

ORDINANCE NO. 84-3

(On Tree Obstruction of Views Combining District)

The Contra Costa County Board of Supervisors ordains as follows (omitting the parenthetical footnotes from the official text of the enacted or amended provisions of the County Ordinance Code):

SECTION I. Division 816 is added to the County Ordinance Code, comprising Chapter 816-2 to provide for tree obstruction-of-view standards and the "-TOV tree obstruction of views" combining district, to read:

DIVISION 816 TREES

CHAPTER 816-2 -TOV TREE OBSTRUCTION OF VIEWS COMBINING DISTRICT

ARTICLE 816-2.2 GENERAL

816-2.202 -TOV Combining District. All land within a land use district combined with a -TOV tree obstruction of views combining district shall be subject to the provisions in this chapter.
(Ord. 84-3.)

816-2.204 Purpose and Intent. The purpose of this chapter is to provide a method for private property owners to gain restoration of views and sunlight lost due to tree growth by another private property owner as defined in article 816-2.4. It is not intended by this chapter to create any greater right to a view or access to sunlight than existed at the time any claimant purchased his property.
(Ord. 84-3.)

816-2.206 Objectives. The objectives of, and the justification for, this chapter are to:

- (1) Preserve and promote the aesthetic benefits provided by trees, views of surrounding locale, and access to light.
- (2) Preserve and promote the beneficial use and enjoyment of privately owned land within the county.
- (3) Preserve, maintain, and enhance property values within the county.
- (4) Discourage the maintenance of trees that provide excessive shade and unduly diminish desirable views.
(Ord. 84-3.)

ARTICLE 816-2.4 DEFINITIONS

816-2.402 General. Unless otherwise specifically provided, or required by the context, the following terms have these meanings for the purposes of this chapter.
(Ord. 84-3.)

816-2.404 Claimant. "Claimant" means any owner of real property who believes in good faith that the growth, maintenance or location of trees situated on the property of another diminishes the beneficial use, economic value and enjoyment of his property, and who files a view claim under Section 816-2.424.
(Ord. 84-3.)

816-2.406 Obstruction. "Obstruction" means any blocking or diminishing of a view by tree growth, maintenance or location.
(Ord. 84- 3 .)

816-2.408 Thinning. "Thinning" means the selective removal of entire branches from a tree so as to improve the tree's structural condition.
(Ord. 84- 3 .)

816-2.410 Topping. "Topping" means the removal of the upper portion of a tree's trunk or primary leader.
(Ord. 84- 3 .)

816-2.412 Trimming. "Trimming" means the selective removal of portions of branches from a tree so as to modify the tree's form, shape or profile and/or improve the tree's appearance.
(Ord. 84- 3 .)

816-2.414 Tree. "Tree" means any woody perennial plant, usually with one main trunk, attaining a height of at least eight feet at maturity.
(Ord. 84- 3 .)

816-2.416 Tree Owner. "Tree owner" means the owner of real property on which are situated tree(s) whose growth, maintenance or location allegedly diminishes the beneficial use, economic value and enjoyment of the property of another.
(Ord. 84- 3 .)

816-2.418 Tree Removal. "Tree removal" means the destruction of any tree by cutting, girdling, interfering with the water supply, applying chemicals, or regrading around the base of the trunk.
(Ord. 84- 3 .)

816-2.420 View. "View" means a range of sight including pleasing vistas or prospects or scenes. Views include, but are not limited to, the sight of geologic features, bays, oceans, sky lines, bridges and distant cities.
(Ord. 84- 3 .)

816-2.422 View Arbitrator. "View arbitrator" means any person mutually agreed to by the claimant and tree owner, a landscape architect registered and licensed by the State of California or other selected in accordance with applicable Arbitration Rules of the American Arbitration Association.
(Ord. 84- 3 .)

816-2.424 View Claim. "View claim" means the claimant's verified written basis for arbitration or court action under this chapter, which clearly establishes all of the following:

(1) The precise nature and extent of the alleged view obstruction and particulars of the manner in which it diminishes the beneficial use, economic value and enjoyment of the claimant's property, including all pertinent corroborating physical evidence available.

(2) The exact location of all trees alleged to cause a view obstruction, the address of the property upon which the trees are located, and the present tree owner's name and address. This requirement may be satisfied by the inclusion of tree location, property address and tree owner information on a valid property survey or plot plan submitted with the view claim.

(3) Any mitigating actions proposed by the parties involved to resolve the alleged view claim.

(4) The failure of personal communication between the claimant and the tree owner to resolve the alleged view obstruction as set forth in this chapter. The claimant must provide physical evidence that written attempts at conciliation have been made and failed. Such evidence may include, but is not limited to, copies of and receipts for certified or registered mail correspondence.
(84-3 .)

816-2.426 Windowing. "Windowing" means the creation of a limited horizontal viewing plan through the head of a tree or trees.
(Ord. 84-3 .)

ARTICLE 816-2.6 STANDARDS

816-2.602 General. Unless otherwise specifically provided, the provisions of this article are to be utilized to resolve view claim disputes.
(84-3 .)

816-2.604 Rights. A claimant has no right greater than that which existed at the time of the claimant's acquisition of the property involved in the view claim, and shall provide evidence to prove the extent of that original view and right.
(Ord. 84-3 .)

816-2.606 View Character. The character of a view shall be determined by evaluating:

- (1) The vantage point(s) from which the view is obtained;
- (2) The existence of landmarks or other unique features in the view; and
- (3) The extent to which the view is diminished by factors other than the tree(s) involved in the claim.
(Ord. 84-3 .)

816-2.608 Obstruction. The character of the view obstruction shall be determined by evaluating:

- (1) The extent of the alleged view obstruction, expressed as a percentage of the total view, and calculated by means of a surveyor's transit or by photography or both; and
- (2) The extent to which landmarks or other unique features in the view are obstructed.
(Ord. 84-3 .)

816-2.610 Benefits and Burdens. The extent of benefits and/or burdens derived from the alleged view obstruction tree'(s) shall be determined with consideration given to the tree(s)' contribution to the following factors:

- (1) Visual screening;
- (2) Wildlife habitat;
- (3) Soil stability, as measured by soil structure, degree of slope and extent of tree(s) root system;
- (4) Energy conservation and/or climate control, and/or interference in efficient operations of claimant's solar energy systems;

- (5) Effects on neighboring vegetation;
- (6) Visual quality of the tree(s), including but not limited to species characteristics, size, form, texture, color, vigor and location;
- (7) The economic value of the tree(s), as measured by the criteria developed by the American Society of Landscape Architects; and
- (8) Other tree-related factors, including but not limited to indigenous tree species, specimen tree quality, rare tree species, and historical value.
(Ord. 84-3.)

816-2.612 Restoration Evaluation. Any restorative action shall be evaluated based on the standards of this article and consideration of the following:

- (1) The effectiveness of the restorative action in reducing the view obstruction;
- (2) Any adverse impact of the restorative action on the benefits derived from the tree(s) in questions;
- (3) The structural and biological effects of the restorative action on the tree(s) in question; and
- (4) The cost of the restorative action, as determined by consultation with licensed landscape architects.
(Ord. 84-3.)

816-2.614 Restoration Limits. Restorative actions shall be limited to the following:

- (1) Trimming;
- (2) Thinning;
- (3) Windowing;
- (4) Topping;
- (5) Tree removal with necessary replacement planting; and/or
- (6) No action.
(Ord. 84-3.)

816-2.616 Restoration Implementation. All restorative actions shall be undertaken subject to the following:

- (1) Restorative actions must be consistent with all applicable statutes, ordinances, and regulations.
- (2) Where possible, restorative actions shall be limited to the trimming and/or thinning of branches; but, when is not a feasible solution, windowing is the preferable solution.
- (3) When thinning, trimming and windowing of branches is not a feasible solution, topping shall be considered.
- (4) Tree removal shall only be considered when all other restorative actions are judged to be ineffective and shall be accompanied by replacement plantings of appropriate plant material necessary to restore the maximum level of benefits lost due to tree removal. Replacement plantings can be required on the tree owner's or the claimant's property.

(5) In those cases where tree removal eliminates or significantly reduces the tree owner's benefits of shading, visual screening, or privacy, replacement screen plantings shall, at the tree owner's option, be established prior to tree removal; notwithstanding the provisions of (4) hereinabove, the tree owner may choose tree removal with replacement plantings as an alternative to trimming, thinning, windowing, or topping.

(6) All trimming, thinning, windowing, topping or removal required under this chapter must be performed by a qualified tree trimmer or as approved by the view arbitrator.
(Ord. 84- 3 .)

ARTICLE 816-2.8 PROCEDURE

816-2.802 Initial Reconciliation. A claimant who believes in good faith that the growth, maintenance, or location of trees situated on the property of another diminishes the beneficial use, economic value and enjoyment of views naturally accruing to the claimant's property shall notify the tree owner in writing of such concerns. The submission of said notification to the tree owner should be accompanied by personal discussions, if possible, to enable the claimant and the tree owner to attempt to reach a mutually agreeable solution to the alleged view obstruction in accordance with the provisions of this chapter.
(Ord. 84- 3 .)

816-2.804 Arbitration. Where the initial reconciliation process fails, the claimant and the tree owner may elect binding arbitration pursuant to this chapter to resolve the alleged view obstruction. The view arbitrator shall be fully qualified under this chapter and shall be agreed to by both the claimant and the tree owner, who shall indicate such agreement in writing and with the arbitrator's consent. The arbitration agreement may provide for employment of experts representing the parties or may be limited to an investigation of the view claim conducted by the view arbitrator. The view arbitrator shall follow the terms and conditions of this chapter to reach a fair resolution of the view claim, and shall submit a complete written report to the claimant and the tree owner. The report shall include the view arbitrator's findings with respect to all standards listed in article 816-2.6 and a complete listing of all mandated restorative actions. All mandated restorative actions shall be implemented within thirty (30) days of the delivery of the arbitration report to the claimant and the tree owner, or within such other period recommended by expert advice to be required by seasons of the year, type of tree, etc. The findings of the view arbitrator shall be final.
(Ord. 84- 3 .)

816-2.806 Costs. The costs of arbitration and all mandated restorative actions and/or replacement plantings shall be apportioned between the claimant and the tree owner as mutually agreed to, or in the absence of agreement as follows:

(1) The claimant and tree owner shall each pay 50% of such costs in those cases involving any tree planted by the tree owner subsequent to March 1, 1984.

(2) In all other cases, the claimant shall pay 100% of such costs.
(Ord. 84- 3 .)

816-2.808 Litigation. In those cases where the initial reconciliation process fails to resolve the view claim and binding arbitration is not chosen by the parties, civil legal action may be pursued by the claimant.
(Ord. 84- 3 .)

ARTICLE 816-2.10 LIABILITIES AND ENFORCEMENT

816-2.1002 Liabilities. The issuance of an arbitration report pursuant to this chapter does not establish any public use or access not already in existence with regard to the property for which the arbitration report and decision are issued, and does not create any liability for the county, any other public agency or entity, or the arbitrator with regard to any restorative actions or replacement plantings to be performed.
(Ord. 84-3.)

816-2.1004 Enforcement. Violations of this chapter are not misdemeanors or infractions. Enforcement of this chapter shall be by the involved private parties. Any claimant may seek to enforce any restorative action mandated pursuant to this chapter through ordinary legal proceedings.
(Ord. 84-3.)

SECTION II. EFFECTIVE DATE. This ordinance becomes effective 30 days after passage, and within 15 days of passage shall be published once with the names of supervisors voting for and against it in the CONTRA COSTA TIMES, a newspaper published in this County.

PASSED on January 31, 1984, 198 , by the following vote:

AYES: Supervisors - Powers, Fahden, Schroder, McPeak, Torlakson.

NOES: Supervisors - None.

ABSENT: Supervisors - None.

ATTEST: J. R. OLSSON, County Clerk
& ex officio Clerk of the Board

By Diana M. Herman
Diana M. Herman, Deputy Clerk

Tom Torlakson
BOARD CHAIR

[SEAL]

VJW:df
10-13-83
11-29-83
1-31-84