

**Process for Preserving Sound and Mountain Views**  
**On Residential Lots in Innis Arden**

**I. Introduction:**

Whereas the Innis Arden Club, Inc. desires to provide a process to resolve disputes among shareholders concerning trees and other vegetation blocking views of Puget Sound and Olympic Mountains consistent with the Mutual Restrictive Easements as amended, it hereby adopts the following procedures and standards.

- A. This compliance process (the Process) is designed as a mechanism to resolve issues and disagreements among Shareholders (Petitioners) whose views are obstructed and Shareholders (Respondents) whose tree(s) and/or vegetation may be blocking views
- B. The purpose of this Process is to guide shareholders to find solutions with the help of the Compliance Committee Members, and/or Mediator. The process provides both the Petitioner and the Respondent (the Parties) a fair and efficient mechanism to resolve view disputes.
- C. The establishment of this process does not obligate Innis Arden Club Inc. in any instance to pursue compliance or enforcement action. It is designed to assist Innis Arden Club, Inc. and its Shareholders in achieving compliance with the Mutual Restrictive Easements, including the Tree Height Amendment.
- D. This process is voluntary. The Process is however, presumed to be fair and impartial and seeks to improve views where views of Puget Sound and mountains are obstructed by trees and/or vegetation on private property. The process is not intended to address view blockage caused by trees or vegetation in the Reserves or any property owned by Innis Arden Club Inc.

**II. Compliance Committee:**

- A. The Board will appoint one of its members as the chairperson of the Compliance Committee. The Chairperson will solicit volunteers from the community to serve on the Compliance Committee.
- B. In consideration of the parties' utilizing community volunteers, the parties shall sign a release of liability in favor of the Club and community volunteers.
- C. Each volunteer serving on the Compliance Committee will be required to have dispute resolution orientation so s/he is qualified for

having respectful discussions with both parties and understanding his/her role and responsibility as a member of the Committee. Furthermore, each Committee member will provide the Chairperson with a fact sheet.

- D. When a Petition is received, the Compliance Committee Chairperson, the Petitioner, and the Respondent will each appoint one member of the Compliance Committee to serve on the "Site Committee", which will assist both parties in the process.
- E. Either party may within 14 days, for any reason, request that a particular member of the Committee not assist with his/her dispute. That Party may then contact the Chairperson of the Compliance Committee and receive a replacement Site Committee Member.
- F. The Site Committee will provide the opportunity for a thorough meeting(s) to discuss the issues with both parties and to assist them in reaching a reasonable and respectful solution. The Site Committee's main task is to gather facts and offer suggestions to assist the parties in resolving their disputes.

**III. Neighbor to Neighbor:**

To employ this voluntary process, the Petitioner is required to try to work out the conflict with the Respondent before filing a petition. Personal contact should be shareholder to shareholder, if possible, but either Party may involve a third party to facilitate communication. The Parties are urged to approach the discussion with rationality, reason and respect. Both Petitioner and Respondent should document contacts (i.e., letters, emails, conversations) for the purpose of providing facts to the Compliance Committee if a petition should be filed.

**Both parties are encouraged to recognize the following:**

- A. The validity of the Restrictive Mutual Easements, including the Tree Height Amendment, the Special Master's Guidelines, and any court orders that apply to the properties involved.
- B. The Petitioner's right to make a request and the Respondent's right to a complete and fair resolution process.
- C. Respondent should be willing to visit the Petitioner's home to see the impact to the view by the tree(s) and/or vegetation in question.

- D. Petitioner should be willing to visit the home of the respondent to view what impact the proposed solution would have on the Respondent's property.
- E. Petitioner has the initial responsibility of identifying the tree(s) or vegetation specifically in question and to propose a solution to correct the perceived problem. However, both Parties are urged to work together, especially when several trees are involved, to identify view blocking trees and the properties on which they are growing. The Respondent bears the responsibility of demonstrating why the Petitioner's claim may be inappropriate and/or why the Mutual Restrictive Easements are inapplicable.
- F. Both parties are encouraged to negotiate a solution to "restoring the view" including the financial responsibility.
- G. The City of Shoreline Code does allow for modification with mitigation in areas classified as "critical areas". Both Petitioner and Respondent shall comply with the City of Shoreline Code when reaching a mutual compliance agreement.

**IV. Filing of Petition:**

- A. If the parties are unable to reach an agreement with using a good-faith effort (as will be reviewed by the Compliance Committee), the Petitioner may submit a Petition (form available on [www.innisarden.com](http://www.innisarden.com)) to the Compliance Committee. All petitions must be submitted in writing to the Compliance Committee Chairperson
- B. Other neighbors, who have tried to work with the same Respondent and have followed the procedures in **III. Neighbor to Neighbor**, may file signed affidavits to be submitted along with the Petitioner's complaint for consideration by the Compliance Committee.
- C. All Petitions must provide as complete, current, and accurate information as possible. The petition must be signed and submitted by the Petitioner who claims to be adversely affected by the supposed violation. The Petitioner shall submit \$25.00 with the Petition to the Innis Arden Club, Inc. for processing and filing.

**V. Notice of Petition:**

- A. Within 90 days of receiving the Petition, the Compliance Committee Chairperson shall provide notice to the shareholder whose lot is the subject of the petition, using certified mail or other means that provides a return receipt. This notice shall include information that outlines the rights and responsibilities of both parties. Included in this

- packet will be the Restrictive Mutual Easements, including the Tree Height Amendment, the Special Master's Guidelines, and a copy of this document which describes the Process. Also to be included is a list of committee members from which each party may choose one member to be part of the Site Committee. Notices will be sent to the shareholder address on record with the Board.
- B. The Respondent shall be given the opportunity to submit a reply, within thirty (30) days from the date of mailing or transmittal of the petition notice, stating why s/he is not in violation or why there may be mitigating circumstances. The response shall be submitted in writing and shall provide as complete, accurate and timely information as possible to assist in an initial assessment of the Petition.
- C. If for any reason either party is not comfortable with the Compliance Committee process, s/he may request that the other party agree to Mediation

**VI. Fairness:**

While it would be impossible for a neighborhood association to comply strictly with the "appearance of fairness" rules, which apply in more formal governmental contexts, Board members and Site Committee members whose participation would appear to compromise the fairness of the complaint resolution process shall not participate.

**VII. Initial Determination by Committee:**

- A. Upon receipt of the initial response or, if no response is received when the thirty (30) day initial response period has expired, the Compliance Committee will meet within 14 days to determine whether there is sufficient basis to process the Petition. If the Compliance Committee finds the Petition inadequate, the Committee may send it back to the Petitioner for more information or may recommend to the Board that it be rejected as frivolous. Otherwise, the Compliance Committee shall notify the parties in writing that site visits will need to occur in order to proceed with the petition process.
- B. The Compliance Committee Chairperson will provide a list of names from which the Petitioner and the Respondent will each choose one person to serve on the three-person Site Committee. The Chairperson of the Compliance Committee will choose the third member of the Site Committee. The three individuals will represent the Compliance Committee and the parties in trying to resolve the issues.

- C. There are three options in utilizing this Compliance process. (1) The parties may choose to work solely with the Site Committee. (2) The parties may choose to work with an outside Mediator to assist with the Site Committee process. (3) The parties may choose to forego the Site Committee process at any point and agree to work entirely with an outside Mediator to resolve their differences.
- D. The Compliance Committee may forward a Petition to the Board to determine if it is frivolous.

**VIII. Site Visit:**

As part of the assistance to both parties the Site Committee and/or Mediator shall conduct site visits at both parties' homes. The Chairperson of the Site Committee will be responsible for scheduling site visits with all the participants, (the Petitioner, the Respondent, the Site Committee members, and/or Mediator) in a timely manner agreeable to all participants. The site visits should occur as soon as possible; and should be no later than 30 days from the Initial Committee Determination, unless extenuating circumstances occur.

**IX. Agreement before Compliance Meeting:**

- A. If both parties agree to settle their differences, they must contact the Compliance Committee Chairperson as soon as possible in order to give sufficient time to notify the Site Committee members of the cancellation.
- B. The Site Committee should make every reasonable attempt to assist the parties to reach an agreement.
- C. If the parties wish to forgo the Site Committee meeting process for any reason, they may request the assistance of a Mediator.

**X. Meeting with Site Compliance Committee:**

- A. After the Site Committee members have reviewed all data provided to them and completed site visits to both homes, a meeting will be scheduled at a mutually agreed upon date and time. This meeting will take place within 30 days of the Initial Site Committee Determination, unless extenuating circumstances occur.
- B. The Petitioner and Respondent will have an opportunity to present their positions on the Petition.
- C. The Site Committee members will take this opportunity to ask questions and share information that they have available.
- D. Either party may provide at their own expense expert peer review of any arborist report, geotech

- report, and/or soils expert findings to present as information for the meeting.
- E. The Site Committee, if it deems appropriate, may accept comments specific to the Petition by other parties (i.e., a neighbor who may have specific knowledge concerning the facts about a dispute.)
- F. The Site Committee will be guided by the Mutual Restrictive Easements including the Tree Height Amendment and the Special Master's Guidelines (at the end of this document).

**XI. Mediation:**

- A. If both parties prefer Mediation over the Site Committee process, they may privately select their own Mediator. It is the responsibility of both parties to arrange for assistance of a Mediator. Mediation organizations are referenced at the end of the document.
- B. The Mediator shall function as the facilitator for the parties and assist them in reaching a mutually agreeable solution.
- C. If the Parties fail to reach an agreement, they are encouraged to notify the Compliance Committee regarding the status of their disagreement.
- D. The parties will provide the Mediator with the Mutual Restrictive Easements including the Tree Height Amendment and the Special Master's Guidelines for reference in finding a resolution.

**XII. Compliance Committee Deliberation and Recommendation:**

- A. Within 14 days after completing its meeting(s) with Petitioner and Respondent, the Site Committee Members shall report the recommendation, including timelines, to the Chairperson of the Compliance Committee, who will then issue a report to the Petitioner, the Respondent and the Secretary of the Innis Arden Board.
- B. The Site Committee shall, if not already agreed to, recommend the allocation of initial compliance costs among all parties, including the Petitioner, those who have submitted affidavits, and the Respondent. Periodic maintenance necessary to maintain compliance will be maintained by the Respondent unless Petitioner, and/or persons who have attached affidavits agree to participate in future maintenance

**XIII. Board Approval**

- A. After receiving the Recommendation from the Compliance Committee Chairperson, the Secretary of the Board will add it to the agenda in the Bulletin for the following month's Board Meeting for approval by the Board.
- B. Once the Board has made its decision on the recommendation, the Secretary of the Board will send the decisions to both parties by certified mail, or other means that provides a return receipt. This decision will be included in the Board's minutes.

#### **XIV. Guidelines:**

On April 3, 1989, Judge Anne Ellington adopted the Procedures for Special Master Process. Included in this document were guidelines for making determinations in the Special Masters' findings. On March 8, 1990, an Order on Review amended the Procedures for Special Master Process. Therefore, the following have been adapted by the Compliance Committee to be considered when making recommendations.

- A. Grandfather Trees<sup>1</sup>: Trees which were view-blocking trees before the subdivision of Innis Arden are exempt where trimming or topping would have a significant adverse effect. See Guidelines for Special Master, 8(a). Petitioners alleging this ground for variance must establish that the tree was view-blocking at the time of subdivision.
- B. Whether a view obstructing tree is necessary to the long term soil stability of the lot, trimming or topping to comply with the covenant would have a significant adverse effect on the overall health of the tree, and there is no reasonable alternative method of stabilizing the soil on the lot.
- C. Whether a view obstructing tree currently provides habitat for one or more endangered species as defined by state or federal law and trimming or topping to comply with the covenant would have a significant adverse impact on such habitat.
- D. Whether the view obstruction is de minimis.
- E. Whether the Special Master (Compliance Committee, Board or Arbitrator) finds other compelling grounds why the covenant should not be enforced in a particular instance; however, personal attachment of the parties to particular trees or landscape plans shall not be compelling grounds.
- F. Neighboring Lot<sup>1</sup>: The reference to 'neighboring lot or lots' in the Restrictive Mutual Easements was not intended by its drafters, nor by the adopting community members, to be restricted to contiguous or adjacent lots. Due to the geography of Innis Arden, including plat layout and slope,

trees several lots distant may entirely block views. The intent of the covenants is to restore such views. However, "neighboring" lots must be such as to have an actual – and not de minimis – view obstruction. Distance from the viewing lot and degree of the view blocked are criteria for consideration as to whether a blockage is de minimis.

#### **XV. Validity of Mutual Restrictive Easements and Tree Heights Amendments:**

None of the foregoing provisions shall be construed as amending or otherwise changing the Mutual Restrictive Easements as amended.

#### **Glossary**

**Arbitration** n. a mini-trial, which may be for a lawsuit ready to go to trial, held in an attempt to avoid a court trial and conducted by a person or a panel of people who are not judges. The arbitration may be agreed to by the parties, may be required by a provision in a contract for settling disputes, or may be provided for under statute. To avoid clogged court calendars the parties often agree to have the matter determined by a panel such as one provided by the American Arbitration Association (which has a specific set of rules), a retired judge, some other respected lawyer, or some organization that provides these services. Usually contract-required arbitration may be converted into a legal judgment on petition to the court, unless some party has protested that there has been a gross injustice, collusion or fraud. Many states provide for mandatory arbitration of cases on a non-binding basis in the hope that these "mini-trials" (proceedings) conducted by experienced attorneys will give the parties a clearer picture of the probable result and lead to acceptance of the arbitrator's decision.

**Covenants, Conditions & Restrictions** n. commonly called "CC and Rs," these are written rules, limitations and restrictions on use, mutually agreed to by all owners of homes in a subdivision or condominium complex. CC and Rs may limit size and placement of homes, exterior colors, pets, ages of residents, use of barbecues and other conduct to protect the quiet enjoyment of the various residents. CC and Rs are enforced by the homeowners association or by individual owners who can bring lawsuits against violators and are permanent or "run with the land" so future owners are bound to the same rules. Most state laws require that a copy of the CC and Rs be recorded with the County Recorder and be provided to any prospective purchaser.

**De minimis** adj. (dee-minnie-miss) Latin for "of minimum importance" or "trifling." Essentially it refers to something or a difference that is so little, small, minuscule or tiny that the law does not refer to it and will not consider it. In a million dollar deal, a \$10 mistake is de minimis.

**Frivolous** adj. referring to a legal move in a lawsuit clearly intended merely to harass, delay or embarrass the opposition. Frivolous acts can include filing the lawsuit itself, a baseless motion for a legal ruling, an answer of a defendant to a complaint which does not deny, contest, prove or controvert anything, or an appeal which contains not a single arguable basis (by any stretch of the imagination) for the appeal. A frivolous lawsuit, motion or appeal can result in a successful claim by the other party for payment by the frivolous complainant of their attorneys' fees for

defending the case. Judges are reluctant to find an action frivolous, based on the desire not to discourage people from using the courts to resolve disputes.

**Mediation** n. To resolve or seek to resolve differences by working with all conflicting parties.

**Mitigate** v. to cause to become less harsh or hostile; to moderate. In the context of this document, it means to moderate the removal of the view blocking trees and vegetation by replacing them with lower growing trees and vegetation.

**Mitigation Plan** n. A plan which is submitted to the City of Shoreline for approval that calls for alleviating the effect of removing view blocking trees and vegetation by replacing them with lower growing trees and vegetation.

**Mutual Restrictive Easements** n. Also know as Covenants, Conditions & Restrictions. (See above.)

**Neighbor** n. For the purpose of this View Compliance Process, a neighbor is any residential property owner or plat upon which, from the perspective of your own property, there exists a material Puget Sound water or Olympic Mountain view obstruction or impaired view potential. Specifically excluded from materiality is any obstruction or impairment which is de minimis. The obstruction or impairment can be caused by vegetation or man made obstacles. Excluded from man made obstacles are building approved by the Architectural Committee of the Innis Arden Board.

**Site Compliance Committee** n. The minimum of three shareholders from the Compliance Committee who represent the Compliance Committee are referred to as the Site Compliance Committee in this Process.

**Restrictive Mutual Easements** The Restrictive Mutual Easements for Innis Arden 1, 2, and 3, frequently referred to as the “Covenants” are restated in the glossary.

**Shareholder** n. one that holds or owns a share in property. i.e. All Innis Arden property owners are Shareholders.

**Special Master Findings & Guidelines.** In April of 1989 King County Superior Court appointed a special master to adjudicate administratively numerous tree height violation assertions brought before the court as a result of the Innis Arden v. Binns' lawsuit. Rather than have all such cases brought before the court in separate lawsuits, the court appointed the special master to administer the complaints in the interest of judicial economy. The court gave the special master **guidelines** to follow in the determination of whether trees or other vegetation were considered to be view blocking or not and also provided guidance in the event that a view blocking tree would be exempt from compliance with the Innis Arden View Tree height amendment. In each separate case brought before the special master, the master issued **findings** having the force of a King County Superior Court ruling. For the purpose of this View Compliance process, findings issued by the court are considered valid and enforceable unless found otherwise. For the purpose of this View Compliance process the Special Master's Guidelines can be found in paragraph XIV.

#### **Tree Height Amendment- IA #1**

In order to preserve the views of Puget Sound and the Olympic Mountains from lots in said subdivision, all trees, shrubs, brush and landscaping, whether native or planted, on residential lots in said subdivision shall be kept to a height no higher than the highest

point of the roof surface nor higher than the height of the house on each lot, whichever is lower. For this purpose, the height of a house shall be measured from the highest point of the roof surface to the lot grade which shall be the average of the highest and lowest ground elevations at exterior walls of the house. This amendment shall apply only to those trees, shrubs and brush which in any way obstruct the view of the sound and Olympics from a neighboring lot or lots. This provision shall not apply to the east half of lots 1 through 13, block 1 which abuts 8<sup>th</sup> Ave N.W. for which view is not a factor and on which trees, shrubs, brush and landscaping will not impair the views of others.

#### **Tree Height Amendment- IA #2**

In order to preserve the views of Puget Sound and the Olympic Mountains from lots in said subdivision, all trees, shrubs, brush and landscaping, whether native or planted, on residential lots in said subdivision shall be kept to a height no higher than the highest point of the roof surface nor higher than the height of the house on each lot, whichever is lower. For this purpose, the height of a house shall be measured from the highest point of the roof surface to the lot grade which shall be the average of the highest and lowest ground elevations at exterior walls of the house. This amendment shall apply only to those trees, shrubs and brush which in any way obstruct the view of the sound and Olympics from a neighboring lot or lots.

#### **Tree Height Amendment- IA #3**

In order to preserve the views of Puget Sound and the Olympic Mountains from lots in said subdivision, all trees, shrubs, brush and landscaping, whether native or planted, on residential lots in said subdivision shall be kept to a height no higher than the highest point of the roof surface nor higher than the height of the house on each lot, whichever is lower. For this purpose, the height of a house shall be measured from the highest point of the roof surface to the lot grade which shall be the average of the highest and lowest ground elevations at exterior walls of the house. This amendment shall apply only to those trees, shrubs and brush which in any way obstruct the view of the sound and Olympics from a neighboring lot or lots. This amendment shall apply only to those trees, shrubs and brush which in any way obstruct the view of the sound and Olympics from a neighboring lot or lots. This provision shall not apply to: the southeasterly half of Lots 10 through 27, all of Lots 28 through 58, and the northerly half of Lots 59 through 61, Block 29; all lots in Block 30; those portions of Lots 10 through 26 lying southerly of the existing houses therein; all of Lots 27 through 32, Block 31; and all lots in Block 32 for which views are not a factor and on which trees, shrubs, brush and landscaping will not impair the view of others.

#### **Mediation/Arbitration resources**

King County Dispute Resolution <http://www.kcdrc.org/> or call toll free at 888-803-4696

Federal Dispute Resolution <http://www.fdrcenter.org/> or call

#### **Shoreline Municipal Code References**

Title 20, Chapter 20.50, Subchapter 3

**Tree Conservation, Land Clearing, and Site Grading Standards**

Title 20, Chapter 20.80, Subchapter 1

**Critical Areas Overlay District – Administration**

Title 20, Chapter 20.80, Subchapter 2

**Critical Areas Overlay District – General Development Standard**

<sup>1</sup> taken from the Order on Review of Special Master's Findings, filed March 9, 1990

