

LMC ARCHITECTURAL CONTROL COMMITTEE

POLICY AND PROCEDURES

for

EVALUATION AND ENFORCEMENT of LMC Regulation II, Article I, Approval Requirement (3) Trees and Views on Private Property

INTRODUCTION

This policy and these procedures provide guidance for the Architectural Control Committee (ACC) and Ludlow Maintenance Committee (LMC) members on the process used by the ACC in the enforcement of Article I, (3), Trees and Views on Private Property adopted May 19, 2007. This policy does not address the loss of view due to trees on the Greenbelt or other common area property owned by the LMC. The LMC Board of Trustees recognizes that native trees provide benefits to the community and finds it necessary to establish basic standards and measures for compliance with the regulation and for the preservation and protection of native trees while at the same time recognizing the individual rights of private property owners.

Views have been an integral part of the North Bay community of Port Ludlow since the original development concept was published in 1967. Numerous references were made, such as: "Residential development, particularly single family housing, has been sited on the steeper, higher parts of the site to maximize view..." "Clearance is carefully planned to preserve views and the forest character..."

REGULATION II, ARTICLE I, (3) VIEWS AND TREES ON PRIVATE PROPERTY

Trees and Views on Private Property: Trees and views both provide significant psychological and tangible benefits for property owners and are essential to the character of our Port Ludlow community. However at times they may come into conflict with each other. This regulation is written in recognition of the importance of scenic resources, views, trees, drainage and sunlight to properties and is intended to provide a fair mechanism for resolving disputes relating to trees and views of LMC property owners.

Any tree of six inches (6 in.) or more breast height diameter may not be cut without authorization of the Architectural Control Committee – Typical Protective Covenants, Paragraph 4.

- a. **Landscaping and Maintenance.** When landscaping their lots property owners shall select varieties of plants, shrubs and trees which will not grow to exceed their roof line height. Hedges, shrubs and rows of trees planted by owners along property lines shall be pruned so as not to exceed a height of eight feet. Property owners shall remove seedlings on their property before they become six inches breast height diameter to help preserve views.
- b. **Views and Obstruction Relief.** Property owners are not entitled to any more view than that which existed when they purchased their property and are encouraged to document that view by photos and other means. Note that there will be instances where property owner's views may be impacted under Regulation II. Any request for committee action must be submitted in writing. All interested parties to the request are encouraged to work out an agreement amongst themselves, including financial responsibility, subject to the committee's approval. Methods of relief shall include pruning, trimming, thinning, limbing up, limited windowing, and possible removal. Exception:

- Mature native evergreens/conifers designated by the ACC to remain on property when developed are exempt from removal unless ruled to be diseased or hazardous to persons or property. Topping will be strongly discouraged except on young cedars for hedging not to exceed eight feet. Corrective action shall not commence until written notice is received from the committee. All resulting work shall be monitored by at least one member of the committee.
- c. Criteria used for determining the extent of relief to be granted will include but not be limited to the following and will apply to all interested parties:
1. The extent to which property values, screening of property, soil stability and drainage (soil structure, degree of slope and root system), surrounding vegetation and community aesthetics are affected;
 2. The extent to which view has been diminished since purchase of property and view obstruction will be relieved by requested action;
 3. The extent to which view has been obstructed as expressed in percentage of total view and the extent to which trees obstruct sunlight and reduce air circulation.
- d. Consultation. Experts may be consulted regarding trees, drainage and environmental issues when necessary. This committee is subordinate to state and county regulations.
- e. Debris Clean Up. All debris resulting from approved request shall be disposed of within two months. Burning of yard debris is permitted only under Regulation I, Article I (10), and is subject to Jefferson County and local fire department permitting process.
- f. Appeal of Committee Decision. An owner who has filed a request or anyone who has identified himself or herself as an interested party affected by a request may file an appeal of the committee decision by following procedures outlined in Regulation V, Article II.

RESPONSIBILITIES

Owner: When properties are purchased in the North Bay of Port Ludlow, owners are required to fully comply with the LMC Governing Documents. The owner therefore has a prime responsibility to assure that their property is in compliance with the requirements of all of the governing documents.

LMC Architectural Committee: The Architectural Control Committee is responsible for monitoring compliance with Regulation II, Article I.

Trees on Private Property Committee: The Trees on Private Property Committee is a service committee subordinate to the ACC and is responsible for evaluation and assessment of requests for tree removal, pruning and thinning and shall make recommendations to the Architectural Committee for approval or denial.

Ludlow Maintenance Commission Board of Trustees: The LMC Board of Trustees (the board) is responsible for ensuring that the LMC Architectural Control Committee carries out its duties and responsibilities in accordance with the LMC governing documents and in hearing and making final determinations on any appeal of the LMC Architectural Control Committee decisions.

INSTITUTION OF ENFORCEMENT PROCEEDINGS

LMC Regulation II, Article IV (2) specifies that in the event of a violation of the terms of these Regulations, any owner of any lot subject to the Restrictive Covenants of Port Ludlow Nos. 1, 2, 3, 4, 5, 6, 7, Ludlow Bay Village, and Oak Bay Short Plat, or the Ludlow Maintenance Commission may institute enforcement proceedings as provided in Regulation V, notwithstanding existing recorded view easements within the platted areas noted above.

For purposes of enforcement of Regulation II, Article I (3), the LMC Architectural Control Committee will initiate review and enforcement proceedings of the alleged violation only after receipt of a detailed written letter and a completed ACC Views and Obstruction Relief form directed to the ACC from any owner described above.

EVALUATION PROCEDURES

The following procedures will be followed to determine if a violation of Regulation II, Article I (3) exists and, if so, the corrective action necessary to bring the violator's property into compliance.

Each request for investigation by the ACC shall be considered on a case-by-case basis. Any decision shall be based on the reasonable judgment of the ACC with consideration given to the following general principles.

1. As stated in Regulation II, Article I [(3) a.], planted vegetation, shrubs and trees within the property lines shall be required to be maintained at or below roof height, unless special circumstances exist including but not limited to drainage issues or high bank stability.
2. Hedges and rows of trees of any species planted along property lines shall be maintained at a height not exceeding eight feet. For the purposes of this policy the definition of "along property lines" is that area which is parallel to all property lines within fifteen feet (15') from that line.
3. In determining whether a view, sunlight or air circulation is impaired, the committee shall consider several factors that include but are not limited to:
 - a. The extent to which the view is allegedly obstructed, expressed as a percentage of total view;
 - b. The extent to which the tree(s) obstruct sunlight or reduce air circulation;
 - c. The extent to which the tree(s) affect the real property value of the complainant's property since purchase;
 - d. The extent to which the tree(s) provide visual screening or soil stability (as measured by soil structure, degree of slope and extent of root system);
 - e. The extent to which the tree(s) affect neighboring vegetation;

4. A scattering of mature evergreens/conifers, the location of which does not impair a view from neighboring lots, may be deemed acceptable. [Regulation II, Article I (2.b.)]. When landscaping their lots, property owners shall select varieties of plants, shrubs and trees that will not grow to exceed their roofline height. Hedges, shrubs and rows of trees planted by owners along property lines shall be pruned so as not to exceed a height of eight feet. Property owners shall remove seedlings on their property before they become six inches breast height diameter to help preserve views. [Regulation II, Article I, (3)(a)].
5. Topping is strongly discouraged with the exception of young cedars for hedging not to exceed eight feet (8'). Topping may be considered as an alternative to removal with consideration given to the criteria defined in Regulation II, Article I (3) (c).
6. Limbing, thinning, windowing and removal of evergreens/conifers is an acceptable means of maintaining a view. All cutting, pruning and trimming shall conform to current professional arboricultural standards.
 - i. Limbing shall be limited to the removal of no more than one-quarter (25%) of a tree's leaf/needle bearing crown.
 - ii. Thinning is the removal of selected limbs to restore a partial or filtered view through the tree's leaf/needle bearing crown. Not more than one-quarter (25%) of a tree's crown shall be removed.
 - iii. Limited windowing is the removal of selected limbs to restore a view window through the foliage subject to the same guidelines as stated in (ii) above.
 - iv. Removal shall mean the physical removal of a tree.

For circumstances outside the scope of this policy, a Licensed Certified Washington State Arborist shall be consulted. Final approval is subject to committee approval.

7. It is recognized that surface water runoff, soil stability and degree of slope are important issues. Each of these items will be given consideration by the ACC in determining compliance. If a dispute shall arise as to the relevance of any of these qualifying conditions, the Port Ludlow Drainage District and/or the Jefferson County Codes will be consulted. If a dispute still exists, the affected parties may consult a professional and licensed civil engineer.
8. No tree(s) shall be removed if a Washington State licensed civil engineering firm, Port Ludlow Drainage District or the Jefferson County authority having jurisdiction, concludes that the removal of tree(s) would: (1) create a significant drainage problem or worsen an existing problem, or (2) create a stability problem with any high bank region. The burden of this analysis rests with the owner where the tree(s) exists. In cases where drainage or bank stability problems preclude tree(s) removal consideration shall be given in accordance with Regulation II, Article I 2 (c).

9. No action shall be taken in Environmentally Sensitive Areas without the concurrence of the Jefferson County Community Development Department. Environmentally Sensitive Areas are defined in the Jefferson County Uniform Development Code. It is the responsibility of the tree owner to obtain the necessary permit in a timely manner.
10. For purposes of enforcement of this regulation mature native evergreens/conifers designated by the ACC to remain on the property when developed (i.e., when a home is built) are exempt from removal unless ruled to be diseased or hazardous to persons or property.

The committee shall be diligent in avoiding delays in managing hazardous tree requests.

Complaints concerning tree(s) deemed to be hazardous by location shall be limited to parties on adjoining properties who are likely to be damaged by said tree(s).

11. All work shall be monitored by at least two members of the committee.
12. Nothing in this policy shall be interpreted as requiring the ACC or LMC Board of Trustees to hire independent experts in reaching their decision.

DOCUMENTATION

The committee shall keep written documentation of all inspections. The record will include the persons making the inspection, dates of the inspection, and lot number and name of the property owner. The record shall include location, size and species of the tree(s). Photographs may be used to supplement the record.

In the case of hazardous trees the record shall include a description of the flaws, recommendations, and documentation of follow-up action

INVESTIGATIVE AND ENFORCEMENT PROCEDURES

The LMC Board of Trustees strongly encourages that tree and view issues be resolved between neighbors in an amicable and equitable manner. The governing documents state that all owners in the community have a responsibility to themselves and to the community to maintain their properties in compliance with the Covenants, Articles of Incorporation, Bylaws and Regulations.

The owner of the offending tree will normally be required to pay the costs to remedy any violation of the regulation. Owners are encouraged to share costs where view restoration

is extensive. Owners are encouraged to work together to arrive at an amicable remedy that is acceptable to the committee.

The following steps will be taken in enforcement of Regulation II, Article I, Approval Requirement, (3) Trees and Views on Private Property:

1. If an owner subject to the LMC Governing Documents alleges a violation, he/she shall bring the alleged violation to the ACC in the form of a detailed written letter, a completed ACC Views and Obstruction Relief form, photographs and any other supporting material they may feel is applicable.
2. The ACC will acknowledge receipt of the written complaint/request no later than 14 calendar days after the next scheduled ACC committee meeting.
3. The ACC will review the alleged violation and within 30 days of sending the acknowledgement letter:
 - i. Determine if a violation may have occurred;
 - ii. Send two members of the ACC to perform a site visit and review the possible violation with the property owner and affected parties;
 - iii. The ACC team's site visit findings will be reviewed at the next scheduled ACC committee meeting;
 - iv. The ACC will determine if a violation has indeed occurred;
 - v. A letter will be generated and mailed to the property owner and a copy to the affected parties within seven (7) days of the ACC committee meeting wherein the ACC determined a violation occurred, describing the violation, the specific corrective action, time period in which the corrective action must be completed, and notification of the date and time of the next scheduled ACC committee meeting to allow parties to review the ACC findings with the ACC.

In cases where the owner is absent from the community for a period of time, the violation will be discussed, if possible, via telephone as well as written correspondence. The corrective action period may exceed the normal period in these cases.

Should the ACC site team consider the situation to be hazardous and/or involve life safety, the ACC team shall report their findings to the ACC chairperson immediately. The ACC chairperson, or designated second, will contact the violating party by telephone, if possible, followed with written correspondence, requesting immediate corrective action.

Correspondence to alleged violators will be sent via U.S. Mail, Certified, Return Receipt Requested.

In all cases, the reporting parties will be copied with all written correspondence.

4. In the event agreement cannot be reached with respect to compliance, or if the violator fails to comply as agreed, the ACC shall write the violator a letter that:
 - Summarizes the ACC decision;
 - Informs the violator of the specific corrective action required to become compliant, and a time limit to achieve compliance;
 - Explains to the violator his/her rights of appeal;
 - Notifies the violator that the matter shall be referred to the LMC Board of Trustees if the violation is not brought into compliance by the time limit specified by the ACC;
5. If the violator wishes to appeal the determination of the ACC to the LMC Board of Trustees, such action must be taken within 60 days after the date of the ACC letter in No. 4 above. The appeal must be in writing and must be delivered in person or deposited in the U.S. Mail addressed to the President or Secretary of the LMC Board of Trustees.
6. The LMC Board of Trustees shall meet and act on the appeal within 60 days after delivery of the appeal to the board. The LMC Board of Trustees shall notify the appellant and the ACC of the place and time of the appeal hearing (see LMC Regulation V, Enforcement and Appeals Procedures, Articles I, II, and III).
7. The appellant and the ACC shall each present factual reasons in accordance with the LMC governing documents stating why the decision of the ACC should be upheld, reversed or modified. The LMC Board of Trustees shall then proceed to make a final decision to affirm, reverse or modify the decision of the ACC. A copy of the LMC Board of Trustee's final decision shall be delivered in person to the appellant or deposited in the U.S. Mail (Certified, Return Receipt Requested) addressed to the appellant's address shown on the LMC records.
8. Upon demand of the LMC, any unresolved dispute, may be settled by arbitration, (Regulation V, Article III).
9. The LMC Board of Trustees may institute legal action should the appellant refuse to comply with the board's final decision within the proscribed time limits set by the board.

DEFINITIONS:

Owner:	Individuals having legal ownership of a developed or undeveloped lot subject to the Governing Documents of Port Ludlow.
View	A vista of Puget Sound, Admiralty Inlet, Hood Canal, Ludlow Bay, Cascade Mountains, and/or the Olympic Mountains.
Breast Height	Diameter at breast height (DBH) shall mean the diameter of a tree trunk measured at four and one-half feet (4.5') above ground level along the center of the trunk axis. The diameter shall be calculated by use of the following formula: DBH = circumference at breast height/3.14
Native Evergreens/Conifers	Native trees are indigenous to the Pacific Northwest region, specifically to Western Washington State: Western Hemlock, Sitka Spruce, Western Red Cedar, Pacific Madrone, Pacific Yew, Shore Pine, Western White Pine, Grand Fir, and Douglas Fir. Holly, rhododendrons and non native pine are not included.
Mature native conifer/evergreen	Native evergreens/conifers designated by the ACC to remain on property when developed.
Hazardous Tree	A hazardous tree shall mean a tree that has been certified by a Licensed, Certified Washington State Arborist as being dead, or is so affected by a significant structural defect, damage or disease, or soil that may not provide adequate support, that falling or failure appears imminent, and poses a threat to life or property.
Hazardous by location	Tree(s) located in a place where they could cause property damage or personal injury should they fall.
Dying/Unhealthy Tree	A dying or unhealthy tree shall mean any tree certified by a Licensed, Certified Washington State Arborist as being unhealthy or dying.
Along Property Lines	That area which is parallel to all property lines within fifteen feet (15') from that line.
Tree Crown	The total of the leaf/needle bearing structure of a tree.

References: Washington State Department of Ecology
 U.S. Park Service Hazardous Tree Guidelines
 International Society of Arboriculture
 Webs for Law Firms, North Carolina

Approved at a regular meeting of the LMC Board of Trustees. Date: Dec. 15, 2007

Vaughn Bradshaw, President

Jerry Nelson, Secretary