



MARIN COUNTY
COMMUNITY DEVELOPMENT AGENCY

ALEX HINDS, DIRECTOR

STAFF REPORT TO THE MARIN COUNTY PLANNING COMMISSION
DRAFT ORDINANCE PERTAINING TO VIEW AND SUNLIGHT OBSTRUCTION FROM TREES
IN THE UNINCORPORATED STRAWBERRY COMMUNITY

Item No.: 5.
Affected area: Unincorporated Strawberry
community east of Highway 101
Hearing Date: February 23, 2004

PROPOSED ORDINANCE:

This is a continued public hearing to consider a request by the Strawberry Design Review Board for the County to consider enacting an ordinance that would establish rights to scenic views and sunlight for residents of the Strawberry community, and provide a process for resolving disputes between property owners when the view or sunlight of one property owner is asserted to be adversely affected by the tree(s) growing on the property of another.

The draft ordinance would, if implemented, amend Chapter 23.20 of the Marin County Code, which generally governs the regulation of natural resources. The draft ordinance would not amend the County's land use and zoning regulations, such as the Countywide Plan, Strawberry Community Plan, or Development Code. In general, the ordinance sets forth purposes and principles concerning views, sunlight, and trees, and establishes dispute resolution procedural options ranging from initial reconciliation to litigation, for dealing with disputes concerning trees, views, and sunlight. The County would not be involved in the process of resolving tree/view/sunlight disputes brought forward under this ordinance, nor would the County have the legal authority to enforce any provisions in the ordinance. In order for the County to enact the ordinance, the Planning Commission would adopt a resolution referring the ordinance to the Board of Supervisors with a recommendation for its adoption.

ENVIRONMENTAL REVIEW:

The Environmental Coordinator has determined that the draft ordinance is not subject to the requirements of the California Environmental Quality Act (CEQA) because it does not constitute a project pursuant to Section 15061(a) and Section 15378. The activities and procedures considered under the ordinance do not require any government action or involvement to effect. Trees determined to have significant resource value would continue to receive the protections that are currently present under the existing County Native Tree Protection and Preservation Ordinance.

PUBLIC NOTICE:

Consistent with State and County requirements and procedures, the Community Development Agency provided public notice for the December 8, 2003, public hearing regarding the draft ordinance to properties within the affected area of the Strawberry community as well as interested parties. At the December 8 public hearing, the Planning Commission continued consideration of the draft ordinance to February 23, 2004. Notice of the continued public hearing was sent to members of the public who submitted written correspondence that included a mailing address, as well as persons who's speaker cards at the last hearing included their address.

PLAN CONSISTENCY:

As conditionally modified, the draft ordinance would not conflict with the Marin Countywide Plan, the Strawberry Community Plan, and the County Native Tree Protection and Preservation Ordinance.

BACKGROUND:

The Strawberry community enjoys with its neighboring communities some of the most scenic and economically valuable views in Marin County. Vistas include the Golden Gate Bridge, San Francisco Bay, arms of Richardson's Bay, the communities of Tiburon, Belvedere, and San Francisco, and landscapes including Angel Island, the Marin Headlands, and Mount Tamalpais. As development of the Strawberry peninsula proceeds, these views have become increasingly constricted by development and the introduction and maturation of landscaping. In response to the view and sunlight impact of growing vegetation, especially trees, some residents of the Strawberry peninsula, acting through the auspices of the Strawberry Design Review Board, have requested that the County consider enacting an ordinance that would establish the right to some portion of the view that existed from a property at the time that the current owner purchased it, and would set up a process by which disputes over views and sunlight might be resolved.

The draft ordinance was considered at Planning Commission hearings in February and March, 2002, and at a hearing on December 8, 2003. The item was continued after each hearing to provide an opportunity to address issues that arose from the Commissions deliberations and the public testimony. A number of issues arose at the most recent hearing. This staff report, and the amended draft tree/view/sunlight ordinance are intended to discuss options that respond to the principal issues raised by the Commission at the December 8 hearing. Although several of the Commissioners expressed reservations about the type of ordinance under discussion, staff recommends at least proceeding with a discussion of the issues surrounding a potential ordinance. Such discussion will help inform either decisionmakers on this ordinance if it goes forward now, or, if no action is taken at this time, future commissions or boards that may deliberate on this matter.

ANALYSIS OF ISSUES:

Lack of community consensus. At the December 8, 2003, Planning Commission meeting, as well as at prior Planning Commission hearings on the subject, the debate on what is appropriate to deal with the tree/view/sunlight issue was lively and far ranging. Very few persons, including those who support a view/sunlight ordinance in concept, expressed unconditional support for the draft ordinance last presented. It was not clear to what extent a community consensus exists supporting such an ordinance. While it is possible to undertake some type of public opinion survey, such an undertaking would be time and staff resource intensive, and would have to be carefully structured to avoid potential design bias. Absent such a survey, however, it is difficult to determine whether a community consensus exists at this time to go forward, and with what type of ordinance. Ultimately, the community survey will need to be considered in the broader context of whether the Commission decides to move forward with a draft ordinance as well as the CDA Planning Division's work program and budget.

Achieving a more balanced ordinance. A number of concerns were raised that the basic premise of the December,

2003, draft ordinance was oriented towards pursuing and establishing view and sunlight claims, to the detriment of tree protection. In response, staff is suggesting a number of amendments to better balance the ordinance, as discussed in the text analysis below

Effective date for view/sunlight claims. One of the more contentious issues at the last hearing was the date which a homeowner would be able to use as the basis for claiming right to a private view or sunlight. , When does o did the view or sunlight exist which is to be the basis of the view/sunlight claim? Issues such as fairness, retroactivity, property rights, basis for claims, property values, etc., all relate to the private right to a view or sunlight. The draft ordinance considered at the last hearing suggested that the views or sunlight on which a view/sunlight claim could be based would be retroactive to no earlier than when a property owner purchased his or her property.

A number of problems with using the purchase date as the basis for a view/sunlight claim were pointed out. For example, in some instances claims could go back several decades. Lack of notice to a more recent purchaser of property with trees against which a view claim is filed is an issue. Action against that owner could have a material impact on the value of his or her property, calling into question not just fairness, but the realtor's liability. The Planning Commission also noted that it is general practice in the County for an adopted ordinance to apply prospectively only. Conversely, some argued that restoring views that existed at the time of property purchase does not go far enough, and instead the ordinance should be based on views which existed at any prior time at which the property was developed.

One option the Planning Commission could consider is using the date of adoption of the ordinance (i.e., the date upon which the ordinance takes effect) as the earliest date upon which a view/sunlight claim could be based. Staff recognize that this will not satisfy those who desire retroactivity to some prior date. Nor will it satisfy those who think that sunlight and view issues should be settled by a private view or sunlight easement, negotiated between private property owners without any County regulation or involvement (the current situation). Using the purchase date does respond to the concerns described above, and sets a baseline date for which documentation to support a view/sunlight claim should be more readily attainable.

Applicability to portion of County. A question arose as to whether a view ordinance could reasonably or legally be instituted for only one portion of the County. As long as a set of circumstances exist within a particular area of the County that are sufficiently compelling to establish a regulatory framework in that one area, the County can be justified in enacting those regulations. In this case, the physical and visual circumstances of the Strawberry peninsula are sufficiently unique, and there is enough relative interest in such an ordinance within the community (however, see consensus discussion above) to consider applying some type of dispute resolution process in Strawberry and not elsewhere in the County . However, similar ordinances (or an expansion of the area in which this ordinances applied) could be enacted in other areas with significant view and sunlight issues if there is sufficient community interest.

Types of restorative action. As mentioned in the last staff report, topping is not generally considered consistent with current arboricultural practices. Topping, (i.e., removing a trees central leader and any branches above a certain height) damages a tree's form, structure, and vigor, and can result in poorly attached new growth. Topping has been replaced with crown reduction as the most substantial tree pruning. Crown reduction can achieve the same view benefits without the adverse impacts of topping.

ANALYSIS OF ORDINANCE:

Purpose and Principles (§ 23.010). The Purpose portion has been expanded to include protection of trees as a

purpose. The Principles have also been expanded to recognize benefits provided by trees.

Definitions (§ 23.020). Definitions have been reworked to address issues that were raised at the last Planning Commission hearing. There is only one view-important area on a property, the “Active Use Area”, defined as the most actively used portion of a residence or commercial building from which views are available. Several other definitions relating to different types of tree work have been added.

Rights Established (§ 23.030). Sets the effective date of adoption of the ordinance as the baseline for basing all view claims. Eliminates the retroactivity issues discussed above.

Unreasonable Obstruction Prohibited (§23.20.040). No change.

Criteria and Factors in Determining Unreasonable Obstruction and Appropriate Restoration Action (§ 23.050). The Section combines three sections in the previous draft for the sake of clarity. Eleven factors/criteria are listed for determining unreasonable obstruction and what restoration action is appropriate. Restoration actions are listed in terms of preference, with the least severe action (vista pruning or windowing) the most preferred.

Process for Resolution of Obstruction Disputes (§ 23.060 - 23.20.110). No change from last time. The multi-tiered approach for resolving disputes is unchanged from the last ordinance draft, as summarized below:

- *Initial Reconciliation:* If a property owner believes that tree growth on a neighboring lot has caused an unreasonable obstruction of views or sunlight (complaining party), he/she must first contact the tree owner regarding their concerns and attempt to resolve the dispute on a voluntary basis through a mutually agreeable solution.
- *Mediation:* If initial reconciliation is unsuccessful, the complaining party must propose mediation as the next step in settling the dispute. Acceptance of mediation by the tree owner is also voluntary. It is recommended that the services of a professional mediator be employed. The County provides professional mediation services at a nominal cost.
- *View/Sunlight Claim:* In the event that mediation is declined by the tree owner or fails to resolve the dispute, the complaining party may prepare a View/Sunlight Claim to pursue either binding arbitration or litigation. The View/Sunlight Claim consists of a description of the obstruction and evidence to show the date the complaining party acquired or occupied their property. Supporting evidence of the obstruction must also be provided, including but not limited to photographs of the current obstruction and the absence of such obstruction during the tenure of the complaining party’s ownership or occupancy. The View/Sunlight Claim must also include the location of trees alleged to cause the obstruction, evidence of the failure of initial reconciliation and mediation to resolve the dispute, and specific restorative actions proposed by the complaining party to resolve the unreasonable obstruction.
- *Binding Arbitration:* Following preparation of a View/Sunlight Claim, the complaining party must offer in writing to submit the dispute to binding arbitration. The tree owner may elect binding arbitration or decline the complaining party’s offer.
- *Litigation:* In those cases where the tree owner declines binding arbitration, the complaining party may pursue the dispute as a civil matter through litigation.
- *Apportionment of Costs:* The complaining party and the tree owner would each pay 50% of the costs associated with mediation and arbitration. The cost of litigation would be determined by the court or a settlement agreement. The cost of restorative action would be determined by mutual agreement or through

mediation, arbitration, court judgment or settlement.

- *Liabilities:* The resolution of disputes through the procedures set out in the draft ordinance would not create any duty or liability of the County insofar as restorative actions are concerned. In addition, the County is not required to enforce or administer any provisions in the draft ordinance. Rather, the intent of the draft ordinance is to provide rights and remedies to private parties, except where the Board of Supervisors determines that a public nuisance related to a tree should be abated.

Limitations (§ 23.20.120). This section stipulates that the draft ordinance would not supersede or otherwise modify the following:

- 1) Existing private rights to views and/or sunlight that may exist under CC&R's (conditions, covenants, and restrictions), easements or other private agreements;
- 2) Regulations contained in the County's Native Tree Preservation and Protection Ordinance (Marin County Code Section 22.83), which may require the preservation of native trees under certain circumstances
- 3) Other land use plans. For example, Conditions of Approval requiring the preservation of trees that might otherwise be subject to a View/Sunlight Claim.

Relative to unencumbered property, this section does not reduce any private view/sunlight claim rights that an owner of property that is subject to CC&R's would have against property that is not subject to CC&R's.

Trees on County-owned property (§ 23.20.130). Trees on County-owned property are exempt from the provisions of this chapter.

OPTIONS:

Staff recommends that the Planning Commission conduct a public hearing and consider the following options:

- 1) Proceed with continued work on the proposed draft ordinance with additional revisions as determined appropriate by the Commission; or
- 2) Proceed with a substantially different ordinance, for example, one addressing certain types of undesirable trees, and/or other substantive changes from the current draft ordinance; or
- 3) Postponing continued work on a draft ordinance; or
- 4) Discontinue work on a draft ordinance relating to private rights to views as they are affected by trees.

The Commission should consider the utility of conducting a community survey in conjunction with Option 1 and Option 2 above, although as stated above, the timing of a community survey as well as additional work on a revised ordinance will be influenced by the CDA Planning Division's current work program and major projects, such as the Countywide Plan Update, Residential Design Guidelines Manual and related community plan updates, Local Coastal Program Update, and subsequent phased updates to the Development Code. The timing of initiating a community survey may also be affected by its cost and the availability of adequate funding.

ATTACHMENTS:

1. Modified Draft Ordinance Pertaining to Views, Sunlight, and Trees in the Strawberry Community
2. CEQA Exemption Document
3. Planning Commission minutes 2/25/02, 3/25/02, 12/8/03

4. Strawberry community map
5. Strawberry community map with CC&R affected properties
6. Letters from Strawberry residents
7. Draft Ordinance from 12/8/03 Planning Commission hearing
8. Planning Commission staff report from December 8, 2003
9. Planning Commission staff report from February 25, 2002
10. Planning Commission staff report from March 25, 2002

Note: Attachments 8-10 have been included in the Planning Commission packets only. These reports have been distributed to members of the public in connection with the previous Planning Commission hearings on the draft ordinance. Additional copies of these reports may, however, be obtained at the Marin County Community Development Agency office, Room 308, Civic Center.

DRAFT
February 23, 2004 Planning Commission Hearing

ORDINANCE NO. _____

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE
COUNTY OF MARIN ADDING CHAPTER 23.20
TO THE MARIN COUNTY CODE PERTAINING TO
VIEWS, SUNLIGHT, AND TREES
IN THE STRAWBERRY COMMUNITY**

THE BOARD OF SUPERVISORS OF THE COUNTY OF MARIN HEREBY ORDAINS AS
FOLLOWS:

SECTION I. Legislative Findings

- A. WHEREAS, the Marin County Board of Supervisors finds that the Strawberry Community is unique with respect to its physical setting adjacent to San Francisco Bay and within the viewshed of Mount Tamalpais; and
- B. WHEREAS, the Marin County Board of Supervisors finds that a number of unique and/or significant views are available from the Strawberry Community, such as San Francisco Bay, the City of San Francisco skyline, the Golden Gate Bridge, the San Francisco-Oakland Bay Bridge, Mount Tamalpais, and the Tiburon Peninsula; and
- C. WHEREAS, the Marin County Board of Supervisors finds that a balance between preservation of views and sunlight, and the protection of trees, is important to maintain the public welfare and in particular the quality of life in the Strawberry Community; and
- D. THEREFORE, the Marin County Board of Supervisors hereby establishes the following rights of persons to preserve views and sunlight, balanced with tree protection, and establishes a process by which persons may seek restoration of such views or sunlight within the Strawberry Community when unreasonably obstructed by the growth of trees or other vegetation.

SECTION II. Chapter 23.20 is hereby added to the Marin County Code to read in full as follows:

Chapter 23.20

Views, Sunlight, and Trees

Sections:

23.20.010	Purpose and Principles.
23.20.020	Definitions.
23.20.030	Rights Established.
23.20.040	Unreasonable Obstruction Prohibited.
23.20.050	Criteria and Factors in Determining Unreasonable Obstruction and Appropriate Restoration
23.20.060	Process for Resolution of Obstruction Disputes.
23.20.070	View/Sunlight Preparation.
23.20.080	Binding Arbitration.
23.20.090	Litigation.
23.20.100	Apportionment of Costs.
23.20.110	Liabilities.
23.20.120	Limitations.
23.20.130	Trees on County-Owned Property.

23.20.010 Purpose and Principles.

The purposes of this Chapter are to:

- (a) Establish the right of persons in the "Strawberry Community" to preserve views or sunlight which exist at the effective date of adoption of this ordinance from unreasonable obstruction by the growth of trees.
- (b) 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.
- (c) Seek to provide a balance in the protection of views, sunlight, and trees.

The rights and the restorative process are based upon the following general principles:

1. The County, on behalf of the people of the "Strawberry Community", as defined herein, recognizes that residents, property owners, and businesses value outward views, the benefits of plentiful sunlight reaching their buildings and yards, and the benefits provided by trees. Views, sunlight, and trees all contribute to the quality of life and promote the general welfare of the entire Community.
2. The County recognizes that views and sunlight contribute a variety of benefits to the community, providing panoramic vistas, supplementing architectural design, enhancing the physical environment, and adding to property value.
3. The County also recognizes that trees provide a variety of benefits, including wildlife habitat, wind and temperature buffering, oxygen replenishment, visual screening, and privacy.
4. Owners and residents should maintain trees on their property in a healthy condition, and before planting trees, owners and residents should consider view and sunlight blockage potential.
5. The County hereby establishes a process by which persons may seek to preserve and restore views or sunlight which existed at date of effective adoption of this ordinance. The County shall also establish a list of factors to be considered in determining appropriate actions to restore views or sunlight.
6. 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.
7. It is the intent of the County that the provisions of this Chapter receive thoughtful and reasonable application. It is not the intent of the County to encourage clear-cutting or substantial denuding of any property of its trees by overzealous application of provisions of this Chapter.

23.20.020 Definitions.

For the purpose of this Chapter, the meaning and construction of words and phrases is as follows:

Active Use Area: The most actively used portion or portions of a residence or commercial building from which views are available (e.g., the family room in a residence or the dining area in a restaurant).

Arbitrator: 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: A legal procedure as set forth in Section 1280, *et seq.*, of the Code of Civil Procedure.

Complaining Party: 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.

Crown reduction: Comprehensive pruning to reduce a tree's height, spread, or shape. Crown reduction involves the removal of the top, sides, and individual limbs to a lateral large enough to become the terminal. No more than one third (33 percent) of the trees canopy shall be removed in any one year.

Mediator: A neutral, objective third person who assists people in finding mutually satisfactory solutions to their problem.

Person: Any individual, corporation, partnership, firm, or other legal entity, excluding the County of Marin.

Protected Tree: A native tree listed in Marin County Ordinance #3342, Native Tree Preservation and Protection. Any alteration or removal of protected trees may require a permit pursuant to other County Ordinances.

Removal: The elimination of any tree from its present location. Removal includes actions that kill or adversely affect the health or vigor of a tree, including cutting, girdling, interfering with the water supply, applying chemicals, or regrading around the base of the trunk.

Restorative Action: Any specific activities affecting a tree or trees that result in the preservation or restoration of views or sunlight.

Strawberry Community: That area of Marin County which is common to the jurisdiction of the Strawberry Recreation District and the Strawberry Design Review Board generally bounded by U.S. Highway 101 to the west, the Town of Corte Madera limits to the north, the Town of Tiburon limits to the east, and San Francisco Bay (Richardson Bay) to the south.

Stand thinning: The selective removal of a small percentage of the total number of trees in a grove of trees.

Sunlight: The availability of direct or indirect sunlight to the primary living area of a residence.

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

Topping: The removal of a tree's upper trunk or main leader, along with any high growing branches, often to maintain the maximum height of a tree below a given vertical elevation. Since this action is often detrimental to the health of a tree, it is generally not recommended.

Tree: 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 Owner: Any person owning real property in the Strawberry Community upon whose land is located a tree or trees alleged by a Complaining Party to cause an unreasonable obstruction.

Trimming: 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.

Undesirable tree: A species of tree that by reason of a following factor or factors: rapid growth, tall height at maturity, shallow root structure, flammability, poor structure, exotic, susceptibility to disease or other mortality factors, or invasiveness, has been deemed "undesirable" by the County. These include Blue Gum Eucalyptus, Monterey Pine, Monterey Cypress, Black Acacia, and Green Acacia trees, all of which generally grow more than 3 feet per year in height and reach a height of over 35 feet at maturity. When considering restorative action for "undesirable" trees, permanent action is preferred.

View: A scene from the active use area of a residence or non-residential 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:

San Francisco Bay (including Strawberry Lagoon, Richardson Bay, and islands therein);
The San Francisco-Oakland Bay Bridge;
The Golden Gate Bridge;
Mount Tamalpais;
The Tiburon Peninsula or surrounding communities (including the City of San Francisco).

View/Sunlight Claim: The written basis for arbitration or court action under the provisions of this Chapter.

Vista Pruning or Windowing: A form of selective thinning by which specific branches or area of the tree is pruned to create an opening or "window" to restore sunlight and/or a view from a specific point (see "Active Use Area").

23.20.030 Rights Established.

Except as provided for in recorded covenants, codes and restrictions (CC&Rs), easements, or other private agreements, persons shall have the right to preserve and seek restoration of views or sunlight which existed at any time since the effective date of adoption of this ordinance, 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.

In order to establish such rights pursuant to this Chapter, the person must follow the process established in this Chapter.

All persons are advised that the alteration, removal, and planting of certain trees may require a permit under other County Ordinances. The applicability of other County Ordinances should be determined prior to any action on trees.

23.20.040 Unreasonable Obstruction Prohibited.

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 Strawberry Community.

23.20.050 Criteria and Factors in Determining Unreasonable Obstruction and Appropriate Restoration Action.

- (a) The extent of obstruction of views from, or sunlight reaching, the 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 operation of a Complaining Party's existing or proposed 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.
- (e) The condition of the tree with respect to general health, disease, fire hazard, danger of falling, and number of healthy trees that a given parcel will support.
- (f) The variety of tree, whether it is a "protected tree", size, projected rate of growth, and maintenance requirements.

- (g) Overall appearance, design and integration into landscaping on the Tree Owner's property.
- (h) Soil stability provided by the tree considering soil structure, degree of slope, and extent of the tree's root system.
- (i) Privacy (visual and auditory) and wind screening provided by the tree to the Tree Owner and to neighbors.
- (j) Energy conservation and or climate control provided by the tree.
- (k) Wildlife habitat provided by the tree.

In all cases, the documentable extent of view or sunlight existing at any time from effective date of ordinance adoption will determine the maximum limit of restorative action which may be required.

It is recommended that all tree work authorized by this chapter be performed or supervised by a certified arborist, and carried out in accordance with standards established by the International Society of Arboriculture for use in the State of California.

Restorative actions include the following (in order of preference)

- vista pruning or windowing
- crown reduction
- stand thinning
- removal with mitigation plantings
- removal without mitigation plantings

Windowing or vista pruning. The most minor form of restorative work, and should be accompanied with maintenance provisions to ensure longevity.

Crown Reduction. Where more substantial restorative action is necessary to preserve or restore views or sunlight, comprehensive pruning of no more than one-third of a tree's canopy may be warranted.

Stand thinning. In instances where the number of trees in a grove exceeds what is appropriate for the health of individual trees, removal of a small percentage of trees in the grove is recommended.

Tree Removal with Mitigation Plantings: Tree removal may be required where restorative actions short of removal are determined to be insufficient (i.e., removal is essential to preserve or re-establish views or sunlight). When tree removal occurs, planting(s) of new trees is recommended to restore the maximum level of benefits lost due to tree removal. New plantings are not to be of an undesirable species, and a less intrusive location may also be recommended. Replacement plantings should be at an appropriate ratio. A minimum planting size should be at least 15 gallons.

Tree Removal without Mitigation Plantings. In instances where mitigation of the removed tree(s) is not appropriate, tree removal may occur without additional tree plantings. In such instances, mitigation planting of other types of landscaping may be appropriate.

Maintenance. Ongoing tree maintenance requirements are recommended as part of Restorative Action in order to achieve lasting preservation of pre-existing views and sunlight.

Permanence. Restorative Action may include written conditions (including ongoing maintenance), which may be recorded and run with the land to help guarantee permanent preservation of views and sunlight.

23.20.060 Process for Resolution of Obstruction Disputes.

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

parties:

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.

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.

For trees located on County-owned property, see Section 23.20.160.

2. **Mediation:** If the initial reconciliation attempt fails, the Complaining Party shall propose mediation as a timely means to settle the obstruction dispute.

Acceptance of mediation by the Tree Owner shall be voluntary, but the Tree Owner shall have no more than 30 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 10 days.

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.

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.

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.

23.20.070 View/Sunlight Claim Preparation.

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 View/Sunlight 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.

A View/Sunlight Claim shall consist of all of the following:

- (a) 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.
- (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.
- (c) Evidence of the failure of initial reconciliation, as described in Section 23.20.090, 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.
- (d) Evidence that mediation, as described in Section 15-9, has been attempted and has failed, or has been declined by the Tree Owner.
- (e) Specific restorative actions proposed by the Complaining Party to resolve the unreasonable

obstruction.

23.20.080 Binding Arbitration:

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.

The Tree Owner shall have 30 days from service of notice to accept or reject binding arbitration. If accepted, the parties shall agree on a specific Arbitrator within 21 days, and shall indicate such agreement in writing.

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 23.20.050 and 23.20.060 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 Marin County Community Development Agency upon completion. Any decision of the Arbitrator shall be enforceable pursuant to the provisions of Code of Civil Procedure § 1280, *et seq.*

23.20.090 Litigation.

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.

The litigant must state in the lawsuit that arbitration was offered and not accepted. A copy of any order or settlement in the lawsuit shall be filed with the Marin County Community Development Agency.

23.20.100 Apportionment of Costs.

Cost of Mediation and Arbitration: The Complaining Party and Tree Owner shall each pay 50% 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.

23.20.110 Liabilities.

The issuance of mediation findings, an arbitration report or a court decision shall not create any duty or liability of the County with regard to the Restorative Actions to be performed.

It is not the intent of this Chapter for the County to have any duties under this Chapter. Instead this Chapter is intended to provide rights and remedies to private parties except where the Board of Supervisors, in their discretion determines that a Public Nuisance should be abated.

Failure of the County to enforce provisions of this Chapter shall not give rise to any civil or criminal liabilities on the part of the County.

23.20.120 Limitations.

It is not the intent of the County in adopting this Chapter to affect obligations imposed by existing easements or valid pre-existing covenants, conditions and restrictions or agreements. It is also not the intent of the County in adopting this Chapter to supersede or otherwise modify any policies, programs, standards, or criteria established in the Marin Countywide Plan, Strawberry Community Plan or other specific plan, and Title 22 (Zoning) of the Marin County Code, including but not limited to Section 22.83 of the Marin County Code pertaining to the preservation and protection of native trees.

23.20.130 Trees on County-Owned Property.

Trees located on County-owned property are exempt from the provisions of this Chapter. Requests or complaints regarding trees located on County-owned property should be made in writing to the Director of Public Works for consideration in accordance with policies adopted by the County.

SECTION III. Effective Date. This ordinance shall be and is hereby declared to be in full force and effect as of thirty (30) days from and after the date of its passage and shall be published once before the expiration of fifteen (15) days after its passage, with the names of the supervisors voting for and against the same in the INDEPENDENT JOURNAL, a newspaper of general circulation published in the County of Marin.

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Marin, held on the Day day of Month, 2004, by the following vote:

AYES:

NOES:

ABSENT:

STEVE KINSEY, PRESIDENT
MARIN COUNTY BOARD OF SUPERVISORS

ATTEST

Mark J. Riesenfeld
Clerk of the Board of Supervisors

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DRAFT 2/23/04