

Resolution No. 191
(View Maintenance)

RESOLUTION OF BOARD OF DIRECTORS
PALOS VERDES HOMES ASSOCIATION
ADOPTING GUIDELINES AND ESTABLISHING PROCEDURES FOR
ENFORCEMENT OF VIEW MAINTENANCE PROVISIONS

WHEREAS, the terms used in this Resolution are intended to have the same meaning given such term in Declaration No. 1 of Establishment of Basic Protective Restrictions, Conditions, Covenants, Reservations, Liens and Charges, recorded on July 5, 1923 in the Official Records of Los Angeles County, as amended (“Declaration”), or in the Bylaws of Palos Verdes Homes Association, adopted June 25, 1923, as amended, unless otherwise stated herein;

WHEREAS, the Declaration and certain recorded local restrictions affect real property known as Palos Verdes Estates and portions of Miraleste (collectively “Restrictions”);

WHEREAS, Article V, Section 7 of the Declaration provides, in part “ ... representatives of the Homes Association ... shall have the right at any time to enter on or upon any property for the purpose of cutting back trees or other plantings which may grow up to a greater height than in the opinion of the Homes Association is warranted to maintain the view and protect adjoining property;”

WHEREAS, Article I, Section 4, and Article VI, Section 11 of the Declaration empower the Palos Verdes Homes Association, a non-profit corporation (“Homes Association” or “Association”) to interpret and/or enforce any or all restrictions, conditions, covenants, reservations, liens, charges and agreements in the Declaration, or at any time created for the benefit of any property subject to the jurisdiction of the Association;

WHEREAS, Article VI, Section 11 of the Declaration provides “In case of uncertainty as to meaning of ... any provisions of this declaration, the Homes Association shall ... in all cases interpret the same and such interpretation shall be final and conclusive upon all interested parties;”

WHEREAS, Article VI, Section 12 of the Declaration provides “[t]he provisions contained in this declaration shall ... be enforceable by ... Palos Verdes Homes Association, by the owner or owners of any property in said tract ...;”

WHEREAS, the Board of Directors of the Association (“Board”) previously adopted Resolution No. 146 in November 2000, Resolution No. 150 in November 2002, Resolution No. 156 in May 2005, Resolution No. 159 in July 2006, Resolution No. 165 in March 2010, Resolution No. 169 in March 2013, Resolution No. 172 in April 2015, Resolution No. 182 in July 2018, Resolution No. 185 in May 2019, and Resolution No. 187 in May 2020, to establish procedures to correct view impairments created by trees or other plantings;

WHEREAS, in enforcing Resolution Nos. 146, 150, 156 159, 165, 169, 172, 182, 185, and 187, it has been the Association's experience that significant view obstructions may occur whether properties are adjoining or are separated by some distance;

WHEREAS, it is the Association's policy to encourage voluntary resolution of disputes, whenever possible, between members who are directly involved;

WHEREAS, it has been the Association's experience that view impairment disputes are often successfully resolved without protracted or costly litigation when settled directly between the affected members; and,

WHEREAS, the Association wishes to implement guidelines and adopt-written procedures to promote the voluntary resolution of view impairment disputes and for use in the evaluation and resolution of view impairment disputes arising from the restrictions set forth in Article V, Section 7 of the Declaration so members may better understand the procedures and remedies available and have a clear process to manage and correct view impairments.

NOW, IT IS RESOLVED, that on the date below, at a duly noticed open Board meeting, a majority of the Board of Directors of this corporation approved and adopted the following resolution:

1. General.

- a. The Association does establish and adopt the following guidelines, procedures, and/or policies to aid individual members of the Association in pursuing a private right of action, through mediation or litigation, to enforce the view maintenance restrictions set forth in Article V, Section 7 of the Declaration.
- b. The Association, pursuant to Article V, Section 7 of the Declaration, has the right, in its own discretion, to enter upon any property for the purpose of cutting back trees or other plantings which may grow up to a greater height than in the opinion of the Association is warranted to (i) maintain the view, and (ii) protect adjoining properties. For purposes of view maintenance, as set forth in Section 7, properties need not be adjoining.
- c. The Association interprets "view" to mean:
 - i. For properties purchased prior to the date of enactment of this Resolution, "view" means the view that existed on the latest date the Restrictions were filed, or June 26, 1923.
 - ii. For properties purchased subsequent to the enactment of this Resolution No. 191, "view" means the documented view that existed at any time since the property was most recently purchased for fair market value through an arm's length purchase or sale, as evidenced by a recorded deed.

2. Definitions. The following definitions are to be utilized by members in resolving their view impairment disputes:

“Scenic View” means a view of the community and its special features such as landscapes, ocean, coastlines, city lights, canyons, golf courses, parkland, architecture, and greenery. This visually impressive scenic vista is to be evaluated from the Main Viewing Area of the residence.

“Main Viewing Area” means the primary living area of the primary residential structure. If the primary living area of a principal residence is not located on the ground floor, the main viewing area means the primary living area of the principal residence. The Main Viewing Area may be an abutting outdoor deck or patio area located at relatively the same elevation as the primary living area of a residence. Hallways, closets, laundry rooms, mechanical rooms, bathrooms, exercise rooms and garages are not considered main viewing areas.

“Complaining Party” means a member who believes the foliage on the property of another member has caused a significant obstruction of a Scenic View from the member’s Main Viewing Area.

“Foliage Owner” means the owner of a property where the condition of trees or other planting is believed to have created a Significant View Obstruction.

“Significant View Obstruction” means a substantial obscuring of the Scenic View, diminishing its attractiveness and enjoyment by the member.

3. Criteria to Determine a Significant View Obstruction. The following unranked criteria must be considered in determining whether a Significant View Obstruction has occurred:
 - The extent to which the foliage obstructs a Scenic View from a Main Viewing Area.
 - The location of the obstruction within a view frame; foliage located within the center of a scenic view is more likely to be found to create significant obstruction than obstruction located on the outer edge of a Scenic View.
 - The quality of the Scenic View being obstructed, including obstruction of landmarks, vistas or other unique features.
 - The extent to which the Scenic View has been diminished over time by factors other than tree growth, such as new additions or residences.
 - The extent to which the Scenic View contributes to the value and enjoyment of the member’s property.
4. View Restoration Procedure. Prior to involvement by the Association in view impairment disputes between two members of the Association, which involvement will be at the sole discretion of the Association and as determined by the Board, the following process must be used in the resolution of view obstruction disputes between members:

- a. *Initial Discussion.* A Complaining Party must notify the Foliage Owner in writing of the view obstruction concerns by registered or certified letter with return receipt. To the extent possible, the notification must be accompanied by personal discussions to enable the Complaining Party and Foliage Owner to attempt to reach a mutually agreeable solution. The notification to the Foliage Owner must include this statement:

“You have twenty (20) calendar days from the date of service of this written request for an Initial Discussion, as indicated on the return receipt, to respond in writing by registered or certified letter with return receipt. Failure to respond in writing by registered or certified letter, with return receipt, within twenty (20) calendar days is deemed as a refusal to engage in an Initial Discussion.”

Agreement to an Initial Discussion by the Foliage Owner is voluntary. If an Initial Discussion is agreed to, the parties must conduct the Initial Discussion within twenty (20) calendar days of the Foliage Owner’s agreement to participate in the Initial Discussion, unless a different date is mutually agreed upon by the parties in writing.

- b. *Mediation.* If the Initial Discussion attempt fails, the Complaining Party must propose mediation as a means to settle the view obstruction dispute. The Complaining Party must invite, by registered or certified letter with return receipt, the Foliage Owner to participate in mediation.

The Complaining Party must notify the Association of any request for mediation pursuant to the provisions of this Resolution. Such notification and documentation are for the purposes of Association record-keeping regarding the application of this Resolution only, and do not obligate the Association to assist or advise a member or participate in the dispute resolution process in any way.

The Foliage Owner has twenty (20) calendar days from date of service of a written request for mediation, as indicated on the return receipt, to accept or reject the offer of mediation. Failure to respond in writing by registered or certified letter, with return receipt, within twenty (20) calendar days is deemed as a refusal to engage in mediation.

Acceptance of mediation by the Foliage Owner is voluntary. If mediation is accepted, the parties must agree in writing upon a mediator within twenty (20) calendar days of the acceptance of mediation, unless a different date is mutually agreed upon by the parties, or the offer of mediation is deemed to have been declined.

If mediation is accepted, the parties must conduct a mediation within forty-five (45) calendar days of the Foliage Owner’s acceptance of mediation, unless a different date is mutually agreed upon by the parties in writing. It is recommended that the services of a professionally trained mediator be employed.

The mediation meeting may be informal. The mediation process may include the hearing of viewpoints of lay or expert witnesses and may include a site visit to the properties of the Complaining Party and the Foliage Owner.

The mediator must consider the purposes and policies set forth in this Resolution in attempting to help resolve the dispute. The mediator must not have the power to issue binding orders for restorative action but must make reasonable efforts to assist the parties to resolve their dispute by written agreement in order to reduce the potential for litigation.

A Complaining Party must provide the Association with a copy of a mediated agreement reached pursuant to this Resolution. Such notification and documentation are for the purposes of Association record-keeping regarding the use of this Resolution only, and do not obligate the Association to assist or advise a member, or to participate in the dispute resolution process in any way.

- c. *Litigation.* The Association strongly encourages members to engage in pre-litigation dispute resolution. In those cases where the Initial Discussion process fails, and mediation is declined by the Foliage Owner or fails, civil action may be pursued by the Complaining Party for resolution of the view obstruction dispute in a court of competent jurisdiction.

The Complaining Party must provide the Association with a copy of the filed complaint, and any subsequent settlement agreement. Such notification and documentation are for the purposes of Association record-keeping regarding the use of this Resolution only and do not obligate the Association to assist or advise a member, or to participate in the dispute resolution process in any way.

A final judgment, entered by a court of competent jurisdiction, will be adopted by the Association.

- d. *Apportionment of Costs.* The Complaining Party and Foliage Owner must each pay fifty percent (50%) of mediation fees, unless they agree otherwise or allow the mediator discretion for allocating costs. The apportionment of litigation costs and fees are to be determined by the court or through a settlement. All costs related to restorative action are to be determined by mutual agreement or court order. It is the intent of the Board that disputes between Association members be resolved without litigation. When litigation is pursued, as a guide to the court, it is the Board's preference that attorneys' fees be awarded to the prevailing party.
- e. *Association Costs.* In instances where members fail to follow the guidelines set forth in this Resolution or refuse to participate in meaningful dispute resolution, should the Association decide, at its sole discretion, to step in and assist or advise a member, or to participate in the dispute resolution process in any way, all costs and fees incurred by the Association, including any reasonable attorneys' fees and costs, will be assessed against the property of the member or members who failed or refused to follow the protocol set herein.

5. Restorative Action. The Association recommends the following criteria be applied to restorative actions:

- a. Trimming of trees and shrubs must conform to ANSI standards and be performed by an ASI licensed arborist.
- b. Topping and severe pruning must be avoided due to the damage such practice causes to the tree's form and health.
- c. Restoration actions may include, but are not limited to the following, in order of preference:

Trimming. Trimming is the most preferable pruning technique that removes excess foliage and can improve the structure of the tree.

Vista Pruning. Vista pruning of branches may be utilized where possible, if it does not adversely affect the tree's growth pattern or health. Topping should not be done to accomplish vista pruning.

Crown Reduction. Crown reduction is preferable to topping or tree removal, if it is determined that the impact of crown reduction does not destroy the visual proportions of the tree, adversely affect the tree's growth pattern or health, or otherwise constitute a detriment to the tree(s) in question.

Stand Thinning. The removal of a portion of the total number of trees from a grove of trees, without any replacement plantings.

Topping. Eliminating the upper portion of a tree's trunk or main leader. Topping is only to be permitted for trees specifically planted and maintained as a hedge.

Heading. Eliminating the outer extent of the major branches throughout the tree. Heading is only to be permitted for trees specifically planted and maintained as a hedge.

Tree/Vegetation Removal. Tree or vegetation removal, which may be considered when the abovementioned restoration actions are judged to be ineffective and may be accompanied by replacement plantings or appropriate plant materials to restore the maximum level of benefits loss due to tree removal.

- d. LA County Fuel Modification standards also apply to Palos Verdes Estates, restricting tree placement and limiting the height of hedging depending upon their distance from structures. Refer to LA County Fuel Modification specifications when selecting replacement vegetation.
- e. The California Department of Fish and Game restricts trimming during the breeding season of raptors and other migratory non-game birds February 1 through September 1. Refer to the Federal Migratory Bird Treaty Act and the California Fish and Game Code sections 3503, 3503.5 and 3513, when scheduling restorative actions.

- f. Inclusion of a maintenance schedule in the agreement for trimming based on the individual species of tree and future view impacts.
6. Liabilities. Members acknowledge and agree their use of the guidelines, procedures, and/or policies set forth in this Resolution neither creates any liability on the part of the Association nor obligates the Association to assist or advise a member, or to participate in the dispute resolution process in any way.

PASSED, APPROVED AND ADOPTED this 6 day of April 2021.

Palos Verdes Homes Association

Attest:

Christine McNamara

Christine McNamara, President

Savery Nash

Savery Nash, Manager