinance.

FOLIAGE OWNER: This is a property owner on whose property is located foliage that a View Owner alleges is substantially disrupting a view. This term is defined in the Code as, "An owner of real property in Trousdale Estates upon which is located foliage that is subject to an action filed pursuant to this Article and which property is within five hundred feet (500') of a view owner's property."

PROTECTABLE VIEW: A protectable view may include any view of the Los Angeles area basin from a viewing area as defined in this section (see below). The view of the Los Angeles area basin may include but is not limited to city lights (Beverly Hills and other cities), ocean, and horizon. The term "protectable view" does not mean an unobstructed panorama of all or any of the above. For purposes of this section, a protectable view shall be determined from a point thirty-six inches (36") above the finished grade of the viewing area. This is intended to capture views from a low, seated position. Parties to a view obstruction case may mutually agree to measure the view from a higher point.

"SAFE HARBOR PLANE: A plane defined by points at the edge of view owner's level pad to points measured from grade at the edge of an adjacent downslope foliage owner's principal building area that is farthest from the edge of view owner's level pad located in a line of sight of a protectable view. The points of the plane on foliage owner's property shall be at a height of one (1) foot above the height of the roof of the primary residential structure on foliage owner's property, not to exceed a maximum height of fifteen (15) feet as measured from grade. (See illustration in Section 10-8-103.) If the downslope property is undeveloped, or if the upslope property's view is over the driveway or "pole" portion of a flag lot, then the maximum height of fifteen (15) feet from grade shall apply.

For the purposes of this definition, the height of the roof of the primary residential structure excludes chimneys, stair or elevator shafts, vent pipes, mechanical equipment, parapets, architectural features that extend above the primary roof elevation, antennae, and other rooftop equipment. If the roof height varies, the height of the roof of the primary residential structure shall be the highest point of the roof of the primary structure.

For purposes of this definition, downslope and upslope properties separated by a public street shall be deemed to be adjacent.

If a view owner's level pad is less than one (1) foot above the height of the roof of the primary residential structure on foliage owner's property, then the safe harbor plane shall be defined as a plane above the foliage owner's level pad at a height of one (1) foot above the height of the roof of the primary residential structure on foliage owner's property."

VIEWING AREA: An area from which a protectable view is assessed, located on the level pad that contains the primary residential structure. The level pad is, usually, the ground level of a structure. A viewing area shall be a room of the primary residential structure (excluding hallways, laundry rooms, closets and garages), or a patio, deck or landscaped area adjacent to the primary residential structure that does not extend beyond the level pad. There may be one or more viewing areas on a property. The Planning Commission or City Council shall establish the Viewing Area or Areas as part of its finding that the View Owner has a Protectable View. The Planning Commission or City Council may designate a location as a Viewing Area if, in the opinion of the Commission or Council, an average resident would often observe a Protectable View from that area.

Attachment 4

Initial Neighbor Outreach: Notice (4a) and Affidavit Templates (4b)

INITIAL NEIGHBOR OUTREACH AFFIDAVIT

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)
CITY OF BEVERLY HILLS) ss

I _____(NAME), under penalty of perjury state: that on _____(DATE), I personally caused a Notice of Initial Neighbor Outreach to be mailed to the owner of the property at _____(ADDRESS), as listed on the most current Los Angeles County Tax Assessor's roll and also personally caused a Notice of Initial Neighbor Outreach to be mailed to the occupant of the property at _____(ADDRESS).

I further certify that (check box that applies):

- I received no response to the notice from said owner
- I received a response from said owner who declined to negotiate a view claim pursuant to the Trousdale View Restoration Ordinance
- I received a response from said owner who agreed to negotiate a view claim pursuant to the Trousdale View Restoration Ordinance but we were unable to reach agreement.

I certify under penalty of perjury that the foregoing is true and correct.

Signed _____

Date _____

Attachment 5

Mediation: Notice (5a), Information Form (5b) and Affidavit Template (5c)

MEDIATION AFFIDAVIT

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)
CITY OF BEVERLY HILLS) ss

I _____(NAME), under penalty of perjury
state: that on _____(DATE), I personally caused a Notice of
Mediation to be mailed to the owner of the property at
_____(ADDRESS), as listed on the most
current Los Angeles County Tax Assessor's roll and also personally caused a Notice of
Mediation to be mailed to the occupant of the property at
_____(ADDRESS).

I further certify that (check box that applies):

- I received no response to the notice from said owner
- I received a response from said owner who declined to negotiate a view claim pursuant to the Trousdale View Restoration Ordinance
- I received a response from said owner who agreed to negotiate a view claim pursuant to the Trousdale View Restoration Ordinance but we were unable to reach agreement.

I certify under penalty of perjury that the foregoing is true and correct.

Signed _____

Date _____

Attachment 6
Tree Removal Permit Application



CITY OF BEVERLY HILLS
 DEPARTMENT OF COMMUNITY DEVELOPMENT
 455 North Rexford Drive
 Beverly Hills, California 90210

TREE REMOVAL PERMIT APPLICATION

No person shall damage, remove or relocate any Heritage*, Native** or an Urban Grove** tree on a single family residential property of the City, without first obtaining a **TREE REMOVAL PERMIT** pursuant to Beverly Hills Municipal Code Sec. 10-3.2901

PROJECT LOCATION: Address No. _____ Street Name _____

	<u>NAME</u>	<u>MAILING ADDRESS</u>	<u>CITY, STATE, ZIP</u>	<u>TEL #</u>
APPLICANT:	_____	_____	_____	_____
OWNER:	_____	_____	_____	_____
APPLICANT'S SIGNATURE:	_____			DATE: _____
RELATIONSHIP TO OWNER:	_____			
DESCRIPTION:	_____			

Reason for Removal	[] Heritage Tree* [] Native Tree** [] Urban Grove	Tree Circumference	Location on Property
1.			
2.			
3.			

REASONS FOR REMOVAL/RELOCATION:

A. Diseased/Dead	C. Hazard to Public Property	E. Construction Project	G. Threat to the Urban Grove
B. Hazard to Private Property	D. Relocation	F. Interference with Utilities	H. Remove & Replace
I. Public Safety Hazard	J. View Blockage	K. OTHER	

ARBORIST REPORT ATTACHED: Yes _____ No _____

COMMENTS: _____

DO NOT WRITE BELOW THIS LINE

APPLICATION APPROVED BY:

Building & Safety _____ / _____ Planning Commission _____ City Council _____
 Date

STAFF REMARKS: _____

* Any tree with a primary trunk circumference of 48" measured at 4'-6' above grade located in the front setback area or a street side setback area except the hillside area.

** Any tree on the City's Official list with primary trunk circumference of 24" measured @ 4'-6' above grade located in the front setback area or a street side setback area except the hillside area.

***Urban grove located anywhere on a single family residence property.

EXHIBIT "A"

Trees Native to the City of Beverly Hills and Its Vicinity

Acer macrophyllum
Alnus rhombifolia
Faximnus dipetala
Juglans Californica
Juniperus californica
Platanus racemosa
Quercus agrifolia
Quercus lobata
Quercus douglasii
Quercus engelmannii
Salix laevigata
Sambucus mexicana
Umbellularia californica

Bigleaf Maple
California alder
Flowering ash
California walnut
California juniper
California sycamore
Coast Live Oak
Valley oak
Blue oak
Engelmann oak
Red willow
Mexican elderberry
California bay

Attachment 7

City Advisory Opinion: Application

Attachment 8

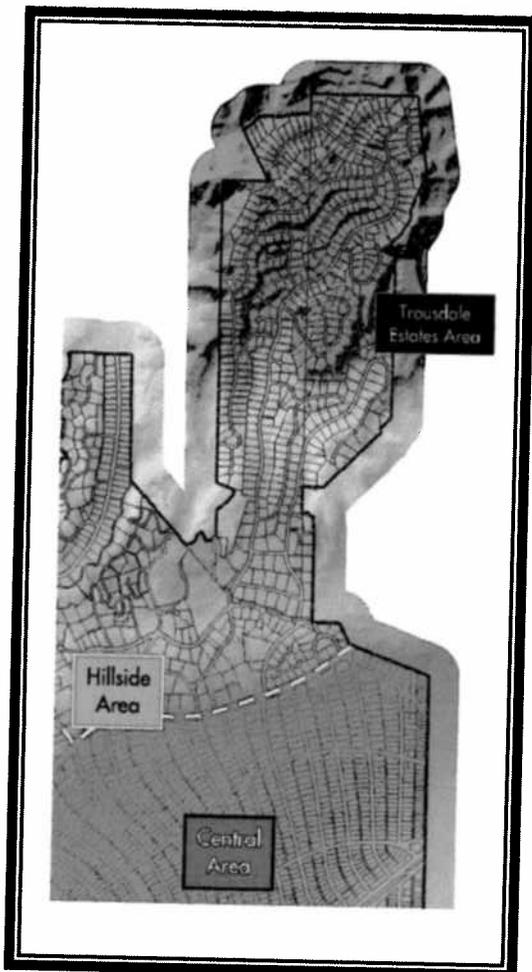
View Restoration Permit Application: Application (8a) and Findings (8b)



Trousdale View Restoration Permit Application

The Trousdale View Restoration Permit Application is submitted by a Trousdale Estates property owner to request a view restoration public hearing before the City's Planning Commission. View Restoration applies only in the Trousdale Estates area and does not currently include the City's Hillside or Central Areas (See illustration below).

This application may be submitted only after a Trousdale property owner has completed Step 1: Initial Neighbor Outreach, and Step 2: Mediation. Please see the View Restoration Guidelines for information about completing Steps 1 and 2, including verification that each step has been completed.



APPLICATION TIPS

Complete Application. Only complete applications will be accepted for filing. Please see Application Checklist on the reverse side.

Application Fee. A View Restoration Application Fee must be submitted with a complete application. There is an additional fee for public notices that will be mailed by the City, depending on the number of notices and other City administrative fees. Fees reflect the cost of processing the application. By law, the City may not collect fees in excess of the cost of services provided. Fees may be found on the official list of City Council-approved fees available on the City's website but it is recommended you speak with a planner by calling 310.285.1141, to calculate the correct fees.

Other Costs. The application requires the submittal of two professional reports, the View Restoration Property Survey and Tree Survey, with costs paid by the applicant, pursuant to the City's Trousdale View Restoration Ordinance. Additional reports that could be requested by the Planning Commission, such as a soils report, could add cost to the application.

Appeal. A decision made by the Planning Commission may be appealed to the City Council. The party appealing the decision (the Appellant) would be responsible for the City's appeal fee.

Enforcement Costs. The Trousdale View Restoration Ordinance provides for one-time enforcement of a City View Restoration decision with costs paid by the applicant. The cost could be substantial if the Foliage Owner declines to comply with the City's decision.

Litigation Costs. The Trousdale View Restoration Ordinance includes indemnification language that requires an applicant to pay the City's litigation costs if a City decision made on behalf of the applicant is litigated. This cost could be substantial. It is noted that the city Council is reviewing ways to reduce the financial burden of this requirement on applicants.



View Restoration Permit Application

A Applicant Information

Name(s): _____
 Address: _____
 City: _____ State & Zip Code: _____
 Phone: _____ Fax: _____
 E-Mail _____

B Foliage Owner 1

Name(s): _____
 Address: _____
 City: _____ State & Zip Code: _____
 Phone: _____ Fax: _____
 E-Mail _____

Foliage Owner 2

Name(s): _____
 Address: _____
 City: _____ State & Zip Code: _____
 Phone: _____ Fax: _____
 E-Mail _____

Please attach additional sheets for more foliage owners

C Mediator *[Neutral third party that facilitated conflict resolution]*

Name(s): _____
 Address: _____
 City: _____ State & Zip Code: _____
 Phone: _____ Fax: _____
 E-Mail _____

View Restoration Permit Application

D Description of: 1) view that is being obstructed and specify the particular area of your property/home where the view can be seen; 2) restoration actions you seek with regard to each Foliage Owner (trimming, removal, etc.)

E For each foliage owner, indicate the type and approximate height of foliage affecting the view.

Foliage Owner 1

Name:

Address:

Subject foliage is on identified Foliage Owner(s)' property

Foliage is above the Safe Harbor Plane exemption

Foliage Owner(s)' property is within 500' of View Owner's property

The following is a summary of information provided in the Tree Survey

Foliage Type	Height <small>(approximate measured from the base of the tree)</small>	Diameter

View Restoration Permit Application

Foliage Owner 2

Name:

Address:

- Subject foliage is on identified Foliage Owner(s)' property
- Foliage is above the Safe Harbor Plane exemption
- Foliage Owner(s)' property is within 500' of View Owner's property

Foliage Type	Height <small>(approximate measured from the base of the tree)</small>	Diameter

Please attach additional sheets for more foliage owners

F I hereby certify that I have read the View Restoration Guidelines and understand all statements on this form. I have completed the Initial Neighbor Outreach & Mediation Steps as required by the Trousdale View Restoration Ordinance. I am the property owner or authorized agent of the subject property. I hereby declare (affirm) that the foregoing statements, facts, and attached plans and materials are true and correct.

View Owner's Signature & Date

Authorized Agent's Signature & Date
(If applicable)

View Restoration Permit Application

(for office use only)

Date received by City: _____

City employee who entered information in computer permit system: _____

Application fee paid: _____

View Restoration Permit Application

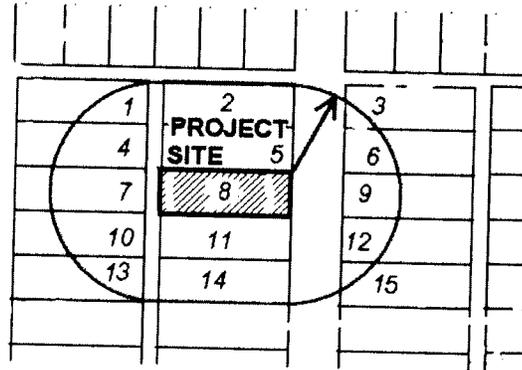
Public Notices

A The following information is required for Public Notification:

Applicant
Checklist:

RADIUS MAPS:

- One copy of a map showing a 500-foot radius around the view owner's parcel and each parcel touched by that radius consecutively. Include all the adjacent lots that the radius line touches. See the illustration below:



MAILING LABELS:

- Two (2) sets of mailing labels with the names and addresses of all property owners of properties within 500 feet of the exterior boundaries of the view owner's property. (PROPERTY OWNER INFORMATION MUST BE OBTAINED FROM THE MOST CURRENT LOS ANGELES COUNTY TAX ASSESSOR'S ROLL.)
- Labels must be numbered to correspond to the assigned numbers on the radius map.
- Labels must be typed or printed on Avery or Xerox brand self-adhesive
- Labels must be on 8-1/2" by 11" sheets
- DO NOT abbreviate city names (U.S. Postal Service Request)
- Provide a CD-RW disk containing the mailing label information in Word or Excel format.

AFFIDAVIT:

Completed and signed statement that the labels and maps are completed and current (see affidavit on the follow page).

View Restoration Permit Application

MAILING LIST AFFIDAVIT (FOR VIEW RESTORATION PERMIT APPLICATIONS ONLY)

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss
CITY OF BEVERLY HILLS)

I, _____, hereby certify that, to the best of my knowledge and under penalty of perjury, the attached Ownership List correctly shows the names and addresses of all persons to whom all property is assessed, as they appear on the most current Los Angeles Tax Assessor's roll, within the area described on the attached application and for a distance of one hundred (500) feet from the exterior boundaries of the property described on the attached application.

I certify under penalty of perjury that the foregoing is true and correct.

Signed

Date

I Findings:

(1) The reviewing authority may issue a View Restoration Permit to remove or alter foliage on any lot that is all or partly within five hundred feet (500') of a View owner's property if it makes all of the following findings:

(a) The View Owner has a Protectable View. The Reviewing Authority shall determine the Viewing Area or Areas in order to make this finding.

(b) The View Owner has substantially complied with the Initial Neighbor Outreach and mediation procedures of this Article.

(c) The View Owner's Protectable View is substantially disrupted by foliage on Foliage Owner's property that is not exempt under Section 10-8-103. The following criteria shall be considered in determining whether or not a Protectable View is substantially disrupted:

(i) Foliage Position within a Protectable View. Foliage located in the center of a Protectable View is more likely to be found to substantially disrupt a view than foliage located on the Protectable View's periphery.

(ii) Foliage Size and Density. Foliage that by virtue of its size and density obstructs a large portion of a protectable view is more likely to be found to substantially disrupt the view than is foliage that obstructs only a small portion of the Protectable View. Trees located in close proximity to each other and maintained in such a way as to collectively form an uninterrupted "green barrier" are more likely to be found to substantially disrupt a view than are individual trees.

(iii) View Diminished by Other Factors. The extent to which the view has been or is diminished by other factors such that removal of the foliage at issue will not substantially restore the Protectable View. Other factors that may be considered include, but are not limited to, permitted structures, and foliage that is not on a private property within five hundred feet (500') of the View Owner's property.

(d) With respect to any tree protected pursuant to Section 10-3-2902, removal of the tree will not:

(i) Adversely affect the neighboring properties or the general welfare or safety of the surrounding area; or,

(ii) Adversely affect the garden quality of the City.

2) The Reviewing Authority may allow foliage to substantially disrupt a Protectable View if the Reviewing Authority makes one or more of the following findings:

- (a) The foliage is important to the integrity of an existing landscape plan.
- (b) Alteration of the foliage will unreasonably impact the privacy and security of the Foliage Owner.
- (c) Alteration of the foliage will have a substantial adverse impact on stability of a hillside, drainage, or erosion control.
- (d) Restoration of the Protectable View would not substantially enhance a reasonable person's enjoyment of the view owner's property taken as a whole.

Attachment 9
Restorative Actions

Attachment 10

Fees

Attachment 11

Enforcement