

THE CAPES HOMEOWNERS' ASSOCIATION

Resolution of the Board of Directors

VIEW PROTECTION RESOLUTION

March 18, 2023

RECITALS

- A. "Declaration" is the *Amended and Restated Declaration of Covenants, Conditions and Restrictions for the Capes* recorded as Document No. 2003-419490, as amended, "Bylaws" is *Fourth Amendment to Bylaws The Capes Homeowners' Association, Inc.* recorded as document No. 2010-006541, as amended, "Act" is the Oregon Planned Community Act, ORS Chapter 94.550-94.783, "Association" is the Capes Homeowners Association, Inc, and "Board" is the elected Board of Directors of the Association;
- B. Article XIV of the Bylaws authorizes the Board to adopt, amend, and rescind administrative rules and policies for the governance of the Association;
- C. Article VI, Section 6.11 of the Declaration provides that, "No landscaping shall be installed by a Lot Owner which materially interferes with another Lot Owner's ocean or bay view and no landscaping shall be allowed that can grow so as to materially interfere with another Lot Owner's ocean or bay view."
- D. Article VI, Section 6.11 of the Declaration further provides that disputes regarding whether landscaping violates this requirement shall be resolved by the Landscape Committee.
- E. Important terms in Section 6.11 are not defined such as "materially interfere." Section 6.11 also does not set out Landscape Committee procedures for evaluating views.
- F. The Board has determined that it would be beneficial to all owners to adopt a policy, which sets out the criteria the Landscape Committee shall use when determining whether landscaping materially interferes with a lot's ocean or bay view and the procedures it will follow.

NOW, THEREFORE, IT IS RESOLVED, that all prior view related resolutions are rescinded and are no longer of any force, including those listed in the February 11, 2005 Tree Removal Resolution, except as to violations already underway or decided.

IT IS FUTHERMORE RESOLVED that the Association shall use the rules and procedures set forth below in evaluating Landscape Review Requests.

I. Definitions

1. "Protected View" means a view of the ocean or Netarts Bay. Other views are not protected, including views of the Oceanside rocks, the spit, Cape Lookout, the beach or sand.

2. “View Corridor” means a single line of sight from an owner’s Primary Living Area to the ocean or bay. One home may benefit from multiple View Corridors.
3. “Primary Living Area” means the interior of the home with an elevation facing the ocean or bay. It includes living rooms, family rooms, dens, bonus rooms, offices, or kitchens. Primary Living Area does not include bathrooms, decks, garages, or bedrooms.
4. “Landscape Review Request” means the request the Association requires a Filing Owner to make to initiate a Landscape Committee’s evaluation of a view. A Review Request form will be available on the Association’s website. The Landscape Committee or the Association’s manager may modify the form from time to time.
5. “Material Interference” or “Materially Interfere” means a determination by the Landscape Committee using its best judgment after committee members have evaluated the view. When determining whether an interference with a Protected View is material, the Landscape Committee shall take into consideration:
 - a. How the current Protected View compares to historical Protected View enjoyed from the home;
 - b. The extent of the tree or landscaping’s interference with a Protected View;
 - c. The extent to which a View Corridor from the home is blocked or obstructed. Trees or landscaping that obstruct a View Corridor may be deemed a Material Interference regardless of whether the home benefits from another View Corridor.
 - d. The likelihood trees or landscaping will Materially Interfere with a Protected View or View Corridor if they are allowed to continue to grow.

II. Evaluation of Views

1. Filing the Complaint. An owner concerned about Material Interference with his or her Protected View (“Filing Owner”) may request the Landscape Committee evaluate the view by filling out a Landscape Review Request form and sending it to the Capes manager. The manager will review the request and may reject the request if it is incomplete. Otherwise, the manager will forward the Landscape Review Request to the Landscape Committee.
2. The Landscape Committee will conduct a preliminary review at a regularly scheduled committee meeting.
3. After receiving and accepting the Landscape Review Request, at least two members of the Landscape Committee will visit the Filing Owner’s home to evaluate whether trees or landscaping Materially Interfere with a Protected View. The committee members will only evaluate the Protected View from the Filing Owner’s Primary Living Areas. The committee members will take pictures of the alleged Material Interference with the Protected View. The

committee members may mark obstructions of the Protected View or View Corridors on the photographs.

4. After the visit, the Landscape Committee will review the pictures and information gathered from the on-site visit and vote in a committee meeting whether a Material Interference with the Protected View exists. The Landscape Committee will evaluate whether a Material Interference exists based on the condition at the time of its visit. Past approval of a lot's landscaping or landscaping plan does not preclude the Landscape Committee from deciding the lot's landscaping Materially Interferes with a Protected View in violation of 6.11 of the Declaration.

5. The Landscape Committee shall keep minutes, which record how each member of the committee voted. No committee member shall vote on or conduct the on-site review if the committee member is a Filing Owner or Landscape Owner (the Owner of the landscape).

Preliminary Finding

6. If the Landscape Committee determines a Material Interference exists, the committee will notify the Owner of the landscape (Landscape Owner) of its preliminary decision in writing. Its decision will:

- a. Include pictures of the Material Interference and recommend a remedy for the violation
- b. Notify the Landscape Owner that they have ninety (90) days from the date of the letter to comply with the request unless a review meeting with the Landscape Committee is requested;
- c. Give the Landscape Owner fourteen (14) days to request a meeting with the Landscape Committee;
- d. Notify the Landscape Owner that if no meeting is requested, the preliminary decision becomes a final decision. A notice of this final decision will then be sent as outlined in number 8 below.

If a Review Meeting with the Landscape Committee is Requested

7. If the Landscape Owner requests a meeting, at least three members of the Landscape Committee will meet with the Owner of the landscaping to discuss remedies. At the meeting, the Landscape Owner may propose an alternative remedy to cure the violation. The meeting may be held on-site, by telephone, or virtually (Zoom for example). The Landscape Committee will offer to meet with the Landscape Owner at one of the next two regularly scheduled Landscape Committee meetings. The Landscape Committee will also notify the Landscape Owner that he or she may submit a written statement and any other documents discussing their objection and proposing an alternative remedy. After presenting an opportunity for a meeting and written statement, the committee will make a final decision.

8. After the Landscape Committee's review, the Landscape Committee will issue a final decision and send it to both the Landscape Owner and Filing Owner. The final decision will:
- a. Contain the Landscape Committee's final decision on the necessary remedy and any proposal made by the Landscape Owner;
 - b. Notify the Landscape Owner of the number of days that they have to comply with the final decision;
 - c. Notify the Landscape Owner and Filing Owner that they can appeal the decision to the board within fourteen (14) days of the date of the final decision; and
 - d. Notify the Landscape Owner and Filing Owner how to request an appeal.
9. The Landscape Committee's decision shall be final and binding on the owners, subject only to appeal to the Association's Board of Directors. Once the Landscape Owner completes a Landscape-Committee approved remedy, the committee will close the request. Once closed, the Landscape Committee will not vote on another Landscape Review Request from the same Filing Owner against the same Landscape Owner for one year.

Board Appeal

10. The Landscape Owner(s) and Filing owner shall have a right to appeal the Landscape Committee's final decision to the Board of Directors. The Landscape Owner(s) may appeal only if he or she has met with the Landscape Committee first. To request an appeal, the owner must write the association's manager within fourteen (14) days of the final decision. At the time the appeal request is made, the owner will give a written explanation of the reason for the appeal.
11. After receiving a request for an appeal, the manager shall offer a hearing for the owner at one of the next two regularly scheduled board meetings (excluding April). The owner may attend the hearing by telephone or virtually (Zoom for example) or in person if the board meeting is an in-person meeting. If the Owner who requested the appeal cannot attend either meeting, then they may submit a written statement and any documents discussing their objections and reason for the appeal. If the owner fails to select a hearing date, fails to attend the hearing, or fails to submit a written statement, the board will make a decision without hearing from the Owner. The Board of Directors will do the following when deciding the appeal:
- a. Review the documents provided by the Landscape Committee;
 - b. Review the documents presented by the owner; and
 - c. Prior to the hearing, at least two directors will conduct a site visit at the Filing Owners home to see the Protected Views. They shall report their findings at the Appeal Meeting.
 - d. No board member shall vote or conduct the on-site review if the member is a Filing Owner or Landscape Owner.

The Board of Director's decision shall be a final, binding decision on the Owner of the landscaping or the Filing Owner.

Notices

12. All notices and decisions shall be sent via email as shown on the Capes owner's resident directory. In addition, a copy of the notice or decision shall be sent via first class mail to the address that the association has on file.

County Regulations

13. Tillamook County land use law may require a Landscaping Owner to obtain a geological review or report prior to cutting or removing trees or landscaping.

If required, the Owner(s) of the interfering landscaping is responsible for obtaining the report and the costs associated with the same. Please check with the Tillamook County for any additional information or updates.

Fines

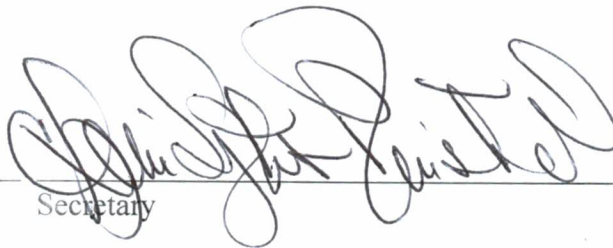
14. Fines. The Board of Directors may levy fines against an owner for failing to cure a Material Interference with a Protected View. The Board will levy fines pursuant to its current Enforcement Resolution and Schedule of Fines.

BE IT FURTHER RESOLVED that this Resolution shall be emailed to all owners at their email address on file in the association's records.

ATTEST:



President



Secretary