



STAFF REPORT  
CITY OF BEVERLY HILLS

**For the Planning  
Commission Meeting of  
January 12, 2012**

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

**EXECUTIVE SUMMARY**

The Planning Commission reviewed draft Trousdale View Restoration Guidelines at a Study Session on December 19, 2011. The Planning Commission provided the following input:

- The Guidelines should be as user-friendly as possible;
- Review reducing the 500' notice radius for Planning Commission View Restoration hearings;
- Recommended that the City contract with an experienced view restoration mediator;
- Recommended that Planning Commission view restoration site visits should be conducted as bus tours that are part of the public hearing;
- Confirmed support of the City Council's review of the indemnification language in the Ordinance with the goal of reducing the burden on view owners;
- Recommended that no additional language is needed regarding the alteration of properties granted a view restoration permit; and,
- Confirmed that the Trousdale landscape standards being developed by staff pursuant to the Ordinance should be limited to lists of foliage/trees recommended and not recommended for planting in Trousdale estates.

In addition, Chair Yukelson provided comments related to grammar and language clarifications that staff has incorporated into the draft guidelines.

### **DRAFT GUIDELINES**

Attached for the Planning Commission's review are the Guidelines further updated pursuant to the Planning Commission's direction. Due to competing priorities, staff was unable to complete the Guidelines but was able to substantially complete a draft View Restoration Permit application for Planning Commission review and comment.

### **ENVIRONMENTAL ASSESSMENT**

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

### **PUBLIC NOTICE**

A legal notice of public hearing was published on December 30, 2011 in the *Beverly Hills Courier* and a notice was published in the *Beverly Hills Weekly*, two newspapers of local circulation.

### **RECOMMENDATION**

It is recommended that the Planning Commission direct staff to prepare a final resolution adopting final guidelines for a public hearing at the Planning Commission's January 26, 2012 meeting.



MICHELE MCGRATH

#### **Attachments:**

1. Planning Commission Resolution (to be provided prior to the meeting)
2. Draft View Restoration Guidelines including the following attachments:
  - Adopted Trousdale View Restoration Ordinance
  - Draft Private Agreement
  - Draft Trousdale View Restoration Permit Application
3. Planning Commission Staff report dated, December 19, 2011
4. Public Notice

**Attachment 1**

**Planning Commission Resolution**

(To be provided prior to the meeting)

## **Attachment 2**

### **Draft View Restoration Guidelines**



## **Trousdale View Restoration Guidelines**

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## Trousdale View Restoration Guidelines

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### TABLE OF CONTENTS

1. **PURPOSE**
2. **ALTERNATIVE DISPUTE RESOLUTION**
  - Private Agreements
  - Binding Arbitration
3. **SUMMARY OF VIEW RESTORATION PROCESS**
4. **KEY TERMS**
5. **VIEW RESTORATION PROCEDURES**
  - Safe Harbor Exemption
  - Initial Neighbor Outreach
  - Mediation
6. **CITY ADVISORY OPINION**
7. **TROUSDALE VIEW RESTORATION PERMIT PROCESS (Public Hearing)**

### ATTACHMENTS

1. **Trousdale View Restoration Ordinance (Attached)**
2. **Private Agreement Form (Draft, Attached)**
3. **Initial Neighbor Outreach: Forms and Letter Templates (Not completed)**
4. **Mediation: Forms and Letter Templates (Not completed)**
5. **City Advisory Opinion (Not completed)**
  - Application
  - Decision Form
6. **View Restoration Permit Application (Draft, Attached)**
7. **Restorative Actions (Not completed)**
8. **Landscape Standards for Trousdale Estates (Not completed; a draft will be presented at the meeting)**



## Trousdale View Restoration Guidelines

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### 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 substantially disrupted 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 early 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, to be cordial, and to find compromise solutions outside of the view restoration process. The ordinance only protects views of the Los Angeles area basin. This includes city lights and views toward the ocean but does not include ridges or canyons not located in a line of sight to the Los Angeles area basin.

The Guidelines reference sections of the Trousdale View Restoration Ordinance (Attachment 1) which is part of the Beverly Hills Municipal Code (BHMC) available online at the City's website, [www.beverlyhills.org](http://www.beverlyhills.org). The City's website includes a webpage for the Trousdale View Restoration Ordinance, and all applicable documents, all of which can be accessed at [include web link here].

### Alternative Dispute Resolution

**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. **Attachment 2** to the Guidelines is a private agreement template neighbors may use and modify to suit their needs.

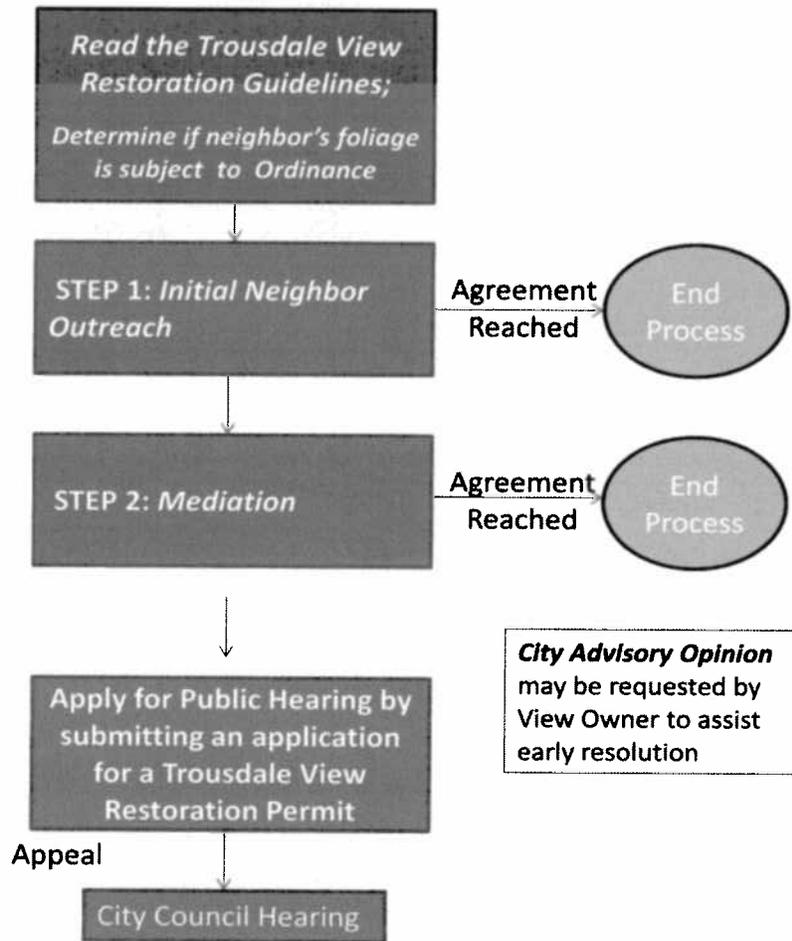
**Binding Arbitration.** Neighbors always have the option, at any time, to agree to binding arbitration as an alternative to the City process. Additional information on the arbitration process (alternative dispute resolution) is available through the following source:

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



# Trousdale View Restoration Guidelines

## Trousdale View Restoration Process



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

**Litigation:** The Trousdale View Restoration Ordinance includes indemnification language that requires an applicant to pay the City's litigation costs if a City decision made on behalf of that applicant is litigated. This cost could be substantial but an applicant could also choose, at that point, not to pursue enforcement of a City decision. It is noted that the City Council is reviewing ways to reduce the financial burden of this requirement on applicants.



## Trousdale View Restoration Guidelines

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### Key Terms

The Guidelines use a number of terms defined in the Trousdale View Restoration Ordinance (Definitions Section). The most commonly referenced terms are defined here.

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

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

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

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

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

[Graphics will be inserted demonstrating these terms]



## Trousdale View Restoration Guidelines

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### View Restoration Procedures

*Read the Trousdale View  
Restoration Guidelines;  
Determine if neighbor's foliage  
is subject to Ordinance*

#### Safe Harbor Exemption:

Not all foliage is subject to the Trousdale View Restoration Ordinance. To create more certainty for property owners, the ordinance defines an area on each property, called the Safe Harbor Area, where foliage is exempt from the Ordinance: The Safe Harbor Area is the area below a Safe Harbor Plane defined in the Ordinance:

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

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

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

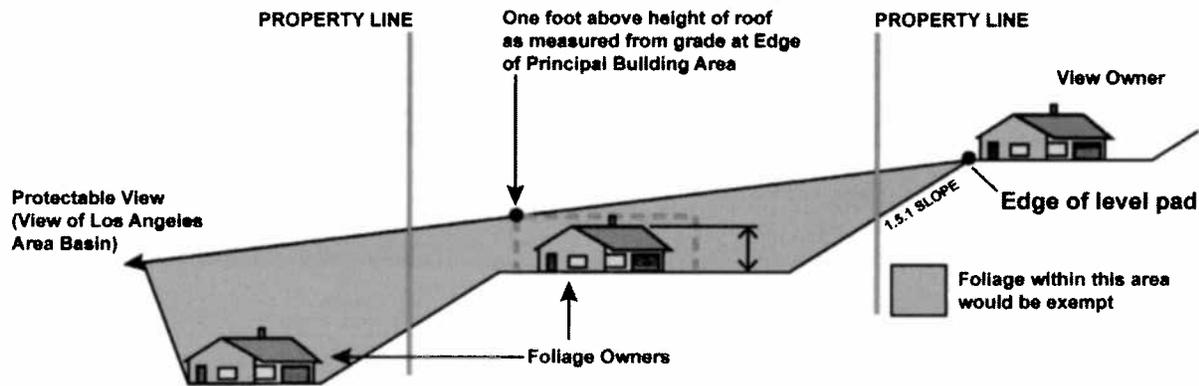
If a view owner's level pad is less than one (1) foot above the height of the roof of the primary residential structure on foliage owner's property, then the safe harbor plane shall be defined as a plane above the foliage owner's level pad at a height of one (1) foot above the height of the roof of the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

[More graphics to be included]



# Trousdale View Restoration Guidelines

## 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

Please note that the Safe Harbor Plane will result in different Safe Harbor Areas on different properties and in relation to different Foliage Owners. It is the responsibility of the View Owner to pay for any surveys necessary to determine the Safe Harbor Area.

**STEP 1: Initial Neighbor Outreach**

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 X 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.



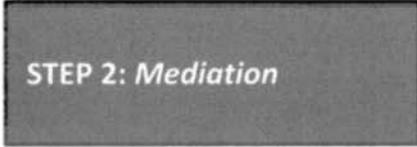
## Trousdale View Restoration Guidelines

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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.



*STEP 2: Mediation*

### **Mediation** (See Attachment X 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 numbers and websites for various reputable mediators including a professional mediator under contract to the City who specializes in view disputes. 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.



## Trousdale View Restoration Guidelines

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### **Continuation of City View Restoration Process after Private Agreement.**

Neighbors may enter into a private agreement at any time in the process (See page 1 of Guidelines and Attachment 2). To encourage private agreements, 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.

A View Owner may resume the City's View Restoration process at the next step after which a private agreement was entered into, provided that less than two years have passed since the date of the private agreement. For example, if neighbors reach agreement at the Initial Neighbor Outreach step and that agreement is not maintained, the view owner may continue to the Mediation step so long as the view owner maintains and can show proof that each step was taken pursuant to . (See Initial Neighbor Outreach and Mediation requirements.)

### **City Advisory Opinion** (See Attachment X for forms)

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

The fee for a City Advisory Opinion is \$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.

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. During this 12-month period, the view owner may complete the Initial Neighbor Outreach and Mediation steps and, if there is no resolution, complete a View restoration Permit application; however, the application may not be submitted until 12 months have elapsed from the date of the City Advisory Opinion.



## Trousdale View Restoration Guidelines

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### **Trousdale View Restoration Permit Process**

Please See **Attachment 6**, the Trousdale View Restoration Permit Application for forms and information.

#### **Submitting an Application**

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

#### **Once a Complete View Restoration Permit Application has been Submitted**

##### **1. Assigned to Planner**

The application will be assigned to a planner. The planner will determine if the application is complete. 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, 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.

##### **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

## Trousdale View Restoration Guidelines

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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.

### **5. Staff Report.**

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

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

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

### **6. Public Hearing.**

A Planning Commission public hearing is held, usually in the afternoon. The hearing will be preceded by a bus tour, to which members of the public are invited as part of the public hearing. The tour is for the Planning Commission to review the sites involved in the case. 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

## Trousdale View Restoration Guidelines

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applicant of the estimated cost for additional expert information. If the applicant refuses to pay for that expense, then the application will be withdrawn by staff.

Please note that parties to the case should not contact planning commissioners prior to the hearing.

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.

[Summarize the findings in plain language in an attachment to application.]

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.

### **7. 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.

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 (Staff working on Restorative Actions attachment with a user-friendly list of potential restorative actions including illustrations.)

### **8. Notice of Decision.**

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

## Trousdale View Restoration Guidelines

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### **9. Completion of Restorative Action & Apportionment of Cost.**

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

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

### **10. Maintenance After Initial Restorative Action.**

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

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

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

The City may 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 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.

## Trousdale View Restoration Guidelines

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[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.]

### **12. 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.

### **13. Appeal to City Council**

A decision of the Planning Commission on a view-related permit may be appealed to the City Council within 14 days of the Planning Commission's decision. Appeal forms are available in the City Clerk's office which may be contacted at 310.285.2400. The form must be submitted to the City Clerk within 14 days of the decision with the required fee 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.

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## **OTHER**

### **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.

**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.

# **Trousdale View Restoration Guidelines**

## **Attachment 1**

### **Trousdale View Restoration Ordinance**

**Disclaimer:**

This is provided for informational purposes only. The formatting of this ordinance may vary from the official hard copy. In the case of any discrepancy between this ordinance and the official hard copy, the official hard copy will prevail.

**ORDINANCE NO. 11-O-2616****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 November 3, 2011, and, at the conclusion of the hearing, continued the matter to the meeting of November 15, 2011, for introduction. 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 January 3, 2011, and the proposed negative declaration and initial study were made available for a 20-day public review period from January 6, 2011, through January 27, 2011. 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 may result in significant adverse impacts on the environment, and hereby adopts 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 also the intent of this ordinance to educate residents to consider the potential to block neighbors' views before planting foliage and in maintaining foliage. It is not the intent of this ordinance to create an expectation that any particular view or views would be restored or preserved.

**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) **CITY ADVISORY OPINION:** A non-binding opinion rendered by the Director of Community Development or his/her designee, to a view owner who requests such an opinion and pays a fee as set by the City Council.

(C) **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.

(D) **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.

(E) **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.

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

**(G) HEDGE:** The term "Hedge" shall have the same meaning as set forth in BHMC 10-3-100.

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

**(I) 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.

**(J) 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.

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

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

**(M) SAFE HARBOR AREA:** The area below a safe harbor plane.

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

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

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

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

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

**(P) 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.

**(Q) 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.

**(R) VIEW RESTORATION GUIDELINES:**

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

**(S) VIEW RESTORATION PROPERTY SURVEY:** A survey completed by a certified professional, such as an ALTA (American Land Title Association) survey, of view owner's site and foliage owner's site that may include calculation of the safe harbor plane as

defined in this Article and any other information or calculations as may be of assistance to a reviewing authority pursuant to this section.

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

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

**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.

Description: Description: Safe Harbor Area 2011 rev2

**10-8-104 PROCEDURES.** Except for violations of Section 10-3.2616, complaints received by the City regarding foliage blocking views in Trousdale Estates shall be addressed through the 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 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) 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 (the "Initial Neighbor Outreach"). This Initial Neighbor Outreach shall be on a form provided by the City in the View Restoration Guidelines on file in the City, shall be signed by the view owner, and shall include a signed statement from view owner that view owner or the view owner's representative shall offer to meet with each foliage owner. The Initial Neighbor Outreach notification shall clearly identify the remedy sought by view owner and include a good faith estimate of the cost of the remedy, and an offer to pay that amount.

(2) Agreement to participate in the Initial Neighbor Outreach by each foliage owner shall be voluntary, but each foliage owner shall have no more than thirty (30) days from service of written request to respond to the view owner, unless foliage owner requests a ten (10) business days extension in writing or the response period is otherwise extended by mutual agreement of the view owner and the foliage owner. Failure to respond shall be considered rejection by the foliage owner. The Initial Neighbor Outreach should be followed by discussions between view owner and each foliage owner to attempt to reach a mutually agreeable solution.

(3) If the view owner and a foliage owner are unable to resolve the matter, or if a foliage owner fails to respond to the Initial Neighbor Outreach, the view owner may proceed with a mediation process. To participate in the City-sponsored mediation process, the view owner shall submit to the City proof of the Initial Neighbor Outreach in the form of a certified letter and mailing receipt. If a foliage owner did not respond to the Initial Neighbor Outreach, then the view owner shall also provide an affidavit, signed under penalty of perjury, indicating the 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 this Code, a tree removal permit must first be obtained in accordance with the requirements of Section 10-3-2900.

**(C) Mediation.**

(1) If the parties are unable to reach agreement through the Initial Neighbor Outreach process and the view owner wishes to pursue remedies available in this Article, then, as a prerequisite, the view owner shall notify each foliage owner of an offer to mediate. The notice shall be on a form provided by the City in the View Restoration Guidelines, shall be signed by view owner, and shall include a signed statement from the view owner that the view owner or the view owner's representative shall offer to meet with each potential foliage owner and a

mediator. The notice shall clearly identify the remedy sought by the view owner and include a good faith estimate of the cost of the remedy.

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

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

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

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

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

**(D) City Advisory Opinion.** A view owner may request a non-binding advisory opinion at any time prior to the view owner filing an application for a view restoration permit in accordance with the requirements of Section 10-8-106. If the view owner wishes to pursue the process set forth in Section 10-8-106, the view owner must wait twelve (12) months from receipt of the City Advisory Opinion to file a view restoration permit application.

**10-8-105 CONTINUATION OF PROCESS AFTER AGREEMENT.** If the view owner and a foliage owner enter into a private agreement as a result of Initial Neighbor Outreach or mediation before the filing of a View Restoration Permit application, and that agreement is not adhered to by parties to the agreement, the parties may pursue civil litigation; however, if the view owner wishes to pursue remedies available in this Article, then the view owner may continue with the pre-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 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 set forth in this section.

**(B) Reviewing Authority:**

The reviewing authority for a View Restoration Permit application shall be the Planning Commission. If a View Restoration Permit application includes review of a protected tree or trees as defined in Section 10-3-2900 of the Beverly Hills Municipal Code, then the reviewing authority 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 Outreach; and,  
Mediation.

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

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

(4) A Tree survey.

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

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

**(D) Verification of Information:**

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

**(E) Public Hearing Notice:**

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

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

**(F) Public Hearing:**

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

**(G) Restrictions and Conditions:**

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

**(H) Appeals; Effective Date:**

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

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

**(I) Findings:**

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

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

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

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

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

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

(iii) View Diminished by Other Factors. The extent to which the view has been or is diminished by other factors such that removal of the foliage at issue will not substantially restore the Protectable View. Other factors that may be considered include, but

are not limited to, permitted structures, and foliage that is not on a private property within five hundred feet (500') of the View Owner's property.

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

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

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

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

(a) The foliage is important to the integrity of an existing landscape plan.

(b) Alteration of the foliage will unreasonably impact the privacy and security of the Foliage Owner.

(c) Alteration of the foliage will have a substantial adverse impact on stability of a hillside, drainage, or erosion control.

(d) Restoration of the Protectable View would not substantially enhance a reasonable person's enjoyment of the view owner's property taken as a whole.

**(J) Restorative Action:** The Reviewing Authority may, through issuance of a View Restoration Permit, require restorative action on foliage owner's property. All restorative action must be performed by a licensed and bonded tree or landscape service unless mutually agreed upon by the view owner and the foliage owner. Restorative action may include, but is not limited to the following:

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

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

(3) Requiring replacement foliage when the reviewing authority finds that removal without replacement will cause a substantial adverse impact on one or more of: a) the public health, safety and welfare; b) the privacy of the property owner; c) shade provided to the

dwelling or property; d) the energy efficiency of the dwelling; e) the stability of the hillside; f) the health or viability of the remaining landscaping; or g) the integrity of the landscape plan.

**(K) Notice of Decision:**

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

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

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

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

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

**(L) Indemnification:**

View owner shall defend, indemnify and hold harmless the City, its agents, officers, attorneys and employees from any claim, action or proceeding (collectively "Action") against the city or its agents, officers, attorneys or employees to attack, set aside, void or annul the Entitlements that may be granted by the City through issuance of a View Restoration Permit, and for any and all costs incurred in enforcing the View Restoration Permit, except for those costs of enforcement as the City may recover from a foliage owner. Indemnitor shall reimburse the city for any court costs and attorney'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 PRIVATE RIGHT OF ACTION; SUBSEQUENT ENFORCEMENT BY VIEW OWNER AND ATTORNEY'S FEES.**

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

At any time, before or after an initial determination of compliance with a View Restoration Permit by the City, any View Owner may sue in Los Angeles superior court to enjoin violation of, or compel compliance with, a View Restoration Permit. The prevailing party in any such civil action between a View Owner and a Foliage Owner shall be entitled to recover its reasonable attorney fees and costs incurred in the litigation.

**10-8-109 LANDSCAPE STANDARDS.**

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

**10-8-110 APPORTIONMENT OF COSTS.**

It is the intent that procedural fees referenced in this section shall reflect the actual cost of administrative activities required of the City to implement this 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. The view owner shall pay the cost of a view restoration property survey or tree survey if such a survey is completed.

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

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

**(B) Mediation:**

(1) Procedural Costs. Any costs associated with obtaining information, mailing the required notice, or preparing an agreement shall be borne by the view

owner. The view owner shall pay the cost of a view restoration property survey or tree survey if such a survey is completed.

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

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

**(C) View Restoration Permit with Public Hearing:**

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

(2) Restorative Action.

(a) The foliage owner shall pay one hundred percent (100%) of the cost of restorative action if the foliage owner did not participate in mediation and the reviewing authority finds restorative action is required.

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

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

**(D) Appeal to City Council**

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

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

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

Section 4. To limit any fiscal impact of the Trousdale Estates View Restoration Program, the City shall conduct no more than ten (10) View Restoration Permit hearings per calendar

year. The City may establish a means of accepting applications for View Restoration Permit hearings that ensures all property owners equal opportunity to receive a hearing.

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.”

Section 7. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.

Section 8. The City Council hereby finds on the basis of the whole record before it, including the initial study and any comments received, that there is no substantial evidence that this proposed ordinance will have a significant effect on the environment and that the negative declaration prepared in connection with this ordinance represents the independent judgment and analysis of the City and the City Council. Therefore, the City Council hereby adopts the Negative Declaration and approves this Ordinance, and authorizes the Mayor to execute the Ordinance on behalf of the City. The documents and other material which constitute the record of proceedings upon which this

decision is based are located in the City's Community Development Department. The custodian of records is the Director of Community Development.

Section 9. Trial Period. A report regarding the implementation of this ordinance shall be provided to the Planning Commission and City Council within 12 months of the effective date of the ordinance.

Section 10. Publication. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage in accordance with Section 36933 of the Government Code, shall certify to the adoption of this Ordinance, and shall cause this Ordinance and his certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

Section 11. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

Adopted: December 6, 2011

Effective: January 6, 2011

\_\_\_\_\_  
BARRY BRUCKER  
Mayor of the City of Beverly Hills, California

ATTEST:

\_\_\_\_\_  
(SEAL)  
BYRON POPE  
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
LAURENCE S. WIENER  
City Attorney

\_\_\_\_\_  
JEFFREY KOLIN  
City Manager

\_\_\_\_\_  
SUSAN HEALY KEENE AICP  
Director of Community Development

# **Trousdale View Restoration Guidelines**

## **Attachment 2**

### **Private Agreement Form**

## Sample View Restoration Private Agreement

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

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

The "Foliage Owner" agrees to the following:

1. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

1. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Additional Items to Consider:

"Foliage Owner" \_\_\_\_\_ Date: \_\_\_\_\_  
Signature

"View Owner" \_\_\_\_\_ Date: \_\_\_\_\_  
Signature

# **Trousdale View Restoration Guidelines**

## **Attachment 6**

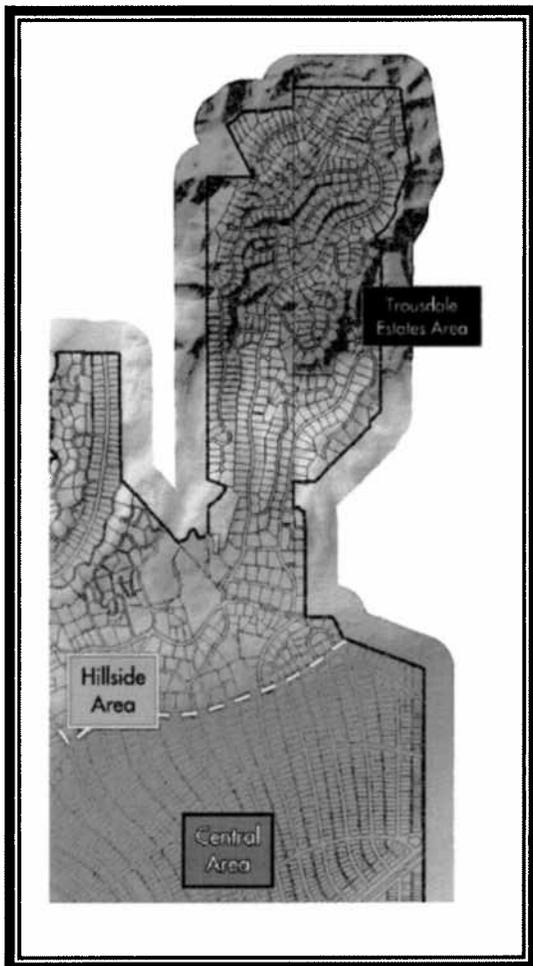
### **View Restoration Permit Application**



## Trousdale View Restoration Application

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

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



### APPLICATION TIPS

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

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

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

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

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

**Litigation Costs.** The Trousdale View Restoration Ordinance includes indemnification language that requires an applicant to pay the City's litigation costs if a City decision made on behalf of that applicant is litigated. This cost could be substantial but an applicant could choose, at that point, not to pursue enforcement of a City decision. It is noted that the City Council is reviewing ways to reduce the financial burden of this requirement on applicants.

For more information, please  
contact a planner at:

**310.285.1141**

# Trousdale View Restoration Application

## Checklist

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- ✓ Complete Application Form
- ✓ Attach Proof that View Owner has completed Initial Neighbor Outreach and Mediation Steps
- ✓ Attach the following professional reports:

- ❖ View Restoration Property Survey

*Must be prepared by a licensed professional surveyor 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 .

- ❖ 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:*

- Species of each tree, based on scientific name, and the common name;
- Tree identifying number and location recorded on a map;
- 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;
- Age of the tree;
- Report of overall health and structural condition of the tree;
- Life expectancy and suitability for preservation;
- 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,
- Tree management recommendations.

**The survey shall be signed or stamped by a registered Landscape Architect, Arborist or Forester.**

# Trousdale View Restoration Application

## Checklist

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NOTE: 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.

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



## View Restoration Permit Application

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### A Applicant Information

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

### B Foliage Owner 1

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

### Foliage Owner 2

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

*Please attach additional sheets for more foliage owners*

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

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

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### D Description of view that is being obstructed (also specify the particular area of your property/home where the view can be seen)

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

<b>Foliage Owner 1</b>		
<b>Name:</b>		
<b>Address:</b>		
<input type="checkbox"/> Subject foliage is on identified Foliage Owner(s)' property <input type="checkbox"/> Foliage is above the Safe Harbor Plane exemption <input type="checkbox"/> Foliage Owner(s)' property is within 500' of View Owner's property		
<b>Foliage Type</b>	<b>Height</b> <i>(approximate measured from the base of the tree)</i>	<b>Diameter</b>

<b>Foliage Owner 2</b>		
<b>Name:</b>		
<b>Address:</b>		
<input type="checkbox"/> Subject foliage is on identified Foliage Owner(s)' property <input type="checkbox"/> Foliage is above the Safe Harbor Plane exemption <input type="checkbox"/> Foliage Owner(s)' property is within 500' of View Owner's property		
<b>Foliage Type</b>	<b>Height</b> <i>(approximate measured from the base of the tree)</i>	<b>Diameter</b>

*Please attach additional sheets for more foliage owners*

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

\_\_\_\_\_  
View Owner's Signature & Date

\_\_\_\_\_  
Authorized Agent's Signature & Date  
(If applicable)

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*(for office use only)*

*Date received by City:* \_\_\_\_\_

*City employee who entered information in computer permit system:* \_\_\_\_\_

\_\_\_\_\_  
*Registration fee paid:* \_\_\_\_\_

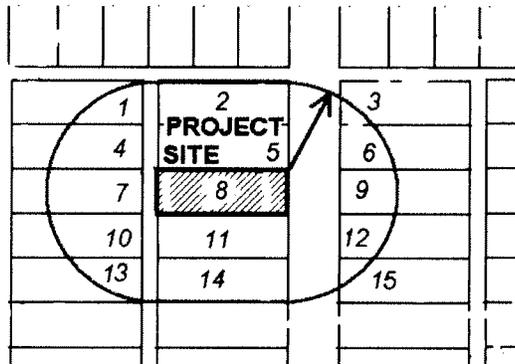
## Public Notices

**A The following information is required for Public Notification:**

Applicant  
Checklist:

**RADIUS MAPS:**

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



**MAILING LABELS:**

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

**AFFIDAVIT:**

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

**MAILING LIST AFFIDAVIT (FOR SIGN ACCOMMODATION APPLICATIONS ONLY)**

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

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

I further certify that, if required pursuant to the attached application, the attached Occupants List reflects all residential addresses within \_\_\_\_\_ (        ) feet from the exterior boundaries of the property described on the attached application that are not owner occupied.

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

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Date

**Attachment 3**  
**Planning Commission Staff Report**  
**dated December 19,2011**



STAFF REPORT  
CITY OF BEVERLY HILLS

For the Planning  
Commission Meeting of  
December 19, 2011

TO: The Planning Commission  
FROM: Michele McGrath, Senior Planner  
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:

Staff Report  
View Restoration Guidelines  
For the Planning Commission Meeting of December 19, 2011

- 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 4**

**Public Notice**



### NOTICE OF PUBLIC HEARING

**DATE:** Thursday, January 12, 2012

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

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

The Planning Commission of the City of Beverly Hills, at its regular meeting on Thursday, January 12, 2012, will hold a public hearing beginning at 1:30 p.m. or as soon thereafter as the matter may be heard, to consider:

A resolution adopting guidelines to implement the Trousdale View Restoration Ordinance adopted by the City Council on December 6, 2011. Section 10-3-108 (R) of the Trousdale View Restoration Ordinance designates the Planning Commission as the body that adopts View Restoration Guidelines for the City.

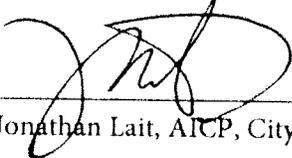
This project is an implementation action of the previously adopted Trousdale View Restoration Ordinance, for which a Negative Declaration was adopted after the project was assessed in accordance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations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

Notice of Public Hearing  
Trousdale View Restoration Guidelines  
January 12, 2012  
Page 2 of 2

Copies of the staff report, draft Guidelines, Negative Declaration, and all documents referenced in the Negative Declaration will be available in the Planning Division on Friday, January 6, 2012 and can be reviewed by any interested person at 455 N. Rexford Drive, Suite 100, Beverly Hills, CA 90210. Copies of the documents will also be available on the same date for review in the Beverly Hills Public Library Reference section. Any interested person may attend the meeting and be heard or present written comments to the Commission.

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

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

  
Jonathan Lait, AICP, City Planner

Published: December 30, 2011