

Ocean Ranch @ Bear Brand	

View Dispute Resolution

Neighbor-to-Neighbor Policy and
Procedure



Ocean Ranch @ Bear Brand
Homeowner Association
Neighbor-to-Neighbor
View Dispute Resolution
Policy & Procedure

Purpose: This policy is to provide standards and procedures to assist in the resolution of view disputes based on the Association’s CC&Rs and a case decision that applies to the community on a broad basis. The goal is to treat everyone fairly. An intent of this policy is to address all view disputes between neighbors and bring consistency to the process.

Goal: Resolve unreasonable encroachments on existing scenic views which neighboring residents reasonably expect to enjoy. Enforce height controls to further lessen the occurrence of view obstructions and reasonably minimize view obstructions. Use governing documents to assist neighbors to work together to achieve a reasonable resolution of view disputes, with Association involvement called upon only as a last resort after communication between neighbors has failed.

Policy: View disputes between neighbors must be resolved in accordance with the CC&Rs and the Associations governing documents, as well as the provisions of the Davis-Stirling Common Interest Development act that supersede the Association’s governing documents. The Ocean Ranch @ Bear Brand governing documents currently include guidelines which pertain to the following:

- common areas (not addressed in this policy)
- separate interests
- Shea production homes (Executive & Residences)
- custom home Lots

Each of the foregoing property interests is afforded a slightly different set of standards. The different configurations and characteristics of each type of property interest will be considered when applying this Policy. An effort will be made to review each view related dispute consistently and fairly. Section 10.15 of the Ocean Ranch at Bear Brand CC&Rs titled: View Obstructions states as follows:

“Each owner by accepting a deed to a Lot hereby acknowledges that any construction or installation by Declarant may impair the view of such Owner and hereby consents to such impairment. No other improvement or obstruction shall be constructed, planted, or maintained upon any Lot in such location or of such height as to unreasonably obstruct the view from any other Lot in the vicinity thereof. If there is a dispute between Owners concerning the obstruction of a view from a Lot, the dispute shall be submitted to the ARC,

whose decision in such matters shall be binding. Any item or vegetation maintained upon any Lot which item or vegetation so exposed to the view of any Owner, shall be removed or otherwise altered to the satisfaction of the ARC, if it determines that the maintenance of such item or vegetation in its then existing state is contrary to the purposes or provisions of this Declaration. The ARC shall ensure that the vegetation on the Common Area and Association Maintenance Areas maintained by the Association is cut at such intervals so that the view of any Owner is not unreasonably obstructed.”

Slope Policy: The Association’s current Architectural Guidelines provide that no improvements may be installed upon the upper two-thirds of an owner’s slope, except that landscaping and pathway type improvements that are low-profile in nature may be installed subject to the Architectural Review Committee’s (“ARC”) prior written approval.

Executive & Residence Homes): Any original construction or installation by the Declarant is exempt from view considerations in the condition that existed as of date of such construction or installation.

View Dispute Factors.

Considerations in assessing the resolution of a view dispute shall be reasonable and include the following as a nonexhaustive checklist of factors:

1. Was the property claiming a view right originally constructed with a glass or see-through (e.g., wrought iron) fence in the relevant area (this indicates an intent to provide for a view, without limitation, through the area of the see-through fence)?
2. How much of the view has been obstructed since time of purchase?
3. Was the landscaping obstructing the view in question approved by the Association before installation (provided, however, approval of landscaping does not give an owner a right to obstruct a view; each owner is responsible for maintaining landscaping so as not to unreasonably obstruct view from another Lot)?
4. Is new or recently installed landscaping obstructing the view in question?
5. What is the nature of the obstructed view (for example, view of hills, ocean, other)?
6. Where is the view observed on the property?
7. How the Lots are situated?
8. What is the height of the obstruction in relation to rooftops etc.?
9. Is the obstruction in the only view corridor of property in question?
10. If a palm tree is causing the obstruction, can fronds be removed to abate any unreasonable obstruction while preserving an acceptable aesthetic appearance of the tree?

11. In relation to the total view, what percentage is obstructed?

The ARC may consider whether trimming and thinning of a tree, rather than removal, will be sufficient to correct an unreasonable obstruction of views.

Owner view protection rights are limited to what is contained in the Association's CC&Rs. The CC&Rs do not provide an objective standard defining at what point landscaping improvements are deemed an unreasonable view obstruction.

The Custom Lots: As outlined in the guidelines, the custom Lots have an express restriction against planting of large species of trees in the rear and side yard measured fifteen feet from the Lot line. There is also a ten-foot by ten-foot by ten-foot triangle at the corner of the Lot ("Rear Yard Triangle Zone") where landscaping shall not exceed three feet in height (each owner is responsible for maintaining all approved landscaping in this area so as not to exceed the height limit). Ocean Ranch guidelines for Custom Lots states as follows:

Large trees, defined as any tree that has a potential spread of 30 feet or greater per the Sunset Western Garden Book, shall not be planted closer than 15 feet to any property line. This rule applies to large canopy trees as well as large palm trees, such as the Phoenix Canariensis (See Guideline Amendment Item No. 10); A three foot height limit applies to any landscaping proposed to be installed within the rear corner triangle of the Lot, as measured 10 feet from said corner along the side property line, and 10 feet from said corner along the rear property line (see Guideline Amendment No. 12, with diagram illustrating the "corner area");

No trees may be planted on the top two thirds of the slope (see Guideline Revision/Slope Development Policy).

The foregoing checklist of considerations as well as the Rear Yard Triangle Zone applies to the Custom Lots.

Neighbor Direct Communication Procedures: Homeowners whose neighbor's landscaping causes a view obstruction should contact their neighbor in writing requesting correction of the view obstruction before the homeowner/complainant's matter will be considered an unresolvable dispute appropriate for further action by the Association.

Before approaching the owner of landscaping that has grown to unreasonably obstruct a view, the homeowner should answer these questions:

- Does the landscaping affect the view of other neighbors?
- If it does, seek to have the other impacted neighbors approach the owner of the landscaping with you. Trimming costs may be divided among you in an effort to achieve a certain and expeditious resolution, rather than submit the issue to ARC for determination of whether an unreasonable view obstruction exist and if so, the extent of corrective action needed to abate the view obstructions (i.e., the ARC's determination may require less trimming than what you wanted and what your neighbor was willing to perform).
- Which part of the landscaping is causing view problems for you -- one limb, the top, one side of it?

- What is the least destructive action that could be taken to restore your view? Maybe the owner will agree to a limited and careful pruning.
- How much will the trimming cost? Be open to paying for or sharing in the cost to accomplish your objective.

Initial Reconciliation: Any homeowner who believes in good faith that the growth, maintenance and/or location of trees, shrubs, hedges or other vegetation situated on the property of another unreasonably obstructs the view from the said homeowner's property shall notify the owner of the landscaping in writing of these concerns. The homeowner also may, but is not required to, confer with the neighbor in an effort to resolve the matter. If an agreement is reached, the corrective trimming or removal of landscaping, as the case may be, should be accomplished within 30 days. If the matter is not resolved, the homeowner with the view concern may submit the dispute to the Association by providing the following:

1. Written proof of the effort to resolve the issue.
2. Evidence their neighbor with the obstruction has refused to cooperate.
3. Statement explaining the nature of the view obstructed (e.g., ocean, hills) and the depth and scope of the lost view.
4. Photographs of the landscaping causing the view obstruction.
5. Description of the view they request be restored, and photographs thereof.
6. Names, addresses, and phone numbers of property owner(s) with the landscaping causing the view obstruction

The ARC will review the homeowner's submission of information, as well as conduct an on site inspection. The Association, on behalf of the ARC, will notify the involved parties stating the ARC's requests and/or findings.

If the ARC finds that any planting unreasonably obstructs the view from another Lot and needs to be trimmed, removed and/or relocated, the costs of such corrective action shall be borne by the owner of the landscaping. Homeowners concerned about impact on privacy from trimming or removal of trees or landscaping, may consider submitting to the Association plans for installing replacement landscaping that has a lower height at maturity or that can be maintained not to exceed the height that will obstruct the view from another Lot.

Alternative Dispute Resolution Between Homeowners: If the initial reconciliation attempt is unsuccessful, and all parcels involved are private property, the complaining party may make a written offer to the neighboring owner of the landscaping to submit the dispute to a form of alternative dispute resolution ("ADR") pursuant Civil Code section 5925 et seq. If the neighboring owner accepts the ADR offer, the ADR shall be completed within 90 days of acceptance of the offer as required under Civil Code section 5940, unless the parties stipulate to extend the time period.

Additional Considerations. It is suggested that homeowners with view concerns, including potential view concerns, consider entering into a written agreement detailing the nature, scope, and frequency of landscape maintenance that will be performed, or, if desired, an easement authorizing the homeowner who's view is impacted a right of access over the Lot of the owner with the landscaping for the purpose of trimming or pruning the landscaping to agreed upon height limits. This will help provide clarity of expectations and reduce disputes in the future. Owners interested in pursuing this option should confer with legal counsel regarding developing a mutually acceptable agreement.

Disclaimer. The Association makes no representation or warranty regarding the impact, if any, trimming

or removal of a tree or other landscaping may have on the structural integrity or other engineering aspects of the slope area. Pursuant to Article VIII, Section 8.7 of the CC&Rs, the ARC is not responsible for reviewing or confirming structural safety or conformance with building or other codes. Thus, each owner is advised to consult with qualified professionals with respect actions appropriate to maintain structural integrity of slope areas after landscaping modifications that may be necessary to bring the owner's Lot into compliance with the view restrictions in the CC&Rs.

The remedies discussed above are cumulative with all other remedies available at law or in equity, and the Association has discretion to pursue any available enforcement remedy it deems appropriate at any time after the ARC makes a determination an unreasonable view obstruction exists.

**VIEW RESTORATION COMPLAINT FORM
APPLICANT INFORMATION**

Name: _____

Address: _____

Telephone: _____

1. Please attach copies of your attempts to resolve conflict with landscaping owner. Two attempts are required.

2. Describe the viewing area on your property from which the best and most important view is taken. Describe the view being obstructed.

3. Does the landscaping in question exceed 16 feet in height or the ridgeline of the residence on the property on which it is located?

4. Will the removal of the landscaping cause impact the privacy of the occupants of the property on which the landscaping is located?

5. Provide the following information for the property where the offending landscaping is located:

Name: _____

Address: _____

Telephone: _____

6. Attach photographs of the offending landscaping and the view to be restored.

I hereby certify that the information and materials submitted with this application are true and correct.

Applicant's signature Date

