

LANDSCAPING VIEW POLICY
Turtle Rock Hills Community Association

(Revised and Adopted by Membership February 13, 2001)

Purpose: The purpose of the View Policy is to provide guidance to members, directors and the architectural committee in the application and enforcement of Section 2 of Article VII of the Declaration of Covenants, Conditions and Restrictions governing the Turtle Rock Hills Community Association.

CC & R Provision: The relevant CC & R provision is Section 2 of Article VII.

“Section 2. Landscaping Approval. No trees, bushes, shrubs, or plants which at maturity, and without clipping or pruning thereof, would exceed the height of the dwelling house on any lot shall be planted or emplaced until the plans and specifications for the placement of any such trees, bushes, shrubs or plants have been submitted to and approved in writing by the architectural committee provided for in Section 3 hereof as to the preservation of the natural view and esthetic beauty which each lot is intended to enjoy. Said plans as submitted shall show in detail the proposed elevations and locations of said trees, bushes, shrubs or plants, including the location and elevation of same in relation to all other lots subject to these restrictions. Approval of said plans by the architectural committee may be withheld if in the reasonable opinion of the committee the view of any lot would be impeded by the location of such tree, bush, shrub or plant, or in any other manner. In any event, the architectural committee shall have the right to require any member to remove, trim, top, or prune any tree, or shrub, which in the reasonable belief of the architectural committee impedes or detracts from the view of any lot.” [emphasis added]

Governing Principles:

- ◆ The preservation of views from member’s lots is a matter of priority established in the CC&R’s.
- ◆ The views which are a natural feature of many hillside lots in the community add substantially to their value.
- ◆ The preservation of aesthetic beauty is a matter of priority established in the CC&R’s.
- ◆ The presence of mature trees and attractive landscaping contributes significantly to the esthetic beauty of the community and adds to their value. The rights of members to maintain mature trees and/or full landscaping shall not be unreasonably restricted unless it detracts from the esthetic beauty of the community or violates the protected view of a

member, in which case the rights of the member with the protected view have priority.

- ◆ It is the affirmative obligation of each member of the association to comply with the requirements of the CC&R's of the community and to not violate the rights of other members by interfering with other member's rights to enjoy the views and esthetic beauty which are protected by the CC&R's.
- ◆ A member does not have an absolute right to a view completely free of changes over time or freedom from any or all visual obstructions above or below the horizon or from a particular angle from side to side.
- ◆ The CC&R's make no distinction between view lots and non-view lots in the application of the rules which preserve and protect the views from member's lots or the esthetic beauty of the community.
- ◆ Each lot in the association is unique and determinations of what constitutes a protected view, what trees or shrubs comprise impediments or detractions from the view and what actions should be taken to restore or preserve the view shall be made on a case by case basis.
- ◆ The determinations of what view is protected, what trees or shrubs constitute an impediment or detraction and what actions are required under the CC&R's are not made in the discretion of an individual member, but, as the CC&R's require, by the Landscaping and Architectural committee in the reasonable exercise of their judgment.

Definitions: Impedes shall mean: interfere with or get in the way of, block, hinder or detract from; Detracts shall mean: to take away (a part) from something so as to lessen its value or importance; to diminish the importance, value or praiseworthiness of something; View shall mean: what is revealed to the vision or can be seen/something that is looked toward or kept in sight. [Webster's Third New International Dictionary - Unabridged]

Standard: Each factor considered in a view complaint, shall be determined by each committee or board member exercising their reasonable judgment.

Procedures:

1. Initiation of a complaint: Members are requested to first make contact with their neighbor in a courteous and considerate manner, either in person or in writing, and request specific action concerning trimming, thinning or removal of the tree/shrub at issue. If satisfactory corrective action is not taken within thirty days, or commitment to take such action within a reasonable time thereafter, the complaining member may initiate a complaint with the association. The notice shall be sent to the association's management company and a copy given to the director who is serving as view liaison. The notice shall provide the name and address of the member upon who's lot the offending tree/shrub grows, identification of the tree/shrub by its type and location on the lot and the specific

action requested to be taken (for example: "trim the height of a Fichus tree by 3 feet" is acceptable, "trim the tree blocking my view" is not acceptable). The notice shall also provide a history of prior contacts where the complaining member requested the neighbor to take action, and copies of any relevant correspondence.

2. Association Action: The landscaping and architectural committee shall promptly make a preliminary review of all written view complaints for completeness and apparent merit, and request any additional information it determines would be beneficial for a more thorough review. Unless the issues and any relevant history are already understood clearly, the committee shall ordinarily schedule visits for individual members of the committee to the properties of the affected members promptly and personally investigate the matter and discuss the relevant issues with the parties.

If the association determines a view impairment exists and directs action concerning the complaint, the architectural committee or board shall direct that a written response be sent to the member on whose property the tree/shrub which is the subject of the complaint grows, with a copy to the complaining member. The decision should be clear and sufficiently specific as to identify the trees/shrubs to be trimmed, topped or removed and clearly describe the actions to be taken. Following receipt of this letter, the member directed to take action shall perform the required action within 30 days unless otherwise permitted by the committee, and shall thereafter continuously maintain the trees/shrubs in a manner that complies with the committee's direction without further notice.

The CC&R's provide that actions are to be taken by the Architectural Committee of the association. They also provide that the committee shall be composed of the board of directors of the association or by three representatives appointed by the board. In cases where the full board takes actions in relation to view related issues, they shall be deemed to be acting as the Architectural Committee.

In the event a member fails to comply with the written direction from the committee or the board, for a period in excess of thirty (30) days, or such different period as the board may reasonably direct, the matter shall be referred to the association's litigation counsel, who shall report to the president of the association or another director designated as liaison with the attorney. Once the matter has been referred to the association's attorney for action all communications with the noncomplying member will be handled through the attorney and the board's liaison.

Once a view impairment matter is resolved, if the same matter comes before the committee or board again, the committee or board may require that the cause of the noncompliance be permanently removed.

3. Alternative Dispute Resolution: The association is subject to the requirements of Section

1354 of the California Civil Code which requires that the association and members attempt to resolve disputes related to the enforcement of the governing documents of the association through means of alternative dispute resolution ("ADR") procedures. The recommended means of ADR is through mediation by a trained professional mediator, although any statutorily authorized ADR method is acceptable. Costs for such ADR shall be borne by the parties unless the association is entitled to recover its costs. The manager of the association shall maintain a list of ADR providers for consideration by members. The maintenance of such a list is solely for the convenience of members and shall not indicate endorsement of any individual ADR provider by the association or its manager. The list will include both nonprofit and for profit providers of ADR services. The Board reserves the right, accorded to it by California law, to require that homeowners, and/or the Board, enter into mediation at any point in the view complaint process.

Request for Courteous Conduct: Issues concerning our homes are close to our hearts and emotions, which makes them inherently difficult to deal with, especially when there is conflict between neighbors. We ask for your special consideration of the fact that reasonable people may differ in their beliefs and judgments about the application of the view policy and request that each member extend courtesy to their neighbors in all communications concerning view issues.

GENERAL INFORMATION AND HISTORY:

Landscaping Plan Approvals: The CC & R's, in Article VII Section 2 (and the Landscaping and Architectural Control Guidelines in Sections III A. and B.) provide that member's are required to submit for approval plans for any landscaping which includes planting a tree or shrub which without trimming or topping grow to a height exceeding the dwelling on the lot. The standard which requires a tree's height to not exceed the roof height is a threshold for triggering the requirement for filing a landscaping application and does not prohibit either new or old plantings from growing above the height of a dwelling nor is it a standard for determining when landscaping must be trimmed to avoid infringing a protected view. The association may approve landscaping which will grow to above the height of dwellings (see for example Landscaping and Architectural Control Guidelines Section III C. regarding privacy) and the association also may require trimming or removal of member's landscaping at much lower heights than the tops of dwellings if in the reasonable belief of the association it impedes or detracts from the view of any lot.

Prior Litigation: The association has been involved in two prior lawsuits with members to enforce directions from the board of directors requiring members to trim or remove certain trees or shrubs. The first case was decided in October 1972 and the court ordered that trees and shrubs be trimmed so that from a position thirty inches above the level pad height of the upslope neighbor nothing obstructed the view past or over the roof of any down-slope house.

The second lawsuit was decided in 1992 and involved two trees, one in the front yard which was ordered trimmed to not exceed the height of the dwelling and one in the back yard which was ordered trimmed to not exceed the height of a then existing fence between the two neighbors.

Two important lessons are derived from the two lawsuits, in both cases the court enforced the directions made by the association's board of directors after the association investigated the view issues and made determinations of what action a member should be required to take. In addition, the standards applied by the courts are somewhat different, recognizing the need to make, and then enforce, case by case determinations of what is necessary to preserve and protect views.

Information Available: Any member interested in information concerning the association's prior successful legal actions to enforce the CC&R's by requiring trimming of trees and shrubs may contact the management office and obtain copies of the judges opinions. The materials will be made available after the member pays any applicable copying charges.

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