



STAFF REPORT  
CITY OF BEVERLY HILLS

For the Planning  
Commission Meeting of  
December 19, 2011

TO: The Planning Commission  
FROM: Michele McGrath, Senior Planner *MM*  
THROUGH: Jonathan Lait, AICP, City Planner  
SUBJECT: Review of Draft View Restoration Guidelines

EXECUTIVE SUMMARY

The City Council adopted the Trousdale View Restoration Ordinance on December 6, 2011. The ordinance directs preparation of View Restoration Guidelines for implementation of the ordinance to be prepared by staff and adopted by the Planning Commission (BHMC 10-8-102 (R)). Attached is a draft version of text to be included in the View Restoration Guidelines for Planning Commission comment. It is intended that the final Guidelines will be in a user-friendly format similar to the recently revised Architectural Commission application and will include a variety of graphics to illustrate terms and concepts. The report below draws the Commission's attention to specific questions regarding the Guidelines. It is anticipated that a public hearing on the Guidelines will be scheduled for the Planning Commission's January 12, 2012 meeting.

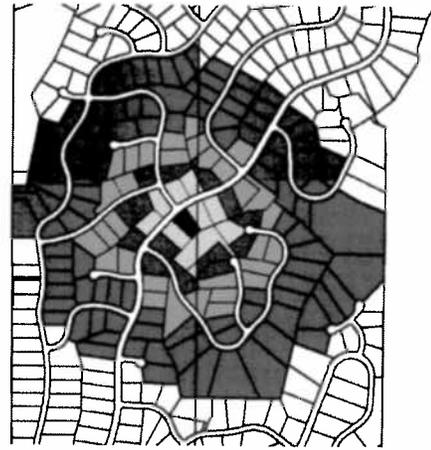
DISCUSSION

The attached draft Guidelines include questions and comments called out in a red font that will be addressed in this report. The specific areas for comment include:

- 500' Notice Radius
- Mediation Procedures
- Planning Commission Site Visits
- Indemnification Language-Related Costs to View Owner
- Alteration of Property Granted a View Restoration Permit
- Trousdale Landscape Standards.

### 500' Notice Radius

It is staff's recollection that the 500' notice radius required for the Planning Commission hearing was included in the Trousdale View Restoration Ordinance when it was contemplated that an application could include multiple view owners as well as multiple foliage owners. The wide notice area would ensure that all view owners with similar view obstruction issues would be aware of the public meeting and could attend and express their views. Subsequently, it was determined that it would be difficult to process applications with multiple view owners and this has been corroborated by City of Rancho Palos Verdes (RPV) staff which has the most experience with this type of ordinance. In addition, concern was expressed during the Trousdale View Restoration Ordinance review process that some



The view owner is represented by the black property in the center and the 500' notice radius extends to the pink area = over 50 property owners noticed.

view owners would attempt to gain a benefit even though another view owner was paying for the public hearing process. As a result, the Beverly Hills View Restoration Permit application allows only one view owner who may name one or more foliage owners in the application. The RPV view restoration guidelines require public notices only to the applicant and named foliage owners at the Planning Commission hearing stage. Staff suggests that the 500' notice radius be monitored to determine if it may need to be revised.

### Mediation Procedures

This step is prior to an application being made to the City and the parties are free to choose their own mediator with information that will be provided in the Guidelines. The Planning Commission has previously discussed the value of encouraging view dispute parties to use a mediator experienced in view restoration issues. To that end, staff requests that the Planning Commission consider recommending that the City enter into a contract for professional mediation services with costs paid by view owners seeking mediation. An on-call contract would allow the City to recommend a highly experienced mediator at a reasonable price. The evidence from other cities has been that use of a mediator experienced in view restoration issues results in a majority of view disputes resolved prior to reaching the Planning Commission.

### Planning Commission Site Visits

View Restoration Permit applications require comprehensive site visits by the Planning Commission. Please provide direction as to whether there is a preference to visit sites by bus as part of the public meeting or whether commissioners wish to visit sites on their own. The latter choice would require commissioners to contact applicants and set up site visits, with no more than two commissioners visiting at any one time. Visiting the sites by bus would require an additional expense that would be included in the fee to the View Owner applicant.

### Indemnification Language-Related Costs to View Owner

Pursuant to City Council direction at its November 3, 2011 hearing on the Trousdale View Restoration Ordinance, a City Council Ad Hoc meeting is being scheduled for January 2012 to discuss the ordinance's indemnification language, specifically exploring ways to reduce the financial burden on View Owners. This meeting may result in changes proposed to the ordinance and/or language that would be added to the guidelines. Staff does not expect new language to be ready for adoption of the View Restoration Guidelines in January so new language would likely be presented to the Planning Commission at a later date.

### Alteration of Property Granted a View Restoration Permit

The Trousdale View Restoration Ordinance does not address alteration of property granted a Trousdale View Restoration Permit. Staff proposes consideration of language to address this issue that could be included in the Guidelines:

"If a property is altered such that a viewing area previously established through a View Restoration Permit, is eliminated or is in a different location, the approved permit shall remain in full force and effect, unless a new application is filed by the subject property owner and the prior determination is amended or repealed by a subsequent decision of the City (Planning Commission or City Council)."

### Trousdale Landscape Standards

The Ordinance states, "The View Restoration Guidelines shall include landscape standards that include a list of nuisance trees that should not be planted in hillside view areas." (BHMC Sec. 10-8-109). Staff proposes including recommended trees and foliage as well as foliage and trees that are not recommended pursuant to the following criteria:

- Height at maturity
- Fire Safety
- Slope stability.

Staff requests direction as to how comprehensive such standards are expected to be and whether additional criteria should be considered. Staff is working with the City's Arborist, Fire Department and landscape experts to prepare standards.

#### RECOMMENDATION

It is recommended that the Planning Commission direct staff to prepare final guidelines for a public hearing at the Planning Commission's January 12, 2012 meeting.

MICHELE MCGRATH

#### Attachments:

1. Draft language for View Restoration Guidelines
2. View Restoration Permit Application Information
3. Rancho Palos Verdes Guidelines: Section Regarding Restorative Action

## **Attachment 1**

**Draft View Restoration Guidelines language**

# **DRAFT View Restoration Guidelines**

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## **ATTACHMENTS**

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- 2. Initial Neighbor Outreach: Forms and Letter Templates**
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# View Restoration Guidelines

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## I. Purpose

The Trousdale View Restoration Ordinance was adopted by the City Council on December 6, 2011 (Attachment 1). The purpose of the View Restoration Guidelines is to assist Trousdale property owners in using the Trousdale View Restoration Ordinance to restore views that have been impacted by foliage growth on neighbors' property. The Guidelines provide a step-by-step process that must be followed if a property owner wishes to preserve the opportunity to apply for a City public hearing of a view restoration case. The intent of the ordinance is to encourage resolution of view issues prior to the need for a public hearing since the public hearing process increases cost and time for property owners.

Neighbors are advised that while the ordinance is intended to help restore views, the ordinance also acknowledges the importance of residential privacy and security, maintaining the garden quality of the City, insuring the safety and stability of the hillsides and trees and vegetation in the City as an integral part of a sustainable environment. Neighbors are advised to be mindful of other neighbors' concerns and to find compromise solutions where appropriate. The ordinance is clear that, "It is not the intent of this ordinance to create an expectation that any particular view or views would be restored or preserved."

The Guidelines reference sections of the Trousdale View Restoration Ordinance as follows: (10-8-101). This is a reference to the location of the pertinent section in the Beverly Hills Municipal Code (BHMC) which is available online at the City's website, [www.beverlyhills.org](http://www.beverlyhills.org). The City's website includes a page for the Trousdale View Restoration Ordinance, and all applicable documents, and that can be accessed at [include link or web travel path here].

### Private Agreements

If neighbors wish to resolve view obstruction issues among themselves without using the City process, they are encouraged by the City to do so. Neighbors may agree to allow foliage to grow higher than the limits set in the ordinance so long as there are no health and safety issues (maintaining trees that are diseased and unstable or foliage that blocks traffic visibility) and so long as the foliage is not maintained in violation of the City's codes, such as the City's hedge height regulations, so that it negatively impacts neighbors.

### Binding Arbitration

Neighbors always have the option, at any time, to agree to binding arbitration as an alternative to the City process. (BHMC 10-8-104 (A))

# View Restoration Guidelines

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## II. Definitions (10-8-101)

The Guidelines use a number of terms defined in the ordinance. The most commonly referenced terms are defined here with additional explanation.

**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.

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

The 500' distance is measured from the edge of the View Owner's property. Any neighbor's property within 500' of the View Owner's property, even if it is just a small portion of the neighbor's property, would be considered to be within 500' of the View Owner's property. Foliage anywhere on properties that are within 500' of the View Owner's property may be subject to a View Restoration Permit request by the View Owner.

**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.

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

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

[Graphics will be inserted demonstrating these terms]

# View Restoration Guidelines

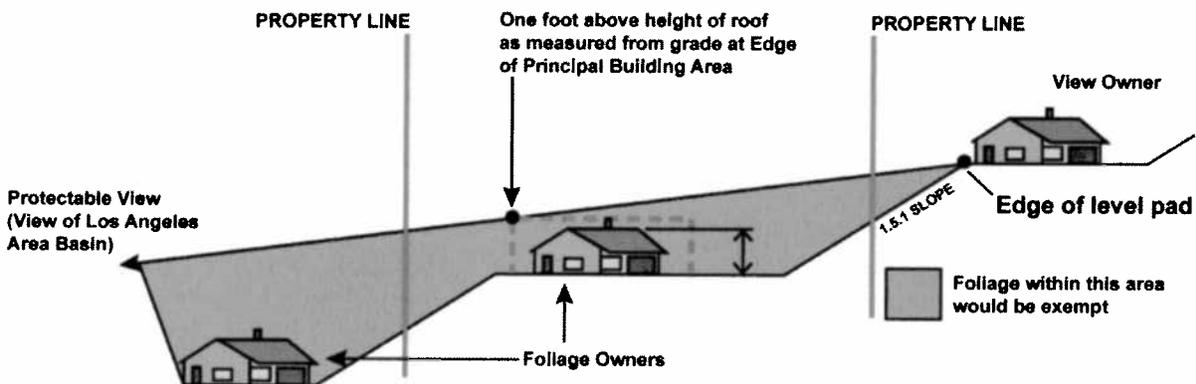
## III. View Restoration Procedures

### A. Exemption: Determine if Foliage is Exempt From the Trousdale View Restoration Ordinance

To create more certainty for property owners, the ordinance defines an area on each property, called the Safe Harbor Area, where foliage is exempt from the Trousdale View Restoration Ordinance.

**EXEMPTION. (10-8-103):** 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.

### Safe Harbor Area



Prepared by the Community Development Department

In the illustration above, the View Owner is at the upper right and all foliage growing in the green area would be exempt from a View Restoration Permit application by that View Owner.

The Safe Harbor Plane is defined below. It will be applied in each unique situation so different foliage owners may have different Safe Harbor Areas relative to different view owners. It is the responsibility of the View Owner to pay for any surveys necessary to determine the Safe Harbor Area.

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

# View Restoration Guidelines

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property's view is over the driveway or "pole" portion of a flag lot, then the maximum height of fifteen (15) feet from grade shall apply.

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

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

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

[More graphics to be included]

## **B. Pre-application Procedures**

Property Owners who wish to use the City's view restoration process must go through the following two steps: Initial Neighbor Outreach and Mediation, before an application may be made for a City public hearing.

### **Initial Neighbor Outreach** (See Attachment 2 for forms)

List steps. Provide sample letter to foliage owner(s) in Guidelines. View owners may call a planner at 310.285.1141 to obtain the current name and address of foliage owners to be contacted. All parties may call the same number to ask questions about the process. If agreement is reached at this step, the parties are encouraged to prepare a private agreement for the parties to sign. A sample agreement will be included in the Guidelines.

View Owner pays any administrative cost:

- Cost of mailing certified letter.

Professional assistance and restorative action is voluntary at this step and cost is up to the parties involved.

### **Mediation** (See Attachment 3 for forms)

List steps. Provide sample letter to foliage owner(s) in Guidelines. All parties may call a planner at 310.285.1141 with questions. Guidelines will include names, addresses, telephone

## View Restoration Guidelines

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numbers and websites for various reputable mediators including a professional mediator under contract to the City who specializes in view disputes. Encourage use of this mediator? Specify information that must be presented to the Mediator. If agreement is reached at this step, the parties are encouraged to prepare a private agreement for the parties to sign. A sample agreement will be included in the Guidelines.

View Owner pays any administrative cost:

- Cost of mailing certified letter;
- cost of mediator;
- cost of agreement preparation, if any.

Professional assistance and restorative action is voluntary at this step. The ordinance specifies that any cost incurred shall be borne by the view owner unless otherwise agreed to by the parties.

### **Continuation of Process After Agreement.** (10-8-105)

To encourage early resolution, the ordinance allows a view owner who enters into a private agreement with a neighboring foliage owner subsequent to the Initial Neighbor Outreach or Mediation steps, to resume the City's view restoration process if the private agreement proves unsuccessful. The City's process may be resumed at the step after the step at which the agreement was entered into, provided that less than two years have passed since the date of the private agreement. If neighbors reach agreement at the Initial Neighbor Outreach step and that agreement is not maintained, the view owner may continue to the Mediation step so long as the view owner maintains proof that each step was taken. (See Initial Neighbor Outreach and Mediation requirements.)

### **C. City Advisory Opinion** (See Attachment for forms)

A view owner has the option to pay a fee and request a non-binding view restoration opinion from staff. This may be an option for view owners who are unsure if they have a protectable view that is being substantially disrupted and would like an impartial opinion and it may also be an option for view owners who do not wish to go through a public hearing process. In both cases, the view owner would gain additional information that may be helpful in working with neighbors to resolve view issues.

The fee for a City Advisory Opinion is \$1,930.00. This is the minimum required to cover the City's cost to provide a written opinion to the view owner. Please note that City fees change each year, usually on July 1.

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

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If a view owner requests and receives a City Advisory Opinion, the view owner must wait one year (12 months) to apply for a City public hearing. This is due to the potential for a conflict between a City opinion and a City decision. If there is a 12-month period between the opinion and the decision, conditions would be different and it would be seen that the City decision would be completely independent of the earlier City Advisory Opinion. During this 12-month period, the view owner may complete the Initial Neighbor Outreach and Mediation steps and, if there is no resolution, complete a View restoration Permit application. The application may not be submitted until 12 months have elapsed from the date of the City Advisory Opinion.

### **D. View Restoration Permit Process**

#### Submitting an application

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

Please call 310.285.1141 and make a counter appointment with a planner to submit an application. You may need to leave a message with your request and a staff member will return your call. If you have questions about completing the application, please call 310.285.1141 and ask to speak with a planner.

#### Application Fees

The fee to file an application will be \_\_\_\_\_ as of February 17, 2011. This includes the following costs:

[List costs: application fee, fee for each additional foliage owner, notice cost, technology and documentation fees, etc.]

#### Enforcement Fees

If a View Restoration Permit is granted to the applicant by the Planning Commission, and the applicant requests City assistance to enforce the decision against a foliage owner, the applicant shall bear all cost of City enforcement. This includes the City's cost for any litigation arising from the View Restoration Permit decision. (See Ordinance Section 10-8-106 (L).)

[Insert here any fee, deposit or other view owner payment information that results from the upcoming City Council View Restoration Ad Hoc Committee discussion concerning the indemnification language in the ordinance.]

# View Restoration Guidelines

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## Once a View Restoration Permit Application has been Submitted:

### 1. Complete Application.

The application will be assigned to a planner. The planner will determine if the application is complete. The planner will contact the applicant and indicate if the application is complete or incomplete. If incomplete, the planner will provide the applicant a list of deficiencies in writing. If incomplete, the application will be held in abeyance until the application is complete. If the applicant does not submit the necessary information and the application remains incomplete for six (6) months, the City shall deny the application without prejudice, and shall provide notice to the applicant of that determination.

Once an application is deemed complete, the following steps shall occur to process the application and prepare for a Planning Commission hearing (See also attached flow chart to be inserted):

### 2. Notification of Foliage Owner(s).

Staff notifies the Foliage Owner(s) in writing, that a formal request for a View Restoration Permit hearing has been filed with the City, attaching a copy of the application, a copy of the View Restoration Guidelines and an authorization form that would allow staff and the Planning Commission to visit the Foliage Owner's property. Staff or City officials may visit Foliage Owner's property only with the Foliage Owner's written authorization. The signed authorization may be emailed to staff by the Foliage Owner.

### 3. Site Visits.

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

### 4. Public Notice.

Staff prepares and mails notices to all property owners within 500 feet of the View Owner's property at least 30 days prior to the hearing, using the address labels submitted by the View Owner with the application. [Note: On reflection, this distance may be too much and is left over from when it was contemplated that multiple view owners may submit an application. RPV send notices only to the parties to the application.]

### 5. Staff Report.

## View Restoration Guidelines

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

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

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

### 7. Public Hearing.

Planning Commission public hearing is held, usually in the afternoon. The applicant and Foliage Owner(s) may speak as can any member of the public who attends. The Planning Commission may, at its discretion, require the review of any case by a qualified soils engineer, arborist, landscape architect or other appropriate professionals based on the specific conditions of the case. The applicant shall be responsible for these additional costs. Staff will advise the applicant of the estimated cost for additional expert information. If the applicant refuses to pay for that expense, then the application will be administratively withdrawn by staff.

After all public testimony has been heard, the Planning Commission will close the public hearing and deliberate. Planning Commission decisions must be supported by substantial evidence in the record before the Commission. The Planning Commission reaches a decision by reviewing the required findings that must be made.

### **View Restoration Permit Findings:** (BHMC Sec. 10-8-106 (l))

[Summarize the findings here in plain language.]

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

### 8. Resolution: Restorative Actions.

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

# View Restoration Guidelines

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## **View Restoration Permit Restorative Action:** (BHMC Sec. 10-8-106 (J))

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

Restorative action may include trimming, culling, lacing or removal of foliage including trees. See a description of these actions attached (See Attachment to the staff report for sample language from Rancho Palos Verdes. Staff plans to include a simplified and user-friendly list of potential restorative actions including illustrations.)

### 9. Notice of Decision.

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

### 10. Completion of Restorative Action & Apportionment of Cost.

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

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

#### (2) Restorative Action.

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

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

Once the restorative work is performed, staff will document compliance with the resolution with digital photographs. Staff will provide copies of these images to the view owner and foliage owner(s) and will maintain copies with the final resolution.

### 11. Maintenance After Initial Restorative Action.

## View Restoration Guidelines

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

### 12. Non-Compliance with View Restoration Permit/City Enforcement.

If, after a period of time specified in the resolution, the restorative work is not performed, the applicant may request to the City in writing that the City proceed with enforcement of the resolution. (Sample letter to the City is Attachment X).

The ordinance requires the City to make an initial determination that a Foliage Owner has complied with a View Restoration Permit; however, any further dispute regarding a Foliage Owner's compliance with a View Restoration Permit may be resolved by a civil action initiated by the View Owner. (See Ordinance section 10-8-108.) In other words, after initial City enforcement, if foliage grows back and disrupts the view in violation of a View Restoration Permit, the View Owner may sue the foliage owner to gain compliance but the City will not be involved in enforcement of the View Restoration Permit at this point.

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

[Note: The extent of these costs and method of payment will be the subject of a City Council Ad Hoc Committee meeting that will take place in January, 2012. The results of that meeting may result in changes to the ordinance and/or additional information in the Guidelines.]

### 13. Limit on Number of Hearings Annually.

As stated in Section 4 of the ordinance, the City shall conduct no more than ten (10) View Restoration Permit hearings per calendar year. Both Planning Commission and City Council hearing will be included in this figure. The City will track this figure so applicants and potential applicants are aware of potential waiting periods for a hearing.

## E. Appeal to City Council

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

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

# View Restoration Guidelines

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## **Decisions Intended to Run With the Land (10-8-107)**

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

## **Other:**

### **Alteration of Property Granted a View Restoration Permit**

Proposed language not addressed in the ordinance: If a property is altered such that a viewing area previously established through a View Restoration Permit, is eliminated or is in a different location, the approved permit shall remain in full force and effect, unless a new application is filed by the subject property owner and the prior determination is amended or repealed by a subsequent decision of the City (Planning Commission or City Council).

**Landscape Standards for Trousdale** (This needs to be developed and possibly made available in a brochure format.)

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

List of recommended trees and nuisance trees as related to:

Height

Fire Safety

Slope Stability

## **Attachment 2**

### **View Restoration Permit Application Information**

## Draft View Restoration Permit Application Information

Application Information to be included on a form:

- Proof that View Owner has completed Initial Neighbor Outreach and Mediation steps
- Identification of specific remedy sought by the View Owner and an estimate of cost
- View Restoration Property Survey documenting the following:
  - Subject foliage is on identified Foliage Owner(s)' property.
  - Foliage Owner(s)' property is within 500' of View Owner's property.
  - Foliage is above the Safe Harbor Plane exemption .

(The View Restoration Property Survey is prepared by a licensed professional surveyor.)

- 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:

- (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.

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.

List professional websites for arborists, foresters and landscape architects.

- Affidavit attesting to accuracy of the application information submitted.
- Any other professional reports the view owner wishes to include such as a geological report related to slope stability.

## **Attachment 3**

### **Rancho Palos Verdes Guidelines: Section Regarding Restorative Action**

**View Restoration and Preservation Permit Guidelines and Procedures**  
**July 20, 2010**

2. Given the variety and number of options which are available to preserve indoor privacy, greater weight generally will be given to protecting outdoor privacy than to protecting indoor privacy.

**F. "For property located within the boundaries of the Miraleste Recreation and Parks District, the Commission shall also find that removal or trimming of foliage strikes a reasonable balance between meeting the purposes of Section 17.02.040 set forth in Section 1 of the Ordinance approved by the voters on November 7, 1989, and preserving the historical development of the Miraleste Recreation and Parks District with large numbers of trees."**

1. The Miraleste Recreation and Parks District has adopted a procedure for responding to view restoration and maintenance requests for foliage located on its property. Such properties owned by the District are not subject to the City's View Restoration Permit process.

2. Properties located within the boundaries of the District, but owned by a person or entity other than the District, are subject to the View Restoration Permit process and the additional finding above.

3. A map of the boundaries of the Miraleste Recreation and Parks District and a list of the streets within the Miraleste Homeowners' Association are attached.

## **VI. COMMISSION ACTION**

A. If the Commission is able to make all of the mandatory findings set forth in Section V (Mandatory Findings) above, then the Commission must determine the action(s) which must be taken to restore the view. Such action(s) may include culling, lacing, trimming, or removal of the foliage, which is significantly impairing the view from the viewing area. These terms are defined as follows:

1. Culling shall mean the removal of dead, decayed, or weak limbs or foliage from a tree or shrub.

2. Lacing shall mean a comprehensive method of pruning that systematically removes excess foliage from a tree or shrub, but maintains its shape.

3. Trimming shall mean the removal of limbs or foliage from a tree or shrub. Trimming includes, but is not limited to:

a. "Crown reducing", which is a comprehensive method of pruning that reduces a tree's or shrub's height and/or spread. Crown reduction entails the reduction of the top, sides or individual limbs by means of removal of the leaders or the longest portion of limbs to a lateral branch large enough to assume the terminal; and,

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b. "Crown raising", which is a comprehensive method of pruning that removes limbs and foliage from the lower part of a tree or shrub in order to raise the canopy of the tree or shrub over the view.

c. "Topping", which is the cutting of branches and/or trunk of a tree or shrub in a manner which substantially reduces the overall height of the tree or shrub.

4. Removal shall mean the removal and disposal of a tree or shrub, by grinding the shrub's or tree's stump to the existing grade or a depth below existing grade to be determined by the Planning Commission on a case-by-case basis. If existing topography or other physical limitations identified by the tree service contractor preclude mechanical stump grinding, the stump shall be flush cut to existing grade or as close to existing grade as possible, as determined by the tree service contractor. If a foliage owner wishes to keep the stump, he or she may so elect; then, in no case, may the remaining stump height exceed 18 inches above grade. Unless otherwise directed by the Commission in connection with the decision on a particular application, removal of the foliage shall not include the removal and disposal of a plant's root system.

B. If any tree or shrub that is ordered to be culled, laced, or trimmed dies within two years of the initial work being performed due to the performance of the work, the applicant or any subsequent owner of the applicant's property shall be responsible for providing a replacement tree or shrub to the foliage owner. This time period may be extended by the Commission if evidence is provided by a certified arborist that a longer monitoring period is necessary for a specific type of tree or shrub. However, if the city arborist determines that culling, lacing, or trimming said tree or shrub will in all probability cause the tree or shrub to die, and the foliage owner chooses not to accept removal and replacement as an option, either in writing or in public testimony during the public hearing, then the applicant will not be responsible for providing a replacement tree or shrub to the foliage owner. The replacement foliage shall be provided in accordance with the specifications described in section VI-E (Commission Action) of these Guidelines. If the work is performed by the foliage owner, said foliage owner shall forfeit the right to replacement foliage if the trimmed tree dies. If a tree or shrub dies it is subject to removal pursuant to Section 8.24.060 (property maintenance) of the RPV Municipal Code.

C. Complete removal of any remaining portion of the tree or shrub that does not significantly impair the view will only be ordered if the owner of the property where the foliage is located consents to the complete removal of the remaining tree or shrub and the Commission finds:

1. That upon the advice of the City's arborist, culling, lacing, or trimming the foliage to sixteen (16) feet or the ridge line is likely to kill the tree or shrub or threaten the public health, safety and welfare; or

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2. That upon the advice of the City's arborist, culling, lacing, or trimming the foliage to sixteen (16) feet or the ridgeline will destroy the aesthetic value of the foliage that is to be trimmed, laced or reduced in height.

D. In order to balance trimming, the commission may require trimming portions of a tree or shrub that are below 16 feet or the ridgeline provided the foliage owner agrees. If a foliage owner agrees to such trimming, then he must do so either in writing, within 30 days of final approval of a View Restoration or View Preservation Permit or in public testimony taken during the hearing. If the foliage owner does not agree, then the foliage owner will not be required to trim, lace or prune below that level and the applicant will not be required to pay for the additional work.

E. The Commission also may order the applicant to replace trees or shrubs which have been removed if the owner of the property where the foliage is located consents to the replacement of the tree or shrub and the Commission finds:

1. That removal without replacement foliage will cause a significant adverse impact on:

a. The public health, safety and welfare;

An example of this would be a situation where there is evidence before the Commission that replacement foliage is needed to help stabilize a slope or minimize slope erosion.

b. The privacy of the owner of the property where the foliage is located;

An example of this would be a situation where there is evidence before the Commission that replacement foliage to mitigate the loss of privacy provided by pre-existing foliage is needed to help screen or block views from the applicant's property into the foliage owner's usable yard area (deck, patio, pool/spa area, barbecue area) and/or residence (unless interior privacy can be achieved by other means).

c. Shade provided to the dwelling or the property where the foliage is located;

An example of this would be a situation where there is evidence before the Commission that replacement foliage is needed to help provide shade to an area of the foliage owner's property, such as a usable yard area (deck, patio, pool/spa area, barbecue area) or residence, that is receiving shade from the foliage that is to be removed.

d. The energy-efficiency of the dwelling where the foliage is located;

An example of this would be a situation where there is evidence before the Commission that replacement foliage is needed to help cool an area of the foliage owner's residence in the summer months that is being kept cool by foliage that is to be removed.

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e. The health or viability of the remaining landscaping where the foliage is located; or

An example of this would be a situation where there is evidence before the Commission that replacement foliage is needed to help provide shade to existing sun-sensitive landscaping on the foliage owner's property, that is receiving shade from the foliage that is to be removed.

f. The integrity of the landscaping of the property on which the foliage is located.

An example of this would be a situation where there is evidence before the Commission that replacement foliage is needed to replace foliage that is a focal point or integral element of an existing landscaping plan.

g. The function of the landscaping as screening of an unfinished wall or structural elements of a deck or other similar structure on an adjacent property.

An example of this would be a situation where there is evidence before the Commission that replacement foliage is needed to replace foliage that provides effective screening of unsightly feature(s) located on an adjacent upslope property. Such features may include but are not limited to unfinished walls, or the support elements underneath decks and structures.

F. The Commission shall ensure that replacement foliage is reasonably comparable to the foliage removed in terms of function and/or aesthetics while understanding that the replacement foliage will not be of the same height, size and breadth as the pre-existing mature foliage. For example, if replacement foliage is determined to be necessary to replace foliage located on a slope, the replacement foliage should be of a woody-root species variety that provides soil stability. The selection of the type of replacement foliage shall be made by the foliage owner subject to approval by the Community Development Director.

G. The Commission is not obligated to order replacement of every tree or shrub ordered removed with a new tree or shrub. For example, two new replacement trees may be able to provide the same level of privacy as five pre-existing trees that are ordered removed. Replacement trees or shrubs generally should be of a 15-gallon size, and should not be larger than a 24-inch box size, unless warranted by the need to reasonably protect privacy or exceptional circumstances and the tree or shrub that is being replaced is substantially larger than a 24-inch box size.

H. The Commission may require that a long-term foliage maintenance schedule be incorporated into the conditions of approval of an approved View Restoration Permit. The purpose of the maintenance schedule is to dictate the minimum frequency of future trimming (i.e. semi-annual, annual or biennial) based on the growth rates of the subject foliage so as to not significantly impair a view. Alternatively, the Commission may

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specify the amount of allowable growth as measured with respect to a fixed point of reference that will not significantly encroach into the view, and require that when this point is reached, the foliage owner may be required to trim the foliage back to the height established by the Commission. In establishing the maintenance schedule, the Commission may take into account seasonal dormant periods of the subject foliage, when trimming is least harmful to the foliage.

I. The Commission shall require that a property owner trim or remove foliage within ninety (90) days. If no date is specified by the Commission, the ninety day time frame shall commence upon the receipt of a letter from the City notifying the foliage owner to trim/remove the foliage. Such a letter is sent by the City once a trust account has been established by the applicant for the cost of the trimming/removal and tree or shrub replacement. Within the ninety (90) day time frame, but not less than two weeks before the trimming/removal date, the foliage owner shall inform City Staff of the date and approximate time the work is scheduled to occur, so that staff may be available on-site to ensure the work is performed in accordance with the Commission's decision. Staff strongly encourages that the foliage owner to schedule a date during the Monday thru Friday workweek. Staff's on-site monitoring of the tree trimming/removal work shall include, if necessary, directing the foliage owner to trim additional foliage that was not specifically designated by the Planning Commission but found by staff to be significantly impairing the same view after the specified foliage is trimmed, provided the Planning Commission had imposed such a condition in its decision. Said additional foliage shall be trimmed to the same height that was established by the Commission for the designated foliage and the applicant shall pay the additional expense of having the foliage trimmed.

If evidence is provided to the Commission that a tree or shrub, subject to tree trimming or removal, contains nests (or eggs) of birds that are designated under the Migratory Bird Treaty Act and California Department of Fish and Game Code, the Commission may require that the subject foliage be trimmed within a ninety (90) day time period after the nest(s) is determined by a qualified biologist or ornithologist to be inactive.

If evidence is provided to the Commission that it is less harmful to trim certain foliage during the foliage's dormant period, the Commission may require that the subject foliage be trimmed ninety (90) days from an established date. In situations where foliage is dormant during the winter months, the Commission shall require that the trimming be performed during the months of November through March. In situations where the Commission determines that not all of the foliage on a property needs to be trimmed during a specific time of the year, the Commission may take either of the following actions:

1. Establish a specified time period for trimming the time-sensitive foliage and establish a different time period for trimming the remaining foliage. This will require the foliage owner to perform two separate trimming actions.

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2. Establish a specified time period for trimming the time-sensitive foliage and require that the remaining foliage also be trimmed at that time.

J. Unless the Commission specifies the amount of allowable growth pursuant to subsection VI-H the Commission may require that all maintenance schedules incorporated into the conditions of approval of a View Restoration Permit be reviewed at a future date to allow the Commission an opportunity to assess the adequacy of the maintenance schedule, as well as the foliage owner's ability to maintain the foliage in compliance with the conditions of approval. The review date shall occur a minimum of one year after the initial trimming is performed. The specific date shall be set by the Commission at the time it makes its decision on a View Restoration Permit, and shall be based on the growth rates of the subject foliage, as well as any other factors that the Commission finds are pertinent to the decision. On or about the specified review date, City Staff will inspect the foliage sites and transmit a brief report to the Commission which describes whether the foliage is being maintained in accordance with the conditions of approval. The report shall also contain a recommendation from City Staff as to whether the maintenance schedule should be amended. The Commission shall consider the report and determine if a public hearing to amend the conditions of approval is necessary. If a public hearing is determined to be necessary, Staff shall transmit to the Commission a report with recommendations for additional or modified conditions of approval. Notice of the public hearing shall be provided in the same manner as required by Municipal Code Section 17.02.040 for the original public hearing. The Commission decision on the review hearing is appealable to the City Council pursuant to Municipal Code Section 17.02.040.

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The Commission shall require that an applicant submit one (1) to three (3) itemized estimates to the City for carrying out the work required by an approved View Restoration Permit. The work estimate shall also include tree or shrub removal and replacement costs for any tree or shrub that dies as a result of the ordered trimming, provided that the tree or shrub was not a tree or shrub identified by the City Arborist as likely to die as a result of said trimming. Said estimates shall be submitted within thirty (30) days after the adoption of the Resolution and shall include the cost to have an ISA certified tree trimmer or accredited arborist on site to perform or supervise the work being done. Said estimates are to be supplied by licensed landscape or licensed tree service contractors, acceptable to the City, which provide insurance by insurers in a form acceptable to the City, and shall include all costs of cleanup and removal of debris. Said insurance shall identify the property owner and the City (and its officers, agents and employees) as additionally named insureds, and shall have a coverage amount of no less than \$1,000,000 for each occurrence and no less than \$2,000,000 in the aggregate. In addition, the applicant shall pay to the City an amount equal to the lowest of the estimates and such funds shall be maintained by the City, in a City trust account until completion of the work as verified by City Staff.

Upon completion of the work, the foliage owner shall submit a copy of a paid invoice to the City. Within 10 calendar days of the submittal of the invoice and verification by City Staff of compliance, the City shall authorize the transmittal of funds