



Planning Commission Report

Meeting Date: October 28, 2010

Subject: An ordinance of the City of Beverly Hills amending various sections of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to establish regulations regarding the restoration and maintenance of certain defined views from single-family residential property in Trousdale Estates

Recommendation: Conduct Public Hearing, Consider Revisions to Proposed Ordinance Language and Direct Staff to Return with a Resolution Recommending that the City Council Adopt the Subject Ordinance

REPORT SUMMARY

The Planning Commission had a public hearing on June 24, 2010 at which the Commission discussed key components of the proposed ordinance, provided direction on these components and directed the Planning Commission Subcommittee to review the draft ordinance with this direction in mind to provide guidance to staff in revising the ordinance language. The Subcommittee met on September 7, 2010 and has been providing input to staff. Staff has revised the draft ordinance language pursuant to the Commission's direction and Subcommittee's input and a revised version of the draft ordinance language is attached. Due to the complexity of these issues, the Subcommittee and staff determined additional input from the Planning Commission is needed on key issues. Staff is seeking specific direction from the Planning Commission on each of the issues discussed in this report and staff shall return to the Commission in November with a complete draft ordinance for review and recommendation to the City Council.

BACKGROUND

- April 7, 2009 – In response to a request from Trousdale Estates residents, the City Council directed the Planning Commission and staff to consider regulations to protect views in the City's hillside areas that have been impaired by foliage.
- May 28, 2009 - The Planning Commission began a discussion of view preservation in the hillside areas including a bus tour at its June 25, 2009 meeting.
- February 11, 2010 - The Planning Commission took public testimony and discussed how different hillside areas of the City may require unique view preservation standards. As a result, the Commission decided to focus the view restoration discussion on Trousdale Estates as a pilot

Attachment(s):

1. Draft Ordinance Language - Redlined
2. Draft Ordinance – Clean Copy
3. Process Flow Chart
4. Public Notice

Report Author and Contact Information:

Michele McGrath
Senior Planner
(310) 285-1135
mmcgrath@beverlyhills.org

area to develop view restoration standards. A subcommittee of Commissioners Cole and Corman was appointed to meet with staff and develop an ordinance framework.

- Feb. to June 2010 – The Subcommittee had seven meetings including a tour to test potential ordinance provisions.
- June 24, 2010 – Planning Commission Public Hearing to consider a draft ordinance framework. Considerable public testimony was heard and direction was provided by the Planning Commission to revise the draft ordinance language.
- Sept. 7, 2010 – Planning Commission Subcommittee meeting to discuss revisions.
-

DISCUSSION

Staff prepared revised ordinance language for the Subcommittee to review based on the following direction from the Planning Commission at its June 24, 2010 meeting:

1. General Direction

- A. The Commission expressed an understanding of the difficulty of developing code enforcement standards, such as maximum tree height, that can be addressed through code enforcement without unintended consequences; as a result, staff has proposed that all view restoration requests be addressed through the view restoration process with encouragement of early resolution but with the opportunity to seek Planning Commission review if necessary.
- B. The Commission articulated the goal of providing relief for residents while limiting the commitment of City resources: Planning Commissioners stated the review process needs to be cost-neutral to the City; residents stated concerns that the process may be costly. Staff acknowledged the process is likely to be costly but maintains that the View Owner is the main beneficiary of the process so the View Owner should bear a large portion of the cost; however, pursuant to Planning Commission direction, staff is developing a cost allocation process that allows some cost to be borne by Foliage Owner if the situation warrants it. It is noted that in some other cities, including Rancho Palos Verdes, View Owner posts a bond and bears the entire cost of the process.

2. Proposed Revisions:

Ordinance Standards

View Restoration Review Area: Planning Commission requested an increase from 300 to 500 feet. This change is reflected in the draft ordinance language.

Hedgerow Definition and Height Limit: Planning Commission requested a definition that would encompass more potential hedgerows; staff requested consideration of a privacy appeal for Foliage (Hedgerow) Owners. The Subcommittee determined that hedgerow does not need to be defined in the Code since all view restoration requests will be directed through the view

restoration process. The existing definition of hedge in the Code and the proposed “safe harbor plane” also provide guidance to residents as to appropriate foliage density and height.

Definition of Property Survey and Tree Survey: Residents at the public hearing requested limitations in the scope of such surveys.

View Restoration Review Process

The Commission requested a flow chart of the review process (draft attached). The goal of the view restoration process is to provide a way for residents to seek relief for disruption of views while limiting City staff involvement and ensuring costs are apportioned fairly. The flow chart attempts to show the three view restoration process tracks:

- Three-step process prior to Planning Commission review will have no City involvement beyond provision of View Restoration Guidelines and other information.
- Apportionment of costs (fees and restorative costs): At the Arbitration and Planning Commission levels there are guidelines to assign some costs to Foliage Owner when appropriate.
- Enforcement of Planning Commission resolutions by on-call code enforcement consultant with reimbursement through fees. Staff proposing prosecution process rather than administrative penalty process at this stage to speed up enforcement.

Findings

The Commission requested clarification of the “substantial disruption” criteria with the discussion potentially including addition of a criterion regarding the relative importance of each view and whether priority should be given to views from the primary living area.

3. Other

Application of view restoration to other hillside areas such as Beverly Hills Estates.

Requirement to provide an ordinance status report to the Planning Commission after a period of time if the City Council adopts an ordinance.

Revisions to draft ordinance language

A number of revisions to the draft ordinance language were proposed in the Subcommittee for which there was general agreement or little discussion and those revisions are not addressed in the draft ordinance language. The Subcommittee focused its discussion on the findings the Commission would need to make to approve a view restoration permit including the definitions of “protectable view” and “viewing area.” The discussion centered on whether the language should be such that the Planning Commission would have great flexibility to consider all views from any viewing area or whether the language should be more tightly crafted so as the focus the Planning Commission’s review. It was determined that the Subcommittee as well as the full Commission would benefit from considering alternative language for the findings section, selecting the language that best reflects the Commission’s

intent. The discussion of the proposed revisions to the previous ordinance language will address the key issues by section as found in the attached draft ordinance.

Definitions (Section 2)

“Protectable View” and “Viewing Area”

Staff and the Subcommittee worked to simplify and clarify definitions as it became clear this was one reason the findings (Section J) were not satisfactory to the Planning Commission and Subcommittee. The term “viewpoint” has been eliminated in favor of “protectable view” and the definition of protectable view was simplified to reference “viewing area” rather than repeat part of the definition of “viewing area.” Discussion of a definition of “viewing area” resulted in the revised language on pages 1 and 2 of the draft ordinance language.

“Restorative Action” and “Safe Harbor Plane”

These are terms used elsewhere in the draft ordinance language and have been added to the definitions section.

“Hedgerow”

Deleted from the draft language.

Procedures

Two-year prohibition on applications from non-participants (Section 3 B. 1)

Staff is proposing new language (p 10 of draft language) that addresses the issue of multiple or serial claims against one Foliage Owner. If a View Owner begins the view restoration process against a Foliage Owner, other View Owners within 500 feet of the Foliage Owner must be notified to participate in the process if any of them also may have a claim against that particular Foliage Owner. If other View Owners choose not to participate in the process at that time, they are then precluded from requesting a view restoration process with that particular Foliage Owner for two years unless that Foliage Owner agrees to engage in the process.

Findings (Section J)

The Subcommittee has considered a variety of potential criteria and the Planning Commission is asked to review language variations for finding J.2.i. as shown on page 16 of the draft ordinance and whether additional criteria such as J.2.iii. (also page 16) should be considered.

GENERAL PLAN CONFORMANCE

The City’s General Plan includes policies that maintain and enhance the City’s urban forest (OS 2 “Urban Forest”) and minimize the removal of existing resources (OS 6 “Visual Resource Preservation”). The ordinance stresses the importance of balancing the desire for views with the maintenance of trees. It

includes the following statement, "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 restore a protected view in accordance with the findings." The City has a tree preservation ordinance that protects trees of certain size or species in the front or street side yards of private residential property.

ENVIRONMENTAL ASSESSMENT

An Initial Environmental study (attached) was prepared for the proposed ordinance because the ordinance could result in the removal of some healthy, mature trees. This ordinance has been assessed in accordance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City, and no significant unmitigated environmental impacts are anticipated; therefore, a negative declaration has been prepared, subject to review by the Planning Commission.

PUBLIC OUTREACH AND NOTIFICATION

Action	Type of Notice	Required Notice Period	Required Notice Date	Actual Notice Date	Actual Notice Period
PC Public Hearing 10/28/10	Newspaper Notice Mailed Notice to Owners	10 days	10/18/10	10/18/10	10 days
Report on Website	Min. 4 days prior to meeting	N/A	N/A	N/A	N/A

Public Comment

As of the time of this report, no letters or emails have been received by the Planning Division.

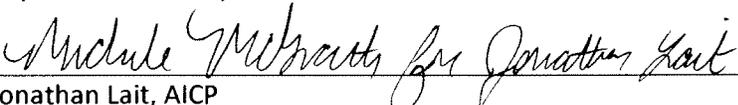
NEXT STEPS

It is recommended that the Planning Commission conduct a public hearing and direct staff to return with a resolution recommending that the City Council adopt an ordinance composed substantially of the draft ordinance language as revised by the Planning Commission.

Alternatively, the Planning Commission may consider the following action:

Direct staff to conduct additional analysis and continue the hearing to a date (un)certain.

Report Reviewed By:


Jonathan Lait, AICP
Assistant Director of Community Development / City Planner

Attachment 1
Draft Ordinance - Redlined

Draft Framework for View Restoration Regulations with proposed revisions

Draft from For September 7, 2010 PC Subcommittee Meeting with MM proposed revisions 10-20-10 and DMS Comments

1. PURPOSE STATEMENT

The intent of this ordinance is to restore and preserve certain views from substantial disruption by the growth of trees, vegetation, or a combination thereof while providing for residential privacy and security; maintaining the garden quality of the City; insuring 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 not the intent of this ordinance to create an expectation that any particular view or views would be restored or preserved. It is also the intent of this ordinance to educate residents to consider view blockage potential before planting foliage.

2. DEFINITIONS

Protectable View

A Protectable View may include any view of the Los Angeles area basin from ~~the level pad that contains the primary residential structure on a property~~ 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. A Protectable View shall not include views of ~~include~~ vacant land that is developable under the City Code.

View Owner

Any owner of real property in Trousdale Estates that has a Protectable View and who alleges that the growth of foliage located on a property within 300 500 feet of View Owner's property is causing substantial disruption of a Protectable View. "View Owner" shall reference one or more owners of the same property.

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 Section Article~~ and which property is within 300 500 feet of a View Owner's property. "Foliage Owner" shall reference one or more owners of the same property.

View Point

A position from which a view is observed.

Viewing Area

The An area from which the a Protectable View is assessed, this shall be from located on the level pad¹ level pad that contains the P primary Residential Structure. A Viewing Area may be a

¹ Current Code definition of "Level Pad" would apply: "LEVEL PAD: That portion of a site containing level finished grade. No portion of a site with a slope that is greater than five percent (5%) shall be considered to be part of a level pad." Use of the term "level pad" is consistent with the View Preservation section of the Hillside

Draft Framework for View Restoration Regulations with proposed revisions

Draft from For September 7, 2010 PC Subcommittee Meeting with MM proposed revisions 10-20-10 and DMS Comments

~~room including the area within the interior of the Primary Residential Structure at level finished grade or from a patio, deck or landscaped area at level finished grade so long as that area that does not extend beyond the level pad. There may be one or more Viewing Areas on a property. For the purposes of this section, a Protectable View from the level pad shall mean a view determined from a point thirty-six inches (36") (sitting position) up to a point six feet (6') (standing position) above the finished grade of the level pad from all locations as described above. The viewing area may have one or more view points.~~

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. ~~or small family daycare home.~~²

Protected View

A ~~Protectable View~~ from a designated view point that has been determined by the reviewing authority to merit restoration.

Tree

A woody perennial plant, consisting usually of a single elongate main stem or trunk and many branches. (tree preservation ordinance)

Foliage

The aggregate of leaves, branches and trunks of one or more plants. ~~Trees and hedges are included in the definition of Foliage.~~

Hedge

~~[Current Code Definition]~~ A growth of vegetation, cultivated in such a manner as to produce a barrier to inhibit passage or to obscure view, which is more than twelve inches (12") in height. Where there are interruptions of growth by vertical space having a horizontal distance of more than twenty four inches (24") in every four feet (4'), such growth shall not be considered a ~~H~~edge. This definition is not intended to include individual shrubs, plants, or trees.

~~[A1] Hedgerow³~~

development standards in the Code. It is noted that "primary residential structure" is not currently defined in the Code but is defined in this ordinance.

² Language from BHMC 10-3-402 regarding uses and buildings permitted in R-1 Zones as well language used to define accessory structure in the Code.

³ Now a definition rather than a separate section in the ordinance. Hedgerow is now included in the findings as part of the criteria to consider "substantial disruption."

Draft Framework for View Restoration Regulations with proposed revisions

Draft from For September 7, 2010 PC Subcommittee Meeting with MM proposed revisions 10-20-10 and DMS Comments

~~A row of three or more shrubs, plants or trees where the growth of vegetation at a point six feet (85') in height⁴ or higher has been cultivated in such a manner as to obscure view. This definition is not intended to include a row of trees, as Tree is defined in this Section, where the primary trunk of each tree is a minimum horizontal distance of at least twenty-four/forty-eight inches (24") (48") from any other primary trunk and two or more of the trees in the row have a circumference of twenty four inches (24") or more, measured at a height of four feet six inches (4'6") above natural grade.⁵ (Interest was expressed in expanding the definition by increasing the distance between the trunks of trees that would be considered part of a hedgerow.)~~

Arborist

1. An individual certified as an arborist by the International Society of Arboriculture (ISA), or 2) "Consulting" Arborist as currently listed as a member of the American Society of Consulting Arborists⁶.

Forester

An individual licensed in California as a Registered Professional Forester.

Landscape Architect

A landscape architect registered by the State of California.

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. (language from City's tree preservation ordinance)

⁴ This is consistent with the language in the Zoning Code under the definition of "Open to Public View: ...Tree foliage which is located more than eight feet (8') above grade shall be considered open to public view". This is the section that has justified tree hedges (hedgerows) in the past.

⁵ Definition uses language consistent with City's current definition of "hedge" and excludes trees that may fall under the City's definition of "Heritage Trees" (48" circumference) and "Native Trees" (trees on list of native trees and 24" circumference) regardless of location on the property (City's Tree Preservation ordinance generally only applies in the front yard or street side setback.) This means that action involving larger trees, even if in a row of trees disrupting a view, would have to be reviewed through the proposed view restoration process rather than subject to a proposed new Code standard that would set a maximum height for a hedgerow (See Section 4 in this framework).

⁶ The first part of this definition is consistent with the City's Tree Preservation Ordinance; the second part has been added in consultation with the City's Arborist as acceptable and allowing more flexibility to applicants. It is suggested the definition of "Arborist" in the Tree Preservation Ordinance should be revised to be consistent with this.

Draft Framework for View Restoration Regulations with proposed revisions

Draft from For September 7, 2010 PC Subcommittee Meeting with MM proposed revisions 10-20-10 and DMS Comments

View Restoration Property Survey

~~An ALTA (American Land Title Association) survey⁷ of the View Owner's site and Foliage Owner's site including calculation of the Exemption "(Safe Harbor) Plane" area as defined in Section 4 below this section Article. Reviewing authority may determine if a partial survey may be permitted. (Surveys were previously proposed to be required at the arbitration level but the public had concerns about cost; particularly since it may not be necessary to survey entire site — see also tree survey below. Staff has conducted additional interviews with staff in other cities, particularly Rancho Palos Verdes, and agrees that the requirement of professional reports such as a property line survey or tree survey should be at the discretion of the reviewing authority (Arbitrator) unless parties wish to voluntarily provide and pay for such surveys. A report would be required as part of the View Restoration application to the Planning Commission since it would need to be confirmed that the foliage in question is subject to the ordinance (within 500' of View Owner's property and above the safe harbor line).~~

⁷ An ALTA survey is a survey that is prepared to ALTA standards and the survey and resulting legal description of the property are then insured as a survey endorsement on your owner's title policy.

Draft Framework for View Restoration Regulations with proposed revisions

Draft from For September 7, 2010 PC Subcommittee Meeting with MM proposed revisions 10-20-10 and DMS Comments

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 subject trees as determined by a ~~and is signed or stamped by a~~ registered Landscape Architect or Arborist or Forester as defined in this section:

- Species of each tree based on scientific name
- Tree identifying number and location recorded on a map
- Physical measurements of the tree such as height and diameter (tree height shall be measured pursuant to the City's Tree Preservation Ordinance)
- Age of the tree
- Report of overall health and structural condition of the tree
- Life expectancy; suitability for preservation
- Foliage management recommendations

The survey shall be signed or stamped by the aforementioned professional.

Restorative Action

Any specific steps taken affecting Foliage that would result in the restoration or preservation of a Protected View.

Safe Harbor Plane

The plane defined by a point at the edge of View Owner's level pad to a point at the maximum building height of the principal building area of an adjacent down-slope Foliage Owner's property. For purposes of this section, "adjacent to" shall include a primary residence across a street from a View Owner.

~~3. Development Standard~~

~~(enforced by City through Code Enforcement Division with a fee)~~

~~3. Hedgerows~~

~~The maximum allowable height for a hedgerow shall be the safe harbor line (height of trees and foliage exempted from the View Restoration ordinance as established in the Safe Harbor provision in this section).~~

~~(Staff is concerned this may be heavy handed in that hedgerows may not need to be trimmed to the safe harbor height to restore a view and staff is also concerned about cases where the Foliage Owner has no other viable options for privacy. For example, RPV requires the removal of foliage exceeding the maximum ridge line of the primary structure or 16 feet in height, whichever is less, unless removal of the foliage, "would constitute an unreasonable invasion of the privacy of the occupants of the property on which the foliage exists and there is no method by which the property owner can create such privacy through some other means allowed within the~~

Draft Framework for View Restoration Regulations with proposed revisions

Draft from For September 7, 2010 PC Subcommittee Meeting with MM proposed revisions 10-20-10 and DMS Comments

~~development code that does not significantly impair a view from a viewing area of another property." The way this has worked in practice, if the FDU Foliage Owner does not voluntarily reduce foliage height below 16 feet or the maximum ridge line, the View Owner may submit a formal complaint to have the foliage reduced with the opportunity for Foliage Owner to present his/her privacy issues. If it is determined there may be a privacy issue, the case is referred to the View Restoration process. The BH hedgerow maximum height does not allow for this type of flexibility. Staff is proposing that language similar to the FDU language above be added to the draft BH ordinance and that the hedgerow definition shall be part of the view restoration ordinance, not a separate development standard like "hedge."~~

Draft Framework for View Restoration Regulations with proposed revisions

Draft from For September 7, 2010 PC Subcommittee Meeting with MM proposed revisions 10-20-10 and DMS Comments

Staff-proposed enforcement process for hedgerow height:

- View Owner complaint to city about hedgerow violation.
- View Owner is informed that he/she can choose a code enforcement path or a view restoration process path:
 - Code Enforcement — complaint forwarded to City's on-call code enforcement consultant where, for a fee, consultant sends official letter to hedgerow owner stating complaint has been filed and possible remedies. If hedgerow owner trims to safe harbor height, case closed. If hedgerow owner questions claim (foliage may not be above safe harbor height, may be a privacy issue), case is forwarded to the View Restoration process.
 - View Restoration — View Owner can forego the code compliance letter and begin View Restoration process. It is noted the code enforcement case may end up in the View Restoration process anyway.

Any tree that is part of a hedgerow as defined in this section and is also a protected tree as defined in Section 10-3-2900 of the BPMC may not be damaged or removed unless a tree removal permit is first obtained in accordance with the requirements of BPMC 10-3-2900.

2. EXEMPTION (Safe Harbor Provision)

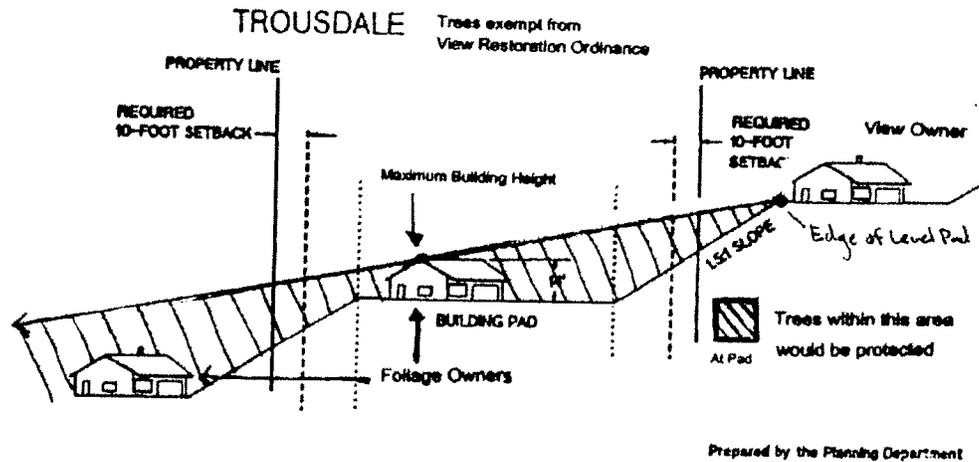
The provisions of this section shall not apply to the following:

Trees, foliage, hedges and hedgerows where the highest point of a tree, foliage, hedge or hedgerow the foliage falls is below a Safe Harbor Plane as defined in this section, a line defined by a point at the edge of the View Owner's level pad to a point at the maximum building height of the principal building area of an adjacent down-slope Foliage Owner's property. [see See example below]. This line defines a plane below which foliage is exempted from view restoration and The exemption applies to trees, foliage and hedges foliage on properties within 300 500 feet of the View Owner. For the purposes of this section, "adjacent to" shall include a primary residence across a street from the View Owner. Trees, foliage and hedges, including trees and foliage exempted pursuant to this section, shall be maintained in accordance with all other zoning code sections (note hedge height restrictions in the Trousdale development standards) and landscape maintenance standards in the Code.⁸

⁸ Just because foliage is exempt from this ordinance does not mean it is exempt from being maintained in accordance with the landscape maintenance, fire and other codes.

Draft Framework for View Restoration Regulations with proposed revisions

Draft from For September 7, 2010 PC Subcommittee Meeting with MM proposed revisions 10-20-10 and DMS Comments



3. PROCEDURES

Violations of the Zoning or Building Code (*e.g. hedges that obstruct vehicle sightlines or foliage not maintained violate the height limits in the Code or foliage not maintained pursuant to a Planning Commission resolution*) shall be addressed through the City's Code Enforcement Process. All other complaints received by the City regarding trees or foliage blocking views in Trousdale Estates shall be addressed through the procedures in this section Article. The procedures in this section Article will be explained in a set of guidelines prepared by the Community Development Department and available to the public.

(A flow chart will be part of the guidelines.)

Staff has clarified the process as follows:

- 1. The three-step process prior to Planning Commission review will have little City involvement.*
- 2. Apportionment of costs (fees and restorative costs; staff is developing an apportionment process wherein some costs may be assigned to Foliage Owner)*
- 3. Enforcement of Planning Commission resolutions: compliance letter and then prosecution process.*

Draft Framework for View Restoration Regulations with proposed revisions

Draft from For September 7, 2010 PC Subcommittee Meeting with MM proposed revisions 10-20-10 and DMS Comments

A) Initial Neighbor Outreach

- 1) View Owner(s) shall notify each Foliage Owner in writing of concerns regarding disruption of View Owner's view by trees, foliage or hedges on Foliage Owner's property. Said notice(s) 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 the View Owner that View Owner or View Owner's representative offers to meet with each potential Foliage Owner. The notification should clearly identify the remedy sought by View Owner. ~~a good faith estimate of the cost of the remedy and an offer by View Owner to pay that cost.~~
- 2) Acceptance of Initial Neighbor Outreach by each Foliage Owner shall be voluntary, but each Foliage Owner shall have no more than 30 days from service of written request to respond to View Owner unless otherwise extended by View Owner. Failure to respond shall be considered rejection by Foliage Owner. The notification should be followed by discussions between View Owner and each Foliage Owner to attempt to reach a mutually agreeable solution.
- 3) If View Owner and Foliage Owner are unable to resolve the matter, View Owner may proceed with a mediation process. To participate in the mediation process, View Owner shall submit to the City proof of Initial Neighbor Outreach in the form of a registered certified letter and return mailing receipt to each Foliage Owner (a return receipt requires the recipient's signature; what if the recipient does not want to sign? Does this hold up the process?). If a Foliage Owner did not respond to the notice or declined to discuss the matter, View Owner shall complete a signed affidavit to that effect.
- 4) If, pursuant to an agreement between View Owner and a Foliage Owner, 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 the BHMC on his/her property, a tree removal permit must first be obtained in accordance with the requirements of BHMC 10-3-2900. *(Consider stating once for each of the three steps prior to Planning Commission review rather than including as part of each step.)*

B) Mediation

- 1) ~~If agreement is not reached through the Initial Neighbor Outreach process is unsuccessful, View Owner shall contact a Mediator as set out in the View Restoration Guidelines on file in the City. propose Mediation by filing with the Community Development Department a Notice of Intent to~~

Draft Framework for View Restoration Regulations with proposed revisions

Draft from For September 7, 2010 PC Subcommittee Meeting with MM proposed revisions 10-20-10 and DMS Comments

~~File a View Restoration permit application on a form provided by the City.⁹ View Owner shall file one Notice of Intent for each Foliage Owner but all Notices of Intent filed by a View Owner must be filed together¹⁰. A processing fee shall apply to each Notice of Intent. View Owner shall notify each Foliage Owner of an offer to mediate by A copy of the registered—certified letter(s) and return receipt to each Foliage Owner for the Initial Neighbor Outreach shall be attached as well as an affidavit(s) if required (See A2 above). The application—notice shall clearly identify the remedy sought by View Owner, a good faith estimate of the cost of the remedy and an offer by View Owner to pay that cost. View Owner shall also cause a notice to be mailed to all addresses within 500 feet of the exterior boundaries of View Owner's property advising other potential View Owners that mediation is sought with certain Foliage Owner(s) and that each other potential View Owner has forty-five days (45 days) to indicate an intention to participate in a view restoration process with certain Foliage Owners. View Owner shall use a mapping service from a list provided by the City to certify the addresses.¹¹~~

- 2) ~~Guidelines as to the information recommended~~ to be submitted by View Owner and each Foliage Owner to the Mediator will be in the View Restoration Guidelines on file in the Community Development Department City. This information may include, but is not limited to, ~~a property survey and a tree survey on each Foliage Owner's property.~~
- 3) The City offers a mediation process that the parties may use; or, parties may meet on their own or choose their own mediator. Acceptance of mediation by each Foliage Owner shall be voluntary, but each Foliage Owner shall have no more than 30 days from service of written request for mediation to accept or reject the offer of mediation, unless otherwise extended by View Owner. Failure to respond shall be considered rejection. Each mediation session may involve one View Owner and one or more Foliage Owners at the discretion of the parties involved.

⁹ ~~Staff has suggested initiating an application and fee at the mediation level rather than the Initial Neighbor Outreach level, which is intended to be a purely neighbor to neighbor process with the City providing only information and forms. Staff now proposing including all information in Guidelines and no application or fee until application for Planning Commission review.~~

¹⁰ Staff is proposing that a View Owner may file only one set of applications within a five-year period.

¹¹ In reviewing the recent view preservation ordinance just adopted by Rolling Hills Estates, staff realized there is potential for duplicative or repetitive view restoration actions against one Foliage Owner. Rolling Hills Estates addresses this by requiring View Owner to notice other potential View Owners who may have an issue with the same Foliage Owner and to attempt to consolidate cases involving the same Foliage Owners. Potential View Owners who do not participate at that time, are precluded from bringing action against that Foliage Owner for two years. I need to work on the language but hopefully you understand the concept.

Draft Framework for View Restoration Regulations with proposed revisions

Draft from For September 7, 2010 PC Subcommittee Meeting with MM proposed revisions 10-20-10 and DMS Comments

- 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(s) 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(s) for the parties to sign.
- 5) If, pursuant to an agreement between View Owner and Foliage Owner, 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 the BHMC on his/her property, a tree removal permit must first be obtained in accordance with the requirements of BHMC 10-3-2900.

Draft Framework for View Restoration Regulations with proposed revisions

Draft from For September 7, 2010 PC Subcommittee Meeting with MM proposed revisions 10-20-10 and DMS Comments

C) Non-binding Arbitration

- 1) In those cases where the parties are unable to reach agreement through the Initial Neighbor Outreach process or through the Mediation process, View Owner shall offer by written notice to each Foliage Owner to submit the dispute to Non-Binding Arbitration. Said notice(s) shall be on a form provided by the City in the View Restoration Guidelines, shall be signed by the View Owner and shall include a signed statement from the View Owner that View Owner or View Owner's representative offers to participate in Non-Binding Arbitration with each potential Foliage Owner. ~~View Owner shall submit to the City proof of notice in the form of a registered letter and return receipt to each Foliage Owner.~~ Foliage Owner shall have thirty days from service of notice to accept or reject non-binding arbitration. If accepted, the parties shall agree on a specific arbitrator within twenty-one days, ~~and shall indicate such agreement in writing, a copy to be provided to the Community Development Department.~~ If one or more of the parties is unable to agree on an Arbitrator within this period of time, the City's on-call Arbitrator shall be retained. Arbitration may involve one View Owner and one or more Foliage Owners at the discretion of the parties involved. If non-binding arbitration is rejected by a Foliage Owner, the Arbitrator shall proceed with review, using the available information. ***The PC brought this up and staff realized the need to have identified an arbitrator in advance so the parties do not get bogged down in agreeing on an arbitrator.***
- 2) ~~Guidelines as to the information to be submitted by View Owner and Foliage Owner to the arbitrator will be in the View Restoration Guidelines on file in the Community Development Department City. This information shall include, but not be limited to a copy of View Owner's application and a tree survey. The Arbitrator may request additional information at the Arbitrator's discretion, with costs associated with the additional information to be borne by View Owner.~~
- 3) The arbitrator shall use the provisions of this chapter to reach a fair resolution of the dispute in accordance with the Beverly Hills Municipal Code and shall submit a complete written report to View Owner and each Foliage Owner. This report shall include the arbitrator's conclusions with respect to the required findings in this section, a list of all mandated restorative actions, a schedule by which the mandates must be completed, and the allocation of the costs for foliage removal among the various parties. View Owner shall file copies of the arbitrator's report with the City Clerk and the Director of Community Development.
- 4) If, pursuant to an agreement between View Owner and Foliage Owner, 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 the BHMC on his/her property, a tree removal permit must first be obtained in accordance with the requirements of BHMC 10-3-2900.

Draft Framework for View Restoration Regulations with proposed revisions

Draft from For September 7, 2010 PC Subcommittee Meeting with MM proposed revisions 10-20-10 and DMS Comments

4. VIEW RESTORATION PERMIT With Public Hearing¹²

A. View Restoration Permit:

Notwithstanding any other provision of this chapter, upon application by a property 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 section where the protectable view is substantially disrupted from the viewing area by trees, foliage or hedges as defined in this section and the Planning Commission can make all of the findings as stated in this section. ~~The number of View Restoration Permit requests that may be heard by the Planning Commission is six annually.~~

B. Reviewing Authority:

The reviewing authority for a View Restoration permit application shall be the Planning Commission.

C. Application:

Application for a View Restoration permit shall be in writing on a form prescribed by the director and shall include but not be limited to the following information:

1)

Proof that View Owner has completed the following procedures as required in this section:

Initial Neighbor Reconciliation, and
Mediation, and
Non-Binding Arbitration;¹³

2) A copy of the Arbitrator's Report

3) Clearly identify the remedy sought by View Owner, ~~a good faith estimate of the cost of the remedy and an offer by View Owner to pay that cost.~~

¹² Staff considered whether View Restoration could be handled as a Trousdale R-1 Permit but since View Restoration does not deal with development standards (as does the existing View Preservation standard in the Hillside Area) staff felt it was more appropriate to create a separate permit (could be BHM 10-3-2610) that would be referenced in the Trousdale development standards. Staff has suggested the term "View Restoration" so as to distinguish foliage obstructing views from View Preservation (structures potentially obstructing views).

¹³ If the parties entered into an agreement at some point in this process but that agreement has been violated and the View Owner seeks remedy, the parties would begin the process again at the step above the step at which they were able to reach an agreement.

Draft Framework for View Restoration Regulations with proposed revisions

Draft from For September 7, 2010 PC Subcommittee Meeting with MM proposed revisions 10-20-10 and DMS Comments

- 4) Tree/Land-ALTA Survey(s) documenting that the subject foliage is within 500 feet of View Owner's property and is growing above the exemption (safe harbor) ~~lineplane~~.

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

Once application has been received, City shall send a formal notice to Foliage Owner including a copy of the application, information about the process and an invitation to have staff and the reviewing authority visit the Foliage Owner's property with the Foliage Owner's approval.

D. 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 three hundred feet ~~(300')~~ (500') of the subject property, as shown on the latest equalized assessment roll. ***(With the change in distance of affected foliage changed from 300' to 500', should the public notice distance change? Cost of mailed notices is paid by applicant.)***^[A2]

E. Public Hearing

The reviewing authority may, at its discretion, require the review or additional review of any case by a qualified soils engineer, landscape architect, arborist or other appropriate professional with the ***initial?*** costs to be borne by the View Owner. ***(Should the Planning Commission have the discretion to apportion the cost of fees and professional reports as well as restorative action costs?)***^[A3]

F. Restrictions and Conditions:

In approving a View Restoration Permit, the reviewing authority may impose such restrictions or conditions, including restorative actions, as it deems necessary or proper to enable satisfy the findings required for such permit to be made.

G. Effective Date

Any decision of the reviewing authority made pursuant to this section takes effect fourteen (14) days from the notice of decision, unless an appeal is filed. If appealed, then the effective day is the date on which the City Council acts.

Draft Framework for View Restoration Regulations with proposed revisions

Draft from For September 7, 2010 PC Subcommittee Meeting with MM proposed revisions 10-20-10 and DMS Comments

H. Appeals:

Any decision of the reviewing authority made pursuant to this section may be appealed to the City Council by the View Owner or the 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.

I. Time for Exercise of Rights:

The exercise of rights granted in such approval shall be completed within 60 days of a decision unless extended by written mutual agreement of the View Owner and Foliage Owner or unless restorative actions required pursuant to the decision should be postponed for the health of trees or foliage pursuant to the tree survey or an arborist's report.

J. Required Findings:

The ~~Planning Commission~~ ~~Reviewing Authority~~ may approve with conditions/restorative actions¹⁴ the issuance of a View Restoration Permit if it makes all of the following findings:

- 1) ~~The View Owner has fully complied with the Initial Neighbor Reconciliation, Mediation and Non-Binding Arbitration following procedures as required in~~ ~~of this section: Initial Neighbor Reconciliation, Mediation and Non-Binding Arbitration.~~
- 2) View Owner's protectable view is substantially disrupted by ~~foliage on Foliage Owner's property that is not exempted under Section #4~~ ~~Paragraph 2 of this section.~~ The following criteria shall be considered in determining whether or not a protectable view is ~~substantially disrupted~~²:

Alternative 1

~~An assessment of all view points in the viewing area~~ ~~protectable views, individually and in combination, and the relative importance of each of the viewpoints~~ ~~protectable view at issue. A determination of relative importance is made by balancing the nature of the protectable view and the importance of the viewing area.~~ If a viewing area View Owner's property has multiple view points ~~protectable views and some protectable views points are found not to be substantially disrupted but other protectable views points are found not to be substantially disrupted, it may be found that the totality of the viewing area~~ ~~protectable views are~~ ~~is not substantially disrupted.~~ *(The definition of "protectable view" is found on page 1 of these draft guidelines. The term "protected view" on page 2 is intended to refer to*

¹⁴ See "F" in this section; it is typical of how the City's has crafted ordinances.

Draft Framework for View Restoration Regulations with proposed revisions

Draft from For September 7, 2010 PC Subcommittee Meeting with MM proposed revisions 10-20-10 and DMS Comments

a viewing area that has been determined by the reviewing authority to merit restoration. This term will would be used in a Planning Commission resolution requiring view restoration.)

Alternative 2

An assessment of all view points in the viewing area protectable views, individually and in combination, and the relative importance of each of the viewpoints protectable view. A determination of relative importance is made by balancing the nature of the protectable view and the importance of the viewing area. If a viewing area View Owner's property has multiple view points protectable views and some protectable views points are found not to be substantially disrupted but other protectable views points are found not to be substantially disrupted, it may be found that the totality of the viewing area protectable views are is not substantially disrupted.

- i) Foliage Position within a Protectable View Point. Foliage located in the center of a Protectable View point is more likely to be found to substantially disrupt a view than Foliage located on the edge of a Protectable View's periphery point.
 - ii) Priority given to views from primary living area? Would we need to define primary living area? (Example: primary living area excludes hallways and bathrooms) (Not clear at PC meeting - Discuss) Hedges within a Protectable View. Hedges as defined in Section 10-3-100 herein 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 factors other than private Foliage such as public Foliage or structures.
 - iiii) The view most often observed by the occupants of the property.
- 3) Foliage to be removed is located on Foliage Owner's property, any part of which is within 300/500 feet of View Owner's property.
 - 4) The proposed trimming, removal or removal with replacement of foliage will balance the reasonable expectation of view restoration for View Owner with the reasonable expectation of privacy and security of Foliage Owner¹⁵ (R-1 Design Review Permit language).

¹⁵ Should this finding consider whether Foliage provides privacy to any property other than Foliage Owner's property?

Draft Framework for View Restoration Regulations with proposed revisions

Draft from February 7, 2010 PC Subcommittee Meeting with MM proposed revisions 10-20-10 and DMS Comments

5) **Trimming, removal or removal with replacement of foliage on Foliage Owner's property will not have a substantial adverse impact on stability of a hillside, drainage of the property, erosion control, energy usage (loss of shade) or on biological resources such as wildlife habitat.**

6) **Removal of a protected tree as defined in 10-3-2900 will not:**

A. adversely affect the neighboring properties or the general welfare or safety of the surrounding area; and

B. adversely affect the garden quality of the city. (current tree preservation ordinance)

K. Restorative Actions

The Planning Commission may, as a condition of a View Restoration Permit, require Restorative Actions, which may include, but are not limited to the following:

1. **Trimming, culling, lacing, or reducing trees, foliage or hedges to a height or width to be determined by the Reviewing Authority.¹⁶**
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 restore a protected view in accordance with the findings.**
3. **Requiring replacement foliage when the reviewing authority finds that removal without replacement will cause a significant adverse impact on 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.**

NOTE: Adding language that would indemnify the City for any negative impacts resulting from restorative actions.

L. Notice of Decision:

A. Written Decision Required: The action taken by the reviewing authority shall be set forth in writing.¹⁷

¹⁶ Information about each of these practices along with graphic representations will be part of administrative guidelines prepared by staff.

Draft Framework for View Restoration Regulations with proposed revisions

Draft from For September 7, 2010 PC Subcommittee Meeting with MM proposed revisions 10-20-10 and DMS Comments

B. Notice of Decision: Within five (5) days after the issuance of a decision by the reviewing authority, the director shall cause a copy of the decision to be mailed, through the United States mail, postage prepaid, to each of the following persons:

1. View Owner, using the mailing address set forth in the application;
2. Each Foliage Owner as listed on a current Tax Assessor's roll.

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

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

5. APPORTIONMENT OF COSTS

Initial Neighbor Outreach

Procedural Costs

Any costs associated with obtaining information, mailing the required notice or preparing an agreement shall be borne by the View Owner.

Restorative Action

Cost of restorative actions agreed upon by the View Owner and Foliage Owner shall be borne by the View Owner unless otherwise agreed to by the Foliage Owner. All restorative actions must be performed by a licensed and bonded tree or landscape service unless mutually agreed upon by the View Owner and Foliage Owner. Cost of subsequent maintenance of trees, foliage, hedges on Foliage Owner's property shall be borne by Foliage Owner, unless otherwise agreed to by the View Owner.

Mediation

Procedural Costs

~~The City Council may establish, by resolution, fees for the processing of View Restoration applications without public hearing. Fees associated with such applications shall be borne~~

¹⁷ The Subcommittee discussed requiring a notice of decision that the City would record against each property involved ***There are legal problems with this so the ordinance will contain language making the property owner responsible for informing future owners of a view restoration resolution.***

Draft Framework for View Restoration Regulations with proposed revisions

Draft from For September 7, 2010 PC Subcommittee Meeting with MM proposed revisions 10-20-10 and DMS Comments

~~by the View Owner.~~ The City will provide up to three hours of free mediation cost for each application.¹⁸ The parties may elect to continue mediation beyond three hours with the cost borne by the View Owner unless otherwise agreed to by the Foliage Owner. If the parties elect to choose their own mediator, the cost shall be borne by the View Owner unless otherwise agreed to by the Foliage Owner. The View Owner shall pay for the cost of a professional report such as a tree survey of the Foliage Owner's property if such a survey is performed conducted by the View Owner and shall bear costs associated with preparation of a mediation agreement, unless otherwise agreed to ~~by the Foliage Owner.~~

Restorative Action

Cost of restorative actions agreed upon by the View Owner and Foliage Owner shall be borne by the View Owner unless otherwise agreed to by the Foliage Owner. All restorative action must be performed by a licensed and bonded tree or landscape service unless mutually agreed upon by the View Owner and Foliage Owner. Cost of subsequent maintenance of trees, foliage, hedges on the Foliage Owner's property shall be borne by the Foliage Owner unless otherwise agreed to by the View Owner.

Non-Binding Arbitration

Procedural Costs

The cost of the arbitrator and preparation of the arbitrator's report shall be borne by the View Owner unless otherwise agreed to by the Foliage Owner. The View Owner shall pay for the cost of a professional report such as a tree survey of the Foliage Owner's property if such a survey is performed conducted by the View Owner and shall bear costs associated with preparation of an agreement as a result of arbitration unless otherwise agreed to by the Foliage Owner.

Restorative Action

Cost of restorative actions in the Arbitrator's report or in an agreement resulting from arbitration shall be apportioned by the Arbitrator. If the Arbitrator determines both parties have participated in the process in good faith, the cost of restorative actions shall be borne all or in large part by the View Owner. If the Arbitrator determines one or both parties have not participated in the process in good faith, the Arbitrator shall apportion the costs

¹⁸ Any proposed expenditure of City funds will need to be approved by City Council.

Draft Framework for View Restoration Regulations with proposed revisions

Draft from For September 7, 2010 PC Subcommittee Meeting with MM proposed revisions 10-20-10 and DMS Comments

accordingly.¹⁹ All restorative action must be performed by a licensed and bonded tree or landscape service unless mutually agreed upon by View Owner and Foliage Owner. Cost of subsequent maintenance of trees, foliage, hedges on Foliage Owner’s property shall be borne by Foliage Owner unless otherwise agreed to by the View Owner.

APPORTIONMENT OF COSTS for View Restoration permit with public hearing

(Staff is drafting an apportionments procedure)

View Restoration Permit with Public Hearing

Procedural Costs

View Owner shall bear the up-front cost of application fees including the tree survey and the cost of any other information requested by the reviewing authority. Foliage Owner shall reimburse View Owner (half the fees?) if Foliage Owner did not agree to restorative actions in Arbitrator’s report and reviewing authority requires removal of the same or more trees, foliage or hedges as indicated in Arbitrator’s report. Foliage Owner shall not reimburse View Owner if Arbitrator’s report and reviewing authority required no restorative action.

Restorative Action

Cost of restorative actions shall be borne by View Owner unless Foliage Owner did not agree to restorative actions in Arbitrator’s report and reviewing authority requires removal of the same or more trees, foliage or hedges as indicated in Arbitrator’s report in which case ~~the Planning Commission shall apportion restoration costs~~ (Need to add an apportionment scheme here) cost of restorative actions shall be borne by Foliage Owner. If Arbitrator’s report determined that no restorative action needed to be taken and the reviewing authority determines some restorative action should be taken, cost of restorative action shall be borne by View Owner. All restorative actions must be performed by a licensed and bonded tree or landscape service unless mutually agreed upon by the View Owner and Foliage Owner. Cost of subsequent maintenance of trees, foliage or hedges on the Foliage Owner’s property shall be borne by the Foliage Owner unless otherwise agreed to by the View Owner.

Appeal to City Council

¹⁹ It was recognized that there could be an unreasonable View Owner as well as an uncooperative Foliage Owner so apportionment of costs should be determined by the Arbitrator based on the facts of the case and the level of cooperation by the parties.

Draft Framework for View Restoration Regulations with proposed revisions

Draft from For September 7, 2010 PC Subcommittee Meeting with MM proposed revisions 10-20-10 and DMS Comments

Procedural Costs

Appellant shall bear the costs of the appeal application including the appeal fee, public notice cost and any other application costs.²⁰

Restorative Action

Cost of restorative actions resulting from an appeal to the City Council shall be apportioned in the same way as cost of restorative actions pursuant to a decision by the reviewing authority (Planning Commission).

6. LANDSCAPE

~~The View Restoration Guidelines Community Development staff shall prepare~~ include landscape standards ~~in the form of administrative guidelines~~ to include a list of nuisance trees that should not be planted in hillside view areas.

7. EFFECTIVE DATE OF ORDINANCE

The provisions of this article shall become effective and be in full force and operation at one minute after twelve o'clock (12:01) A.M. on _____, 2010.

8. TRIAL PERIOD

A report regarding the implementation of this ordinance shall be provided to the Planning Commission within 24 months of the effective date of the ordinance.

THE END

²⁰ Appellant could be either party so it is recommended appellant pays the procedural costs.

Attachment 2

Draft Ordinance – Clean Copy

Draft Framework for View Restoration Regulations with proposed revisions

Draft from June 24, 2010 PC Meeting with revisions for 10-28-10 PC Meeting

1. PURPOSE STATEMENT

The intent of this ordinance is to restore and preserve certain views from substantial disruption by the growth of trees, vegetation, or a combination thereof while providing for residential privacy and security; maintaining the garden quality of the City; insuring 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 not the intent of this ordinance to create an expectation that any particular view or views would be restored or preserved. It is also the intent of this ordinance to educate residents to consider view blockage potential before planting foliage.

2. DEFINITIONS

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. A Protectable View shall not include views of vacant land that is developable under the City Code.

View Owner

Any owner of real property in Trousdale Estates that has a Protectable View and who alleges that the growth of Foliage located on a property within 500 feet of View Owner's property is causing substantial disruption of a Protectable View. "View Owner" shall reference one or more owners of the same property.

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 500 feet of a View Owner's property. "Foliage Owner" shall reference one or more owners of the same property.

Viewing Area

An area from which a Protectable View is assessed, located on the level pad¹ that contains the Primary Residential Structure. A Viewing Area may be a room of the Primary Residential Structure at level finished grade, or a patio, deck or landscaped area at level finished grade that does not extend beyond the level pad. There may be one or more Viewing Areas on a property. For purposes

¹ Current Code definition of "Level Pad" would apply: "LEVEL PAD: That portion of a site containing level finished grade. No portion of a site with a slope that is greater than five percent (5%) shall be considered to be part of a level pad." Use of the term "level pad" is consistent with the View Preservation section of the Hillside development standards in the Code. It is noted that "primary residential structure" is not currently defined in the Code but is defined in this ordinance.

of this section, a Protectable View shall be determined from a point thirty-six inches (36" above the finished grade of the level pad.

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. .²

Protected View

A Protectable View that has been determined by the reviewing authority to merit restoration.

Tree

A woody perennial plant, consisting usually of a single elongate main stem or trunk and many branches. (tree preservation ordinance)

Foliage

The aggregate of leaves, branches and trunks of one or more plants. Trees and hedges are included in the definition of Foliage.

Hedge

A growth of vegetation, cultivated in such a manner as to produce a barrier to inhibit passage or to obscure view, which is more than twelve inches (12") in height. Where there are interruptions of growth by vertical space having a horizontal distance of more than twenty four inches (24") in every four feet (4'), such growth shall not be considered a Hedge. This definition is not intended to include individual shrubs, plants, or trees.

Arborist

1. An individual certified as an arborist by the International Society of Arboriculture (ISA), or 2) "Consulting" Arborist as currently listed as a member of the American Society of Consulting Arborists³.

Forester

An individual licensed in California as a Registered Professional Forester.

Landscape Architect

A landscape architect registered by the State of California.

² Language from BHMC 10-3-402 regarding uses and buildings permitted in R-1 Zones as well language used to define accessory structure in the Code.

³The first part of this definition is consistent with the City's Tree Preservation Ordinance; the second part has been added in consultation with the City's Arborist as acceptable and allowing more flexibility to applicants. It is suggested the definition of "Arborist" in the Tree Preservation Ordinance should be revised to be consistent with this.

Draft Framework for View Restoration Regulations with proposed revisions

Draft from June 24, 2010 PC Meeting with revisions for 10-28-10 PC Meeting

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. *(language from City's tree preservation ordinance)*

View Restoration Property Survey

An ALTA (American Land Title Association) survey⁴ of the View Owner's site and Foliage Owner's site including calculation of the Exemption (Safe Harbor) Plane as defined in this Article.

DRAFT

⁴ An ALTA survey is a survey that is prepared to ALTA standards and the survey and resulting legal description of the property are then insured as a survey endorsement on an owner's title policy.

Draft Framework for View Restoration Regulations with proposed revisions

Draft from June 24, 2010 PC Meeting with revisions for 10-28-10 PC Meeting

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 registered Landscape Architect or Arborist or Forester as defined in this section:

- Species of each tree based on scientific name
- Tree identifying number and location recorded on a map
- Physical measurements of the tree such as height and diameter (tree height shall be measured pursuant to the City's Tree Preservation Ordinance)
- Age of the tree
- Report of overall health and structural condition of the tree
- Life expectancy; suitability for preservation
- Foliage management recommendations

The survey shall be signed or stamped by the aforementioned professional.

Restorative Action

Any specific steps taken affecting Foliage that would result in the restoration or preservation of a Protected View.

Safe Harbor Plane

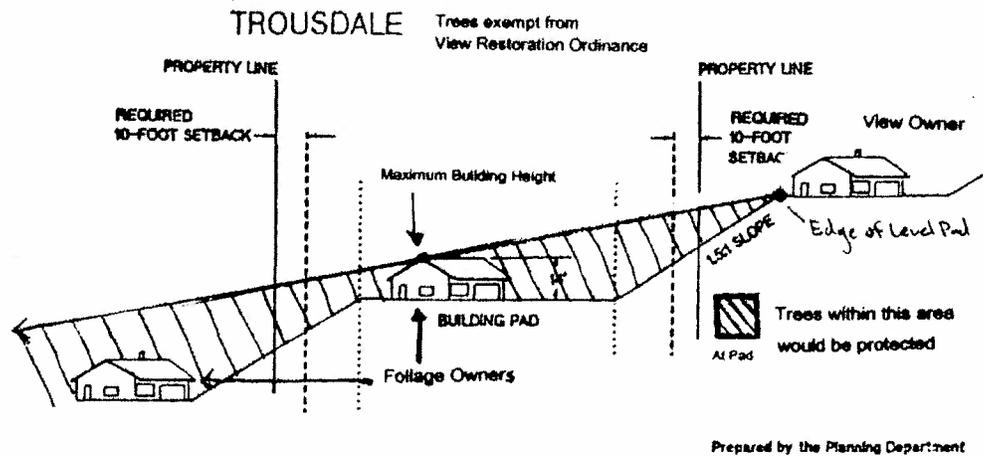
The plane defined by a point at the edge of View Owner's level pad to a point at the maximum building height of the principal building area of an adjacent down-slope Foliage Owner's property. For purposes of this section, "adjacent to" shall include a primary residence across a street from a View Owner.

2. EXEMPTION (Safe Harbor Provision)

The provisions of this section shall not apply to the following:

Foliage, where the highest point of the Foliage is below a Safe Harbor Plane as defined in this section. [See example below]. The exemption applies to Foliage on properties within 500 feet of View Owner. Foliage shall be maintained in accordance with all other zoning code sections and landscape maintenance standards in the Code.⁵

⁵ Just because foliage is exempt from this ordinance does not mean it is exempt from being maintained in accordance with the landscape maintenance, fire and other codes.



3. PROCEDURES

Violations of the Zoning or Building Code (*e.g. hedges that obstruct vehicle sightlines or foliage not maintained*) shall be addressed through the City's Code Enforcement Process. All other complaints received by the City regarding Foliage blocking views in Trousdale Estates shall be addressed through the procedures in this Article. The procedures in this Article will be explained in a set of guidelines prepared by the Community Development Department and available to the public.

(A flow chart will be part of the guidelines.)

Staff has clarified the process as follows:

- 1. The three-step process prior to Planning Commission review will have little City involvement.*
- 2. Apportionment of costs (fees and restorative costs; staff is developing an apportionment process wherein some costs may be assigned to Foliage Owner)*
- 3. Enforcement of Planning Commission resolutions: compliance letter and then prosecution process.*

Draft Framework for View Restoration Regulations with proposed revisions

Draft from June 24, 2010 PC Meeting with revisions for 10-28-10 PC Meeting

A) Initial Neighbor Outreach

- 1) View Owner(s) shall notify each Foliage Owner in writing of concerns regarding disruption of View Owner's view by trees, foliage or hedges on Foliage Owner's property. Said notice(s) 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 the View Owner that View Owner or View Owner's representative offers to meet with each potential Foliage Owner. The notification should clearly identify the remedy sought by View Owner.
- 2) Acceptance of Initial Neighbor Outreach by each Foliage Owner shall be voluntary, but each Foliage Owner shall have no more than 30 days from service of written request to respond to View Owner unless otherwise extended by View Owner. Failure to respond shall be considered rejection by Foliage Owner. The notification should be followed by discussions between View Owner and each Foliage Owner to attempt to reach a mutually agreeable solution.
- 3) If View Owner and Foliage Owner are unable to resolve the matter, View Owner may proceed with a mediation process. To participate in the mediation process, View Owner shall submit to the City proof of Initial Neighbor Outreach in the form of a certified letter and mailing receipt to each Foliage Owner (a return receipt requires the recipient's signature; what if the recipient does not want to sign? Does this hold up the process?). If a Foliage Owner did not respond to the notice or declined to discuss the matter, View Owner shall complete a signed affidavit to that effect.
- 4) If, pursuant to an agreement between View Owner and a Foliage Owner, 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 the BHMC on his/her property, a tree removal permit must first be obtained in accordance with the requirements of BHMC 10-3-2900. ***(Consider stating once for each of the three steps prior to Planning Commission review rather than including as part of each step.)***

B) Mediation

- 1) If agreement is not reached through the Initial Neighbor Outreach process, View Owner shall contact a Mediator as set out in the View Restoration Guidelines on file in the City. View Owner shall notify each Foliage Owner of an offer to mediate by certified letter(s) and return receipt to each Foliage Owner as well as an affidavit(s) if required (See A2 above) The notice shall clearly identify the remedy sought by View Owner. View Owner shall also cause a notice to be mailed to all addresses within 500 feet of the exterior boundaries of View Owner's property advising other potential View Owners that mediation is sought with certain Foliage Owner(s) and that each other potential View Owner has forty-five days (45 days) to indicate an intention to

Draft Framework for View Restoration Regulations with proposed revisions

Draft from June 24, 2010 PC Meeting with revisions for 10-28-10 PC Meeting

participate in a view restoration process with certain Foliage Owners. View Owner shall use a mapping service from a list provided by the City to certify the addresses.⁶

- 2) Information recommended to be submitted by View Owner and each Foliage Owner to the Mediator will be in the View Restoration Guidelines on file in the City.
- 3) The City offers a mediation process that the parties may use; or, parties may meet on their own or choose their own mediator. Acceptance of mediation by each Foliage Owner shall be voluntary, but each Foliage Owner shall have no more than 30 days from service of written request for mediation to accept or reject the offer of mediation, unless otherwise extended by View Owner. Failure to respond shall be considered rejection. Each mediation session may involve one View Owner and one or more Foliage Owners at the discretion of the parties involved.
- 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(s) 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(s) for the parties to sign.
- 5) If, pursuant to an agreement between View Owner and Foliage Owner, 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 the BHMC on his/her property, a tree removal permit must first be obtained in accordance with the requirements of BHMC 10-3-2900.

⁶ In reviewing the recent view preservation ordinance just adopted by Rolling Hills Estates, staff realized there is potential for duplicative or repetitive view restoration actions against one Foliage Owner. Rolling Hills Estates addresses this by requiring View Owner to notify other potential View Owners who may have an issue with the same Foliage Owner and to attempt to consolidate cases involving the same Foliage Owners. Potential View Owners who do not participate at that time, are precluded from bringing action against that Foliage Owner for two years. I need to work on the language but hopefully you understand the concept.

C) Non-binding Arbitration

- 1) In those cases where the parties are unable to reach agreement through the Initial Neighbor Outreach process or through the Mediation process, View Owner shall offer by written notice to each Foliage Owner to submit the dispute to Non-Binding Arbitration. Said notice(s) shall be on a form provided by the City in the View Restoration Guidelines, shall be signed by the View Owner and shall include a signed statement from the View Owner that View Owner or View Owner's representative offers to participate in Non-Binding Arbitration with each potential Foliage Owner. Foliage Owner shall have thirty days from service of notice to accept or reject non-binding arbitration. If accepted, the parties shall agree on a specific arbitrator within twenty-one days. If one or more of the parties is unable to agree on an Arbitrator within this period of time, the City's on-call Arbitrator shall be retained. Arbitration may involve one View Owner and one or more Foliage Owners at the discretion of the parties involved. If non-binding arbitration is rejected by a Foliage Owner, the Arbitrator shall proceed with review, using the available information.
- 2) Information to be submitted by View Owner and Foliage Owner to the arbitrator will be in the View Restoration Guidelines on file in the City. The Arbitrator may request additional information at the Arbitrator's discretion, with costs associated with the additional information to be borne by View Owner.
- 3) The arbitrator shall use the provisions of this chapter to reach a fair resolution of the dispute in accordance with the Beverly Hills Municipal Code and shall submit a complete written report to View Owner and each Foliage Owner. This report shall include the arbitrator's conclusions with respect to the required findings in this section, a list of all mandated restorative actions, a schedule by which the mandates must be completed, and the allocation of the costs for foliage removal among the various parties. View Owner shall file copies of the arbitrator's report with the City Clerk and the Director of Community Development.
- 4) If, pursuant to an agreement between View Owner and Foliage Owner, 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 the BHMC on his/her property, a tree removal permit must first be obtained in accordance with the requirements of BHMC 10-3-2900.

4. VIEW RESTORATION PERMIT With Public Hearing⁷

⁷ Staff considered whether View Restoration could be handled as a Trousdale R-1 Permit but since View Restoration does not deal with development standards (as does the existing View Preservation standard in the Hillside Area) staff felt it was more appropriate to create a separate permit (could be BHMC 10-3-2610) that would be referenced in the Trousdale development standards. Staff has suggested the term "View Restoration" so as to distinguish foliage obstructing views from View Preservation (structures potentially obstructing views).

Draft Framework for View Restoration Regulations with proposed revisions

Draft from June 24, 2010 PC Meeting with revisions for 10-28-10 PC Meeting

A. View Restoration Permit:

Notwithstanding any other provision of this chapter, upon application by a property 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 section where the protectable view is substantially disrupted from the viewing area by trees, foliage or hedges as defined in this section and the Planning Commission can make all of the findings as stated in this section.

B. Reviewing Authority:

The reviewing authority for a View Restoration permit application shall be the Planning Commission.

C. Application:

Application for a View Restoration permit shall be in writing on a form prescribed by the director and shall include but not be limited to the following information:

1)

Proof that View Owner has completed the following procedures as required in this section:

Initial Neighbor Reconciliation, and
Mediation, and
Non-Binding Arbitration;⁸

2) A copy of the Arbitrator's Report

3) Clearly identify the remedy sought by View Owner.

4) Tree/ALTA Survey(s) documenting that the subject foliage is within 500 feet of View Owner's property and is growing above the exemption (safe harbor) plane.

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

Once application has been received, City shall send a formal notice to Foliage Owner including a copy of the application, information about the process and an invitation to have staff and the reviewing authority visit the Foliage Owner's property with the Foliage Owner's approval.

⁸ If the parties entered into an agreement at some point in this process but that agreement has been violated and the View Owner seeks remedy, the parties would begin the process again at the step above the step at which they were able to reach an agreement.

D. 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 three hundred feet (500') of the subject property, as shown on the latest equalized assessment roll.

E. Public Hearing

The reviewing authority may, at its discretion, require the review or additional review of any case by a qualified soils engineer, landscape architect, arborist or other appropriate professional with the initial? costs to be borne by the View Owner.

F. Restrictions and Conditions:

In approving a View Restoration Permit, the reviewing authority may impose such restrictions or conditions, including restorative actions, as it deems necessary or proper to satisfy the findings required for such permit.

G. Effective Date

Any decision of the reviewing authority made pursuant to this section takes effect fourteen (14) days from the notice of decision, unless an appeal is filed. If appealed, then the effective day is the date on which the City Council acts.

H. Appeals:

Any decision of the reviewing authority made pursuant to this section may be appealed to the City Council by the View Owner or the 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.

I. Time for Exercise of Rights:

The exercise of rights granted in such approval shall be completed within 60 days of a decision unless extended by written mutual agreement of the View Owner and Foliage Owner or unless restorative actions required pursuant to the decision should be postponed for the health of trees or foliage pursuant to the tree survey or an arborist's report.

J. Required Findings:

Reviewing Authority may approve⁹ the issuance of a View Restoration Permit if it makes all of the following findings:

- 1) View Owner has fully complied with the Initial Neighbor Reconciliation, Mediation and Non-Binding Arbitration procedures of this section:
- 2) View Owner's protectable view is substantially disrupted by Foliage on Foliage Owner's property that is not exempt under Paragraph 2 of this section. The following criteria shall be considered in determining whether or not a protectable view is substantially disrupted:

Alternative 1

An assessment of protectable views, individually and in combination, and the relative importance of each protectable view at issue. A determination of relative importance is made by balancing the nature of the protectable view and the importance of the viewing area. If a View Owner's property has multiple protectable views and some protectable views are found to be substantially disrupted but other protectable views are found not to be substantially disrupted, it may be found that the totality of the protectable views are not substantially disrupted. *(The definition of "protectable view" is found on page 1 of these draft guidelines. The term "protected view" on page 2 is intended to refer to a viewing area that has been determined by the reviewing authority to merit restoration. This term would be used in a Planning Commission resolution requiring view restoration.)*

Alternative 2

⁹ See "F" in this section; it is typical of how the City's has crafted ordinances.

Draft Framework for View Restoration Regulations with proposed revisions

Draft from June 24, 2010 PC Meeting with revisions for 10-28-10 PC Meeting

An assessment of all protectable views, individually and in combination, and the relative importance of each protectable view. If a View Owner's property has multiple protectable views and some protectable views are found to be substantially disrupted but other protectable views are found not to be substantially disrupted, it may be found that the totality of the protectable views are not 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) Hedges within a Protectable View. Hedges as defined in Section 10-3-100 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 factors other than private Foliage such as public Foliage or structures.
 - iv) The view most often observed by the occupants of the property.
- 3) Foliage to be removed is located on Foliage Owner's property, any part of which is within 500 feet of View Owner's property.
 - 4) The proposed trimming, removal or removal with replacement of foliage will balance the reasonable expectation of view restoration for View Owner with the reasonable expectation of privacy and security of Foliage Owner ¹⁰(*R-1 Design Review Permit language*).
 - 5) Trimming, removal or removal with replacement of foliage on Foliage Owner's property will not have a substantial adverse impact on stability of a hillside, drainage of the property, erosion control, energy usage (loss of shade) or on biological resources such as wildlife habitat.
 - 6) Removal of a protected tree as defined in 10-3-2900 will not:
 - A. adversely affect the neighboring properties or the general welfare or safety of the surrounding area; and
 - B. adversely affect the garden quality of the city. (*current tree preservation ordinance*)

K. Restorative Actions

¹⁰ Should this finding consider whether Foliage provides privacy to any property other than Foliage Owner's property?

The Planning Commission may, as a condition of a View Restoration Permit, require Restorative Actions, which may include, but are not limited to the following:

1. Trimming, culling, lacing, or reducing Foliage to a height or width to be determined by the Reviewing Authority.¹¹
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 restore a protected view in accordance with the findings.
3. Requiring replacement foliage when the reviewing authority finds that removal without replacement will cause a significant adverse impact on 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.

NOTE: Adding language that would indemnify the City for any negative impacts resulting from restorative actions.

L. Notice of Decision:

A. Written Decision Required: The action taken by the reviewing authority shall be set forth in writing.¹²

B. Notice of Decision: Within five (5) days after the issuance of a decision by the reviewing authority, the director shall cause a copy of the decision to be mailed, through the United States mail, postage prepaid, to each of the following persons:

1. View Owner, using the mailing address set forth in the application;
2. Each Foliage Owner as listed on a current Tax Assessor's roll.

¹¹ Information about each of these practices along with graphic representations will be part of administrative guidelines prepared by staff.

¹² The Subcommittee discussed requiring a notice of decision that the City would record against each property involved ***There are legal problems with this so the ordinance will contain language making the property owner responsible for informing future owners of a view restoration resolution.***

Draft Framework for View Restoration Regulations with proposed revisions

Draft from June 24, 2010 PC Meeting with revisions for 10-28-10 PC Meeting

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

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

5. APPORTIONMENT OF COSTS

Initial Neighbor Outreach

Procedural Costs

Any costs associated with obtaining information, mailing the required notice or preparing an agreement shall be borne by the View Owner.

Restorative Action

Cost of restorative actions agreed upon by the View Owner and Foliage Owner shall be borne by the View Owner unless otherwise agreed to by the Foliage Owner. All restorative actions must be performed by a licensed and bonded tree or landscape service unless mutually agreed upon by the View Owner and Foliage Owner. Cost of subsequent maintenance of trees, foliage, hedges on Foliage Owner's property shall be borne by Foliage Owner, unless otherwise agreed to by the View Owner.

Mediation

Procedural Costs

The City will provide up to three hours of free mediation cost for each application.¹³ The parties may elect to continue mediation beyond three hours with the cost borne by the View Owner unless otherwise agreed to by the Foliage Owner. If the parties elect to choose their own mediator, the cost shall be borne by the View Owner unless otherwise agreed to by the Foliage Owner. The View Owner shall pay for the cost of a tree survey of the Foliage Owner's property if such a survey is performed by the View Owner and shall bear costs associated with preparation of a mediation agreement, unless otherwise agreed to by the Foliage Owner.

Restorative Action

¹³ Any proposed expenditure of City funds will need to be approved by City Council.

Draft Framework for View Restoration Regulations with proposed revisions

Draft from June 24, 2010 PC Meeting with revisions for 10-28-10 PC Meeting

Cost of restorative actions agreed upon by the View Owner and Foliage Owner shall be borne by the View Owner unless otherwise agreed to by the Foliage Owner. All restorative action must be performed by a licensed and bonded tree or landscape service unless mutually agreed upon by the View Owner and Foliage Owner. Cost of subsequent maintenance of trees, foliage, hedges on the Foliage Owner's property shall be borne by the Foliage Owner unless otherwise agreed to by the View Owner.

Non-Binding Arbitration

Procedural Costs

The cost of the arbitrator and preparation of the arbitrator's report shall be borne by the View Owner unless otherwise agreed to by the Foliage Owner. The View Owner shall pay for the cost of a professional report such as a tree survey of the Foliage Owner's property if such a survey is performed by the View Owner and shall bear costs associated with preparation of an agreement as a result of arbitration unless otherwise agreed to by the Foliage Owner.

Restorative Action

Cost of restorative actions in the Arbitrator's report or in an agreement resulting from arbitration shall be apportioned by the Arbitrator pursuant to a formula determined by the City. If the Arbitrator determines both parties have participated in the process in good faith, the cost of restorative actions shall be borne all or in large part by the View Owner. If the Arbitrator determines one or both parties have not participated in the process in good faith, the Arbitrator shall apportion the costs accordingly.¹⁴ All restorative action must be performed by a licensed and bonded tree or landscape service unless mutually agreed upon by View Owner and Foliage Owner. Cost of subsequent maintenance of trees, foliage, hedges on Foliage Owner's property shall be borne by Foliage Owner unless otherwise agreed to by the View Owner.

APPORTIONMENT OF COSTS for View Restoration permit with public hearing

(Staff is drafting an apportionments procedure)

View Restoration Permit with Public Hearing

Procedural Costs

¹⁴ It was recognized that there could be an unreasonable View Owner as well as an uncooperative Foliage Owner so apportionment of costs should be determined by the Arbitrator based on the facts of the case and the level of cooperation by the parties.

Draft Framework for View Restoration Regulations with proposed revisions

Draft from June 24, 2010 PC Meeting with revisions for 10-28-10 PC Meeting

View Owner shall bear the up-front cost of application fees including the tree survey and the cost of any other information requested by the reviewing authority. Foliage Owner shall reimburse View Owner if Foliage Owner did not agree to restorative actions in Arbitrator's report and reviewing authority requires removal of the same or more trees, foliage or hedges as indicated in Arbitrator's report. Foliage Owner shall not reimburse View Owner if Arbitrator's report and reviewing authority required no restorative action.

Restorative Action

Cost of restorative actions shall be borne by View Owner unless Foliage Owner did not agree to restorative actions in Arbitrator's report and reviewing authority requires removal of the same or more trees, foliage or hedges as indicated in Arbitrator's report in which case (Need to add an apportionment scheme here). If Arbitrator's report determined that no restorative action needed to be taken and the reviewing authority determines some restorative action should be taken, cost of restorative action shall be borne by View Owner. All restorative actions must be performed by a licensed and bonded tree or landscape service unless mutually agreed upon by the View Owner and Foliage Owner. Cost of subsequent maintenance of trees, foliage or hedges on the Foliage Owner's property shall be borne by the Foliage Owner unless otherwise agreed to by the View Owner.

Appeal to City Council

Procedural Costs

Appellant shall bear the costs of the appeal application including the appeal fee, public notice cost and any other application costs.¹⁵

Restorative Action

Cost of restorative actions resulting from an appeal to the City Council shall be apportioned in the same way as cost of restorative actions pursuant to a decision by the reviewing authority (Planning Commission).

6. LANDSCAPE

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

¹⁵ Appellant could be either party so it is recommended appellant pays the procedural costs.

7. EFFECTIVE DATE OF ORDINANCE

The provisions of this article shall become effective and be in full force and operation at one minute after twelve o'clock (12:01) A.M. on _____, 2010.

8. TRIAL PERIOD

A report regarding the implementation of this ordinance shall be provided to the Planning Commission within 24 months of the effective date of the ordinance.

THE END

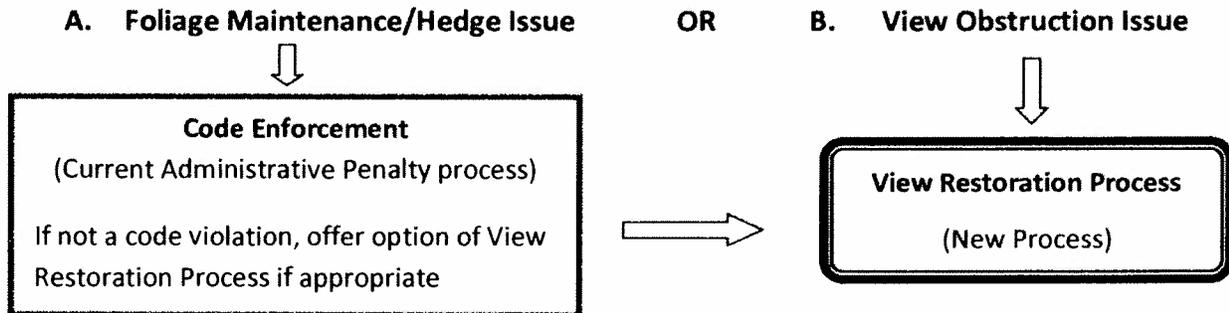
RR

Attachment 3
Process Flow Chart

VIEW RESTORATION PROCESS

DRAFT

Foliage/View obstruction complaint in Trousdale Estates; Staff to Determine:



View Restoration Process Guidelines:
Provided by Community Development Staff and available online and at public counter; contains detailed instructions, graphics, forms and contacts to guide residents through process

Private Agreement Process

Residents are encouraged to use the guidelines to resolve issues. A Planning Commission public hearing cannot be scheduled unless this process is completed.

Initial Neighbor Outreach
Parties attempt to resolve conflict themselves using Guidelines

- View Owner sends certified notice to Foliage Owner(s)
- Foliage Owner has 30 days to respond
- Parties Meet

View Owner responsible for costs
No professional reports required

Agreement → Process Ends
No Participation or No Agreement: → Mediation

Mediation
Neutral third party facilitates conflict resolution

- City offers 3 hours free mediation; View Owner contacts Mediator
- View Owner sends certified notice to Foliage Owner(s)/30-days
- Parties Meet

View Owner responsible for costs
No professional reports required

Agreement → Process Ends
No Participation or No Agreement → Non-Binding Arbitration

Non-Binding Arbitration
Neutral legal professional reviews evidence; provides report

- If no agreement on arbitrator reached, use City's Arbitrator
- Arbitrator shall visit all sites if permitted by owners
- Arbitrator renders written decision whether all parties participate or not

View Owner responsible for fees; Arbitrator allocates restorative costs by formula; professional reports can be required by Arbitrator

Agreement → Process Ends
No Participation or No Agreement → Planning Commission Hearing

Restorative Action/Enforcement

If parties come to an agreement at any point during the above process but one or more party is not satisfied with disposition of the agreement, parties may seek a civil remedy (Superior Court); the City will not enforce private agreements. Alternatively, an applicant may choose to continue with the View Restoration Process at the step beyond the last step completed provided certain deadlines are met.

Public Hearing Process

Planning Commission

Formal Application includes:

Proof that View Owner has completed the following procedures as required in this section:

- Initial Neighbor Reconciliation, and
- Mediation, and
- Non-Binding Arbitration; A copy of the Arbitrator's Report.

Tree/Land Survey(s) showing subject foliage is within 500' and above safe harbor line

Planning Commission may approve a View Restoration Permit if findings can be made.
Planning Commission may request any professional reports needed to render decision
Restorative Actions shall be determined by Planning Commission

Planning Commission allocates costs among parties pursuant to formula in Code. All maintenance of foliage on Foliage Owners' property subsequent to restorative actions is to be performed and paid for by Foliage Owner unless otherwise agreed to by View Owner.

City Council

Appellant shall bear cost of fee; cost of restorative actions shall be determined in the same way as at PC

Resolution Enforcement

Resolutions would be enforced by an on-call code enforcement consultant, reimbursed through fees

Attachment 4

Public Notice



NOTICE OF PUBLIC HEARING

DATE: Thursday, October 28, 2010

TIME: 1:30 p.m., or as soon thereafter as the matter may be heard

LOCATION: Commission Meeting Room 280 A
Beverly Hills City Hall
455 North Rexford Drive
Beverly Hills, CA 90210

The Planning Commission of the City of Beverly Hills, at its regular meeting on Thursday, October 28, 2010, will hold a public hearing beginning at 1:30 p.m. or as soon thereafter as the matter may be heard, to consider:

An ordinance of the City of Beverly Hills amending the Beverly Hills Municipal Code to establish regulations regarding the restoration and maintenance of certain defined views from single-family residential property in the Trousdale Estates area of the City that are substantially impaired by certain foliage maintained on other private property or properties. Trousdale Estates is defined in the Zoning Code as all property located north of Doheny Road and east of Schuyler Road, except that land zoned R-1.X, and that portion of Lot A of the Doheny Ranch tract northwesterly of tract numbers 24485 and 24486, commonly referred to as the Greystone Mansion property.

Notice of Public Hearing
Trousdale View Restoration Ordinance
October 28, 2010
Page 2 of 2

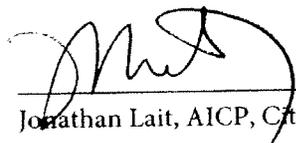
This Ordinance would be a first step in a process to review view restoration in Trousdale Estates and the Hillside Area of the City. The Planning Commission, at a future meeting, will separately consider the appropriateness of similar regulations for the Hillside Area of the City. Any Planning Commission recommendation regarding a draft ordinance would be forwarded to the City Council for its consideration at a duly noticed public hearing.

This project has been assessed in accordance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City, and no significant unmitigated environmental impacts are anticipated; therefore, a negative declaration is being prepared, subject to review by the Planning Commission. A Notice of Intent to Adopt a Negative Declaration was issued on June 11, 2010, and a period for public comment on the environmental documentation ran from June 18, 2010 through July 8, 2010.

Copies of the staff report, initial study and Negative Declaration, and all documents referenced in the Negative Declaration will be available in the Planning Division on Friday, October 22, 2010 and can be reviewed by any interested person at 455 N. Rexford Drive, Suite 100, Beverly Hills, CA 90210. Copies of the documents will also be available on the same date for review in the Beverly Hills Public Library Reference section. Any interested person may attend the hearing and be heard or present written comments to the Commission.

If you challenge the Commission's action in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City, either at or prior to the public hearing.

If there are any questions regarding this notice, please contact Michele McGrath in the Community Development Department at 310.285.1135 or at mmcgrath@beverlyhills.org.


Jonathan Lait, AICP, City Planner

Published: October 15, 2010