

- In Section B modify the language such evidence must show absence 'to must prove the absence 'to indicate photographic evidence is not necessary
- What is Culver City's policy if a complaint of this nature is made against it?
- Should trees in the public right-of-way which are part of an orderly program intended to create a specific aesthetic for the City be considered differently from trees that grow in a park?
- The proposed ordinance is reasonable it places a high value on trees and recognizes view preservation is a fair concept

*Mr Wardlaw*

- *Staff discussed how to deal with trees in the public right-of-way because street trees provide various benefits to the public good, and a decision was made to exempt the City in that regard*
- *A City park serves a very different purpose, so the trees in public parks should be considered differently than the effects of a private party's trees when considering view impacts*

The consensus of the Commissioners was to forward the discussed revisions to the City Council

7 Other Business

Mr Wardlaw advised the Commission of the upcoming meetings and agenda items

Chair Malsin commended staff for their excellent job presenting some very complicated topics

8 Adjournment

Vice-Chair Lamm moved, seconded by Commissioner Muranaka, to adjourn the meeting at 12 18 a m to **December 8, 2004** at 7 00 p m in the Mike Balkman Council Chambers at City Hall The motion was unanimously approved

D SCOTT MALSIN, CHAIRPERSON  
PLANNING COMMISSION  
CITY OF CULVER CITY, CALIFORNIA

TITLE IV LAND IMPROVEMENT AND USETown of Tiburon

## Chapter 15 VIEW AND SUNLIGHT OBSTRUCTION FROM TREES

**15-1 Purpose and principles**

(a) The purposes of this chapter are to

(1) Establish the right of persons to preserve views or sunlight which existed at any time since they purchased or occupied a property from unreasonable obstruction by the growth of trees

(2) Establish a process by which persons may seek restoration of such views or sunlight when unreasonably obstructed by the growth of trees or other vegetation (see definition of Tree )

(b) The rights and the restorative process are based upon the following general principles

(1) The town recognizes that residents property owners and businesses cherish their outward views from the Tiburon Peninsula and that they also cherish the benefits of plentiful sunlight reaching their buildings and yards. The town recognizes that both outward views and plentiful sunlight reaching property contribute greatly to the quality of life in Tiburon and promote the general welfare of the entire community

(2) The town also recognizes the desire of many of its residents property owners and businesses for beautiful and plentiful landscaping including trees. The town realizes that this desire may sometimes conflict with the preservation of views and sunlight and that disputes related to view or sunlight obstruction are inevitable

(3) Owners and residents should maintain trees on their property in a healthy condition for both safety reasons and for preservation of sunlight and outward views. Before planting trees owners and residents should consider view and sunlight blockage potential both currently and at tree maturity. Persons have the right to seek civil remedies when threatened by dangerous tree growth

(4) The town shall establish a process by which persons may seek to preserve and restore views or sunlight which existed at any time since they purchased or occupied property from unreasonable obstruction by the growth of trees. The town shall also establish a list of factors to be considered in determining appropriate actions to restore views or sunlight

(5) When a view or sunlight obstruction dispute arises the parties should act reasonably to resolve the dispute through friendly communication thoughtful negotiation compromise and other traditional means such as discussions with the appropriate neighborhood or homeowner association. Those disputes which are not resolved through such means shall follow the procedure established herein

(6) It is the intent of the town that the provisions of this chapter receive thoughtful and reasonable application. It is not the intent of the town to encourage clear cutting or substantial denuding of any property of its trees by overzealous application of provisions of this chapter (Ord No 379 N S § 3 (part))

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TITLE IV LAND IMPROVEMENT AND USEChapter 15 VIEW AND SUNLIGHT OBSTRUCTION FROM TREES**15.2 Definitions**

For the purpose of this chapter the meaning and construction of words and phrases is as follows

Active use area means the most frequently occupied portion or portions of a commercial building from which views are available

Arbitrator means a neutral person who will conduct a process similar to a trial and who will hear testimony consider evidence and make a binding decision for the disputing parties

Binding arbitration means a legal procedure as set forth in section 1280 et seq of the Code of Civil Procedure

Complaining party means any property owner (or legal occupant with written permission of the property owner) who alleges that trees located on the property of another person are causing unreasonable obstruction of his or her pre existing views or sunlight

Mediator means a neutral objective third person who assists people in finding mutually satisfactory solutions to their problem

Person means any individual corporation partnership firm or other legal entity excluding the Town of Tiburon

Primary living area means the portion or portions of a residence from which a view is observed most often by the occupants relative to other portions of the residence The determination of primary living area is to be made on a case by case basis

Protected tree means any of the following

Heritage tree meaning any tree which has a trunk with a circumference exceeding sixty inches measured twenty four inches above the ground level

Oak tree including coast live oak blue oak California black oak interior live oak canyon live oak Engelmann oak or valley oak tree

Dedicated tree meaning a tree of special significance so designated by resolution of the town council

Removal means the elimination of any tree from its present location

Restorative action means any specific requirement to resolve a tree dispute

Stump growth means new growth from the remaining portion of the tree trunk the main portion of which has been cut off

Sunlight means the availability of direct or indirect sunlight to the primary living area of a residence

Thinning means the selective removal of entire branches from a tree so as to improve visibility through the tree and/or improve the tree's structural condition

Topping means elimination of the upper portion of a tree's trunk or main leader

Tree means any woody plant with the potential to obstruct views or sunlight including but not limited to trees shrubs hedges and bushes References to tree shall include the plural

Tree claim means the written basis for arbitration or court action under the provisions of this chapter

Tree owner means any person owning real property in Tiburon upon whose land is located a tree or trees alleged by a complaining party to cause an unreasonable obstruction

Trimming means the selective removal of portions of branches from a tree so as to modify the tree(s) shape or profile or alter the tree's appearance

View means a scene from the primary living area of a residence or the active use areas of a nonresidential building The term view includes both upslope and downslope scenes but is

generally medium or long range in nature as opposed to short range. Views include but are not limited to skylines, bridges, landmarks, distant cities, distinctive geologic features, hillside terrains, wooded canyons, ridges and bodies of water.

Some additional examples are

- (1) San Francisco Bay (including San Pablo Bay, Richardson Bay, and islands therein)
- (2) The San Francisco-Oakland Bay Bridge
- (3) The Golden Gate Bridge
- (4) The Richmond-San Rafael Bridge
- (5) Mount Tamalpais
- (6) The Tiburon Peninsula or surrounding communities (including the city of San Francisco)

Windowing means a form of thinning by which openings or windows are created to restore views and/or sunlight (Ord. No. 379 N.S. § 3 (part))

TITLE IV LAND IMPROVEMENT AND USEChapter 15 VIEW AND SUNLIGHT OBSTRUCTION FROM TREES

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**15.3 Rights established**

(a) Persons shall have the right to preserve and seek restoration of views or sunlight which existed at any time since they purchased or occupied a property when such views or sunlight are from the primary living area or active use area and have subsequently been unreasonably obstructed by the growth of trees

(b) In order to establish such rights pursuant to this chapter the person must follow the process established in this chapter. In addition to the above rights private parties have the right to seek remedial action for imminent danger caused by trees

(c) All persons are advised that the alteration, removal and planting of certain trees requires a permit under chapter 15A of the Tiburon Municipal Code (Trees). The applicability of chapter 15A should be determined prior to any action on trees. (Ord. No. 379 N.S. § 3 (part))

TITLE IV LAND IMPROVEMENT AND USE

## Chapter 15 VIEW AND SUNLIGHT OBSTRUCTION FROM TREES

**15 4 Unreasonable obstruction prohibited**

(a) No person shall plant maintain or permit to grow any tree which unreasonably obstructs the view from or sunlight reaching the primary living area or active use area of any other parcel of property within the Town of Tiburon

(b) Because the maintenance of views and sunlight benefits the general welfare of the entire town any unreasonable obstruction of views or sunlight from the primary living area or active use area shall also constitute a public nuisance (Ord No 379 N S § 3 (part))

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**15-5 Criteria for determining unreasonable obstruction**

The following criteria are to be considered (but are not exclusive) in determining whether unreasonable obstruction has occurred

- (a) The extent of obstruction of pre existing views from or sunlight reaching the primary living area or active use area of the complaining party both currently and at tree maturity
- (b) The quality of the pre existing views being obstructed including obstruction of landmarks vistas or other unique features
- (c) The extent to which the trees interfere with efficient operation of a complaining party's pre existing solar energy systems
- (d) The extent to which the complaining party's view and/or sunlight has been diminished over time by factors other than tree growth (Ord No 379 N S § 3 (part))

TITLE IV LAND IMPROVEMENT AND USEChapter 15 VIEW AND SUNLIGHT OBSTRUCTION FROM TREES

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**15-6 Criteria for determining appropriate restorative action**

When it has been determined that unreasonable obstruction has occurred then the following unweighted factors shall be considered in determining appropriate restorative action

- (a) The hazard posed by a tree or trees to persons or structures on the property of the complaining party including but not limited to fire danger and the danger of falling limbs or trees
- (b) The variety of tree its projected rate of growth and maintenance requirements
- (c) Aesthetic quality of the tree(s) including but not limited to species characteristics size growth form and vigor
- (d) Location with respect to overall appearance design or use of the tree owner's property
- (e) Soil stability provided by the tree(s) considering soil structure degree of slope and extent of the tree's root system
- (f) Privacy (visual and auditory) and wind screening provided by the tree(s) to the tree owner and to neighbors
- (g) Energy conservation and or climate control provided by the tree(s)
- (h) Wildlife habitat provided by the tree(s)
- (i) Whether trees are protected trees as defined in section 15.2 of this chapter (Ord. No. 379 N.S. § 3 (part))



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Chapter 15 VIEW AND SUNLIGHT OBSTRUCTION FROM TREES

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**15-7 Types of restorative action**

(a) Restorative actions include but are not limited to the following

- (1) Trimming
- (2) Thinning or windowing
- (3) Topping
- (4) Removal with replacement plantings
- (5) Removal without replacement plantings

(b) In all cases the documentable extent of view or sunlight existing at any time during the tenure of the present owner or legal occupant is the maximum limit of restorative action which may be required

(c) Restorative action may include written conditions (including ongoing maintenance) and directions as to appropriate timing of such actions and may be made to run with the land and apply to successors in interest. Where removal is required, replacement by appropriate species should be considered.

(d) In cases where trimming, windowing or other restorative action may affect the health of a tree which is to be preserved, such actions should be carried out in accordance with standards established by the International Society of Arboriculture for use in the state of California (Ord No 379 N S § 3 (part))

## TITLE IV LAND IMPROVEMENT AND USE

### Chapter 15 VIEW AND SUNLIGHT OBSTRUCTION FROM TREES

#### **15.8 Town guidelines concerning restorative action**

The Town of Tiburon provides the following general guidelines concerning restorative actions

- (a) **Undesirable trees** By reason of their tall height at maturity, rapid growth, dense foliage, shallow root structure, flammability, breakability or invasiveness, certain types of trees have been deemed undesirable by the town, including Blue Gum Eucalyptus, Coast Redwood, Monterey Pine, Monterey Cypress trees, or any other tree which generally grows more than three feet per year in height and is capable of reaching a height of over thirty five feet at maturity. When considering restorative action for undesirable trees, aggressive action is preferred.
- (b) **Protected trees** The Town of Tiburon has designated certain trees to be protected trees defined in section 15.2. Any alteration or removal of protected trees will require a permit from the town's planning director pursuant to chapter 15A of the Tiburon Municipal Code.
- (c) **Stump growth** Stump growth generally results in the hazard of weak limbs, and its protection is not desirable. When considering restorative action for stump growth, aggressive action is preferred. Restorative action which will result in future stump growth should be avoided.
- (d) **Trimming** Trimming is the most minor form of physical restorative action. This option is recommended when minor unreasonable obstruction has occurred, provided that ongoing maintenance is guaranteed.
- (e) **Thinning or windowing** When simple trimming will not resolve the unreasonable obstruction, thinning or windowing may be necessary. These should be supervised by a certified arborist.
- (f) **Topping** Topping as a restorative action should be used with caution. Topping can have deleterious effects on a tree's health, appearance and cost of maintenance. Topping frequently results in stump growth. Tree removal with replacement plantings may be a preferable alternative.
- (g) **Removal** Tree removal may be required where such removal is essential to preserve pre-existing views or sunlight. While normally considered a drastic measure, tree removal can be the preferred solution in many circumstances.
- (h) **Maintenance** Ongoing tree maintenance requirements are strongly recommended as part of restorative action in order to achieve lasting preservation of pre-existing views or sunlight.
- (i) **Permanence** Conditions of restorative action should be recorded and run with the land to help guarantee permanent preservation of pre-existing views and sunlight. (Ord. No. 379 N.S. § 3 (part))

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TITLE IV LAND IMPROVEMENT AND USEChapter 15 VIEW AND SUNLIGHT OBSTRUCTION FROM TREES**15.9 Process for resolution of obstruction disputes**

The following process shall be used in the resolution of view and sunlight obstruction disputes between parties

(a) (1) Initial reconciliation A complaining party who believes that tree growth on the property of another has caused unreasonable obstruction of views or sunlight from the primary living area or active use area shall notify the tree owner in writing of such concerns

(2) The notification should if possible be accompanied by personal discussions to enable the complaining party and tree owner to attempt to reach a mutually agreeable solution. If personal discussions fail, neighborhood associations may be willing to assist with the resolution of the obstruction dispute

(3) For trees located on town owned property see section 15.16

(b) (1) Mediation If the initial reconciliation attempt fails the complaining party shall propose mediation as a timely means to settle the obstruction dispute

(2) Acceptance of mediation by the tree owner shall be voluntary but the tree owner shall have no more than thirty days from service of notice to either accept or reject the offer of mediation. If mediation is accepted the parties shall mutually agree upon a mediator within ten days

(3) It is recommended that the services of a professionally trained mediator be employed. The county of Marin provides professional mediation services at a nominal cost

(4) The mediation meeting may be informal. The mediation process may include the hearing of viewpoints of lay or expert witnesses and shall include a site visit to the properties of the complaining party and the tree owner. Parties are encouraged to contact immediate neighbors and solicit input

(5) The mediator shall consider the purposes and policies set forth in this chapter in attempting to help resolve the dispute. 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 by written agreement in order to eliminate the need for binding arbitration or litigation. (Ord. No. 379 N.S. § 3 (part))

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**15-10 Tree claim preparation**

(a) In the event that the initial reconciliation process fails and mediation either is declined by the tree owner or fails the complaining party must prepare a tree claim and provide a copy to the tree owner in order to pursue either binding arbitration or litigation under the authority established by this chapter

(b) A tree claim shall consist of all of the following

(1) A description of the nature and extent of the alleged obstruction including pertinent and corroborating physical evidence Evidence may include but is not limited to photographic prints negatives or slides Such evidence must show absence of the obstruction at any documentable time during the tenure of the complaining party Evidence to show the date of property acquisition or occupancy by the complaining party must be included

(2) The location of all trees alleged to cause the obstruction the address of the property upon which the tree(s) are located and the present tree owner's name and address

(3) Evidence of the failure of initial reconciliation as described in section 15 9 to resolve the dispute The complaining party must provide physical evidence that written attempts at reconciliation have been made and have failed Evidence may include but is not limited to copies of and receipts for certified or registered mail correspondence

(4) Evidence that mediation as described in section 15 9 has been attempted and has failed or has been declined by the tree owner

(5) Specific restorative actions proposed by the complaining party to resolve the unreasonable obstruction (Ord No 379 N S § 3 (part))

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## Chapter 15 VIEW AND SUNLIGHT OBSTRUCTION FROM TREES

**15 11 Binding arbitration**

(a) In those cases where the initial reconciliation process fails and where mediation is declined by the tree owner or has failed the complaining party must offer in writing to submit the dispute to binding arbitration and the tree owner may elect binding arbitration

(b) The tree owner shall have thirty days from service of notice to accept or reject binding arbitration. If accepted the parties shall agree on a specific arbitrator within twenty one days and shall indicate such agreement in writing

(c) The arbitrator shall use the provisions of this chapter to reach a fair resolution of the tree claim and shall submit a complete written report to the complaining party and the tree owner. This report shall include the arbitrator's findings with respect to sections 15 5 and 15 6 of this chapter a pertinent list of all mandated restorative actions with any appropriate conditions concerning such actions and a schedule by which the mandates must be completed. A copy of the arbitrator's report shall be filed with the town attorney upon completion. Any decision of the arbitrator shall be enforceable pursuant to the provisions of Code of Civil Procedure section 1280 et seq (Ord No 379 N S § 3 (part))

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## Chapter 15 VIEW AND SUNLIGHT OBSTRUCTION FROM TREES

**15 12 Litigation**

(a) In those cases where binding arbitration is declined by the tree owner then civil action may be pursued by the complaining party for resolution of the view or sunlight obstruction dispute under the rights and provisions of this chapter

(b) The litigant must state in the lawsuit that arbitration was offered and not accepted and that a copy of the lawsuit was filed with the town attorney. A copy of any order or settlement in the lawsuit shall also be filed with the town attorney (Ord No 379 N S § 3 (part))

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Chapter 15 VIEW AND SUNLIGHT OBSTRUCTION FROM TREES

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**15-13 Apportionment of costs**

Cost of mediation and arbitration The complaining party and tree owner shall each pay fifty percent of mediation or arbitration fees unless they agree otherwise or allow the mediator or arbitrator discretion for allocating costs

Cost of litigation To be determined by the court or through a settlement

Cost of restorative action To be determined by mutual agreement or through mediation arbitration court judgment or settlement (Ord No 379 N S § 3 (part))

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**15-14 Liabilities**

- (a) The issuance of mediation findings, an arbitration report or a court decision shall not create any liability of the town with regard to the restorative actions to be performed.
- (b) Failure of the town to enforce provisions of this chapter shall not give rise to any civil or criminal liabilities on the part of the town. (Ord. No. 379 N.S. § 3 (part))

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**15-15 Limitations**

It is not the intent of the town in adopting this chapter to affect obligations imposed by an existing easement or a valid preexisting covenant or agreement (Ord No 379 N S § 3 (part))

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**15 16 Trees on town-owned property**

Trees located on town-owned property are exempt from the provisions of this chapter. Requests or complaints regarding trees located on town owned property should be made in writing to the superintendent of public works for consideration in accordance with policies adopted by the town (Ord. No. 379 N.S. § 3 (part))

## VIEW DISPUTE RESOLUTION PROCESS

|           |                                            |           |                                                                  |
|-----------|--------------------------------------------|-----------|------------------------------------------------------------------|
| Sections  |                                            |           |                                                                  |
| 22 76 010 | Findings                                   | 22 76 100 | Restoration Action Limitations                                   |
| 22 76 020 | Intent and Purpose                         | 22 76 110 | View or Sunlight Claim Evaluation Criteria                       |
| 22 76 030 | Definitions                                | 22 76 120 | Hierarchy of Restoration Actions                                 |
| 22 76 040 | View or Sunlight Claim Limitations         | 22 76 130 | Responsibility for Restoration Action and Subsequent Maintenance |
| 22 76 050 | Private View or Sunlight Claim             | 22 76 140 | Liability                                                        |
| 22 76 060 | Initial Discussions                        |           |                                                                  |
| 22 76 070 | Mediation                                  |           |                                                                  |
| 22 76 080 | Arbitration                                |           |                                                                  |
| 22 76 090 | Private Cause of Action - View Restoration |           |                                                                  |

**22 76 010 Findings**

The City Council finds and declares as follows

A Both views and trees and vegetation contribute to the aesthetic value quality of life ambience and economic value of properties within the City of Santa Barbara Similarly access to sunlight across property lines contributes to the health and well being of community members enhances property values and provides an opportunity to utilize solar energy Utilization of passive solar energy reduces air pollution visual blight and promotes the general health and welfare of the residents of the City

B Views whether of the Pacific Ocean the Channel Islands the City the Santa Ynez Mountains the surrounding hillsides and canyons or other natural and man made landmarks produce a variety of significant and tangible benefits for both residents and visitors Views contribute to the aesthetic visual environment of the City of Santa Barbara by providing scenic vistas and inspiring distinctive architectural design

C Trees and vegetation produce a wide variety of significant psychological and tangible benefits for both residents and visitors to the community Trees and vegetation provide privacy modify temperatures screen winds replenish oxygen to the atmosphere maintain soil moisture mitigate soil erosion and provide wildlife habitat Trees and vegetation contribute to the visual environment and aesthetics by blending buffering and reducing the scale and mass of architecture Trees and vegetation within the City provide botanical variety and a sense of history Trees and vegetation also create shade and visual screens and provide a buffer between different land uses

D The benefits derived from views trees and vegetation and sunlight may come into conflict The planting of trees and other vegetation and their subsequent growth particularly when such trees are not properly maintained can produce unintended harmful effects both on the property on which they are planted or on neighboring properties (Ord 5220 2002 )

**22 76 020 Intent and Purpose**

The intent and purpose of this Chapter is to accomplish the following

A **Right to Scenic View and Sunlight Access** Establish the right of a real property owner to preserve scenic views and access to sunlight free from unreasonable obstructions caused by the growth of trees under circumstances where such views and sunlight access existed prior to the growth of the unreasonable obstruction

B **Dispute Resolution Process** Establish that real property owners are in need of a process to resolve disputes among themselves concerning view or sunlight access within the immediate vicinity of their property

C **Evaluation Procedures** Establish procedures and evaluation criteria by which private real property owners may seek a mutually acceptable resolution of such views or sunlight access disputes

D **Protect Trees** Discourage ill considered damage to trees and vegetation and promote proper use of trees and landscaping establishment and maintenance

E **Not a Covenant or Servitude** It is not the intent and purpose of this Chapter for the City to create either a covenant running with the land or an equitable servitude

F **Right Exclusive to this Chapter** Nothing herein shall be deemed to establish a general right of a homeowner to affect or restrict the lawful development or use (including the use and maintenance of landscaping) of a neighboring property under circumstances where such development or use is otherwise permitted approved or allowed under the provisions of the Santa Barbara Municipal Code In addition nothing herein shall be deemed or construed to provide a homeowner with any thing other than the rights specified in this Chapter for the restoration of a view or access to sunlight and a right to utilize the dispute resolution process for addressing unreasonable tree or vegetation view obstructions as such claim process is established herein (Ord 5220 2002.)

## 22 76 030 Definitions

For the purpose of this Chapter the following words and phrases shall have the meanings set forth herein

A **ALTER** To take action that changes a tree or vegetation including but not limited to extensive pruning of the canopy area topping cutting girdling interfering with the water supply applying chemicals or re grading around the feeder root zone of the tree or vegetation

B **ARBITRATION** A voluntary legal procedure for settling disputes and leading to a determination of rights of parties usually consisting of a hearing before an arbitrator where all relevant evidence may be freely admitted as set forth in California Code of Civil Procedure Section 1280 et seq

C **ARBITRATOR** A mutually agreed upon neutral third party professional intermediary who conducts a hearing process and who hears testimony considers evidence and makes a decision for the disputing parties The arbitrator may be chosen from a list available from the City of qualified and professionally trained arbitrators including but not limited to members of the American Association of Arbitrators

D **ARBORIST, CERTIFIED** A person who has passed a series of tests by the International Society of Arboriculture (ISA) is governed by ISA's professional code of ethics and possesses the technical competence through experience and related education and training to provide for or supervise the management of trees and other woody plants

E **AUTHORIZED AGENT** A person as defined herein who has been designated and approved in writing by a real property owner of record to act on his or her behalf in matters pertaining to the processing of a view or sunlight claim as outlined in this Chapter

F **CANOPY** The umbrella like structure created by the overhead leaves and branches of a tree which create a sheltered area below

G **CITY MAINTAINED TREES** Trees which are specifically designated for maintenance by the City Council for City maintenance under SBMC Section 15 20 050 in the Master Street Tree Plan adopted pursuant to SBMC Section 15 20 030

H **CITY PROPERTY** Real property of which the City is the fee simple owner of record

I **CLAIM VIEW OR SUNLIGHT** Documentation as set forth in Section 22 76 050 that outlines the basis of view or sunlight access diminishment and the specific restoration action that is being sought which shall serve as the written basis for arbitration or a legal cause of action under the provisions of this Chapter

J **COMPLAINANT** Any property owner group of property owners (or an authorized agent thereof) who allege that tree(s)/vegetation located within the immediate vicinity of their property as set forth in Section 22 76 040 is causing unreasonable obstruction of the view or blocking the sunlight benefiting the real property of the Complainant

K **CROWN** The rounded top of the tree

L **CROWN REDUCTION/SHAPING** A method of comprehensive trimming that reduces a tree's height or spread Crown reduction entails the reduction of the top sides or individual limbs of a tree by means of removal of leaders or the longest portion of limbs to a lateral large enough to assume the terminal

M **DESTROY** To take action that endangers the health or vigor of a tree or vegetation including but not limited to cutting girdling interfering with the water supply applying chemicals or re grading around the base of the trunk of a tree

N **DIRECTOR** The Director of the City Community Development Department

O **HEADING BACK** The overall reduction of the mass of a tree by modification to its major limbs

P **HISTORIC or SPECIMEN TREE** Any tree or stand of trees that have been designated as either an Historic Tree or a Specimen Tree pursuant to the authority of the Santa Barbara Municipal Code Chapters 15 20 and 15 24

Q **LACING or THINNING** A comprehensive method of trimming that systematically and sensitively removes excess foliage and improves the structure of a tree

R **LANDSCAPE CONSULTANT** A landscape professional retained to provide advice and information regarding landscape plans view or sunlight claims and landscaping techniques and maintenance procedures

S **MAINTENANCE PRUNING** Pruning with the primary objective of maintaining or improving tree health and structure includes "crown reduction/shaping" or "lacing" but not ordinarily "topping" or "heading back"

T **MEDIATOR** A neutral objective third party professional negotiator to help disputing parties reach a mutually satisfactory solution regarding a view or sunlight claim The mediator may be chosen from a list available from the City of qualified and professionally trained (arbitrators/mediators) including but not limited to members of the American Association of Arbitrators

U **OBSTRUCTION** The blocking or diminishment of a view or sunlight access attributable to growth improper maintenance or location of trees or vegetation

V **PERSON** Any individual individuals corporation partnership firm or other legal entity

W **PRUNING** The removal of plant material from a tree or from vegetation

X **REAL PROPERTY** Rights or interests of ownership of land and all appurtenances to the land including buildings fixtures vegetation and improvements erected upon, planted, or affixed to the land

Y **RESTORATION ACTION** Any specific steps taken affecting trees or vegetation that would result in the restoration of a view or sunlight access across real property lines

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**Z SEVERE PRUNING** The cutting of branches or trunk of a tree in a manner which substantially reduces the overall size of the tree or destroys the existing symmetrical appearance or natural shape of the tree and which results in the removal of main lateral branches leaving the trunk and branches of the tree in a stub appearance "Topping" and heading back as defined herein are considered to be severe pruning

**AA STAND THINNING** The selective removal of a portion of trees from a grove of trees

**BB STREET** The portion of a right of way easement used for public purposes such as roadway improvements curbs gutters and sidewalks dedicated to the City and formally accepted by the City into the City public street system for maintenance purposes

**CC SUNLIGHT** The availability or access to light from the sun across property lines

**DD TOPPING** Eliminating the upper portion of the trunk or main leader of a tree

**EE TREE** Any woody perennial vegetation that generally has a single trunk and reaches a height of at least eight feet at maturity

**FF TREE or VEGETATION OWNER** Any person owning real property in the City whereon tree(s) or vegetation is located

**GG VIEW** A vista of features including but not limited to bodies of water beaches coastline islands skylines ridges hillside terrain canyons geologic features mountains and landmarks The term "view" does not necessarily include an unobstructed panorama of these features

**HH VISTA PRUNING** The selective thinning of framework limbs or specific areas of the crown of a tree to allow a view from a specific point (Ord 5220 2002 )

## **22 76 040 View or Sunlight Claim Limitations**

**A PRIVATE VIEW DISPUTE RESOLUTION** Subject to the other provisions of this Chapter the owner or owners of real property within the City (as the Complainant ) may initiate the private view dispute resolution process provided for in this Chapter However a request for view or sunlight access dispute resolution may only be made if such a claim has not been initiated against the same real property by the Complainant with respect to the same tree or vegetation obstruction within a two year time period prior to the initiation of the most recent request

**B CITY OWNED AND MAINTAINED TREES** Nothing herein shall provide any authority or process for the permitting of alterations to or the removal of City Maintained Trees or the alteration or removal of those trees regulated by SBMC Chapters 15 20 and 15 24 (Ord 5220 2002 )

## **22 76 050 Private View or Sunlight Claim**

**A NOTICE TO CITY OF COMPLAINT** A Complainant shall notify the City Community Development Department of any request for mediation or arbitration pursuant to the provisions of this Chapter and shall provide the City with the claim documentation materials described in subsection B hereof Such notification and documentation shall be for the purposes of City record keeping regarding the use of this Chapter only and shall not obligate the City to assist or advise a property owner or participate in the dispute resolution process in any way

**B CONTENTS OF CLAIM** A view or sunlight restoration dispute resolution process claim shall consist of all of the following documentation and evidence

- 1 **Evidence of Prior View** A written description of the nature and extent of the alleged obstruction including pertinent and corroborating photographic evidence Evidence may include but is not limited to documented and dated photographic prints or slides as well as written testimony or declarations from residents living in the area Such evidence should if possible show the extent to which the view or sunlight access has been diminished over time by the excessive growth of the trees or vegetation
- 2 **Evidence Regarding Unreasonable Tree Blockage** The location of all trees or vegetation alleged to cause the obstruction the address of the property upon which the trees or vegetation are located and the present tree/vegetation owner's name and address
- 3 **Desired Action** The specific view or sunlight access restoration actions being requested by the Complainant in order to resolve the allegedly unreasonable view obstruction
- 4 **Evidence of Attempted Resolution** Evidence that an initial discussion between the two property owners (as described in Section 22 76 060) has been made and has failed Evidence may include but is not limited to copies of receipts for certified or registered mail correspondence
- 5 **Evidence of Ownership** Evidence confirming the ownership and the date of acquisition of the Complainant's property

(Ord 5220 2002 )

## **22 76 060 Initial Discussions**

**A INITIAL CONTACT** A Complainant who believes that a tree or some other vegetation which has grown on another person's real property has caused unreasonable obstruction of a view or sunlight access from the Complainant's property shall first advise the tree or vegetation property owner of such view or sunlight blockage concerns. This notification shall request personal discussions to enable the Complainant and tree/vegetation property owner to attempt to reach a mutually agreeable solution and shall be followed up with a written confirmation of any agreed upon resolution and schedule for the required work of view restoration

**B NOTIFICATION REQUIREMENTS** The initial notification from the Complainant to the owner of the tree/vegetation shall provide a copy of the View Preservation Ordinance (Santa Barbara Municipal Code Chapter 22 76) In the initial notification the Complainant shall invite the tree/vegetation owner to view the alleged obstruction from the Complainant's property and the tree/vegetation owner is urged to invite the Complainant to view the situation from the owner's property Failure of the tree/vegetation owner to respond to the written request for initial discussion within thirty (30) days from the date of posting shall be deemed a refusal by the owner to participate in the initial discussion phase of the process

**C FAILURE TO AGREE** After the initial discussion if the parties do not agree as to the existence and nature of the Complainant's obstruction or to the appropriate restoration action or if the initial discussion is refused the Complainant may proceed with the subsequent dispute resolution process outlined herein with respect to mediation arbitration and court action (Ord 5220 2002)

## **22 76 070 Mediation**

**A MEDIATION REQUEST** If initial discussion under Section 22 76 060 fails to achieve agreement between the tree/vegetation owner and Complainant the Complainant may send to the tree/vegetation owner a request that the tree/vegetation owner accept participation in a mediation process in an effort to resolve the view or sunlight blockage claim Acceptance of mediation by the tree/vegetation owner shall be voluntary However the request may inform the tree/vegetation owner that failure to participate in mediation may be brought to the court's attention in the event of subsequent legal action by the Complainant Failure of the tree/vegetation owner to respond to the notice requesting mediation within thirty (30) days from the date of posting shall be deemed formal refusal of the mediation process by the tree/vegetation owner

**B SELECTION OF MEDIATOR** If the tree/vegetation owner agrees to participate in a mediation process the parties shall agree in writing to the selection of an individual mediator which may be chosen from a list of professional mediators available from the City Community Development Department

**C AUTHORITY OF MEDIATOR** The mediator is encouraged to be guided by the provisions of this Chapter including the claim evaluation criteria and the hierarchy of restoration actions set forth in Sections 22 76 110 and 22 76 120 respectively in attempting to mediate a resolution of the view or sunlight blockage claim The mediator may request a consultation or information from a certified arborist (chosen from a list of such arborists made available by the Community Development Director) regarding any questions involving landscape techniques or maintenance procedures with the expense of such consultation payable as a mediation expense in accordance with the provisions of this Chapter

**D ROLE OF THE MEDIATOR, COSTS, FAILURE TO RESPOND** The role of the mediator shall be advisory in nature and shall not be binding in establishing view or sunlight restoration action Any agreement reached between the two parties as a result of the mediation process described herein shall be reduced to writing by the mediator and signed by the mediator and all of the parties The cost of mediation shall be paid by the Complainant or shared in a manner set by mutual agreement between the parties The failure of the tree/vegetation owner to respond to implement (or allow the implementation of) a mediated resolution within thirty (30) days of the submission of the mediated resolution to the owner (as established by the posting date) shall be deemed a refusal by the tree/vegetation owner to accept mediation (Ord 5220 2002)

## **22 76 080 Arbitration**

**A REQUEST FOR ARBITRATION** If the initial discussion under Section 22 76 060 or a mediated resolution pursuant to Section 22 76 070 fails to achieve agreement between the tree/vegetation owner and the Complainant the Complainant may advise the tree/vegetation owner in writing that the Complainant is requesting participation in a formal arbitration process Acceptance of arbitration by the tree/vegetation owner shall be voluntary However the request may inform the tree/vegetation owner that failure to participate in the arbitration process may be brought to the court's attention in the event of subsequent legal action by the Complainant pursuant to Section 22 76 090 The tree/vegetation owner shall have thirty (30) days from posting of the arbitration notice to either accept or decline arbitration Failure to respond within thirty (30) days shall be deemed a formal refusal of arbitration If accepted the parties shall agree in writing to the selection of an individual arbitrator who may be chosen from a list of professional arbitrators available from the City within thirty (30) days of such acceptance If the parties do not agree on a specific arbitrator within thirty days either party may petition a court of competent jurisdiction to appoint an arbitrator

**B AUTHORITY OF ARBITRATOR** The arbitrator is encouraged to be guided by the provisions of this Chapter including the claim evaluation criteria and the hierarchy of restoration actions set forth in Sections 22 76 110 and 22 76 120 respectively in attempting to help resolve the view or sunlight blockage claim and shall submit a complete written decision to the Complainant and the tree/vegetation owner An arbitrator is encouraged to request a report from a certified arborist with respect to the view obstruction dispute Any decision of the arbitrator shall not be binding and shall only be enforceable pursuant to the provisions of California Code of Civil Procedure Section 1285 et seq

**C ACCEPTANCE OF THE ARBITRATOR'S DECISION, COSTS OF ARBITRATION** The failure of the tree/vegetation owner to implement the arbitrator's decision within thirty (30) days of the posting of the written decision shall be deemed a refusal to accept arbitration The costs of arbitration shall be paid by the Complainant or shared by mutual agreement between the parties (Ord 5220 2002)

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## 22 76 090 Private Cause of Action – View Restoration

**A INITIAL COMPLAINT** If a Complainant has pursued and has been unsuccessful in attempting to obtain an acceptable restoration under Section 22 76 060 ("Initial Discussion") Section 22 76 070 ("Mediation") or Section 22 76 080 ("Arbitration") the Complainant may initiate a civil action in Superior Court for the County of Santa Barbara for resolution of owner's view or sunlight claim under the provisions of this Chapter. The Complainant is encouraged to provide the Court the results of the view or sunlight claim resolution process, particularly any proposed mediator's or arbitrator's decision, as well as any report or study prepared by a certified arborist prepared in connection with the view obstruction dispute. At the discretion of the judge issuing a judgment pursuant to this section, the judgment may be recorded in the official records of Santa Barbara County.

**B SUBSEQUENT COMPLAINTS** A Complainant who has initiated a Complaint and obtained Restoration Action through mediation or arbitration under this Chapter with respect to a particular Obstruction within two (2) years of a subsequent Complaint shall not be required to seek mediation or arbitration on the subsequent Complaint for the same obstruction prior to initiating legal action pursuant to this Section. (Ord 5220 2002)

## 22 76 100 Restoration Action Limitations

Except as otherwise authorized by law, no tree or vegetation on real property owned or controlled by another person may be removed, destroyed, or otherwise altered unless the Complainant either enters into a written agreement with the tree/vegetation owner allowing the Complainant to enter the property to do so or the Complainant obtains a judicial determination specifying in detail the nature and timing of the restoration action, the Complainant's right to enter the property, and designating the parties responsible for performing such restoration action. In all cases, restoration actions shall be structured and implemented in accordance with the hierarchy established by Section 22 76 120. (Ord 5220 2002)

## 22 76 110 View or Sunlight Claim Evaluation Criteria

In evaluating and resolving a view or sunlight claim, the following unranked criteria shall be considered:

- A The vantage point(s) in the Complainant's home from which the view or sunlight is obtained or received
- B The extent of the view or sunlight obstruction
- C The quality of the view or sunlight access, including the existence of landmarks or other unique view features, or the extent to which these views or sunlight access are blocked by tree(s) or vegetation
- D The extent to which the view or sunlight access is diminished by factors other than tree(s) or vegetation
- E The extent to which the tree(s) or vegetation have grown to obscure the enjoyment of view or sunlight access from the Complainant's property compared with the view or sunlight access which was available at the time the Complainant acquired his or her home
- F The number of existing trees or amount of vegetation in the area, the number of healthy trees that a given parcel of land will support, and the current effects of the tree(s) and their removal on the neighboring vegetation
- G The extent to which the tree(s) or vegetation provide:
  - 1 Screening or privacy
  - 2 Energy conservation or climate control
  - 3 Soil stability, as measured by soil structure, degree of slope, and extent of the tree's root system when a tree is proposed for removal
  - 4 Aesthetics
  - 5 Community or neighborhood quality or significance
  - 6 Shade
  - 7 Historical context due to the age of the tree/vegetation
  - 8 Rare and interesting botanical species
  - 9 Habitat value for wildlife, and
  - 10 Blending, buffering, or reduction in the scale and mass of adjacent architecture
- H The date the Complainant purchased his or her property and circumstances which existed at that time with respect to the view
- I The date the tree/vegetation owner purchased his or her property and circumstances which existed at that time with respect to the view
- J The distance between the Complainant's home and the tree or vegetation Obstruction for which Restoration Action is sought
- K Whether the tree or vegetation Obstruction is located within a City designated High Fire Hazard zone and constitutes the type of trees or vegetation not generally encouraged for new residential construction within such zones
- L The extent to which the City has an interest in the preservation of an affected tree in its present form due to its unique character, its historical importance, or other specific factors as may be identified by a certified arborist. (Ord 5220 2002)

## 22 76 120 Hierarchy of Restoration Actions

View or sunlight restoration actions must be consistent with all other provisions of this Chapter and SBMC Title 22 generally. Severe pruning should be avoided due to the damage such practice causes to the tree's form and health. Restoration actions may include but are not limited to the following in order of preference:

A **Lacing or Thinning** Lacing/thinning is the most preferable pruning technique that removes excess foliage and can improve the structure of the tree.

B **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.

C **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.

D **Stand Thinning** The removal of a portion of the total number of trees from a grove of trees with or without replacement plantings.

E **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, espalier, bonsai, or in pollard form and if restoration actions (A) through (D) of this section will not accomplish the determined restoration and the subsequent growth characteristics will not create a future obstruction of greater proportions.

F **Heading Back** Eliminating the outer extent of the major branches throughout the tree. Heading back is only to be permitted for trees specifically planted and maintained as a hedge, espalier, bonsai, or in pollard form and if restoration actions (A) through (E) of this section will not accomplish the determined restoration and the subsequent growth characteristics will not create a future obstruction of greater proportions.

G **Tree/Vegetation Removal** Tree or vegetation removal which may be considered when the above mentioned 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 lost due to tree removal. (Ord. 5220 2002.)

## 22 76 130 Responsibility for Restoration Action and Subsequent Maintenance

The costs of restoration action and subsequent maintenance shall be determined either by agreement between the tree or vegetation owner and the Complainant or as required pursuant to any final arbitration decision or court order. (Ord. 5220 2002.)

## 22 76 140 Liability

A **NON-LIABILITY OF CITY** The City shall not be liable or responsible for any damages, injury, costs, or expenses which are the result of any recommendations or determinations made by City Staff or mediator or decisions made by other persons (e.g., arbitrator or judge) concerning a view or sunlight claim or a Complainant's assertions pertaining to views or sunlight access granted or conferred herein.

B **CITY ENFORCEMENT** Under no circumstances shall the City have any responsibility or obligation to enforce or seek any legal redress, civil or criminal, for any decision made concerning a view or sunlight claim.

C **NO CRIMINAL RESPONSIBILITY** Notwithstanding Chapter 1 28 of the Santa Barbara Municipal Code, a failure to comply with the provisions of this Chapter is not a criminal offense, and the enforcement of this Chapter shall be only by the affected and interested private parties. (Ord. 5220 2002.)

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## Chapter 12.45 SOLAR ACCESS AND VIEWS

City of Berkeley

## Section 12.45.010 Purpose and objectives

A The purpose of this chapter is to

1 Set forth a procedure for the resolution of disputes between private property owners relating to the resolution of sunlight or views lost due to tree growth

2 This view chapter does not impair obligations imposed by an existing easement or a valid pre-existing enforceable covenant or agreement

3 Nothing in this chapter is meant to replace the peaceful, sensible and just resolution of differences between neighbors acting in good faith. The provisions contained in this chapter are meant to encourage that such resolution occurs prior to engaging in the legal remedies provided by it.

B The objectives of this chapter are

1 To preserve and promote the aesthetic and practical benefits which trees provide for individuals and the entire community

2 To discourage ill-considered harm to or destruction of trees

3 To encourage the use of solar energy for heat and light

4 To encourage food production in private gardens

5 To restore access to light and views from the surrounding locale

6 To encourage the maintenance of positive relationships within a neighborhood when there is conflict between objectives 1, 2 and 3, 5 above

7 It is not an objective of this chapter to facilitate or encumber the transmission of radio and television signals (Ord. 6286 NS § 1 (part) 1995; Ord. 6173 NS § 1 (part) 1993; Ord. 5817 NS § 1 (part) 1987)

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Attachment No 6

Chapter 12 45 SOLAR ACCESS AND VIEWS**Section 12 45 020 Definitions**

A For the purposes of this chapter the meaning and construction of words and phrases hereinafter set forth shall apply

1 Solar access means the availability of sunlight to a property

2 Views mean a distant vista or panoramic range of sight of Berkeley neighboring areas or the San Francisco Bay Views include but are not limited to skylines bridges distant cities geologic features hillside terrains and wooded canyons or ridges

3 Trees means any woody perennial plant usually with one or more major trunks attaining a height of at least fifteen feet at maturity

4 Complaining party means any property owner (or legal occupant without objection of property owner) who wishes to alter or remove a tree(s) on the property of another which creates an obstruction to his or her access to sunlight or view whether such access is gained from an original dwelling or any addition thereto used as a dwelling

5 Tree owner means any individual owning real property in Berkeley upon whose land is located a tree or trees alleged by a complaining party to cause an obstruction

6 Obstruction means any substantial blocking or diminishment of a view from a structure lawfully used as a dwelling or access to sunlight to the real property which is attributable to the growth maintenance or location of tree(s)

7 Tree mediator or tree arbitrator means any trained and experienced mediator or mediator/arbitrator acceptable to both complaining party and tree owner to mediate or arbitrate a tree dispute

8 Restorative action means any specific requirement to resolve a tree dispute

9 Thinning means the selective removal of entire branches from a tree so as to improve visibility through the tree and/or improve the tree's structural condition

10 Tree removal means the elimination of any tree from its present location

11 Trimming means the selective removal of portions of branches from a tree so as to modify the tree(s) shape or profile or alter the tree's appearance

12 Topping means removal of the top portion of a tree's main leader stems resulting in an overall reduction in the tree's height and size

13 Tree claim means the written basis for arbitration or court action under the provisions of this article which includes all of the following

a The nature and extent of the alleged obstruction including pertinent and corroborating physical evidence Evidence may include but is not limited to photographic prints negatives or slides Such evidence must show absence of the obstruction at any documentable time during the tenure of the current property owner (or legal occupant without objection of property owner) hereinafter referred to as complaining party Evidence to show date of acquisition must be included

b The location of all trees alleged to cause the obstruction the address of the property upon which the tree(s) are located and the present tree owner's name and address This requirement may be satisfied by the inclusion of the tree location property address and tree owner information

c Any mitigating actions proposed by the parties involved to resolve the tree claim

d The failure of personal communication between the complaining party and the tree owner to resolve the alleged obstruction as set forth in Section 12 45 030 of this chapter The complaining party must provide physical evidence that written attempts at conciliation have been made and failed Evidence may include but is not limited to copies of and receipts for certified or registered mail correspondence (Ord 6286 NS § 1 (part) 1995 Ord 6173 NS § 1 (part) 1993 Ord 5817 NS § 1 (part) 1987)

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## Chapter 12 45 SOLAR ACCESS AND VIEWS

### **Section 12 45 030 Procedures**

A The procedures described in this section shall be followed in the resolution of tree disputes between private parties

1 Initial reconciliation A complaining party who believes in good faith that the growth maintenance or location of tree(s) on the private property of another (hereinafter referred to as tree owner) diminishes the beneficial use of economic value of his or her property because such tree(s) interfere with the access to sunlight or views which existed prior to such growth maintenance or location of the tree(s) on the property during the time the complaining party has occupied the property shall notify the tree owner in writing of such concerns The notification should if possible be accomplished by personal discussions to enable the complaining party and tree owner to attempt to reach a mutually agreeable solution

2 Mediation If the initial reconciliation attempt fails the complaining party shall propose mediation as a means to settle the dispute on a relatively informal basis Acceptance of mediation by the tree owner shall be voluntary If mediation is elected the parties shall mutually agree upon a tree mediator

The mediation meeting may be informal and no written record is necessary unless desired by the parties The mediation process may include the hearing of viewpoints of lay or expert witnesses and shall include a site visit to the properties of the complaining party and the tree owner Parties should be encouraged to give notice to immediate neighbors and solicit input The tree mediator shall consider the objectives benefits and burdens set forth in this chapter in attempting to help both parties reach a resolution of the dispute The tree 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 in order to eliminate the need for binding arbitration or litigation

3 Tree claim preparation In the event that the initial reconciliation process fails and mediation either is not elected or fails the complaining party must prepare a tree claim (as defined in 12 45 020) and provide a copy to the tree owner in order to pursue either binding arbitration or litigation This constitutes a filing of a tree claim

4 Binding arbitration In those cases where the initial reconciliation process fails and where mediation has not resolved the dispute the complaining party must offer to submit the dispute to binding arbitration and the tree owner may elect binding arbitration The identity of the tree arbitrator shall be agreed upon by both the complaining party and the tree owner who shall indicate such agreement in writing This agreement may provide for employment of experts representing the parties or may be limited to an investigation of the tree claim conducted by the tree arbitrator The tree arbitrator shall follow the provisions of this chapter to reach a fair resolution of the tree claim and shall submit a complete written report to the complaining party and the tree owner This report shall include the tree arbitrator's findings with respect to all standards listed in Section 12 45 040 (Standards) of this chapter a pertinent list of all mandated restorative actions with any appropriate conditions concerning such actions including a schedule by which mandates must be completed Such actions must be completed with due regard for the health of the tree A copy of the arbitrator's report shall be filed with the City Clerk

5 Litigation In those cases where initial reconciliation fails and binding arbitration is not elected civil action may be pursued by the complaining party for resolution of the sunlight access or view tree claim under the provisions of this chapter The litigant must state in the lawsuit that arbitration was offered and not accepted and that a copy of the lawsuit was filed with the City Clerk A copy of any order or settlement in the lawsuit shall also be filed with the City Clerk (Ord 6286 NS § 1 (part) 1995 Ord 6173 NS § 1 (part) 1993 Ord 5817 NS § 1 (part) 1987)

## Chapter 12 45 SOLAR ACCESS AND VIEWS

### **Section 12 45 040 Standards for resolution of disputes**

A In resolving the tree dispute the tree mediator tree arbitrator or court shall consider the benefits and burdens derived from the alleged obstruction within the framework of the objectives of this chapter as set forth in Section 12 45 010 in determining what restorative actions if any are appropriate The burden of proof shall be on the complaining party

#### **1 Benefits**

- a Visual quality of the tree(s) including but not limited to species characteristics size growth form and vigor
- b Location with respect to overall appearance design and/or use of the tree owner's property
- c Soil stability provided by the tree(s) considering soil structure degree of slope and extent of the tree's root system
- d Visual auditory and wind screening provided by the tree(s) to the tree owner and to neighbors Existing privacy provided by the tree(s) to the tree owner's home shall be given particular weight
- e Energy conservation and/or climate control provided by the tree(s)
- f Wildlife habitat provided by the tree(s)
- g The economic value of the tree(s) as measured by criteria developed by the International Society of Arboriculture and the economic value of the property as a result of the tree(s)
- h Other tree related factors including but not limited to
  - (i) The degree to which the species is native to the local region or area
  - (ii) Indigenous nature of the species to which the tree belongs
  - (iii) Specimen tree quality
  - (iv) Rare tree species and the frequency of new planting of a tree

#### **2 Burdens**

- a The hazard posed by a tree or trees to persons or structures on the property of the complaining party including but not limited to fire danger and the danger of falling limbs or trees
- b The extent to which the trees diminish the amount of sunlight available to the garden or home of the complaining party
- c The extent to which the trees interfere with efficient operations of a complaining party's pre-existing solar energy system
- d The existence of landmarks vistas or other unique features which cannot be seen because of growth of trees since the acquisition of the property
- e The extent to which the alleged obstruction interferes with sunlight or view The degree of obstruction shall be determined by means of a measuring instrument or photography
- f The extent to which solar access or the view is diminished by factors other than trees
- g Deleterious effect of the trees upon the complaining party's vegetation through loss of heat and light except that the dropping of leaves or maintenance factors shall not be a burden under this chapter

3 Restorative actions The tree mediator shall recommend or the tree arbitrator or court shall order restorative action or no action according to Section 12 45 040 (Standards) Restorative actions may include written directions as to appropriate timing of trimming thinning topping or removal Such restorative actions are to apply only to current parties to the dispute The tree arbitrator or court may require compensation to the tree owner for value lost due to restorative actions

Possible restorative actions may include

Trimming

Thinning

Delayed trimming or thinning

Topping

Tree removal possibly with replacement plantings

- a Restorative actions shall be limited to the trimming and/or thinning of branches where possible and practical

Trimming or thinning may be on a delayed basis providing time for the top of the tree to grow above the point where it obstructs sunlight or view

- b When trimming and/or thinning of branches is not a feasible solution the impact on the health of the tree shall be considered and replacement may be required Topping is not a generally accepted arboricultural practice and therefore is not recommended by the City

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c In those cases where tree removal eliminates or significantly reduces the tree owner's benefits replacement plantings shall at the tree owner's option be set forth in writing prior to the tree removal. The tree owner may elect tree removal with replacement plantings (as an alternative to trimming thinning and topping).

d All trimming thinning topping and tree removal required under this chapter shall be performed by a person or firm selected by the tree owner with the concurrence of the complaining party except that in the event that the complaining party is not obligated to bear any of the cost for such action his or her concurrence is not required. The use of a certified arborist for such work is encouraged but not required.

e The extent of solar access or view available and documentable as present at any time during the tenure of the present owner or legal occupant is the limit of restorative action which may be required. If the complaining party is seeking a view or sunlight from an addition the complaining party has no right to a view or solar access greater than that which existed at the time the construction of the addition was completed or August 6, 1987 whichever date is later.

f No restorative action may be required concerning any tree the base of which is more than three hundred feet from the immediate vicinity of the dwelling of the complaining party's property. If no dwelling exists the distance shall be determined from the most likely dwelling site upon the property or from the geographical center of the property at the discretion of the mediator arbitrator or court as appropriate.

g A tree which has been the subject of restorative action under the terms of this chapter is exempted from other property owners' claims for a period of five years from date of filing of a tree claim.

h Nothing in this section shall be construed to deny compensation to a tree owner to which a tree owner would be entitled under any other provision of law (Ord. 6286 NS § 1 (part) 1995 Ord. 6173 NS § 1 (part) 1993 Ord. 5817 NS § 1 (part) 1987).

Chapter 12 45 SOLAR ACCESS AND VIEWS

**Section 12 45 050 Apportionment of costs**

A Cost of mediation and arbitration

1 The complaining party shall pay all the costs if any of mediation

2 The complaining party and the tree owner shall each pay fifty percent of all the costs of the arbitrator's professional fee if any

B Cost of litigation

1 The complaining party shall pay one hundred percent of both parties' reasonable attorneys' fees in the event that his or her claim is finally denied or no action is ordered pursuant to Section 12 45 040 unless the tree owner has refused to participate in either the initial reconciliation or mediation

2 In all other cases the complaining party and the tree owner shall each pay his or her attorneys' fees. Court costs shall be allocated to the parties at the court's discretion

C Cost of restorative actions. At any time during the procedure specified in this chapter the parties may agree between themselves as to the allocation of the costs of restorative action. If such an agreement is not reached the following shall apply

1 As to trees planted prior to August 6 1987 the complaining party shall pay one hundred percent of the costs of the initial restorative action. The complaining party shall pay the cost of subsequent restorative action as the result of the recurrence of the same obstruction

2 As to trees planted subsequent to August 6 1987 the tree owner and the complaining party shall each be responsible for fifty percent of the costs of restorative action and subsequent recurrence of the same obstruction

D Compensation for value of restorative actions. In the event a tree arbitrator or court orders restorative action and compensation to the tree owner therefor the tree arbitrator or court may use any of the following methods to determine value lost: fair market value, replacement value, or trunk formula. Trunk formula shall mean the method of determining value as set forth in latest edition of the Guide for Plant Appraisal published by the Council of Tree and Landscape Appraisers (Ord 6286 NS § 1 (part) 1995; Ord 6173 NS § 1 (part) 1993; Ord 5817 NS § 1 (part) 1987)

Chapter 12 45 SOLAR ACCESS AND VIEWS

Section 12 45 060 Liabilities

A The issuance of mediation findings an arbitration report or a court decision shall not create any liability of the City with regard to the restorative actions to be performed

B The complaining party shall indemnify and hold harmless the tree owner with respect to any damages or liability incurred by said owner arising out of the performance of any work at the behest of the complaining party as follows

1 With respect to trees planted prior to August 6 1987 the complaining party shall indemnify the tree owner as to one hundred percent of any such damages or liability

2 With respect to trees planted after August 6 1987 the complaining party shall indemnify the tree owner as to fifty percent of any such damages or liability

C Failure to enforce on the part of the City will not give rise to any civil or criminal liabilities (Ord 6286 NS § 1 (part) 1995 Ord 6173 NS § 1 (part) 1993 Ord 5817 NS § 1 (part) 1987)

Chapter 12 45 SOLAR ACCESS AND VIEWS

Section 12 45 070 Enforcement

A violation of this chapter is not a misdemeanor and the enforcement of this chapter shall be by private parties involved. The complaining party shall have the right to bring injunctive action to enforce any restorative action ordered pursuant to this chapter (Ord 6286 NS § 1 (part) 1995 Ord 6173 NS § 1 (part) 1993 Ord 5817 NS § 1 (part) 1987)



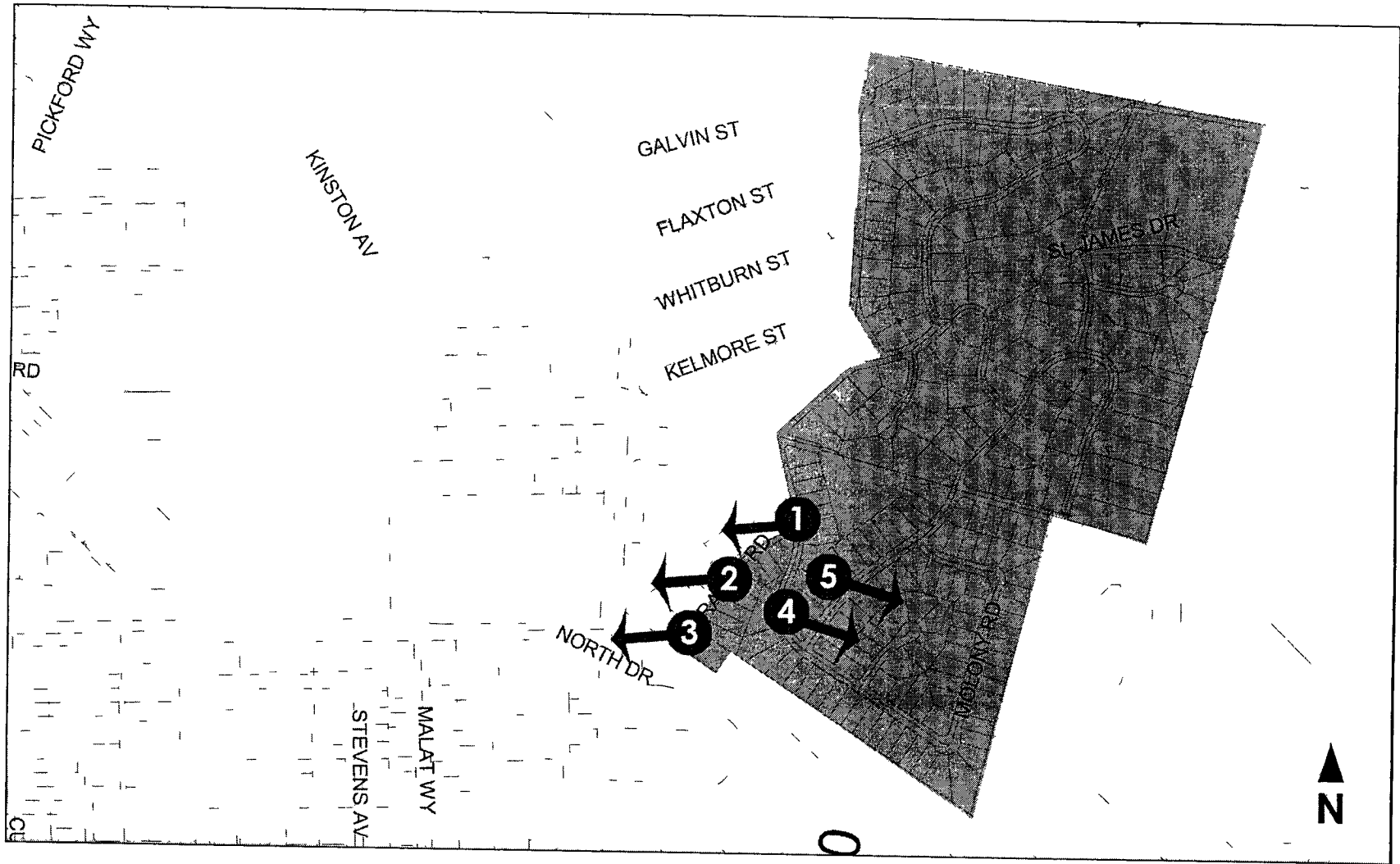
## Chapter 12-45 SOLAP ACCESS AND VIEWS

## Section 12-45-080 Severability

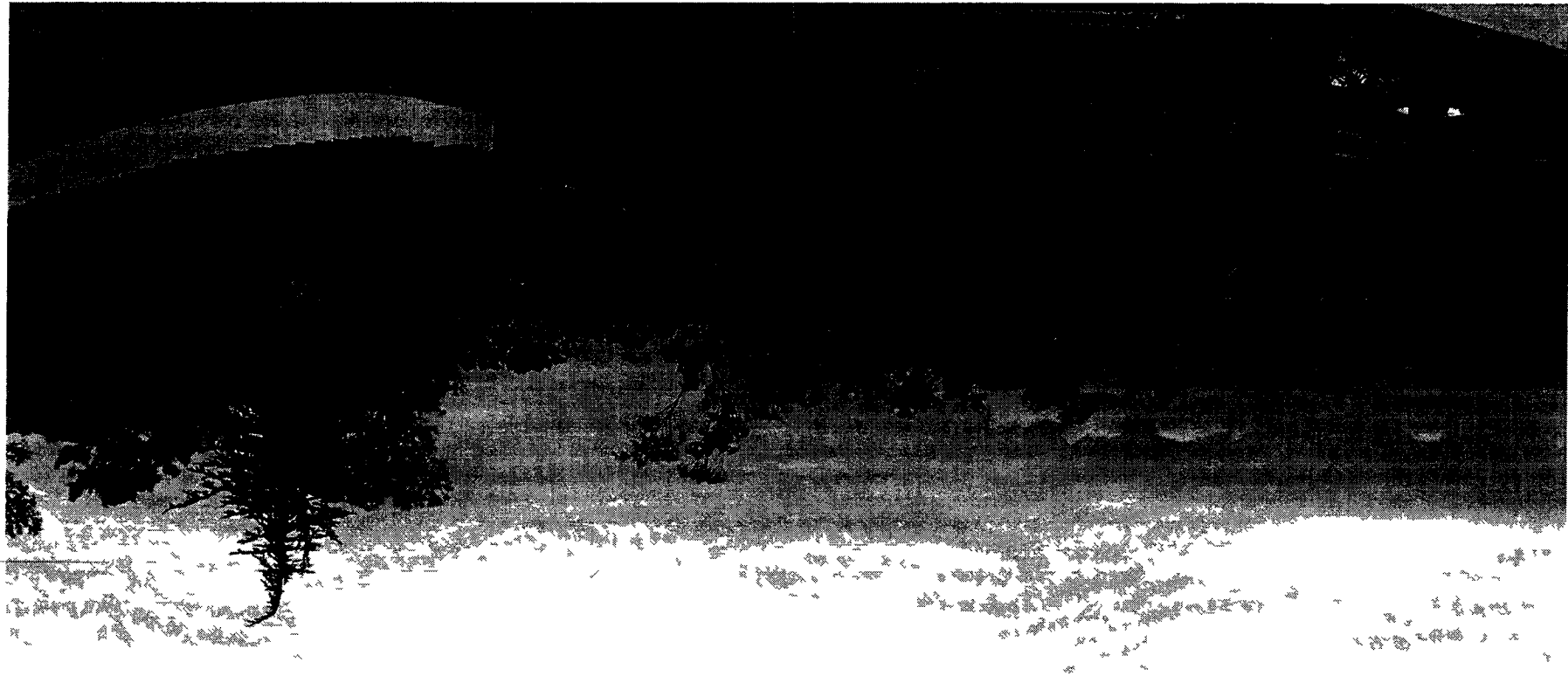
If any portion of this chapter is struck down by court action, all other portions will remain in effect (Ord 6286-NS § 1 (part) 1995 Ord 6173 NS § 1 (part) 1993 Ord 5817 § 1 (part) 1987)

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VIEWS FROM CULVER CREST



VIEWS FROM CULVER CREST



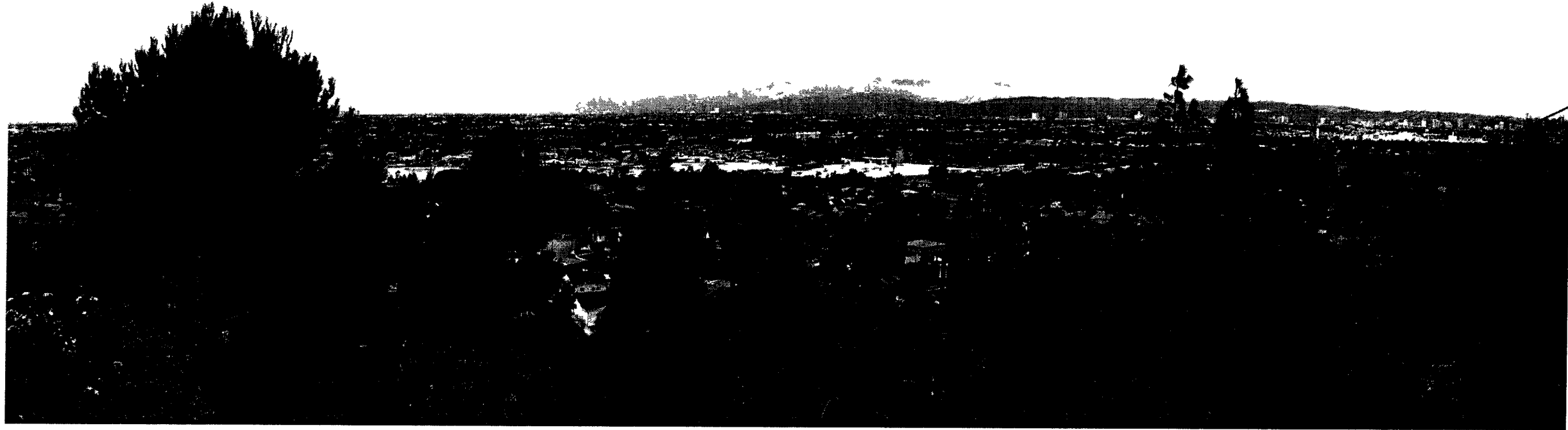
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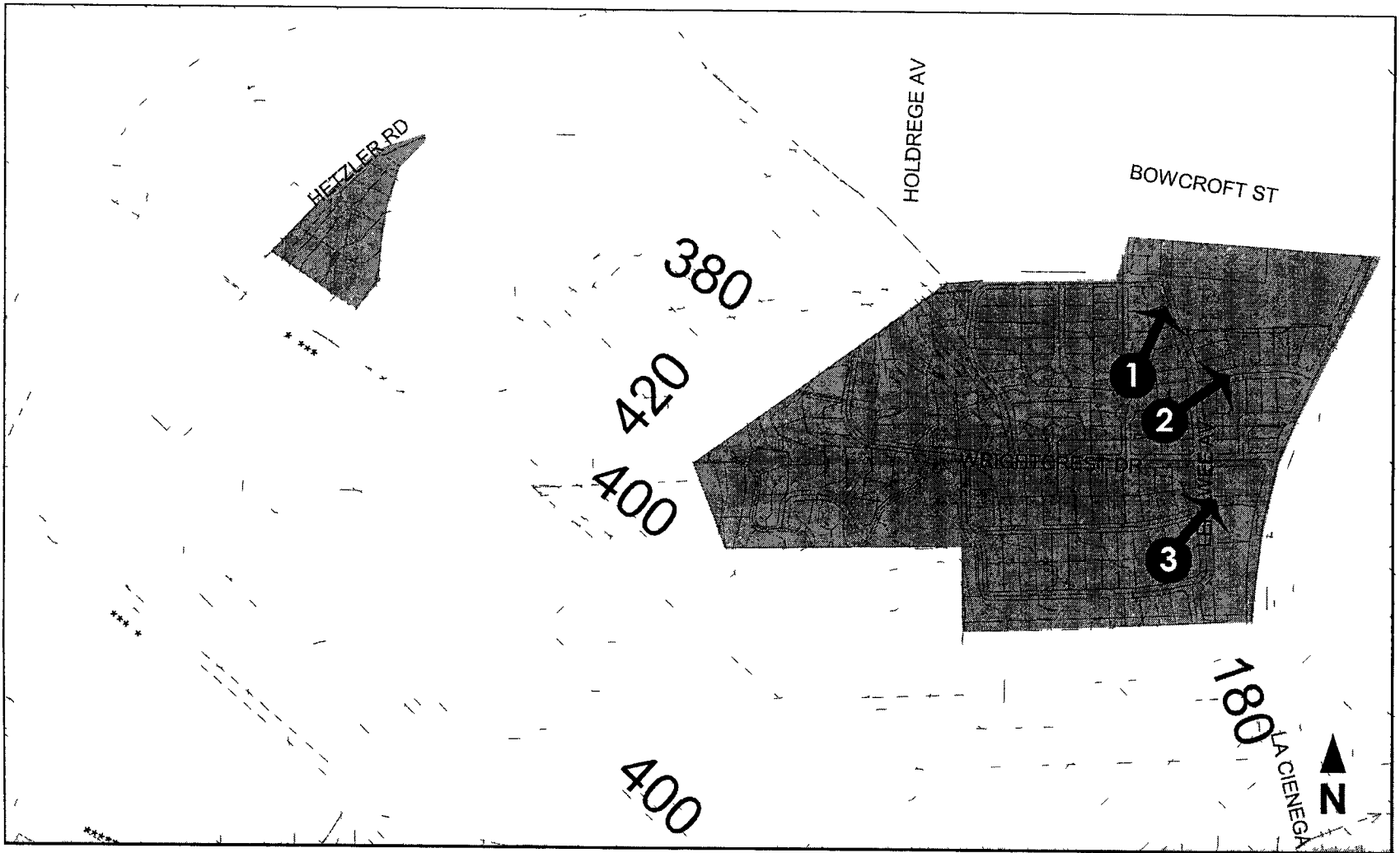


VIEWS FROM CULVER CREST

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VIEWS FROM BLAIR HILLS





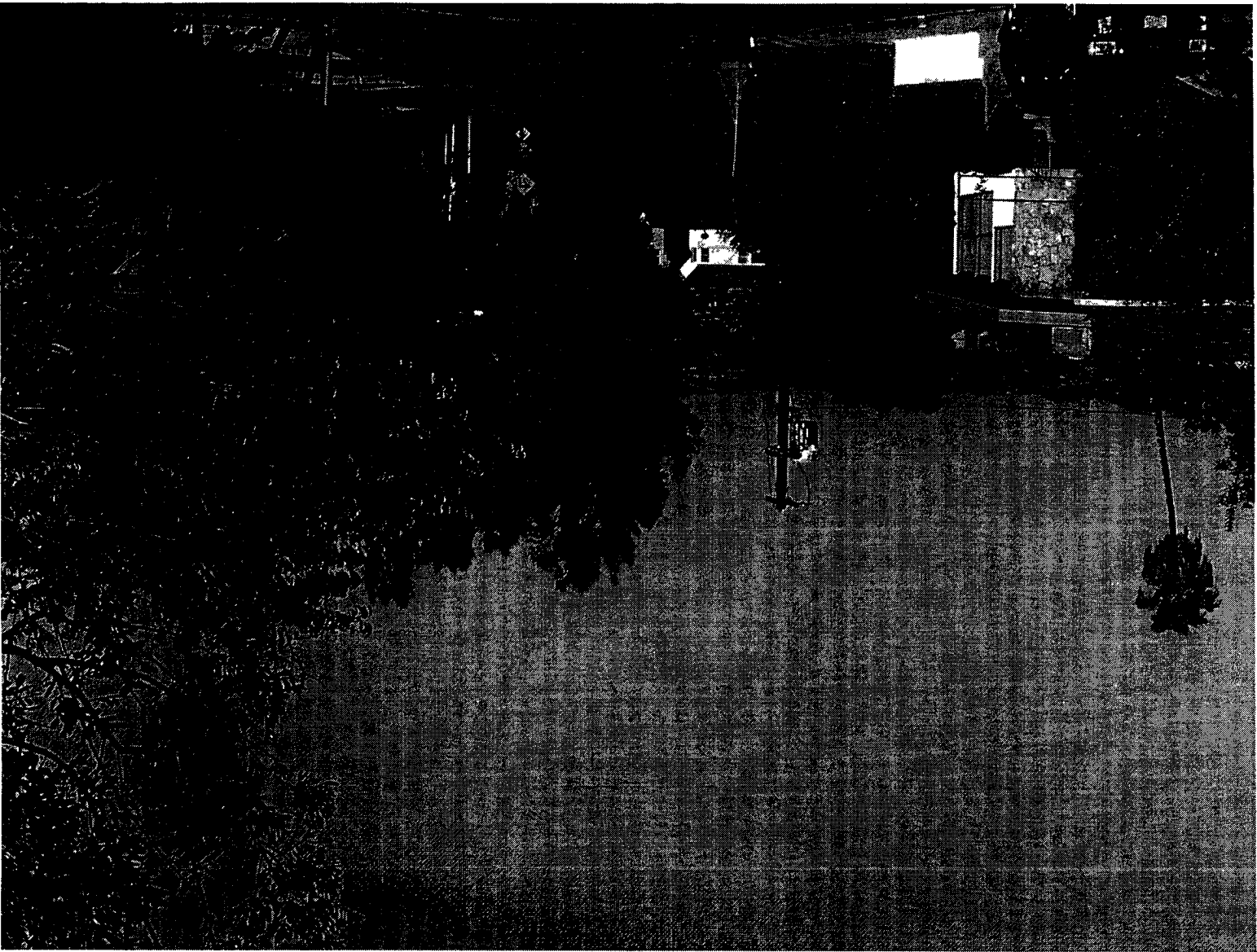
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