



Architectural Rules

Adopted 8/11/04¹

INTRODUCTION

These Architectural Design Review Guidelines (the Guidelines) were adopted by the Kent Woodlands Property Owners Association (KWPOA) Board of Directors on August 11, 2004, following an extended 30-day public comment period. The goal of the Guidelines is give the property owners guidance, by way of examples and explanation, as to the criteria used by the KWPOA Architectural Committee in reviewing proposed improvements and exercising its broad discretion under the KWPOA's Covenants, Conditions, and Restrictions (CC&Rs).

It is the intent of the KWPOA Board of Directors that adopting the Guidelines will facilitate the design review process by providing examples of how the Architectural Committee is likely to exercise its broad discretion. The Guidelines are not binding restrictions.

KWPOA'S ROLE IN DESIGN REVIEW

The KWPOA By-Laws and CC&Rs give the Board of Directors the authority to enforce the CC&Rs and to appoint an Architectural Committee to conduct design review of Improvements on member parcels. All members seeking to construct or alter any "Improvements" must first obtain the written approval of the KWPOA Architectural Committee. The term "Improvements" is broadly defined in the CC&R's, at Article V, Section 1(b), as the construction, installation, or alteration of any structure, including any building, wall, deck, fence, pool, or sport court. Also included in this definition is any major landscaping project visible from the street or neighboring lots, landscape structures, and drainage or grading projects. If there is any doubt as to whether approval is required, it is always best to check with the Architectural Committee.

The KWPOA Board is also authorized to adopt "Architectural Rules" consistent with the CC&R's to assist the Architectural Committee in its evaluation and deliberation, Article V, Section 5, of the CC&R's authorize the adoption of these guidelines. For the most part, the Guidelines are a restatement of existing requirements. The CC&Rs contain a variety of general criteria relating to Improvements, as well as a variety of very specific criteria. In addition to the requirements set forth in the CC&R's, pursuant to Article V, Section 6(d) of the CC&R's, any proposed Improvement must also be consistent with the current land use plan applicable to Kent Woodlands, which is the Kent Woodlands Land Use Policy Report ("KWLUPR"). The Guidelines therefore attempt to organize the key criteria of the CC&R's and the KWLUPR into 14 subject areas. Once adopted the Guidelines will become a part of the existing KWPOA Architectural Rules (published on KWPOA.com), which deal with issues such as working hours, variance and appeal processes. Once again, the Guidelines are just that – guidelines. They are not binding, but are intended to assist owners, the Architectural Committee, and the Board of Directors so that future architectural approvals will work to maintain the architectural and aesthetic standards and community character prevailing within Kent Woodlands.

¹ Except as otherwise noted.

ROLE OF THE COUNTY OF MARIN IN DESIGN REVIEW

The County's Community Development Agency through the Planning Department and the Planning Commission, rely upon the County Plan as modified by the KWLUPR to make its own design review of any proposed project in Kent Woodlands. The County may acknowledge but cannot enforce the KWPOA CC&Rs.

To build in the County of Marin, a KWPOA member applicant must obtain the approval of both the KWPOA and the County. A non-KWPOA member applicant must obtain the approval of the County only. However, the County does request an evaluation from the KWPOA of a non-member's project, and therefore KWPOA recommends and encourages non-members to seek a preliminary review by the KWPOA.

COMMUNITY INPUT INTO THE DESIGN REVIEW GUIDELINES

The KWPOA Board and the Architectural Committee worked for some time to develop and adopt a set of design review guidelines that would help the community and the KWPOA evaluate improvements in Kent Woodlands. The Board sought a wide spectrum of opinion through the introduction of a design review oriented survey and two community workshops. The results of the survey and workshops were published in the KWPOA newsletters. The Board evaluated additional comments received in the comment period.

Through this effort the KWPOA has obtained a clear sense of the Kent Woodlands community on the relative merits of a wide range of design review concepts. In brief, our membership has identified preservation of privacy/sense of seclusion, woodland character, and views as the most important characteristics of our community.

OBJECTIVES OF THE DESIGN REVIEW GUIDELINES

After receiving Community input, the KWPOA Board adopted the Guidelines to meet the following objectives:

- a) Assure consistency in the design review process while accommodating wide variations in parcel characteristics;
- b) Provide guidance to the Community on the Architectural Committee's expectations; and
- c) Satisfy the County Planning Commission's request for guidance.

IMPLEMENTATION OF THE DESIGN REVIEW GUIDELINES

These design review guidelines are intended to assist new members and potential design review applicants in understanding the KWPOA design review process. By introducing these design review guidelines the KWPOA intends to alleviate the concerns of potential applicants and to allow the Architectural Committee to work in harmony with the applicant to achieve a mutually satisfactory result.

Once again, it is important to understand that the Architectural Committee shall use the design review guidelines as only one important source in evaluating design review applications. The design review guidelines establish guidelines for proposed works of improvements, but do not take the place of the broad discretion which is exercised by the Architectural Committee when it makes decisions on applications.

The Board hopes that the new guidelines will be widely used by the Architectural Committee in evaluating Design Review applications, by member and non-member Kent Woodland residents considering remodels or development, by the County Planning Department and Planning Commission, and by Realtors, Architects, Developers and Contractors working in Kent Woodlands. They will also be published in the New Resident Welcome Pack and made available for download on the KWPOA.com website.

KWPOA Architectural Design Review Guidelines		Planning Document References
1.	<p><u>Privacy</u> – Applicants should seek to minimize the impact on neighbors’ privacy/sense of seclusion. Additions to residences, especially second stories, and the siting of any new residences should be designed to keep privacy between homes at a maximum. New design proposals will be evaluated for the impact the Improvements and related use will have on the privacy of neighboring owners. The reasonable enjoyment of privacy may be considered to be impacted if the Improvement (i) materially increases the visibility from indoor or frequently-used outdoor areas to private indoor or outdoor areas of adjacent properties, (ii) materially decreases the sense of seclusion by introduction of additional mass (“mass” refers to length, width, height and other attributes of a building) that cannot be addressed with the use of setbacks and height limits, or (iii) would result in an unreasonable increase in noise heard by neighbors (e.g., location of pools, sport courts or noise-producing equipment or activities in proximity to neighboring structures or frequently-used outdoor areas).</p>	<p>KWPOA CC&R Article V, Sect. 6(b), Sect. 6(c); Article VI, Sect. 14</p> <p>KWLUPR page II-3; CD1.5; CD1.6; CD1.8; EQ8.1</p>
2.	<p><u>Woodland Character</u> – All Improvements should be designed to preserve the woodland character (native woods, forest and many trees) of Kent Woodlands. New designs must show that the privacy and seclusion enjoyed by neighboring lots due to existing vegetation will be maintained. If removed, woodland vegetation must be replaced with comparable vegetation screening at the discretion of the Architectural Committee in conjunction with input from neighbors. In restoring screening lost between neighbors, the Architectural Committee may require a landscape plan showing replacement of removed trees and shrubs.</p>	<p>KWPOA CC&R Article V, Sect. 6(b), Sect. 6(c), Sect 6(d)</p> <p>KWLUPR CD1.6; CD1.10</p>
3.	<p><u>Views and Ridge-top Preservation</u> – Applicants should seek to minimize any change in visibility resulting from new developments. New designs must show that views reasonably enjoyed from neighboring lots are not materially impacted; however, visibility of any new construction, absent other factors, should not necessarily be a ‘material impact’ on neighbor’s views. Where a proposed project is visible to neighboring lots or streets, the Architectural Committee may seek comment from potentially affected neighbors and the Community at large. Existing views should be protected when (i) they contain landmark or natural features (e.g. Mt. Tam, the Bay, undisturbed natural areas (excluding all of a vacant lot), horizon lines, city skylines, etc), (ii) they are preserved by deed or easement or (iii) they would normally be considered marginal or insignificant but are the only views enjoyed by a neighbor from outdoor living areas or from picture windows in living, dining or master bedroom areas. Natural ridge-tops shall be preserved by new development being sited and designed so that rooflines are below the visual plane of ridges. Where a ridge lot is too flat to allow placement of new construction below the visual plane of the ridge, then a height limit of one story and 18 feet above natural grade should be imposed.</p>	<p>KWPOA CC&R Article V, Sect. 6(c), Sect. 6(d)</p> <p>KWLUPR CD1.4; CD1.5; CD1.6; CD1.7</p>
4.	<p><u>Neighborhood Characteristics</u> – Improvements must be in harmony with the external design and appearance of other structures in Kent Woodlands – i.e. compatible in scale, height, bulk, mass and appearance (colors, material and design) to other residences in the immediate neighborhood and integrated with and subordinate to the natural setting. The size of remodels and teardown/ rebuilds is not numerically limited but is constrained by impact on the privacy/sense of seclusion, woodland character preservation and view maintenance criteria above. In general the Architectural Committee will assess whether a lot can accommodate a proposed Improvement without impacting neighbors’ enjoyment of their property and the larger the proposed structure the greater the Architectural Committee will scrutinize and protect potential impact on neighbors.</p>	<p>KWPOA CC&R Article V, Sect 6(b)</p> <p>KWLUPR CD1.3; CD1.4; CD1.7</p>
5.	<p><u>Fit With Natural Topography</u> – Proposed designs should preserve and protect significant natural features and fit into and follow the natural topography. This may be achieved by maintaining mature landscape and tree screening, minimizing paved surfaces, avoiding ridgelines and water courses and building with structural lines, forms, materials and colors that follow the natural topography and background.</p>	<p>KWPOA CC&R Article V, Sect 6(b), Sect. 6(d)</p> <p>KWLUPR EQ7.1; CD1.1; 1.2; 1.7</p>

6.	<p>Tree Preservation/Replacement – Trees over 6” in diameter (18” in circumference as measured 5’ above ground level) may not be removed without the written consent of the Architectural Committee. If trees must be removed approval will usually require installation of replacement trees at a minimum ratio of 1:1 (one replacement tree for each tree removed). Tree removal requests must include photographic records of screening that will be lost. For trees diseased beyond recovery, a written report by a registered consulting arborist shall be required. For trees deemed severe fire hazards, a written report from Kentfield Fire District and/or the homeowner’s insurance company shall be required.</p>	<p>KWPOA CC&R Article V, Sect. 6(b); Article VI, Sect. 8</p> <p>KWLUPR EQ4.1, CD1.1, CD1.2</p>
7.	<p>Visual Impact – To reinforce the beautiful natural environment of Kent Woodlands natural earth tone colors and finishing materials should be used externally. Home design and style should be in harmony and compatible with existing architectural styles and finishes in Kent Woodlands. Repainting in the same, previously approved, color does not need re-approval.</p>	<p>KWPOA CC&R Article V, Sect. 6(d) Article VI, Sect. 12</p> <p>KWLUPR CD1.3; 1.4; 1.6 ; 1.7; 1.9</p>
8.	<p>Setbacks—Unless specific setbacks are defined on the property deeds the currently existing setbacks are to remain or shall be increased to CC&R minimum setbacks (front: 30’, side: 15’, back: 25’, 50’ from bank of stream) or more. No improvements or other structures, including swimming pools, retaining walls or other outside facilities, shall be constructed except in conformity with the setback lines of the original Subdivision map or subsequent deeds. The Architectural Committee will have discretion to require that the footprint of improvements be placed at a greater distance from property lines than required by prevailing setbacks if such placement is necessary to accommodate privacy, view or mass impacts on neighboring lots.</p>	<p>KWPOA CC&R Article V, Sect 6(c), Sect. 6(d) Article VI, Sect. 6</p> <p>KWLUPR CD1.5; EQ3.1</p>
9.	<p>Building Height - The height of any new Improvement should not impact the reasonable enjoyment (including sun, light and air) to neighboring lots or result in a reduction of privacy, seclusion or views. Drawings must show finished height from finished grade of walls, structures, roof ridelines and other items of the proposed design. In general, (i) maximum height is limited to 30’ or lower if necessary to minimize the adverse effect on the privacy, seclusion or views of neighboring lots, (ii) roof pitches should not exceed 9 in 12, (iii) no vertical building wall should exceed 20’ in height as measured from the lowest point on finished grade adjacent to the wall, and (iv) to minimize mass and bulk any vertical walls above 20’ single wall height limit should be stepped back from the adjacent lower walls by a minimum distance of 10’.</p>	<p>KWPOA CC&R Article V, Sect. 6(b), Sect. 6(c), Sect.6 (d)</p> <p>KWLUPR CD1.6; CD1.7</p>
10.	<p>Excavation and Grading - Existing topography, native vegetation, trees, and rock outcroppings should be preserved. Massive grading or alteration of the existing site is not considered appropriate. Retaining walls visible from offsite should be of minimum height (4 feet or less) and faced with stone or earth-tone materials and colors.</p>	<p>KWPOA CC&R Article V, Sect. 6(b), Sect. 6(d) Article VI, Sect. 4 KWLUPR EQ6.1; EQ7.1; CD1.1 ; CD1.2 ; CD1.9</p>
11.	<p>Fences – All fencing should be limited to 6’ in height, unless the applicant can demonstrate that additional height will be visually unobtrusive and will not affect views from surrounding parcels. Open fencing to preserve neighborhood character and views is encouraged. Where solid fencing or a wall is necessary it should be concealed by vegetation. Solid fencing should not be used along roadways unless special circumstances exist (such as to prevent auto lights shining directly into living quarters). Desirable fencing materials include natural wood, open wire fabric, rock, masonry, wrought iron or a combination thereof. Chain link fencing is not permitted. Fencing along roadways should be set back from the property line as much as possible with space for pedestrians and off street parking. Limiting fencing to the developed lot area rather than to lot perimeter is encouraged. Gate and gate pillars should be setback from roadways by 30’ to allow 30’ fire truck access.</p>	<p>KWPOA CC&R Article VI, Sect. 22</p> <p>KWLUPR CD1.9; T1</p>

12.	<p>Outdoor Lighting – Any outdoor lighting should be limited to the minimum necessary and designed or located to avoid or minimize visibility from surrounding properties and roadways. Outdoor lighting includes gate pillar lanterns and any other exterior lighting. With the exception of motion detecting security lights, outdoor lighting should be limited to down-lit lamps with diffusion lenses or translucent glass, to allow soft lighting and a glow, but while preventing glare. No transparent glass is allowed. Exterior lighting fixtures shall be down lights only. Skylights are to be non-reflective, dark in color and not contain artificial illumination.</p>	<p>KWPOA CC&R Article VI, Sect. 18</p> <p>KWLUPR CD1.8</p>
13.	<p>Solar Panels & Alternate Energy – Solar Panels & Alternate Energy – No alternate energy systems, including wind and solar energy equipment, may be installed without the prior written approval of the Architectural Committee. The location of solar systems should minimize the impact on neighbors’ sense of privacy and seclusion and should minimize reflection of light into other homes. The location of wind energy systems shall not impact the quiet enjoyment of neighbors’ sense of privacy and seclusion nor materially impact ridge-top preservation. <i>(Adopted 03/26/15)</i></p>	<p>KWPOA CC&Rs Article VI, Sect. 13.</p>
14.	<p>Wildlife Corridors - Design proposals should preserve wildlife corridors through private property.</p>	<p>KWLUPR EQ5.1</p>
15.	<p>Noise (expanded 1/25/2007) - No owner shall permit loud and unreasonable noise to emanate beyond their property line that annoys or disturbs the quiet enjoyment of neighboring property owners or residents. The County of Marin also has an ordinance regulating loud and unnecessary noises, and citizen complaints related to noise are investigated by the Marin County Sheriff. Because noise from sound equipment, mechanical equipment, dogs, power tools and construction is most often the source of noise complaints, the following will clarify the Association's rules regarding noise complaints.</p> <p>Sound Equipment: Unreasonable noise from sound equipment, including but not limited to radios, hifi systems, televisions, and musical instruments, shall be contained within the property lines at all times and any noise from sound equipment emanating beyond an owner's lot must cease between 11:00 p.m. and 7:00 a.m.</p> <p>Mechanical Equipment: Noise from mechanical equipment, including but not limited to pool pumps, generators, garage door openers and similar devices, shall be sufficiently soundproofed using the most up to date soundproofing methods so that unreasonable noise is contained within the property lines at all times. Design reviews of driveways, arrival courts, sports courts, paved terraces, pool and other noise generating areas will ensure minimal increases in existing noise levels experienced by neighbors.</p> <p>Dog Barking: Residents shall take all reasonable steps to prevent dogs from barking and making noise that disturbs and annoys neighbors. Incessant barking is expressly prohibited.</p> <p>Power Tools: The use of noise producing manual or power tools, including but not limited to leaf blowers, lawn mowers, chain saws, chippers, power washers, and similar equipment, is only permitted between 7:30am and 5:00pm Monday through Friday, 9:00 am and 4:00 pm on Saturdays and should be avoided unless reasonably necessary on Sundays, state or national holidays. Consistent use of noisy tools on Sundays or holidays may be considered unreasonable and subject to enforcement action.</p> <p>Construction: Regulations and permit approvals limit the hours for construction-related activities to between 7:30 a.m. and 5:00 p.m. Monday through Friday, 9:00 a.m. and 4:00 p.m. on Saturdays. No construction is allowed on Sundays, state or national holidays (New Year’s Day, President’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day). Loud noise-generating construction-related equipment (e.g., backhoes, generators, jackhammers) can be maintained, operated, or serviced at a construction site from 8 am to 5 pm Monday – Friday only.</p>	<p>KWPOA CC&R Article V, Sect. 6(c) Article VIII, Sect. 2, Sect. 3</p> <p>KWLUPR 4.2; EQ8.1</p>

16.	Maximum Construction Period: Commencement of construction of approved Improvements is to begin within (2) two years of the date of approval by the Board and all construction (whether based on initial approved plans or later approved changes to such plans) is to be completed within (2) two years after construction first commences (the “completion period”). The completion period may be extended for good cause upon application to the Board provided such application is made at least 30 days prior to the expiration of the completion period. (<i>Adopted 09/27/12</i>)	
The following Architectural rules were recompiled as of October 18, 2002. These rules augment the rules (Design Review Guidelines) above.		
17.	Except as otherwise determined by the Committee, the Committee shall meet twice each month at the Association office on days and at times agreed upon by its members. The meeting schedule shall be published at least once each year in the Association newsletter.	
18.	The agenda for all Committee meetings shall be determined by the Committee Chairperson. Anyone wishing to be placed on the agenda for a meeting must obtain advance approval from the Committee.	
19.	All applicants must submit, prior to the Committee's cutoff date, a completed Application for Construction Approval, in the form approved by the Committee (“Application”). Notice of an applicant's project must be published in the Kent Woodlands newsletter before the project can be reviewed and processed. To be deemed "complete" an application must contain all the information requested by the Committee including proof that all affected neighbors have had an opportunity to see the plans and comment on them prior to submittal. The Committee may solicit comments from affected neighbors. The determination as to whether a neighbor is “affected” will be at the discretion of the Committee.	
20.	The Committee shall, in its discretion, set processing fees from time to time, based on the nature of the project and the extent of review required.	
21.	The Committee shall act on completed applications with reasonable promptness. Within thirty (30) days of deciding whether or not to approve a completed Application, the Committee shall notify the applicant, in writing, of its decision. The Committee shall provide a copy of its notification letter to the Marin County Community Development Agency (CDA).	
22.	To assure compliance with its findings and directives, the Committee may impose special assessments pursuant to the Association’s special assessment schedule, undertake repairs or modifications at an owner’s expense (after providing the owner notice and an opportunity to be heard), or pursue any other remedies available to it under the CC&Rs and Kent Woodlands Land Use Policy Report.	
23.	Applicants must obtain separate approval from the Marin County Community Development Agency, if required.	
24.	All construction vehicles and storage shall be contained on-site. The use of public streets, sidewalks or right-of-way by contractors and subcontractors as staging areas for materials and equipment, or for equipment parking (including portable toilets), is not permitted.	
25.	Construction vehicles, equipment and materials shall be parked or stored at the project site to allow for safe traffic circulation and to minimize negative impacts on neighbors	
26.	Any changes or additions to approved project plans, including exterior colors, must be submitted to the Committee for approval.	
27.	Any owner who receives a fire inspection safety notice or citation from the Kentfield Fire Protection District regarding the reduction of fire risks shall be subject to inspection by the Committee to confirm compliance with the notice or citation. The Committee reserves the right to pursue any and all available remedies to assure compliance with owner’s maintenance responsibilities regarding fire risks under Article VII, Section 2 of the CC&Rs.	

28.	New development, including remodels and second story additions, must be carefully sited and designed to avoid highly visible ridgeline areas and shall avoid interference with existing views and loss of privacy and seclusion on surrounding properties. Proposals for residential second story additions must be consistent with the predominant roof form and overall architectural style of the existing residence.
29.	<p>When determined to be appropriate, the Committee may require graphic information for analysis of the potential visual impact on the community. Unless waived or modified by the Committee, story poles are required for new construction, teardowns and major additions such as second stories and for architectural features that may impact neighboring properties. Poles are required to be installed ten days prior to the anticipated agenda date. The proposed story pole locations and design shall be approved by the Committee prior to installation and the locations must be shown on the plans submitted by the applicant. Story Pole locations and heights shall be verified by a surveyor if requested by the Committee. Unless modified by the Committee, the poles shall be set at all corners of the project, with a height representing the roof height at each corner, and at the ends of all roof ridge lines. When requested by the Committee, the story poles shall be connected with orange netting (or other acceptable visual aids) to display the roof ridgeline, to allow observers to visualize the impact of height, mass, bulk and shadow. Second story window placement shall be noted with a flag or other device when closer than 100' from a neighboring structure.</p> <p><i>(The following paragraph was adopted 05/23/13)</i> With respect to any application, the Committee has discretion to require the applicant to provide one or more studies concerning the impact of the proposed Improvement on neighboring properties if the proposed Improvement may adversely impact a neighboring property in a manner that is inconsistent with the governing policies, rules and guidelines for design review in Kent Woodlands.</p>
30.	All structures should limit the use of white, bright or reflective colors and materials. The Committee reserves the right to determine the appropriateness of colors and exterior materials on a case-by-case basis.
31.	<p>Variations to the rules set forth in the CC&Rs and the Land Use Policy are discouraged. Variance requests will be considered on a case-by-case basis. Certain findings must be met in order to approve a variance. In order to have a variance request considered by the Committee, the applicant must submit information in support of the findings as part of the application. The required findings are as follows:</p> <ol style="list-style-type: none"> a) The granting of the variance will not jeopardize the intent of the CC&Rs nor change the character of Kent Woodlands. b) The granting of the variance will not create a hardship for another owner on another lot in Kent Woodlands. c) The use or improvement requiring the variance represents a reasonable use of the property that is necessary to the normal enjoyment of residential property in Kent Woodlands. d) The property has unique physical or topographical characteristics which would preclude developing the proposed improvement in a manner not requiring a variance. e) The need for the variance has not been self induced – that is, previous improvements to the property can not be cited as the sole reason that the new improvement cannot comply with the CC&Rs.
32.	Any decision of the Architectural Committee may be appealed to the Board of Directors under rules for appeals, which are established by the Board from time to time.
33.	By submitting an application for design review to KWPOA an applicant grants permission to the Board, the Committee and their designees to visit the site of the proposed improvement as necessary to determine the appropriateness of the proposed request, and to monitor compliance with the conditions of approval until completion of the project.
34.	Upon completion of an approved project, applicants are required to certify in writing that the improvement has been installed or constructed in accordance with the plans as approved or conditionally approved by the Committee. The Committee may require a letter of certification from the applicant, the architect, the contractor and any other appropriate party.

Background

In 2005, the KWPOA Board promised to establish clear rules and a process regarding trees and view maintenance and restoration because, sadly, this has been a growing area of neighborly conflict in Kent Woodlands. Typically neighbors solve these disputes amicably and reasonably but occasionally neighbors can't sort it out between themselves and a view dispute is brought before the Architectural Committee (AC) and sometimes an AC decision is appealed to the Board. View maintenance and restoration disputes can be very 'gut-wrenching' and very costly. To find a less stressful way to resolve view restoration issues for KWPOA members a View Restoration Committee made up of Members with knowledge and experience of view disputes was formed to explore the need for a new KWPOA Views and Trees rule to guide members and the KWPOA in handling such issues. The committee reported back to the KWPOA Board in June 2006 with a recommendation to adopt the draft rule below. The KWPOA Board sought member feedback in a one-month member comment period (Sep 2006) and this led to the revised version below.

Preamble

The overall purpose of the KWPOA is to uphold the CC&Rs (download available from KWPOA.com). In summary the CC&Rs seek to conserve and protect the Kent Woodland's fundamental "woodland" ambience as well as the 'privacy' and 'views' of residents. It is the responsibility of the Architectural Committee (AC) to review all improvement applications (including view restorations ones) and to make reasonable decisions, on a case-by-case basis. In general views may not be enhanced at the expense of a neighbor's privacy nor privacy enhanced at the expense of a neighbor's view.

Purpose

1. To define the rights and obligations of Members concerning the restoration and maintenance of views from a Member's property.
2. To establish a process by which Members may seek restoration of views.

Introduction

Article VI, Section 8 of the KWPOA CC&Rs provides: *"No trees which have a circumference greater than eighteen (18) inches when measured five (5) feet above grade shall be cut, removed or heavily pruned without the consent of the Architectural Committee unless the tree is certified to be dead or diseased and is creating or is likely to create an immediate threat or hazard to persons or property. If a tree materially obstructs the view from any other residential Lot, the Architectural Committee shall determine if, how and to what extent such tree shall be trimmed or removed so that the view from the other residential Lot shall not be unreasonably obstructed by such tree. The Committee shall in writing advise the Owner of the Lot upon which the tree is located to have the tree so trimmed or removed. If the Owner fails for a period of thirty (30) days after delivery of such written notice to have the tree so trimmed or removed, the Architectural Committee shall have the right, but shall not be obligated, by itself or its agents or employees, to enter the Lot upon which the tree is located and to trim or to remove it at the expense of the Owner."* Pursuant to Article V, Section 5 of the CC&Rs, this Rule shall be used as a non-binding guideline to interpret and implement the provisions of Article VI, Section 8 of the KWPOA CC&Rs.

Article I. Definitions of Terms Used

"AC" means the KWPOA Architectural Committee

"Board" means the Board of Directors of the KWPOA

"CC&Rs" means the KWPOA's Amended and Restated Covenants Conditions and Restrictions recorded in 1995 and any subsequent amendments

"KWPOA" means the Kent Woodlands Property Owners Association

"Lot" means a parcel of real estate in Kent Woodlands that is subject to the KWPOA CC&Rs and defined as a "Lot" therein

"Member" means a member of the KWPOA, e.g. a property owner of a Lot that is subject to the KWPOA CC&Rs

"View" means the unobstructed visual access to landscape features as provided for herein

Article II. Members' Right To Restoration or Maintenance of a View Obstructed by Trees

1. Views Subject to Restoration:

- a) **Time Frame.** Each Member shall have a right to the restoration and maintenance of the views that were enjoyed by that Member as of the date the Member first became subject to the 1995 KWPOA CC&Rs or any time thereafter.
- b) **Views Defined.** Views subject to restoration and maintenance are those of (i) landmarks or natural features such as Mt. Tam., Bays, Phoenix Lake, forests and/or vegetation, undisturbed natural areas (excluding all of a vacant Lot), horizon lines, city skylines, and similar natural landscapes and features including any reasonable view as determined by the AC.
- c) **Locations on Lots Entitled to View Restoration.** Only views enjoyed from primary residences and primary outdoor entertaining areas are entitled to restoration.
- d) **New Views Caused by Fire, Disease, Disaster, and Routine Trimming/Pruning.** In the event that the trees or structures existing on a Lot are destroyed or materially diminished by fire, disease, or other natural disaster, the AC shall have the discretion to modify the provisions of this Rule, provided that it determines that good cause exists. Otherwise, new views created by fire, disease, or natural disaster, to the extent that such new views exceed the restorable views existing at the time of the disaster, are subject to the maintenance and restoration pursuant to this Rule only to the extent that such newly created views do not diminish the sense of seclusion and privacy of other Lots. When feasible, except for new construction, a balance should be struck between protecting a sense of privacy and seclusion and protecting views. The views entitled to restoration herein shall not be increased due to routine trimming, pruning, or seasonal changes.
- e) **Views Created or Caused by Intentional or Negligent Acts of Members.** To the extent that any Member intentionally or negligently causes the death or destruction of trees or vegetation on any Lot, including his own Lot, if undertaken without AC approval where such approval is required, the new views created as a result of such acts are not subject to restoration or preservation.

2. Extent of Restoration Permitted

- a) The **view restoration rights** of Members who undertake new construction or whose existing homes have been extensively remodeled shall be subordinated to the extent needed to protect and preserve the sense of privacy and seclusion of other affected Members.
- b) The **privacy rights** of Members who undertake new construction or whose existing homes have been extensively remodeled shall be subordinated to the extent needed to protect and preserve the existing views of other affected Members.
- c) **Remediation** shall, to the extent advisable, be conducted according to professional standards by a licensed arborist and shall be the minimum amount necessary to restore impacted views. To the extent feasible, shaping and windowing of trees shall be preferred to topping. Outright removal of trees shall only be required as a last resort if necessary to accomplish the objectives of this Rule.
- d) Members have a **responsibility** to exercise their rights under this Rule in a timely manner. Failure to do so may result in injury to or undue burden on the owner(s) of the offending tree(s). If unreasonable delay in seeking restoration has caused actual harm then restoration shall be limited to the extent necessary to avoid or mitigate such harm. An example of an undue burden would be where delay necessitated either complete removal or unsightly topping of the entire crown where prompter action would have permitted simple trimming. Failure to act in a timely manner may also give rise to legal or equitable limitations on a member's right to restoration of a view.

Article III. Process for Seeking Restoration or Maintenance of Views

- a) **The Application for View Restoration.** Any member may petition for restoration of a view obstructed by tree(s) by filing an application with the AC.
- b) **Burden of Proof Borne By Member Seeking Restoration.** The Member seeking restoration bears the burden of establishing entitlement to restoration pursuant to this Rule, including but not limited to, demonstrating by photographic or other reliable objective evidence the existence and extent of any view to be restored. Any Member may log the photographic evidence with the AC (pursuant for the AC's instructions for doing so) as a way of making the evidence public.
- c) **KWPOA Assisted Reconciliation.** The AC shall allow at least 2 meetings for view restoration solutions, after it is convinced that the parties have conscientiously tried to find resolution between them. The first meeting shall be in the form of a preliminary hearing. Both parties may present a case and the committee may present suggested solutions. If no agreement can be reached the AC shall determine at the next meeting whether or not an unreasonable impact exists and to what degree it should be remediated. The AC may allow up to 2 months after the preliminary hearing for the parties to work on a solution. Private formal mediation can be utilized but if the applicant so requests, he shall be entitled to a decision by the AC before he is required to participate in mediation.
- d) **Communication of Findings to All Parties.** After investigating a request for view restoration and providing for the meetings described above, the AC shall make a written determination regarding the request within 30 days of the final hearing on the application for restoration. The AC response will include what views are to be restored and how they will be restored as well as the pertinent sections of this Rule utilized in making its determination.
- e) **Cost of Remediation.** If the parties cannot agree on allocation of costs for view restoration the AC may determine allocation of costs. Typically, but not necessarily, the cost of view restoration will be borne by the member seeking the view restoration.