



Planning Commission Report

Meeting Date: June 9, 2011

Subject: An ordinance of the City of Beverly Hills amending the Beverly Hills Municipal Code to adopt a view restoration program for the Trousdale Estates area of the City.

Recommendation: Conduct continued public hearing, consider revised draft ordinance and consider adopting a resolution recommending revised draft ordinance to the City Council.

REPORT SUMMARY

Pursuant to a request from a City Council/Planning Commission Ad Hoc Committee on Trousdale view restoration, the Planning Commission, at a May 26, 2011 public hearing, reconsidered the draft Trousdale View Restoration ordinance that it previously recommended to the City Council, with the benefit of comments from the Ad Hoc Committee and additional public hearing comments. At the May 26 meeting, the Chair requested that the Planning Commission members of the Ad Hoc Committee (Vice Chair Corman and Commissioner Cole) meet with staff to review proposed revisions prior to presenting a final draft ordinance to the Planning Commission. The Planning Commission Ad Hoc Committee met on May 31, 2011 to review a draft ordinance. A final draft ordinance is attached for the Commission's review including: Attachment 1, the previous Trousdale View Restoration Ordinance recommended by the Planning Commission to the City Council showing the proposed changes; and, Attachment 2, a clean copy of the same document with the changes incorporated. Also attached is a revised Planning Commission resolution recommending the revised draft ordinance to the City Council. It is noted that the Ad Hoc Committee did not review the final draft of the ordinance prior to distribution to the Planning Commission for this meeting. This report reviews revisions to the ordinance discussed at the May 26, 2011 Planning Commission meeting and at the Planning Commission Ad Hoc meeting on May 31, 2011.

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.

Attachment(s):

1. Planning Commission Previously Recommended Ordinance showing redlined changes
2. Clean Copy of Ordinance with changes incorporated
3. Planning Commission Resolution Recommending Ordinance

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- 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 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.
- Oct., Nov. – Planning Commission hearings to consider final draft ordinance.
- December 16, 2010 – Planning Commission adopts resolution recommending draft ordinance to City Council.
- January 25, 2011 – City Council Study Session on draft ordinance; Mayor directs that a City Council/Planning Commission Ad Hoc Committee review the ordinance.
- April 20, 2011 – City Council/Planning Commission Ad Hoc Committee meeting with public input.
- May 26, 2011 – Planning Commission Public Hearing to review draft ordinance with the benefit of Ad Hoc Committee comments and additional public comments.
- May 31, 2011 – Planning Commission Ad Hoc meeting to review proposed revisions to ordinance.
- June 9, 2011 – Planning Commission Public Hearing to review revisions to draft ordinance.

DISCUSSION

Revisions to Draft Ordinance

Substantive changes to the draft ordinance are discussed below. Page numbers reflect pages in the redlined version of the ordinance (Attachment 1).

Definition of Viewing Area (Page 4)

The Planning Commission requested that the breadth of views that the Planning Commission may consider for protection should be narrowed to address concerns about the ability of the Planning Commission and staff to define and adequately address the most important views when reviewing view restoration cases. Language has been added to the definition of “Viewing Area” so a viewing area or areas shall exclude “hallways, bathrooms, closets and garages.”

Mediation Procedure (Page 6)

No substantive change has been proposed to the mediation procedure; however, the requirement that a view owner shall contact a mediator has been deleted since that is a specific action that would be

better included in the View Restoration Guidelines that the Planning Commission will be considering in the near future. At this point, it is not clear who should contact the mediator; it may be that the City should contact the mediator, depending on the mediation procedures ultimately recommended by staff and the Planning Commission.

Binding Arbitration (Page 5)

The revised ordinance now clarifies under “Procedures” that interested parties may agree to binding arbitration at any time to resolve their disputes in which case compliance with the proposed view restoration procedures would not be required.

Removal of Non-Binding Arbitration Procedure (Page 7, and other sections)

In the draft ordinance previously recommended by the Planning Commission, the view restoration review process included a requirement that the view owner offer to the foliage owner, and complete, a non-binding arbitration step after the mediation step and prior to applying for a Planning Commission hearing. Based on concerns about the cost and efficacy of the non-binding arbitration step, that step has been removed from the proposed view restoration review process. The City Council/Planning Commission Ad Hoc Committee discussed inserting a City advisory opinion in the process as an early step; however, concerns about the potential problems of an early City advisory opinion competing with a later, more carefully considered Planning Commission decision, outweighed any perceived benefits of a City advisory opinion in the opinion of the Planning Commission Ad Hoc Committee. The Ad Hoc Committee expressed concern that the view restoration review process now proposed includes only two steps prior to Planning Commission review: initial neighbor outreach and mediation; however, there do not appear to be any steps that could be added to the City’s proposed process that would benefit the process.

Required Findings (Pages 10-11)

The required findings that the Planning Commission would make to issue a View Restoration Permit have not been substantially changed but have been restructured to clarify the Planning Commission’s key decision points in determining whether a View Restoration Permit should be granted:

- Does view owner have a protectable view whether from one or more viewing areas?
(See I “Required Findings,” 1, which would be considered by the Planning Commission in conjunction with the definitions of “Protectable View and “Viewing Areas” in the “Definitions” section of the ordinance, pages 2-4).
- If it is determined that view owner has a protectable view, what are the criteria to determine that the protectable view has been substantially disrupted?
(See I “Required Findings,” 1 iii a-c on page 10).
- If a view owner has a protectable view that has been determined to be substantially disrupted, is restorative action required?

This is addressed in the ordinance under I “Required Findings” 2, which allows the Planning Commission to permit obstruction of a view in the following specific circumstances:

- foliage is important to integrity of an existing landscape plan;

- alteration of foliage will unreasonably impact privacy and security; or,
- alteration of foliage will have a substantial adverse impact on stability of a hillside, drainage or erosion control.

References to alteration of foliage impacting energy usage or biological resources (wildlife) were removed from this section as unnecessary because such issues are addressed elsewhere in the ordinance (e.g. the Planning Commission may require replacement trees if there is an impact on health, safety or welfare); or, in the case of impact on wildlife, the State Department of Fish and Game has not identified wildlife issues in the Trousdale Estates Area as discussed in the environmental documents prepared regarding this ordinance.

Decisions Intended to Run with the Land (Pages 12-13)

This section was in the previous version of the ordinance and has not changed.

Initial City Enforcement: Subsequent Enforcement by View Owner and Attorney's Fees (Pages 12-13)

This section is a new section that addresses the City's concerns about the costs into perpetuity of enforcing View Restoration Permit decisions. Through the proposed ordinance the City would be providing to residents of Trousdale Estates:

- view restoration regulations developed after a long, thoughtful process;
- a view restoration review process that includes the opportunity for a Planning Commission decision, unlike most other cities with view restoration ordinances; and,
- City enforcement of the initial restorative action required to restore a view.

This new section places responsibility on the interested parties to maintain the view once it has been restored. In addition, to assist the parties in subsequent enforcement action, the ordinance now states, "...the prevailing party in any such civil action between view owner and foliage owner shall be entitled to recover its attorney's fees incurred in the litigation."

Apportionment of Costs (Pages 13-14)

The ordinance previously recommended by the Planning Commission proposed that all application fees (procedural costs) should be paid by the view owner. Cost for restorative action would be borne entirely by the view owner at the early steps but would transfer to the foliage owner as the process progressed, based on the level of foliage owner participation in the process and the level of restorative action required. This cost shifting was intended to encourage early resolution of view obstruction disputes. The City Council/Planning Commission Ad Hoc Committee expressed concern about the cost of the view restoration review process to view owners as well as the length of the process. In response to this concern, the non-binding arbitration step has been removed from the process, greatly reducing cost and time for the parties involved. Removing a step in the process, however, removes opportunities to more gradually shift costs in the process. As a result, the revised ordinance front loads costs to the view owner and then shifts some or all restorative action costs to the foliage owner at the Planning Commission step. The goal is to encourage foliage owner participation by the mediation level, thereby increasing the chances for resolution prior to the Planning Commission step, saving all parties time and money.

In the revised ordinance, all procedural costs for the initial neighbor outreach, mediation and Planning Commission hearing steps are still proposed to be paid by the view owner as there is no other effective way to ensure that the review process is cost-neutral to the City and it is the view owner who receives the most benefit from the process. Restorative Action costs would be paid by the view owner at the initial neighbor outreach and mediation steps to encourage foliage owner participation. If a case ends up before the Planning Commission, the foliage owner would pay fifty percent (50%) of restorative action cost if the foliage owner participated in mediation, and one hundred percent (100%) of the restorative action cost if the foliage owner did not participate in mediation.

The revised ordinance is now silent with regard to payment of ongoing maintenance costs at the initial neighbor outreach and mediation steps. Since these steps involve private discussions and agreements, the Planning Commission Ad Hoc Committee felt that determination of payment of maintenance costs should be left to the parties involved. The ordinance does specify that it is the foliage owner's responsibility to maintain foliage consistent with a View Restoration Permit issued by the City.

Code Enforcement Solution: New code limits on fence and hedge height in certain areas (Page 15)

The ordinance recommended by the Planning Commission includes an amendment to the "Walls, Hedges and Fences" section of the Trousdale development standards to provide a code enforcement solution to the problem of tall hedges that grow in such locations as to completely obscure neighbors' views. The Planning Commission Ad Hoc Committee supported the language presented at the May 26, 2011 Planning Commission meeting, with the removal of the word "walls," as walls may not be constructed on slopes in Trousdale, and the addition of language that captures tree hedges, as well as traditional hedges, in the designated area within five feet of an upslope pad that faces the Los Angeles Area Basin. No expansion of the area subject to the proposed additional hedge height restrictions is proposed at this time.

Consistency with City's Existing Tree Preservation Ordinance (Pages 15-16)

Sections 5 and 6 of the ordinance propose minor changes to the City's existing tree preservation ordinance so it is consistent with the proposed Trousdale view restoration ordinance. Definitions for "Arborist" and "Tree" are proposed to be slightly revised to be consistent with proposed definitions for the same terms in the Trousdale view restoration ordinance. In addition, the criteria for Building and Safety Division approval for removal of a protected tree were revised so that such trees could be removed in Trousdale if they block a view of the Los Angeles Area Basin from another property. The criteria currently only allow Building and Safety Division approval for removal of protected trees on the same property as the viewing area from which a view is obstructed. This will allow parties engaging in initial neighbor outreach or mediation to apply to the Building and Safety Division for removal of protected trees blocking a view on another property rather than applying to the Planning Commission for a permit to remove a protected tree. Protected trees that are proposed to be removed as part of a view restoration case being heard by the Planning Commission would be considered by the Planning Commission and no additional permit from the Building and Safety Division would be required.

PUBLIC OUTREACH AND NOTIFICATION

A public notice for this meeting was published in the *Beverly Hills Courier* on May 13, 2011 and mailed to each property owner in Trousdale Estates on May 16, 2011. Several letters were received prior to the May 26, 2011 Planning Commission meeting and entered into the record. As of the time of this report no additional letters have been received by the Planning Division.

ENVIRONMENTAL ASSESSMENT

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 was prepared and a resolution adopted by the Planning Commission on December 16, 2011 recommending the City Council adopt a negative declaration for the ordinance. 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.

Report Reviewed By:

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

Attachment 1

Draft Trousdale View Restoration Ordinance

**Redline version showing changes from the ordinance previously
recommended to the City Council**

ORDINANCE OF THE CITY OF BEVERLY HILLS
AMENDING THE BEVERLY HILLS MUNICIPAL CODE TO
ADOPT A VIEW RESTORATION PROGRAM FOR THE
TROUSDALE ESTATES AREA OF THE CITY

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS HEREBY

ORDAINS AS FOLLOWS:

Section 1. The City Council considered this Ordinance at a duly noticed public hearing on _____ and, at the conclusion of the hearing, introduced this Ordinance. Evidence, both written and oral, was presented during the hearing.

Section 2. An initial study of the potential environmental impact of this ordinance was prepared. The initial study concluded that the ordinance would not result in significant adverse environmental impacts; thus a negative declaration is the appropriate document to adopt in order to comply with the California Environmental Quality Act (CEQA). A notice of intent to adopt a negative declaration was published on June 11, 2010, and the proposed negative declaration and initial study were made available for a 20-day public review period from June 18, 2010 through July 8, 2010. No public comments on the proposed negative declaration or initial study were submitted during the comment period. Based on the information in the records regarding this ordinance, the City Council finds that there is no evidence suggesting that the ordinance ~~will~~may result in significant adverse impacts on the environment, and hereby adopts ~~a~~the negative declaration for this ordinance. The records related to this determination are on file with the City's Community Development Department, 455 N. Rexford Drive, Beverly Hills, California, 90210. The custodian of records is the Director of Community Development.

Section 3. City Council hereby adds a new Chapter 8 to Title 10 to the Beverly Hills Municipal Code (BHMC) regarding View Restoration as follows:

“Chapter 8. VIEW RESTORATION.

Article 1. Trousdale Estates View Restoration

10-8-101 PURPOSE AND INTENT. The intent of this ordinance is to restore and preserve certain views from substantial disruption by the growth of privately owned trees, vegetation, or a combination thereof while providing for residential privacy and security; maintaining the garden quality of the City; 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 the potential to block neighbors’ views before planting foliage and in maintaining foliage.

10-8-102 DEFINITIONS.

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

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

(B) **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.

(C) **FOLIAGE:** The aggregate of leaves, branches and trunks of one or more plants. Trees and hedges, including hedges that otherwise meet the standards of the Zoning Code, are included in the definition of foliage.

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

(E) **FORESTER:** An individual licensed in California as a Registered Professional Forester (RPF).

(F) **HEDGE:** ~~Foliage or landscaping as defined~~ The term “Hedge” shall have the same meaning as set forth in BHMC 10-3-100.

(G) **LANDSCAPE ARCHITECT:** A landscape architect registered by the State of California.

(H) **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.

(I) **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 Beverly Hills Municipal Code. For purposes of this section, a protectable view shall be determined from a point thirty-six inches (36”) above the finished grade of the level pad.

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

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

(L) **SAFE HARBOR PLANE:** The plane defined by points at the edge of view owner’s level pad to points at a maximum height of fourteen feet (14’) as measured from grade at the edge of an adjacent down-slope foliage owner’s principal building area that is farthest from the ~~side~~edge of view owner’s level pad facing a protectable view. (See illustration in section 10-8-103.)

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

(N) **TREE SURVEY:** A tree survey includes the following information for trees alleged to impair a view and all trees within the vicinity of the alleged view-impairing trees as determined by a Landscape Architect, Arborist, or Forester ~~as defined in this section:~~

- (1) Species of each tree, based on scientific name, and the common name;
- (2) Tree identifying number and location recorded on a map;
- (3) Physical measurements of the tree such as height and circumference: (tree circumference shall be measured on the primary trunk at a height of four feet, six inches (4’ - 6”) above natural grade;
- (4) Age of the tree;
- (5) Report of overall health and structural condition of the tree;

- (6) Life expectancy and suitability for preservation;
- (7) Potential restorative actions to address trees alleged to disrupt a view, impact of such restorative actions on trees, and long-term maintenance activities to prevent future potential view disruption; and,
- (8) Tree management recommendations.

The survey shall be signed or stamped by a registered Landscape Architect, Arborist or Forester ~~as defined in this section.~~

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

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

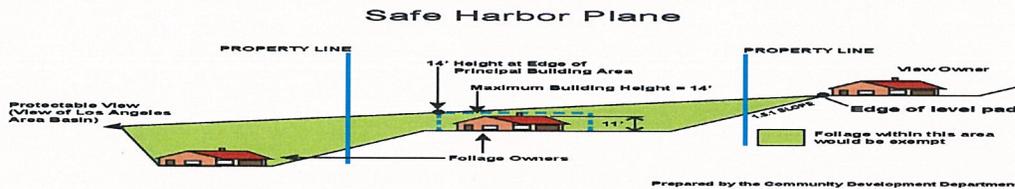
(P) VIEW RESTORATION GUIDELINES:

Guidelines for implementation of the ordinance ~~to be~~ prepared by the Community Development Department, adopted by the Planning Commission, and made available to the public.

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

(R) VIEWING AREA: An area from which a protectable view is assessed, located on the level pad that contains the primary residential structure. A viewing area ~~may~~shall be a room of the primary residential structure ~~at level finished grade(excluding hallways, bathrooms, closets and garages),~~ or a patio, deck or landscaped area ~~at level finished grade~~adjacent to the primary residential structure that does not extend beyond the level pad. There may be one or more viewing areas on a property. ~~For purposes of this section, a protectable view shall be determined from a point thirty six inches (36”) above the finished grade of the level pad.~~ The Reviewing Authority shall establish the Viewing Area or Areas as part of its finding that the View Owner has a Protectable View. The Reviewing Authority shall designate a location as a Viewing Area if, in the opinion of the Planning Commission, an average resident would spend material time at that location while at home on their property in order to observe the Protectable View.

10-8-103 EXEMPTION. The provisions of this article shall not apply to foliage where the highest point of the foliage is below a safe harbor plane as defined in this Article. The exemption applies to foliage on foliage owner's property. Foliage shall be maintained in accordance with all other requirements of this Code, including landscape maintenance standards.



10-8-104 PROCEDURES. ~~Violations of the Zoning or Building Code standards shall be addressed through the City's Code Enforcement Process. All other~~ Except for violations of Section 10-3.2616 (F), complaints received by the City regarding foliage blocking views in Trousdale Estates shall be addressed through the ~~pre-hearing~~ View Restoration Permit pre-application procedures in this Article. The procedures in this Article will be augmented by the View Restoration Guidelines.

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

(A) Parties' Option to Enter Binding Arbitration; Effect of Arbitration Decision. Nothing in this ordinance is intended to preclude interested parties from agreeing to resolve the dispute or disputes through binding arbitration, in which case compliance with the procedures set forth in this Section shall not be required. View Owners who are subject to a binding arbitration decision shall be precluded from applying for a View Restoration Permit as to any Foliage Owner who is a party to the binding arbitration decision.

(B) ~~(A)~~ Initial Neighbor Outreach.

(1) If a view owner wishes to pursue remedies available in the Article, the view owner shall notify each foliage owner in writing of concerns regarding disruption of the view owner's protectable view by foliage on foliage owner's property. ~~Said notice (the "Initial Neighbor Outreach"). This Initial Neighbor Outreach~~ shall be on a form provided by the City in the View Restoration Guidelines on file in the City, shall be signed by the view owner, and shall include a signed statement from view owner that view owner or the view owner's representative shall offer to meet with each foliage owner. The Initial Neighbor Outreach notification shall clearly identify the remedy sought by view owner and include a good faith estimate of the cost of the remedy.

(2) ~~A~~ Acceptance of Agreement to participate in the Initial Neighbor Outreach by each foliage owner shall be voluntary, but each foliage owner shall have no more than thirty (30) days from service of written request to respond to the view owner, unless foliage

owner requests a ten (10) day extension in writing or the response period is otherwise extended by mutual agreement of the view owner and the foliage owner. Failure to respond shall be considered rejection by the foliage owner. The ~~notification~~Initial Neighbor Outreach should be followed by discussions between view owner and each foliage owner to attempt to reach a mutually agreeable solution.

(3) If the view owner and a foliage owner are unable to resolve the matter, or if a foliage owner fails to respond to the Initial Neighbor Outreach ~~notice~~, the view owner may proceed with a mediation process. To participate in the City-sponsored mediation process, the view owner shall submit to the City proof of the Initial Neighbor Outreach in the form of a certified letter and mailing receipt. If a foliage owner did not respond to the Initial Neighbor Outreach ~~notice~~, then the view owner shall also provide an affidavit, signed under penalty of perjury, indicating the non-response of foliage owner.

(4) If, pursuant to an agreement between the view owner and a foliage owner, the view owner or foliage owner may damage or remove, or cause to be damaged or removed, any protected tree as defined in Section 10-3-2900 of ~~the BHMC on his/her property~~this Code, a tree removal permit must first be obtained in accordance with the requirements of ~~BHMC~~Section 10-3-2900.

(C) ~~(B)~~ **Mediation.**

(1) If the parties are unable to reach agreement through the Initial Neighbor Outreach process and the view owner wishes to pursue remedies available in ~~the~~this Article, ~~then the~~ view ~~owner shall contact a mediator, pursuant to View Restoration Guidelines.~~ View owner shall notify each foliage owner of an offer to mediate. ~~Said~~The notice shall be on a form provided by the City in the View Restoration Guidelines ~~on file in the City~~, shall be signed by view owner, and shall include a signed statement from the view owner that the view owner or the view owner's representative shall offer to meet with each potential foliage owner and a mediator. The ~~notification~~notice shall clearly identify the remedy sought by the view owner and include a good faith estimate of the cost of the remedy.

(2) Acceptance of mediation by each foliage owner shall be voluntary, but each foliage owner shall have no more than thirty (30) days from service of a written request for mediation to accept or reject the offer of mediation, unless the foliage owner requests a ten (10) day extension in writing or the response period is otherwise extended by mutual agreement of the foliage owner and the view owner. Failure to respond shall be considered rejection. Each mediation session may involve one or more view ~~owner~~owners and one or more foliage ~~owner~~owners at the discretion of the parties involved.

(3) ~~View~~The view owner and each foliage owner shall comply with requirements in the View Restoration Guidelines regarding submittal of information to the mediator.

(4) The mediator shall not have the power to issue binding orders for restorative action but shall strive to enable the parties to resolve their dispute at this stage. If an agreement is reached between the parties as a result of mediation, the mediator will encourage

the participants to prepare, and can assist in the preparation of, a private agreement for the parties to sign.

(5) If the view owner and a foliage owner are unable to resolve the matter, or if a foliage owner fails to respond to the mediation notice or ~~comply with~~ to participate in the mediation process as prescribed in the View Restoration Guidelines, then the view owner may proceed ~~with a non-binding arbitration process~~ to file for a View Restoration Permit.

~~(6) — 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.~~

~~(C) — Non-binding Arbitration.~~

~~(1) — If parties are unable to reach agreement through the Initial Neighbor Outreach process or through the mediation process, and view owner wishes to pursue remedies available in the Article, view owner shall offer by written notice to each foliage owner to submit the dispute to Non-binding Arbitration as prescribed in the View Restoration Guidelines. Notice shall be on a form provided by the City in the View Restoration Guidelines, shall be signed by view owner, and shall include a signed statement from view owner that view owner or view owner's representative shall offer to participate in non-binding arbitration with each potential foliage owner. The notification shall clearly identify the remedy sought by view owner and include a good faith estimate of the cost of the remedy.~~

~~(2) — Acceptance of non-binding arbitration by each foliage owner shall be voluntary but each foliage owner shall have no more than thirty (30) days from service of written request for non-binding arbitration to accept or reject the offer of non-binding arbitration, unless foliage owner requests a ten (10) day extension in writing or the response period is otherwise extended by mutual agreement of the view owner and foliage owner.~~

~~(3) — If foliage owner accepts non-binding arbitration with view owner, the parties shall agree on a specific arbitrator within twenty one (21) days. If the parties are unable to agree on an arbitrator within this period of time, the City's designated arbitrator shall be retained. A conference with an arbitrator shall take place not more than seventy five (75) days from the date an arbitrator is designated unless otherwise agreed to by the parties. If non-binding arbitration is rejected by a foliage owner, view owner shall provide the arbitrator with an affidavit signed under penalty of perjury indicating non-response of foliage owner and the arbitrator shall proceed with review, using the available information.~~

~~(4) — View owner and each foliage owner shall comply with requirements in the View Restoration Guidelines regarding submittal of information to the arbitrator. The arbitrator may request additional information at the arbitrator's discretion.~~

~~(5) — The arbitrator shall use the provisions of this Article and other relevant provisions of the Municipal Code to reach a fair resolution of the dispute, and shall submit a complete written report by certified mail to view owner and to each foliage owner that~~

~~originally received written request from View Owner for non-binding arbitration. This report shall include the arbitrator's conclusions with respect to the required findings in this section, a list of all recommended restorative actions, a schedule by which the restorative actions should be completed, and the allocation of the costs of restorative actions among the various parties pursuant to Section 10-8-109.~~

~~(6) If view owner and a foliage owner are unable to resolve the matter through non-binding arbitration, view owner may proceed with a public hearing process as set forth in Section 10-8-106.~~

~~(6)~~ (7) If, pursuant to an agreement between the view owner and a foliage owner, the view owner or ~~a~~ 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~~this Code, a tree removal permit must first be obtained in accordance with the requirements of ~~BHMC~~Section 10-3-2900.

10-8-105 CONTINUATION OF PROCESS AFTER AGREEMENT. If the view owner and a foliage owner enter into a private agreement ~~at any point in the pre-hearing process as a result of Initial Neighbor Outreach or mediation before the filing of a View Restoration Permit application~~, and that agreement is not adhered to by the foliage owner and the view owner wishes to pursue remedies available in ~~the~~this Article, then the view owner may continue with the pre-~~hearing~~application process at the step after the step at which the agreement was entered into, provided that less than two (2) years have passed since the date of the private agreement. If the view owner wishes to pursue remedies available in ~~the~~this Article and more than two (2) years have passed since the date of the private agreement, then the view owner shall begin view restoration procedures with the Initial Neighbor Outreach.

10-8-106 VIEW RESTORATION PERMIT.

(A) View Restoration Permit:

After exhaustion of the pre-hearing steps set forth in Section 10-8-104, and upon application by a view owner in a form satisfactory to the Director of Planning and Community Development, the reviewing authority may issue a View Restoration Permit to a view owner with a protectable view as defined in this section where the protectable view from a viewing area is substantially disrupted by foliage as defined in the Article and the reviewing authority makes all of the findings as ~~stated~~set forth in this section.

(B) Reviewing Authority:

The reviewing authority for a View Restoration Permit application shall be the Planning Commission. If a View Restoration Permit application includes review of a protected tree or trees ~~subject to as defined in~~ Section 10-3-2900 of the Beverly Hills Municipal Code, then the reviewing authority ~~shall conduct that review concurrent with review of the~~may order the removal of the tree or trees pursuant to Section 10-3-2902 as part of the restorative action required by a View Restoration Permit.

(C) Application:

Application for a View Restoration Permit shall be in writing on a form prescribed by the Director of Community Development and shall include but not be limited to the following information:

(1) Proof that view owner has attempted or completed the following procedures as required in this section:

Initial Neighbor ~~Reconciliation~~Outreach; and,
Mediation; ~~and~~,
~~Non-binding Arbitration~~.

~~(2) — A copy of the arbitrator's report.~~

(2) ~~(3)~~ Identification of the specific remedy sought by view owner and an estimate of cost.

(3) ~~(4) View~~A view restoration property survey documenting that the subject foliage is on foliage owner's property, ~~which~~that the foliage owner's property is within five hundred feet (500') of view owner's property, and the foliage is above the safe harbor plane.

(4) ~~(5)~~ Tree survey.

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

Once a complete application has been received, the City shall send a formal notice ~~to~~of the application to the foliage owner including a copy of the application, a copy of the View Restoration Guidelines and a request for an invitation to ~~have~~ staff and the reviewing authority to visit foliage owner's property with foliage owner's ~~approval~~authorization.

(D) Verification of Information:

All applicants for a View Restoration Permit shall submit an affidavit, signed under penalty of perjury, that the information provided in the application and other submitted documents is complete, true, and accurate based on ~~their~~the applicants' knowledge and reasonable investigation.

(E) Public Hearing Notice:

The reviewing authority shall hold a public hearing concerning each application for a View Restoration Permit.

Notice of any hearing held pursuant to this section shall be mailed at least thirty (30) days prior to such hearing by United States mail, postage paid to the applicant and all owners and residential occupants of property within five hundred feet (500') of the ~~subject~~

~~property~~view owner's and foliage owner's properties, as shown on the latest equalized assessment roll.

(F) Public Hearing:

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

(G) Restrictions and Conditions:

In approving a View Restoration Permit, the reviewing authority may impose such restrictions or conditions, including restorative action, as it deems necessary or proper to ~~satisfy the findings required for such permit~~restore a Protected View; protect the foliage owner's reasonable enjoyment of its property; protect the public health, safety and welfare; or any combination thereof.

(H) Appeals; Effective Date:

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

~~(I) — Appeals:~~

Any decision of the Planning Commission made pursuant to this section may be appealed to the City Council by view owner or foliage owner pursuant to the provisions set forth in Title 1, Chapter 4, Article 1 of this Code. The appeal period shall commence at the date of mailing of the Notice of Decision.

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

(I) ~~(J)~~ Required Findings:

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

(1) ~~Foliage to be removed is located on foliage owner's property, any part of which is within five hundred feet (500') of view owner's property.~~The View Owner has a Protectable View. The Reviewing Authority shall determine the Viewing Area or Areas in order to make this finding.

(2) ~~The View owner~~Owner has substantially complied with the Initial Neighbor ~~Reconciliation, Outreach and~~ mediation, ~~and non-binding arbitration~~ procedures of this Article.

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

~~(i) — Protectable views from view owner's property that the reviewing authority deems relevant, individually and in combination, and the relative importance of the protectable views sought to be restored.~~

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

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

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

~~(v) — View from Primary Living Area. The view most often observed by the occupants of the property from the primary living area. Primary living area for the purposes of this section shall mean the portion or portions of a residence from which a view is observed most often by the occupants relative to other portions of the residence. The determination of primary living area is to be made on a case by case basis by the reviewing authority.~~

(4) The reviewing authority may require the removal of a protected tree pursuant to Section 10-3-2902 if the reviewing authority finds that removal of the tree will not:

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

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

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

~~(5) (vi) Integrity of the Landscape Plan. The importance of~~ The foliage is important to the integrity of an existing landscape plan.

~~(vii) — Any findings and conclusions in the arbitrator’s report.~~

~~(6) (4) The proposed trimming, removal, or removal with replacement~~ Alteration of the foliage will ~~balance the reasonable expectation of view restoration of view owner with the reasonable expectation of~~ unreasonably impact the privacy and security of ~~foliage owner.~~ the Foliage Owner.

~~(7) (5) Trimming, removal, or removal with replacement~~ Alteration of the foliage ~~on foliage owner’s property~~ will ~~not~~ have a substantial adverse impact on stability of a hillside, drainage ~~of the property, or~~ 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:~~

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

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

(J) ~~(K)~~ Restorative Action:

The Planning Commission may, through issuance of a View Restoration Permit, require restorative action on foliage owner’s property. All restorative action must be performed by a licensed and bonded tree or landscape service unless mutually agreed upon by the view owner and the foliage ~~owner.~~ ~~Cost of subsequent maintenance of foliage on foliage owner’s property shall be borne by foliage owner unless otherwise agreed to by view~~ owner. Restorative action may include, but is not limited to the following:

(1) Trimming, culling, lacing, or reducing foliage to a height or width to be determined by the reviewing authority but not below the safe harbor plane.

(2) Requiring the complete removal of the foliage when the reviewing authority finds that the trimming, culling, lacing, or reduction of the foliage is likely to kill the foliage, threaten the public health, safety, or public welfare, or will destroy the aesthetic value of the foliage that is to be pruned or reduced. Removal of a healthy tree not on a list of nuisance trees maintained by the City is to be avoided unless the reviewing authority determines such removal is necessary to ~~restore~~ avoid substantial disruption of a protected view ~~in accordance with the findings.~~

(3) Requiring replacement foliage, with foliage owner's concurrence, when the reviewing authority finds that removal without replacement will cause a ~~significant~~substantial adverse impact on one or more of: a) the public health, safety and welfare; b) the privacy of the property owner; c) shade provided to the dwelling or property; d) the energy efficiency of the dwelling; e) the stability of the hillside; f) the health or viability of the remaining landscaping; or g) the integrity of the landscape plan.

(K) ~~(L)~~ **Notice of Decision:**

(1) Written Decision Required: The action taken by the reviewing authority shall be set forth in writing.

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

(i) ~~View~~The view owner, using the mailing address set forth in the application;

(ii) Each foliage owner ~~and each occupant of foliage owner's property~~that is named on the application, as listed on a current Tax Assessor's roll and to the occupant of the Foliage Owner's property if the Foliage Owner's address is different than the property on which the foliage is located.

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

(L) ~~(M)~~ **Indemnification:**

View owner shall defend, indemnify and hold harmless the City, its agents, officers, attorneys and employees from any claim, action or proceeding (collectively "Action") against the city or its agents, officers, attorneys or employees to attack, set aside, void or annul the Entitlements that may be granted by the City through issuance of a View Restoration Permit, and for any and all costs incurred in enforcing any View Restoration Permit, except for those costs of enforcement as the City may recover from a foliage owner. Indemnitor shall reimburse the city for any court costs and attorney's fees that the City may be required by a court to pay as a result of such Action. City may, at its sole and absolute discretion (1) participate in the defense of such Action undertaken by View Owner, or (2) retain separate counsel whose attorneys' fees and costs shall be paid by View Owner. Such participation in the defense of such Action or the retention of separate counsel by the City shall not relieve View Owner's obligations under this provision. The City shall promptly notify the View Owner of any such Action.

View owner shall indemnify the City against any and all claims resulting from the issuance, defense, implementation, or enforcement of the View Restoration Permit.

10-8-107 DECISIONS INTENDED TO RUN WITH THE LAND; DISCLOSURE. Decisions regarding view restoration shall be binding on all current and future owners of view owner's property and foliage owner's property, and such decisions must be disclosed by each owner to subsequent owners of the property.

10-8-108 INITIAL CITY ENFORCEMENT; SUBSEQUENT ENFORCEMENT BY VIEW OWNER AND ATTORNEY'S FEES

If a Foliage Owner fails to comply with the provisions of a View Restoration Permit, the City may, at its discretion, enforce its decision to gain initial compliance with the View Restoration Permit provisions.

Thereafter, any further disputes between a View Owner and a Foliage Owner regarding compliance with a View Restoration Permit may be resolved through filing a civil action in a court of competent jurisdiction. The prevailing party in any such civil action between a View Owner and a Foliage Owner shall be entitled to recover its attorney's fees incurred in the litigation.

10-8-109 ~~10-8-108~~-LANDSCAPE STANDARDS:

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

10-8-110 ~~10-8-109~~-APPORTIONMENT OF COSTS:

It is the intent that ~~administrative~~procedural fees referenced in this section shall reflect the actual cost of administrative activities required of the City to implement this Ordinance. Additional clarification of fees and costs may be included in the View Restoration Guidelines.

(A) Initial Neighbor Outreach

(1) Procedural Costs. Any costs associated with obtaining information, mailing the required notice, or preparing an agreement shall be borne by the view owner. ~~View~~The view owner shall pay the cost of a view restoration property survey or tree survey if such a survey is completed.

(2) Restorative Action. ~~Cost~~The cost of restorative action agreed upon by the view owner and the foliage owner shall be borne by the view owner unless otherwise agreed to by the foliage owner. ~~Cost~~

(3) Maintenance Costs. The cost of subsequent maintenance of foliage on the foliage owner's property shall be ~~borne by foliage owner unless otherwise agreed to~~allocated as agreed upon by the parties.

(B) Mediation

(1) Procedural Costs. ~~The City may provide up to three hours of free mediation cost for each application.~~Any costs associated with obtaining information, mailing the

required notice, or preparing an agreement shall be borne by the view owner. The view owner shall pay the cost of a view restoration property survey or tree survey if such a survey is completed.

~~(2) — The parties may elect to continue mediation beyond three hours with the cost borne by view owner unless otherwise agreed to by foliage owner. If the parties elect to choose their own mediator, the cost shall be borne by view owner unless otherwise agreed to by view owner and foliage owner. View owner shall pay the cost of a view restoration property survey or tree survey if such a survey is completed and shall bear costs associated with preparation of a mediation agreement, unless otherwise agreed to by the parties.~~

~~(3) — Restorative Action. Foliage owner shall pay ten percent (10%) of the cost of restorative action resulting from mediation in which foliage owner participates, unless the parties agree to a different arrangement. Cost of subsequent maintenance of foliage on foliage owner's property shall be borne by foliage owner unless otherwise agreed to by the parties.~~

~~(C) — Non-binding Arbitration~~

~~(1) — Procedural Costs. The cost of the arbitrator and preparation of the arbitrator's report shall be borne by view owner unless otherwise agreed to by the parties. View owner shall pay the cost of a view restoration property survey or tree survey on foliage owner's property if such a survey is completed, and shall bear costs associated with preparation of an agreement as a result of arbitration, unless otherwise agreed to by the parties.~~

~~(2) Restorative Action. Foliage owner shall pay twenty percent (20%) of the The cost of restorative action resulting from non-binding arbitration in which foliage owner participates, unless the parties agree to a different arrangement. Foliage owner shall pay fifty percent (50%) of the cost of restorative action resulting from non-binding arbitration in which foliage owner does not participate, unless the parties agree to a different arrangement. Cost of subsequent maintenance of foliage on foliage owner's property shall be borne by foliage agreed upon by the view owner and the foliage owner shall be borne by the view owner unless otherwise agreed to by the parties.~~

(3) Maintenance Costs. The cost of subsequent maintenance of foliage on the foliage owner's property shall be allocated as agreed upon by the parties.

(C) ~~(D)~~ **View Restoration Permit with Public Hearing**

(1) Procedural Costs. View owner shall bear the cost of application fees and other applications costs including the view restoration property survey and tree survey and the cost of any other information requested by the reviewing authority.

(2) Restorative Action.

(a) ~~Foliage~~The foliage owner shall pay one hundred percent (100%) of the cost of restorative action if the foliage owner did not participate in ~~non-binding arbitration or did not agree in writing with the arbitrator's recommended~~

~~restorative action mediation and the reviewing authority finds restorative action is required in the same amount or more than recommended in the arbitrator's report. Foliage owner shall pay fifty percent (50%) of the cost of restorative action if foliage owner participated in non-binding arbitration but did not agree in writing with the arbitrator's recommended restoration and the reviewing authority finds restorative action is required in an amount less than required by the arbitrator's report.~~

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

~~(3) (b) View owner shall pay one hundred percent (100%) of the cost of restorative action if foliage owner agreed in writing with the arbitrator's recommended restorative action and view owner proceeds to a public hearing seeking more restorative action than recommended by the arbitrator. Maintenance After Initial Restorative Action. The foliage owner shall pay for subsequent maintenance of the foliage consistent with the View Restoration Permit.~~

(D) ~~(E)~~ **Appeal to City Council**

(1) Procedural Costs. Appellant shall bear the costs of the appeal application including the appeal fee, public notice cost, and any other application costs.

(2) Restorative Action. ~~Cost~~The cost of restorative action resulting from an appeal to the City Council shall be apportioned in the same way as the cost of restorative action pursuant to a decision by the Planning Commission.

(3) Maintenance After Initial Restorative Action. The foliage owner shall pay for subsequent maintenance of the foliage consistent with the View Restoration Permit.

Section 4. The City Council hereby adds a new subsection F to section 2616 of Article 26 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows, with all other parts of Section 2616 remaining without amendment:

“F. Height Limit for Fences and Hedges meeting certain criteria. ~~Hedges planted~~

Fences: New fences on a slope of a down-slope property, that are within five horizontal feet from the edge of the level pad of an up-slope property, shall not extend above ~~the elevation a point thirty-six inches (36") above the finished grade~~ of the level pad on the upslope property in any area where the upslope property ~~may have a view of the Los Angeles Basin.”~~ faces the Los Angeles Area Basin. Notwithstanding Section 10-3-2759, any existing fence subject to this paragraph F that was constructed in accordance with applicable ordinances and regulations at

the time of construction shall be deemed a nonconforming structure, and may be maintained in its existing configuration unless more than fifty percent (50%) of the area of the fence measured from the outer perimeter of structure without deductions for open spaces in fencing, is replaced or reconstructed in any five (5) year period. If more than fifty percent (50%) of the combined area of the fence is replaced or reconstructed, then the replacement structure shall be treated as new for the purposes of this paragraph and shall be constructed so that the entire structure conforms with the development standards of this paragraph.

Hedges: Hedges planted on a slope of a down-slope property that are within five horizontal feet from the edge of the level pad of an up-slope property shall not extend above the finished grade of the level pad on the upslope property in any area where the upslope property faces the Los Angeles Area Basin.

Hedge, as used in this paragraph F, shall be defined as 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 to the top of the vegetation material having a horizontal distance of more than twenty four inches (24") in every four horizontal feet (4'), such growth shall not be considered a hedge for purposes of this paragraph F.

Section 5. The City Council hereby amends the definitions of the terms "Arborist" and "Tree" set forth in Section 10-3-2900 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows, with all other definitions listed in Section 10-3-2900 remaining without amendment:

"ARBORISTS: An individual certified as an arborist by the International Society of Arboriculture (ISA), or an individual who is currently listed as a Consulting Arborist by the American Society of Consulting Arborists (ASCA)."

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

Section 6. The City Council hereby adds a new paragraph D. to Section 10-3-2904 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows, with all other portions of Section 10-3-2904 remaining without amendment:

"D. The removal of a protected tree pursuant to a View Restoration Permit issued by the City in accordance with the provisions of Section 10-8-106 of the City's Municipal Code."