

# Table of Contents

|   |     |
|---|-----|
| pc2021_10_12_Agenda (Revised) .....                       | 2   |
| Item 01-TVS21-001 (Hook-Wilson) PC Report Combined .....  | 6   |
| Item 02- Draft Parking Code Changes Report Combined ..... | 138 |

City of Del Mar  
Planning Commission Agenda- **REVISED**  
Del Mar Town Hall - **VIA TELECONFERENCE ONLY**  
**Tuesday, October 12, 2021 at 4:30 PM**  
**Please note special start time.**  
**(or as soon thereafter as practicable)**

**Remote Regular Meeting**  
**VIA TELECONFERENCE ONLY**  
**Tuesday, October 12, 2021 at 4:30 PM**

Pursuant to the State of California Executive Order N-25-20, and in the interest of public health, the City of Del Mar is temporarily taking actions to mitigate the COVID-19 pandemic by holding City Council Meetings electronically or by teleconference. The Town Hall will not be open to the public for this meeting.

**Ted Bakker**  
Chair

**Philip Posner**  
Vice Chair

**Don Countryman**  
Commissioner

**John Farrell**  
Commissioner

**Claire McGreal**  
Commissioner

**Joseph D. Smith, AICP**  
Planning & Community  
Development Director

**Amanda Lee**  
Principal Planner

Agenda

It is the intention of your Planning Commission to be receptive to your concerns about your community. Your participation in local government will assure a responsible and efficient City of Del Mar.

**Public Participation/Comment**

Members of the public can participate in the meeting by either submitting a written red dot comment via email to [planning@delmar.ca.us](mailto:planning@delmar.ca.us) or by speaking live using the Zoom link and/or dial-in information provided below. The deadline to submit written comments is 12 p.m. on the day of the meeting and the subject line of your email should clearly state the agenda item you are commenting on. Those wishing to comment live should join the Zoom meeting when the item(s) they wish to speak on is announced or at the meeting start time for items not on the agenda.

Zoom

Link: [https://us02web.zoom.us/j/85719416064?pwd=\\_U3lOMUNYcDVER0duYlpQZTNtRWpNUT09](https://us02web.zoom.us/j/85719416064?pwd=_U3lOMUNYcDVER0duYlpQZTNtRWpNUT09)

Phone: (669) 900-6833

Meeting ID: 857 1941 6064

While registration is not required, staff recommends members of the public submit an optional tele-comment request form ([www.delmar.ca.us/telecomment](http://www.delmar.ca.us/telecomment)) to assist with speaker management during the meeting. For more information please visit: [www.delmar.ca.us/publiccomment](http://www.delmar.ca.us/publiccomment).

### **Project Applicants/Representatives**

Applicants/representatives will be provided a link to participate in the meeting and, unless otherwise noted, for items on the agenda, **applicants and their team of representatives shall limit their [total] presentations to 10 minutes or less.**

### **Viewing the Meeting and Access to Agenda Materials**

Members of the public can watch the meeting live on the City's website at: <http://delmar.12milesout.com/Video/Live> and on Cable TV Spectrum Ch. 24, AT&T Ch. 99 starting at 4:30 PM.

Agenda materials and communications from the public on agenda items, "Red Dots", are available on the City's website only, as City Hall and the Del Mar Library are currently closed to the public. <http://www.delmar.ca.us/AgendaCenter>.

**Regular Meetings** of the Planning Commission are generally held on the second Tuesday of the month, beginning at 6:00 PM. For further information regarding the scheduling of meetings or meeting agendas, check the **City's website at [www.delmar.ca.us](http://www.delmar.ca.us)**, or contact the Planning Department's office at 858-755-9313 or via email at [planning@delmar.ca.us](mailto:planning@delmar.ca.us). A full Planning Commission agenda packet with all backup information is available at City Hall, the Del Mar Library, and on the City's website the Friday before each Planning Commission meeting.

**Meeting will end at 11:00 PM.** unless extended by a majority vote of the Commissioners. If all the items on the agenda are not heard, the remaining items will be heard the following Tuesday (if facilities are available) at 1050 Camino Del Mar or via teleconference as noted herein.

**This notice will be the only written notice sent.** Items, which are continued by the Planning Commission from one Planning Commission meeting to another "date certain" meeting date, will not be re-noticed through the mail.

**Final action.** The decision of the Planning Commission is final unless a written appeal is filed with the City Clerk, accompanied with a processing fee, within ten (10) working days from the date of notice of the action taken on the application. An approved permit shall not be valid until the 10-day appeal period has expired. The appeal is then forwarded to the City Council, which determines at the Initial Consideration whether to reject the appeal, thereby upholding the Planning Commission's decision, or to set the matter for a subsequent date for a new (de novo) public hearing review. If a de novo public hearing is set by the City Council, an additional fee will be required.

**Special Needs:** In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's office at 858-755-9313. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

**Meeting Decorum:**

All persons attending the Planning Commission meeting shall conduct themselves in a courteous and respectful manner. Comments shall be directed to the members of the Commission, rather than to others in attendance at the meeting. The Chairperson (or Vice Chair or Chair pro-tem in their absence), is designated as the parliamentarian for the meeting. As deemed appropriate, they may interrupt a speaker with instruction to redirect their remarks to relevant points on the agenda item before the Commission. They may also terminate a speaker's oral presentation if comments continue to be non-relevant or become disrespectful.

**Note:** The entirety of the City of Del Mar is located within the Coastal Zone. Some of the development projects listed on this agenda, as noted, require the receipt of a Coastal Development Permit. Some of these projects may also lie in what is known as the "Coastal Development Appeals Area". For the projects located in the appeals area, the City's action on the requested Coastal Development Permit may be appealed to the California Coastal Commission. An appeal may be filed with the Coastal Commission within the ten calendar days following the Coastal Commission's receipt of a notice from the City of its final action on the Coastal Development Permit application. However, before an appeal may be filed with the Coastal Commission, the City's action on the CDP application must be final, meaning that all of the City's [separate and internal] appeals processes must first be exhausted.

**ROLL CALL**

**APPROVAL OF MINUTES**

1. Approval of September 14, 2021 Planning Commission Meeting Minutes

**UPDATE**

**PLANNING COMMISSION/STAFF DISCUSSION** (Non-Application Items)

**HEARING FROM THE AUDIENCE ON ITEMS NOT LISTED ON THE AGENDA** (Oral Communications)

**DISCUSSION AND BRIEFING** (Application Items)

**CONSENT CALENDAR:**

The Planning Commission at the beginning of the meeting can place any item on the agenda upon the Consent Calendar. Consent Calendar items are not subject to public testimony. If you have a concern and wish to present information to the PC, you must be present at the beginning of the meeting to ensure the item will not be placed on consent or write a letter to the PC by 12pm the day of the meeting expressing why the application should be taken off the Consent Calendar.

**NEW APPLICATION(S):**

|   |   |
|---|---|
| <p><b>ITEM 1</b><br/> <b>TVS21-001</b></p>  | <p><b>Applicants:</b> Nigel Hook and Janet Wilson<br/> <b>Applicant's Address:</b> 635 Hoska Road<br/> <b>Tree Owners:</b> Matthew and Chelsea Ziskin<br/> <b>Site Address (Vegetation Location):</b> 624 8<sup>th</sup> Street<br/> <b>Staff Contact:</b> Jennifer Gavin, Associate Planner<br/> <b>Description:</b> The applicants are seeking relief under DMMC Chapter 23.51 (Trees, Scenic Views, and Sunlight) for claims of scenic view blockage from vegetation located on the neighboring property.</p>  |
| <p><b>ITEM 2</b><br/> <b>ZA21-001</b><br/> <b>LCPA21-001</b></p>  | <p><b>Location:</b> Citywide<br/> <b>Applicant:</b> City of Del Mar, Planning Department<br/> <b>Environmental Status:</b> Exempt<br/> <b>Staff Contact:</b> Jennifer Gavin, Associate Planner<br/> <b>Description:</b> A request for a recommendation from the Planning Commission to the City Council on the proposed amendments to update the City's Parking Code Regulations to provide relief to restaurant, personal services, and retail parking requirements in Del Mar Municipal Code Chapter 30.80 and amend the Local Coastal Program (LCP) in compliance with State law. The City Council will consider whether to adopt the amendments in a future noticed public hearing.</p>   |
| <p><b>ITEM 3</b><br/> <b>EA19-001</b><br/> <b>(River Path Phase III) Project and Environmental Review Update</b><br/><br/> <b>(No Formal Action)</b><br/><br/> <i>Item continued to future PC hearing date.</i></p> | <p><b>Location:</b> River Path Del Mar (Adjacent to the San Dieguito Lagoon, southeast of Jimmy Durante Boulevard, along the north edge of San Dieguito Drive and western end of Racetrack View Drive)<br/> <b>Applicant:</b> City of Del Mar<br/> <b>Environmental Status:</b> A Draft Initial Study (IS) and Mitigated Negative Declaration have been prepared pursuant to the requirements of the California Environmental Quality Act (CEQA). The document is anticipated to be distributed for a 30-day public review period to commence on October 1, 2021 and ending on October 30, 2021.<br/> <b>Staff Contact:</b> Adriana Jaramishian, Associate Planner<br/> <b>Description:</b> The proposed project involves the Phase III extension of the River Path Del Mar pedestrian trail in the City of Del Mar, along the southern edge of the San Dieguito Lagoon, from the Grand Avenue Lookout to the Crest Canyon Trail. <b>The purpose of this item is to provide the Planning Commission and public a detailed project update, including an overview of the draft environmental document (MND). No formal action will be taken by the Planning Commission as this is an informational item only.</b></p> |

**ADJOURNMENT:**

I, Jennifer Gavin, Associate Planner for the City of Del Mar, certify that a copy of the foregoing was posted at the Del Mar City Hall on Thursday, September 30, 2021.




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Jennifer Gavin  
 Associate Planner



# City of Del Mar Staff Report

PLANNING COMMISSION  
STAFF REPORT  
October 12, 2021

APPLICATION: TVS21-001

APPLICANTS:

Name: Nigel Hook and Janet Wilson  
Address: 635 Hoska Drive  
Del Mar, CA 92014  
APN#: 300-252-16-00

TREE OWNERS:

Name: Matthew and Chelsea Ziskin  
Address: 624 8<sup>th</sup> Street  
Del Mar, CA 92014  
APN #: 300-252-14-00

BACKGROUND

The Trees, Scenic Views and Sunlight Ordinance (TSVS) is set forth in the Del Mar Municipal Code (DMMC) Chapter 23.51 (Exhibit A). The TSVS process includes several required criteria and procedures that must be followed before a Planning Commission determination can be rendered. The intent of the process is to encourage all possible efforts at a private resolution to the dispute prior to City involvement in the matter. However, if unable to resolve a scenic view or sunlight obstruction issue after making reasonable efforts, including attempting mediation, a property owner (or legal occupant with written permission of the property owner) may submit a request (application) to have the matter heard by the Planning Commission.

Submitted TSVS applications are subject to a two-step process by which applicants are required to first demonstrate they have a pre-existing scenic view from a primary living area that has been unreasonably obstructed by tree growth on another property and that the obstructed scenic view is eligible for restorative action. If the first step is satisfied per the code, the second step involves City action to determine the appropriate restorative action to restore the prior scenic view and/or sunlight access that was lost and adopt the required restorative action by Resolution. TSVS applications are subject to Planning Commission approval and are appealable to the City Council.

On February 8, 2021, Nigel Hook and Janet Wilson (Applicants) submitted a Trees, Scenic Views, and Sunlight application (TVS21-001, Exhibit B), asserting that vegetation on the property located at 624 8<sup>th</sup> Street, unreasonably blocked pre-existing scenic views from the Primary Living Area (Living Room) of their residence located at 635 Hoska Drive. The Applicants' residence is located directly to the east of 624 8<sup>th</sup> Street where the vegetation is located. The Applicants also submitted documentation of their attempts to reach out to the Tree Owners through January 2021 for conflict resolution (Exhibit C).

Due to the COVID-19 Pandemic, the City was unable to set the application for a hearing prior to the approval of the City's phased reopening plan. Effective July 1, 2021, the City Council approved in-home site visits to resume in circumstances where a waiver is signed by the property owner allowing the Tree Owner, Staff, and Planning Commissioners to perform site visits.

The Tree Owners at 624 8<sup>th</sup> Street were notified on April 20, 2021 of the filing of the TVS application and again on June 22, 2021 that the application had been set for the September 22, 2021 Planning Commission hearing. Upon being notified of the submitted TVS application, the Tree Owners submitted response materials, which are included as Exhibit D.

This item was previously set for the September 22, 2021 Planning Commission hearing but was continued to the October hearing upon request of the Applicant.

### ANALYSIS

Following is an analysis of the submitted materials as they relate to the pertinent DMMC code sections. The Applicants and Tree Owners demonstrated that mediation is not an option for resolution of this dispute. Therefore, in accordance with DMMC Chapter 23.51.050, the Planning Commission is asked to determine whether the Applicants have demonstrated evidence of an unreasonably obstructed scenic view as follows:

- 1) That the Applicants had a pre-existing scenic view from a primary living area that was unreasonably obstructed by tree growth on another property per the established definitions of terms and required criteria set forth in DMMC Chapter 23.51; and
- 2) That the obstructed scenic view from a primary living area meets the criteria for a restorative action.

If the Planning Commission is able to make a determination that the Applicants' scenic view was unreasonably obstructed and that a determination of restorative action is appropriate, then TVS21-001 will be set for a subsequent public hearing for a determination of the appropriate restorative action.

### Regulatory Context

The Del Mar Municipal Code requires that a Planning Commission render a decision on a TVS application based on the criteria in DMMC Section 23.51.050 (Standards for Determining Unreasonable Obstruction). TVS applications require a fact-based decision that considers the details relating to:

- 1) Property ownership details, including the date the Applicants purchased or began occupying the property;
- 2) Evidence, including photographs, that demonstrates the date that a scenic view from a primary living area was established on the Applicants property, the quality of the pre-existing scenic view, and demonstrates that the claimed scenic view primary living area is not inconsistent with any prior determinations made by the City;
- 3) Evidence that the subject trees are located within 300 feet of the Applicant's property;
- 4) Evidence, including photographs, that demonstrates the view has been unreasonably obstructed by growth of the subject trees, the extent of scenic view obstruction, and whether there are any other factors that may have diminished the scenic view over time; and
- 5) Whether the Applicants have contacted the Tree Owners and made reasonable efforts to resolve the dispute before submitting an application to the City.

In this case, there is a disagreement between the Applicants and Tree Owners over whether there was a pre-existing scenic view from the primary living area of 635 Hoska Drive. The terms "Scenic View" and "Primary Living Area" are defined in DMMC Section 23.51.020. In accordance with the Municipal Code, if the Applicants are unable to demonstrate evidence of a pre-existing scenic view from a primary living area, then there will be no basis for the Planning Commission to render a decision for a restorative action.

### **Perspectives Provided by Applicants and Tree Owners for Planning Commission Consideration**

The perspectives and arguments set forth by the respective stakeholders for the TVS application (TVS21-001) are summarized below:

#### Applicants' Request

The Applicants' property (635 Hoska Drive) is developed with a single dwelling unit and a detached garage. The lot has street frontage located on both Hoska Drive and 8<sup>th</sup> Street, which is commonly referred to as a "through-lot". The westerly property line of 635 Hoska Drive abuts two separate properties that are each developed with a single dwelling unit. The adjacent southwest

property is 624 8<sup>th</sup> Street, which is owned by the Tree Owners for the subject TVS application (TVS21-001).

The Applicants' property is characterized by sloping topography that slopes downward from east to west. The western portion of the residence includes the living room, which the Applicants are claiming as their "Primary Living Area". Further, the Applicants claim that they have had a "Scenic View" of the Pacific Ocean through a tri-fold door with glazing in the last 10 years.

Within the submitted request for a restorative action, the Applicants are relying on the following argument:

- That the Applicants are the legal property owner of 635 Hoska Drive and have owned their home since April 9, 1999;
- That they have a right to file a TVS application with the City to restore a pre-existing scenic view that was unreasonably obstructed by trees located at 624 8<sup>th</sup> Street (compare to the required criteria establishing a right to seek restoration of a scenic view per DMMC Section 23.51.030);
- That the Applicant's property is within 300 feet of the trees located at 624 8<sup>th</sup> Street (a required condition for a TVS application per DMMC Section 23.51.030);
- That the Applicants had a pre-existing "Scenic View" of the Pacific Ocean from a "Primary Living Area" (living room) that has been substantially blocked by the growth of trees along the Tree Owners' east property line (compare to the definitions of terms per DMMC Section 23.51.020).
- That the pre-existing scenic view existed within the last ten years (a required condition of TVS application rights per DMMC Section 23.51.050B);
- That the primary living area from the Applicants living room is not inconsistent with any prior determinations made by the City;
- That the Applicants had an amicable relationship with the previous owner of 624 8<sup>th</sup> Street whom allowed them to trim the hedges in the past. (The Applicants submitted a letter from the previous owner which they feel demonstrates that amicable relationship and tacit agreement allowing them to trim the neighbor's vegetation - see Exhibit B); and
- That the Applicants attempted to reach out to and confer with the Tree Owners prior to submitting the TVS application (required condition of TVS application rights per DMMC Section 23.51.050A). However, the Tree Owners did not wish to engage in mediation. (See Exhibit C for submitted documentation).

Exhibit B includes materials provided by the Applicants to show their home floor plan, and photographs (from 2015 and 2021) that are intended to show that a pre-existing scenic view was blocked by the growth of trees on the neighboring property over time. The Applicants also submitted aerial photos, which are intended to demonstrate the heights of the trees at different points in the last 10 years. In addition to the letters included in the Applicant's submitted materials (Exhibit B) two additional letters were received from individuals who have been in the home and attest to their having been a view visible from the living room in the last ten years (Exhibit E).

Tree Owners' Response

The Tree Owners' property (624 8<sup>th</sup> Street) includes a single dwelling unit located just west of and approximately 9-10 feet lower in elevation downhill from the Applicants' property at 635 Hoska Drive. The subject trees include 17 Eugenia trees located along the eastern property line separating the two properties.

The Tree Owners have submitted information (Exhibit D) providing the following argument:

- That based on the information that was provided to them when they purchased the property at 624 8<sup>th</sup> Street in 2015, the trees had historically been maintained at a height of approximately 23 feet to provide privacy between the neighboring properties.
- That the view shown in the photographs provided by the Applicants from 2015 was created on the Tree Owner's property, without permission from them or the prior property owner.
- That the view being claimed by the Applicants was created without consent, authorization, or legal standing when their trees were cut down by the Applicants, without permission, while the Tree Owners were in escrow on the house in March of 2015.
- That the previous property owner of 624 8<sup>th</sup> Street filed a complaint with City Code Enforcement and filed an incident report with the Sherriff's Department against the Applicants in 2015 related to the incident of trespassing and unauthorized cutting of vegetation that is located on the property at 624 8<sup>th</sup> Street.
- That subsequent incident reports have been filed with the Sherriff by the Tree Owners in 2017 and 2020 in response to additional attempts by the Applicants to perform unauthorized maintenance on the trees on their property without their permission.
- That since the claimed view was created by the Applicants without permission and was not pre-existing, the Tree Owners believe that the application has no standing and that mediation/restoration should not be required since there is no evidence of a Scenic View that qualifies for restoration per the ordinance.

The Tree Owners have additionally submitted letters from the previous owner (Alan S. Martin, Successor Trustee of the Jane S. Martin Trust), the neighbor to the north (Susie MacNamara, 623 Hoska), and the gardener for 624 8<sup>th</sup> Street since 2006 (Gabriel Guzman), attesting to the fact that, to their knowledge, the hedges at 624 8<sup>th</sup> Street were never previously authorized for trimming or maintenance at the reduced height preferred by the Applicants.

Primary Living Area/ Scenic View of Applicants

In determining if restorative action is required for a TVS application, it must first be determined that there is a pre-existing Scenic View from a Primary Living Area. Primary Living Area is defined in DMMC Section 23.51.020 J. as "that (single) portion of a residence from which a Scenic View is observed most often by the occupants and guests at the residence. The determination of Primary Living Area is to be made on a case-by case basis and shall be consistent with any prior

determinations made by the City.” Outdoor spaces such as decks, patios, and yards are not eligible as a Primary Living Area.

Scenic View is defined in DMMC Section 23.51.020 M. as a view of the ocean, lagoons, canyons, the community and its landscapes and urban forest character, or other scenic vistas, from the Primary Living Area of a residence.

Staff performed a site visit of the Applicant’s property on August 16, 2021 and observed the Living Room, which is the Primary Living Area being claimed by the Applicant. This room is located on the southwest corner of the residence and includes a tri-fold door on the south wall and three windows centered on the west wall. During Staff’s site visit, using the 2015 photographs submitted by the Applicants as a reference, it was observed by staff that any potential Scenic View of the Pacific Ocean would likely be viewed from the left side of the tri-fold doors, looking southwest out of the doors from inside the Living Room. Otherwise, from the majority of the Living Room the view appeared to be oriented primarily south from these doors which does not appear would capture a Scenic View of the Pacific Ocean. There were also windows on the west wall of the Living Room, however, it was observed that there are mature dense trees on the neighboring property at 623 Hoska and therefore a Scenic View was likely not present from these windows.

Documentation was submitted by the Tree Owners that the Eugenia trees were cut down in 2015 by the Applicants, without permission of the Tree Owner at the time and that the previous owner filed a complaint with both City Code Enforcement and with the County Sherriff in response to the unauthorized trimming. The Tree Owners indicated that the 2015 photographs submitted by the Applicants identifying the Scenic View for which restorative action is being sought were taken after this incident where the trees were cut down without permission. No other photographic evidence prior to 2015 has been submitted to demonstrate a pre-existing Scenic View from a Primary Living Area. Aerial Photographs were submitted by the Applicant within this time period, however, they do not show the height of the trees nor the extent of a view that may or may not have been visible.

#### Additional Information to Consider

##### **Prior Design Review Application (635 Hoska Drive)**

On August 17, 2011, an Administrative Design Review Application (ADR-11-23) was approved at 635 Hoska Drive to 1) remove two windows on the west side of the Living Room door, 2) install three centered windows on the same wall, 3) remove two windows on the south wall of the residence, and 4) install a tri-fold set of doors and a small deck. The remodel done in 2011 reflects the current window and door configuration seen in the Living Room today at the home of the Applicants for the subject TVS application.

**Current Design Review Application (624 8<sup>th</sup> Street)**

The Tree Owners for the subject TVS application recently submitted a Design Review Application (DRB21-018) for the redevelopment of the property at 624 8<sup>th</sup> Street with a new home. As a part of the submitted landscape plan, they have identified that the existing Eugenia trees along the east property line are proposed to remain along approximately 38 feet of the northeast property line.

Summary of key issues that relate to the pending decision requested of the Planning Commission:

| Issue  | Significance  | References   |
|--|---|--|
| <p>1) The Applicants have been the legal property owner of 635 Hoska Drive since April 9, 1999 and are asserting that trees located within 300’ on the adjacent neighboring property at 624 8<sup>th</sup> Street unreasonably obstruct a pre-existing scenic view from their property and that they have a right to a restorative action.</p>                       | <p>This meets the DMMC definition of Applicant for standing to file TVS application.</p>  | <p>DMMC Sections 23.51.020(A) and 23.51.030(A)<br/><br/>Report Exhibit B</p>         |
| <p>2) The Applicants provided photos with the intent to show that in the time frame of 2011 to present they enjoyed a pre-existing scenic view from the primary living area (living room) of their property across the neighboring property at 624 8<sup>th</sup> Street and that the prior scenic view is currently obstructed due to unreasonable tree growth.</p> | <p>The submitted photos reflect the correct timeframe (within the last ten years). However, it should be noted that some of the photos appear to have been taken from an outdoor vantage point which is not consistent with the required definitions of scenic view or primary living area per DMMC. Outdoor spaces such as decks, patios, and yards are not eligible as a primary living area. A scenic view is required to be from a primary living area and that primary living area must be a (single) portion of a residence from which a scenic view is observed most often by the occupants and guests of the residence. The Planning Commission should seek confirmation of these details for the record to determine if a pre-existing</p> | <p>DMMC Sections 23.51.020(J) and (M) and 23.51.030(A)<br/><br/>Report Exhibit B</p> |

|   |  |  |
|---|--|--|
|   | scenic view from the primary living area was obstructed.   |  |
| 3) The Tree Owners assert that the Applicants, without permission, trimmed the Eugenia trees in 2015 to create their own view, and further assert that it would not be reasonable or appropriate to require restoration of a view that was obtained without property owner permission and does not meet the criteria required for restoration per DMMC Chapter 23.51. | The Tree Owners submitted documentation of prior code violation complaints and incident reports submitted to the County Sherriff related to their assertion that the view (requested to be restored via TVS21-001) was obtained in violation of the law and without property owner permission. | DMMC Sections 23.51.020, 23.051,030, and 23.51.050<br><br>Report Exhibit D |
| 4) The Tree Owners submitted photos of the trees upon purchase of their property at 624 8 <sup>th</sup> Street in 2015 which reflect the height and condition of the trees and associated privacy the trees provided from the neighboring properties.   | DMMC Section 23.51.050 identifies privacy (visual and auditory) as one of multiple factors for the Planning Commission to consider.  | DMMC Sections 23.51.020, 23.051,030, and 23.51.050<br><br>Report Exhibit D |

PLANNING COMMISSION ACTION- FINDINGS REQUIRED (STEP ONE)

The decision-making process for TVS applications is a two-step process. The first step is for the Planning Commission to determine if the two required findings can be made, pursuant to DMMC Section 23.51.050. The two required findings are as follows:

- 1. That the Applicant has contacted the Subject Tree owner and has made reasonable efforts to resolve the dispute including documented attempts (registered mail, etc.) to reach and confer with the Subject Tree owner, and documentation supporting efforts to mediate the dispute.**

The Applicants submitted documentation of email correspondence with the Tree Owners from 2015, 2020, and January 2021 (included as Exhibit C). The email in January 2021 included an offer to engage in mediation, which the Tree Owners indicated they did not want to participate in.

PLANNING COMMISSION  
STAFF REPORT: TVS-21-001  
October 12, 2021  
Page 9 of 10

**2. That the Scenic View from or the Sunlight reaching the real property of the Applicant is unreasonably obstructed and the manner in which the Scenic View and/or Sunlight is obstructed.**

In order for the Commission to make this finding, the following facts must first be established:

**2a.** The Planning Commission will first need to establish if the view blockage being claimed is a “Scenic View” which defined under DMMC 23.51.020 M. includes “a view of the ocean, lagoons, canyons, the community and its landscapes and urban forest character, or other scenic vistas, from the Primary Living Area of a residence”.

The Applicants are claiming their living room as their Primary Living Area and the Scenic View as the Pacific Ocean to the southwest. Staff has not found any additional prior determinations made by the City regarding a Primary Living Area for 635 Hoska Drive.

*Staff recommends that the Planning Commission make a determination whether there is sufficient evidence of a “Scenic View” from a “Primary Living Area” as defined in DMMC Sections 23.51.020 M. & J. based on the documentation submitted and the personal observations made while visiting the subject property.*

**2b.** If the Planning Commission is able to make a determination that the obstructed view in question is a “Scenic View,” from the Primary Living Area of the residence, the Planning Commission must next establish if this view is being “unreasonably obstructed” by the trees located at 624 8<sup>th</sup> Street using the criteria listed under DMMC Section 23.51.050 B.1-17 (Exhibit A).

*To determine if the view is being “unreasonably obstructed,” Staff recommends using the factors from DMMC Section 23.51.050.B. (Exhibit A)*

**RESTORATIVE ACTION (STEP TWO)**

If the Planning Commission is able to make the required two findings pursuant to DMMC 23.51.050, the TVS application (TVS21-001) will be set for a subsequent public hearing to make a determination as to the appropriate restorative action pursuant to DMMC 23.51.070. As a part of this decision the Commission will need to make two decisions:

1. The type of restorative action pursuant to DMMC 23.51.070.B. (Exhibit A)
2. Any additional written conditions including if ongoing maintenance is required and the time schedule (for example annual, bi-annual trimmings).

In the past, the Planning Commission has utilized a subcommittee of the Planning Commission to prepare a recommended restorative action for consideration by the Planning Commission as a whole in a public hearing. Once the Planning Commission has adopted a Resolution documenting its determination for restorative action, the action is appealable to the City Council. The Applicants

PLANNING COMMISSION  
STAFF REPORT: TVS-21-001  
October 12, 2021  
Page **10** of **10**

and Tree Owners would be subject to the procedures outlined in DMMC Section 23.51.080 for implementation of the final restorative action after the local appeal rights have been exhausted and the decision becomes effective.

#### STAFF RECOMMENDATION

Staff recommends that the Planning Commission's review include consideration of the written and photographic evidence submitted by both parties and the personal observations made while visiting the subject properties, in order to determine if the required findings can be made.

If the Planning Commission decides that the findings cannot be made pursuant to DMMC 23.51.050, then the Commission would need to make findings for denial of TVS21-021 for the record and no further action would be taken.

If the Planning Commission decides that both findings may be made pursuant to DMMC 23.51.050, the application will be set for a subsequent hearing at which time the Commission will make a decision on restorative action pursuant to DMMC Section 23.51.060. This allows time for the Tree Owner to provide information related to the vegetation characteristics and maintenance needs and consult with a certified arborist to facilitate a Planning Commission decision on the restorative action. As previously mentioned, the Planning Commission has utilized a subcommittee of the Planning Commission to prepare a recommended restorative action for consideration by the Planning Commission.

Respectfully Submitted,



Jennifer Gavin  
Associate Planner

#### Exhibits

- Exhibit A - DMMC Chapter 23.51
- Exhibit B - Application Materials
- Exhibit C - Applicants Attempts to Resolve the Dispute with Tree Owners
- Exhibit D - Tree Owners Submitted Response to Application
- Exhibit E - Additional Correspondence

## Chapter 23.51 - TREES, SCENIC VIEWS AND SUNLIGHT

## 23.51.010 - Purpose.

- A. The City recognizes that Trees, Scenic Views and plentiful Sunlight contribute to the special character of Del Mar and to the overall quality of life enjoyed by residents, property owners, and visitors in Del Mar.
- B. Trees, Vegetation, and other landscaping produce a wide variety of significant psychological and tangible benefits for residents, property owners, and visitors in Del Mar. Trees contribute to the economic value and comfortable enjoyment of the community, neighborhoods and individual properties. Trees provide aesthetic value as part of an urban forest, visual and auditory privacy, climate control, wind screening, soil stability, and wildlife habitat.
- C. Scenic views, whether of the Pacific Ocean, nearby lagoons, canyons, the community and its landscapes and urban forest character, or other scenic vistas, produce a variety of significant and tangible benefits for residents, property owners and visitors. Scenic views provide inspiring vistas, encourage distinct and creative architecture, and contribute to the economic value and comfortable enjoyment of real property within the City of Del Mar.
- D. Plentiful Sunlight provides an opportunity to utilize solar energy and contributes to the economic value and comfortable enjoyment of real property within the City of Del Mar.
- E. The purpose of this Chapter is to acknowledge the benefits derived from Trees, Scenic Views and plentiful Sunlight and to balance the goal of maintaining each of them when possible. This Chapter also provides a process by which persons may seek to restore Scenic Views and/or Sunlight that has been unreasonably obstructed by the growth and/or installation of Trees and Vegetation.

(Ord. No. 747; Ord. No. 780)

## 23.51.020 - Definitions.

For the purposes of this Chapter, the following words and phrases shall have the meanings respectively ascribed to them by this Section:

- A. *Applicant* shall mean any property owner (or legal occupant with written permission of the property owner) who alleges that Trees or Vegetation located on the property of another person unreasonably obstructs a pre-existing Scenic View or Sunlight and who has filed a (Trees, Scenic Views and Sunlight) Application with the City to restore said view or sunlight.
- B. *Certified Arborist* shall mean Certified Arborist as that term is defined by the International Society of Arboriculture.
- C. *Crown Reduction/Shaping* shall mean a method of comprehensive trimming that reduces a Tree's height and/or spread. Crown reduction entails the reduction of the top, sides or individual limbs of a Tree by removal of leaders or the longest portion of limbs to a lateral large enough to assume to terminal.
- D. *Heading back* shall mean a pruning process where overall reduction of the mass of a Tree is achieved by modification to major limbs.
- E. *Imminent Danger* shall mean the immediate risk to the health, safety or welfare of any person or real property, whether private or publicly owned.
- F. *Lacing* shall mean a comprehensive method of trimming that systematically and sensitively removes excess portions of a Tree and improves the structure of the Tree.

- G. *Mediation* shall mean a private, voluntary process in which an impartial and qualified third party facilitates communication between parties to a dispute to promote settlement.
- H. *Obstruction* shall mean any substantial blocking or diminishment of Scenic Views and/or Sunlight that is attributable to the growth, improper maintenance or location of a Tree or Vegetation.
- I. *Person* shall mean any individual, corporation, partnership, firm, or other legal entity (including the City of Del Mar), owning property or residing within the Del Mar City limits.
- J. *Primary Living Area* shall mean that (single) portion of a residence from which a Scenic View is observed most often by the occupants and guests at the residence. The determination of Primary Living Area is to be made on a case-by case basis and shall be consistent with any prior determinations made by the City.
- K. *Protected Tree* shall mean any of the following:
1. A Tree of the species *Cupressus macrocarpa* (Monterey Cypress);
  2. A Tree of the species *Pinus torreyana* (Torrey Pine);
  3. A Tree of any species and located on property within the Central Commercial, Open Space Overlay zones of the City, within a public right-of-way, or on public or City-owned property; or
  4. Any Tree planted as a result of required mitigation for the removal of another Protected Tree.
- L. *Restorative Action* shall mean any specific action required to resolve a dispute relating to the unreasonable obstruction of a pre-existing Scenic View or Sunlight.
- M. *Scenic View* shall mean a view of the ocean, lagoons, canyons, the community and its landscapes and urban forest character, or other scenic vistas, from the Primary Living Area of a residence.
- N. *Severe Pruning* shall mean the cutting of branches and/or trunk of a Tree in a manner which substantially reduces the overall size of the Tree or destroys the existing symmetrical appearance, natural shape or health of the Tree and which results in the removal of main lateral branches leaving the trunk and branches of the Tree in a stub appearance. "Topping" and "Heading back" as defined herein are considered to be severe pruning.
- O. *Site of Subject Tree* shall mean the property on which a Subject Tree is located.
- P. *Subject Tree* shall mean a Tree for which a claim has been made by an Applicant regarding the unreasonable obstruction of a Scenic View or Sunlight.
- Q. *Sunlight* shall mean the availability of direct or indirect Sunlight to the Primary Living Area or to the existing solar energy system of a residence.
- R. *Thinning* shall mean the selective removal of entire branches from a Tree so as to improve visibility through the Tree and/or improve the Tree's structural condition.
- S. *Tree* shall mean any perennial plant growing on public or private property, having a self-supporting woody main stem or trunk with the potential to obstruct Scenic Views or Sunlight, including but not limited to Trees, shrubs, hedges, and bushes or any plant material planted or growing in a dense continuous line so as to form a thicket barrier or naturally grown fence. References to "Tree" shall include the plural.
- T. *Tree Removal* shall mean the elimination of any Tree or plant from its present location.
- U. *Topping* shall mean eliminating the upper portion of the trunk or main leader of a Tree. Topping is not recommended in almost all cases.
- V. *Trimming* shall mean the selective removal of portions of branches from a Tree so as to modify the Tree shape or profile or otherwise alter the Tree's appearance.

- W. *Vegetation* shall mean all plant material, including but not limited to, those referenced in this Section for the
- X. *Windowing* shall mean a form of thinning by which openings or "windows" are created to restore Scenic Views and/or Sunlight.

(Ord. No. 729; Ord. No. 780)

23.51.030 - Rights Established.

- A. A person shall have the right to seek restoration and preservation of Scenic Views or Sunlight that existed at the time they purchased or occupied a property or in the last ten years, whichever is shorter, when such Scenic Views from the Primary Living Area, or Sunlight available to the Primary Living Area or solar energy system of a residence, have subsequently been unreasonably obstructed by the growth of Trees or Vegetation located within the Del Mar City limits and 300 feet of the Applicant's property boundary.
- B. In order to establish such rights pursuant to this Chapter, the Applicant shall follow the process established in this Chapter.
- C. Any person whose Tree(s) is the subject of a Trees, Scenic Views and Sunlight application shall be granted the right to, under Applicant supervision, access the Applicant's Primary Living Area and personally view and/or document the alleged blockage and Scenic Views and/or Sunlight. By signing the Trees, Scenic Views and Sunlight application, the Applicant shall acknowledge and accept this right given to the Tree owner.
- D. All persons are advised that the alteration and removal of certain Trees requires a permit under DMMC Chapter 23.50 (Trees). The applicability of DMMC Chapter 23.50 should be determined by the City prior to any action on Trees.

23.51.040 - Procedure.

- A. Any person who desires to resolve a conflict between Trees, Scenic Views and Sunlight may submit an application to the Department of Planning and Community Development on a form approved by the Director.
- B. The application shall be deemed to have been filed when:
1. The Director has determined that the application is complete, has been submitted in proper form and meets the criteria established in Subsection 23.51.030.A. of this Chapter;
  2. The Applicant has submitted to the City the required fee, in an amount to be established by resolution of the City Council, to cover the administrative costs of processing the application; and
  3. The Director has determined that the Applicant has contacted the Subject Tree owner and has made reasonable efforts, including documented efforts to engage in mediation, to resolve the dispute and that these efforts have not been successful.
- C. The Director shall cause the application to be presented at a noticed public hearing conducted by the City of Del Mar Planning Commission.
- D. Within ten working days after the application has been deemed filed, City staff shall notify the Subject Tree owner, in writing, and provide the following:
1. A copy of the Trees, Scenic Views and Sunlight application;
  2. A copy of DMMC Chapter 23.51;
  3. A statement explaining that there is still time and an opportunity to resolve the matter by discussions between the Applicant and the Subject Tree owner prior to the scheduled public hearing;
  4. Information about the mediation process, including a handout from the Del Mar Community Mediation

Advisory Committee, and encouragement to use mediation. Additional informational materials associated with dispute resolution shall be distributed as they are made available; and

5. Notice that a written response to the application may be submitted for review by the Planning Commission prior to the hearing, the deadline for any such response, and the date and time of the hearing.
- E. At least ten days prior to the public hearing, notice shall be published and mailed to property owners of record of real property within 300 feet of both the Applicant's property boundaries and of the site of the Subject Tree.
- F. At the hearing, each party shall be allowed time to present evidence pertinent to the application/claim. The public shall also be given an opportunity to comment on the application. The Applicant shall not thereafter raise arguments that were not presented during the public hearing or in the written record.
- G. The Planning Commission shall make a decision on the Application based on the criteria listed in Section 23.51.050 of this Chapter. An action approving an Application shall be set forth in a Resolution and accompanied by Conditions of Restorative Action that identify the specific manner in which the Subject Tree is to be trimmed, pruned, removed or otherwise altered in accordance with Section 23.51.070 of this Chapter. The Planning Commission's decision shall become final on the 11th working day following such determination, unless the decision is appealed to the City Council in accordance with the provisions of this Code (Section 23.51.100).
- H. The Conditions of Restorative Action and required term of maintenance (if deemed appropriate) imposed by the Planning Commission may be recorded in a covenant against the deed for the property on which the Subject Tree is located. If required, the covenant shall run with the land to help guarantee permanent preservation of pre-existing Scenic Views and/or Sunlight.

(Ord. No. 780)

#### 23.51.050 - Standards for Determining Unreasonable Obstruction.

Prior to rendering a decision in favor of the Applicant, the Planning Commission shall make the following findings of fact:

- A. That the Applicant has contacted the Subject Tree owner and has made reasonable efforts to resolve the dispute as set forth in DMMC Subsection 23.51.040.B. Proof of the Applicant's efforts shall include documented attempts (registered mail, etc.) to reach and confer with the Subject Tree owner, and documentation supporting efforts to mediate the dispute; and
- B. That the Scenic View from or the Sunlight reaching the real property of the Applicant is unreasonably obstructed and the manner in which the Scenic View and/or Sunlight is obstructed. In determining whether the Scenic View from and/or Sunlight reaching the real property of the Applicant is unreasonably obstructed, the Planning Commission shall consider several factors, which include but are not limited to, the following:
  1. The extent of alleged Scenic View obstruction, expressed as a percentage of the total Scenic View, and calculated by means of a surveyor's transit or by photographs or both;
  2. Documentable evidence that demonstrates the Scenic Views and/or Sunlight that existed at the time the Applicant purchased or began occupying a property, or in the last ten years, whichever is shorter;
  3. The quality of the pre-existing Scenic View(s) and/or Sunlight being obstructed;
  4. That the implementation of a Restorative Action will not create an unreasonable infringement of the Subject Tree owner's privacy that could not be mitigated;

5. The extent to which the Subject Tree interferes with efficient operation of an Applicant's pre-existing structure;
6. The extent to which the Subject Tree causes shadows or reduces air circulation and/or light;
7. The extent to which the Applicant's Scenic Views and/or Sunlight has been diminished over time by factors other than Subject Tree growth;
8. The variety of Subject Tree, its projected rate of growth and maintenance requirements;
9. The aesthetic quality of the Subject Tree, including but not limited to species characteristics, size, growth, form and vigor;
10. The extent to which the location of the Subject Tree with respect to overall appearance, design, or use benefits the Subject Tree owner's property;
11. The extent to which soil stability is provided by the Subject Tree, considering soil structure, degree of slope and extent of the Subject Tree's root system per a report from a licensed soils engineer (if applicable);
12. The extent to which privacy (visual and auditory) and wind screening is provided by the Subject Tree to the owner and to neighbors;
13. The extent to which energy conservation and/or climate control is provided by the Subject Tree;
14. The extent to which wildlife habitat is provided by the Subject Tree;
15. Whether the Subject Tree is a "Protected Tree", as defined herein and in Chapter 23.50 (Trees);
16. The value of the Subject Tree to the community/neighborhood; and
17. Whether the Subject Tree is located on public right-of-way or City-owned property.

(Ord. No. 780)

#### 23.51.060 - Criteria for Determining Appropriate Restorative Action.

After it has been determined, through the hearing process, that unreasonable obstruction has occurred, then the following unweighted factors shall be considered in determining appropriate Restorative Action:

- A. Any hazards posed by the Subject Tree to persons or structures on the property of the Applicant including, but not limited to, fire danger, as determined by a City Fire Official, and the danger of falling limbs or Trees, as determined by a Certified Arborist;
- B. The variety of Subject Tree, its projected rate of growth and maintenance requirements;
- C. The aesthetic quality of the Subject Tree, including but not limited to species characteristics, size, growth, form and vigor;
- D. The location of the Subject Tree with respect to overall appearance, design, or use of the Subject Tree owner's property;
- E. Soil stability provided by the Subject Tree considering soil structure, degree of slope and extent of the Subject Tree's root system per a report from a licensed soils engineer;
- F. Privacy (visual and auditory) and wind screening provided by the Subject Tree to the owner and to neighbors;
- G. Energy conservation and or climate control provided by the Subject Tree;
- H. Wildlife habitat provided by the Subject Tree;
- I. Whether the Subject Tree is a "Protected Tree", as defined herein and in Chapter 23.50 (Trees);
- J. The value of the Subject Tree to the community/neighborhood; and

K. Whether the Subject Tree is located on public right-of-way or City-owned property.

#### 23.51.070 - Hierarchy of Restorative Actions.

- A. Restorative Action may include additional written conditions (including ongoing maintenance), and directions as to appropriate timing of such actions, and may be made to run with the land and apply to successors in interest. Where removal is required, replacement by appropriate species should be considered, but may not always be required.
- B. View and/or Sunlight Restorative Actions must be consistent with all other provisions of this Chapter. In cases where Trimming, Windowing, or other Restorative Action may affect the health of a Tree which is to be preserved, such actions should be carried out in accordance with standards established by the International Society of Arboriculture for use in the State of California. Severe pruning should be avoided due to the damage such practice causes a Tree's form and health. Restorative Actions may include, but are not limited to the following, in order of preference:
1. *Lacing*. Lacing is the most preferred pruning technique that removes excess foliage and can improve the structure of the Tree.
  2. *Windowing*. Windowing may be utilized where possible, if it does not adversely affect the Tree's growth pattern or health. Topping should not be done to accomplish windowing.
  3. *Crown reduction/shaping*. Crown reduction/shaping is preferable to topping or Tree removal, if it is determined that the impact of crown reduction does not destroy the visual proportions of the Tree, adversely affect the Tree's growth pattern or health, or otherwise constitute a detriment to the Tree in question.
  4. *Heading back*. Heading back is only to be permitted for Trees specifically planted and maintained as a hedge, espalier, bonsai or in pollard form and if Restorative Actions 1 through 3 of this Section will not accomplish the determined restoration and the subsequent growth characteristics will not create a future obstruction of greater proportions.
  5. *Tree Removal*. Tree removal may be considered when the above-mentioned Restorative Actions are judged to be ineffective and may be accompanied by replacement plantings of appropriate plant materials to restore the maximum level of benefits lost due to Tree removal. The City of Del Mar has designated certain Trees as "Protected Trees". Any alteration or removal of Protected Trees will require a permit from the City's Planning Director pursuant to DMMC Chapter 23.50.
  6. *Stand Thinning*. The removal of a portion of the total number of Trees from a grove of Trees, without any replacement plantings.

#### 23.51.080 - Restorative Work and Allocation of Costs.

When the Planning Commission has rendered a decision in favor of the Applicant, the following procedures shall be enacted:

- A. 1. The Subject Tree owner shall submit to the Applicant and the City two itemized estimates for carrying out the Restorative Work required by the Resolution. The estimates shall be supplied by licensed landscape or licensed Tree service contractors, under the supervision of a Certified Arborist, acceptable to the City, within 30 days after the adoption of the Resolution.
2. Within 15 days of receiving the cost estimates, the Applicant shall deposit with the City an amount equal to the lower cost estimate. Failure of the Applicant to make the required deposit within 15

days will render the resolution of approval null and void. After the required deposit is received by the City, the Subject Tree owner will then, at her/his sole discretion, choose the company by which she/he wishes the work done, as found acceptable to the City, and shall order the work done within 30 days after receiving the Applicant's deposit or such other period of time as the Planning Commission may determine to be reasonable and appropriate. If the Subject Tree owner does not have the work completed within the time period indicated by the Planning Commission or within 30 days, the City will order the work completed and charge the Subject Tree owner with any costs incurred above the estimate selected.

3. Upon completion of the work, the Subject Tree owner shall notify the City and shall submit a copy of an invoice showing that the work was performed. Upon submittal of the invoice and verification by City staff of the compliance, the City shall transmit the funds from the City deposit account to the Subject Tree owner. If the paid invoice submitted by the Subject Tree owner is for an amount less than the funds in the City's trust account, the Subject Tree owner shall only be transmitted an amount equal to the actual cost of the trimming. In such situations, the balance of the trust account shall be refunded back to the Applicant or applied to the Applicant's permit processing account, if that account contains a negative balance. If the paid invoice submitted by the Subject Tree owner is for an amount that exceeds the funds in the City's trust account, the Subject Tree owner shall only receive the funds from the City trust account, and the Subject Tree owner shall be responsible for paying the difference. If a Subject Tree owner chooses to do the required work himself/herself, then the Subject Tree owner shall not be compensated from the City trust account and the amount in the trust account shall be refunded to the Applicant(s).

- B. In the event that the Planning Commission or Council makes the determination that the Subject Tree constitutes a hazard to the safety of the Applicant or his/her property, and is being maintained by the Subject Tree owner in disregard for the safety of others, the Subject Tree owner shall:
  1. Cause appropriate corrective work to be performed within 30 days;
  2. Pay all costs for work performed; and
  3. Deposit with the City an amount equal to that expended by the Applicant as required by Subsection 23.51.040.B.2. of this Chapter and the fees shall be refunded to the Applicant.

(Ord. No. 780)

#### 23.51.090 - Ongoing Maintenance.

If ongoing maintenance is required as a condition of the Planning Commission's approval in favor of the Applicant, said maintenance work shall be performed according to the time schedule (annually, bi-annually, etc.) established by the Planning Commission. On each occasion that scheduled maintenance is to occur, the procedures indicated in Section 23.51.080 shall apply.

(Ord. No. 780)

#### 23.51.100 - Appeal.

The decision of the Planning Commission may be appealed to the City Council pursuant to this Code. The provisions of Section 1094.6 of the California Code of Civil Procedure are applicable to judicial review of the City of Del Mar's decisions pursuant to this Chapter.

(Ord. No. 780)

23.51.110 - Enforcement.

The Subject Tree owner shall comply with any work prescribed by the Planning Commission or Council no later than 90 days after final action on the Application, unless, it is determined that it is less harmful to the Subject Tree for the work to occur at a specific time of the year, in which case, the work shall be performed no later than 90 days from a date set by the Planning Commission or Council. Thereafter, the continued maintenance (if required by Resolution) of the Subject Tree that is not in compliance with the final order prescribed by the Planning Commission or Council shall constitute a misdemeanor or infraction, punishable in accordance with the provisions of DMMC Chapter 1.08 and is declared a public nuisance which may be enjoined or abated as provided by law.

(Ord. No. 780)

23.51.120 - Limitations.

- A. It is not the intent of the City in adopting this Chapter to affect obligations imposed by an existing easement or a valid pre-existing covenant or agreement.
- B. Nothing in the Chapter shall deny private parties the right to seek remedial action for imminent danger caused by Trees.



City of Del Mar  
 Department of Planning and Community Development  
 1050 Camino del Mar  
 Del Mar, CA 92014

Phone: 858-755-9313 Fax: 858-755-2794  
 Hours: M-TH 1:00 pm – 5:30 pm  
 FRI 1:00 pm – 4:30 pm  
[www.delmar.ca.us](http://www.delmar.ca.us)

Exhibit B

**TSVS** - \_\_\_\_\_ - \_\_\_\_\_

Submittal Date: \_\_\_\_\_ Planner: \_\_\_\_\_

Fees: PL: \_\_\_\_\_ GPF: \_\_\_\_\_ Noticing: \_\_\_\_\_

Receipt No.: \_\_\_\_\_

## Trees, Scenic Views and Sunlight Application

### APPLICANT:

Applicant(s): **Nigel Hook & Janet Wilson**

Mailing Address: **635 Hoska Dr**

City / State: **Del Mar, CA**

Zip: **92014**

Phone No(s): **619.977.3000 (Nigel) 619.733.1428 (Janet)**

Email: **Nigel@SilverHook.com & Janet@SilverHook.com**

Signature(s):

### OWNER (if not primary applicant listed above):

Owner:

Mailing Address:

City / State:

Zip:

Phone No(s):

Email:

Signature(s)

(authorizing applicant to submit application):

### APPLICANT'S PROPERTY INFORMATION:

Site Address: **635 Hoska Dr, Del Mar, CA 92014**

Mailing Address: **635 Hoska Dr, Del Mar, CA 92014**

Assessor Parcel No.: **APN 3002521600**

### TREE / VEGETATION – OWNER'S PROPERTY INFORMATION:

Owners Name **Matt and Chelsa Ziskin**

Site Address: **624 8th Street**

Mailing Address: **624 8th Street, Del Mar 92014**

Assessor's Parcel Number: **APN 3002521400**

Zone: \_\_\_\_\_ Overlay Zone: \_\_\_\_\_

Approximate distance from the applicant's property: **Next Door**

**The applicant shall complete the following information. No application will be deemed complete unless all sections are answered in full. Attach additional pages if necessary.**

1. Describe the **Primary Living Area** of your residence. Describe the scenic view that is being obstructed and the specific tree/vegetation that is causing the obstruction. If the tree/vegetation is obstructing sunlight from reaching the Primary Living Area or solar energy system of the residence, please describe:

The primary area is our living room and the wet bar entertainment area located in the southwest corner of our home (see attached) Our sunset and ocean view is west by southwest directly across the property line running between **624 8th Street** and **623 Hoska Dr**. In our primary view corridor.

**624 8th Street - The hedge and trees are not being maintained and have obstructed our ocean view.**

2. Explain the steps you have taken to resolve this matter with the tree/vegetation owner. Please provide documentation of these actions. [Note: Early neighbor consultation and attempts to resolve the problem using Mediation Services are required prior to any consideration by the Planning Commission.]

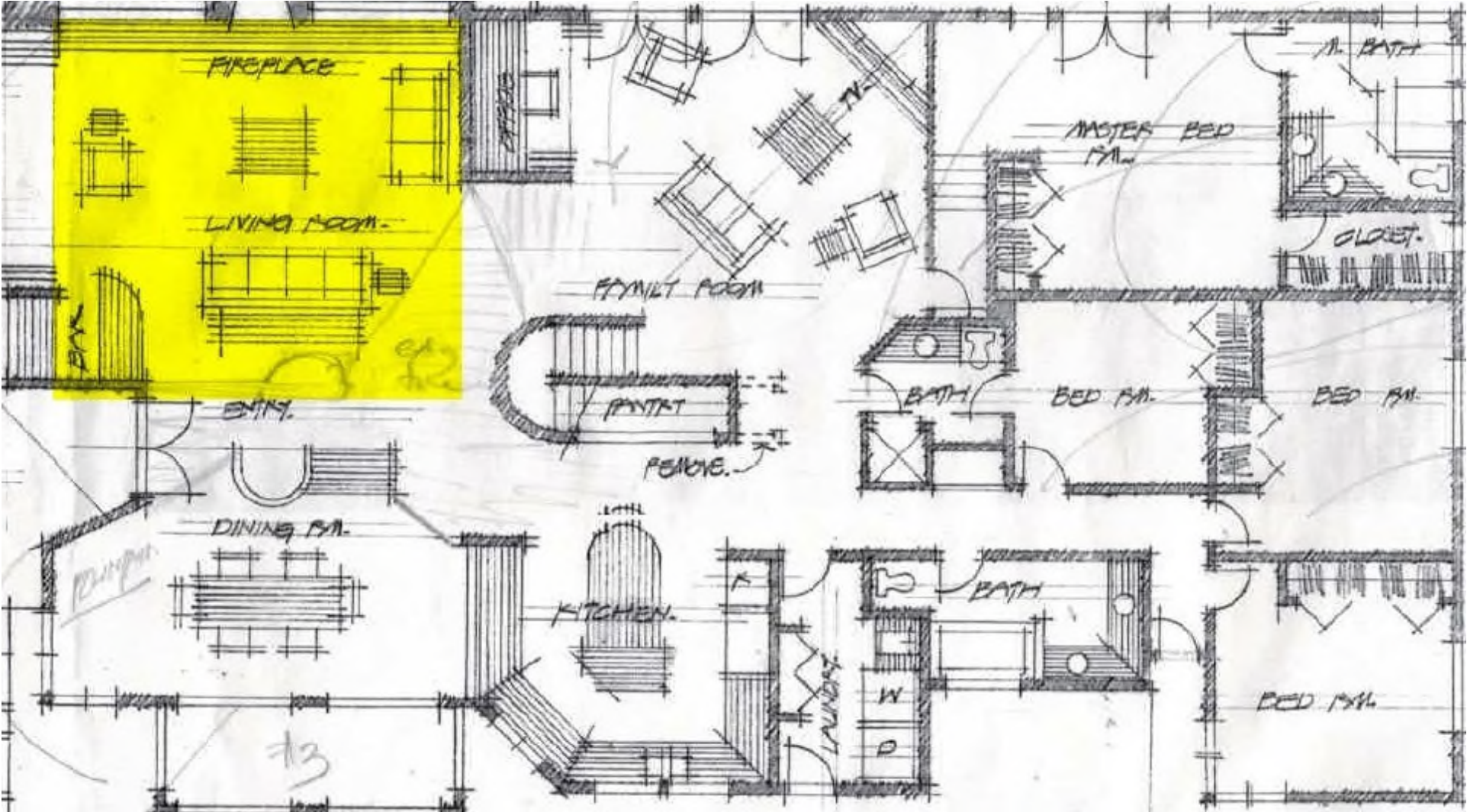
**624 8th Street - We have met with Matt and Chelsea Ziskin in our home. They have refused to trim the hedge and tree *unless* we agree to approve the 2-story home they hope to build. We've explained that agreeing to a 2-story without at least seeing story pole is not possible. Therefore, Matt is refusing to maintain the hedge and trees to restore our ocean view. Please see attached email and pictures.**



3. The Planning Commission will only consider applications regarding scenic views and/or sunlight access that existed at the time you purchased or occupied the subject property or in the last ten years, whichever is shorter. Please describe all (required) evidence you have submitted to document the date and extent of the unobstructed view or amount of sunlight reaching your Primary Living Area or solar energy system. Also, please provide evidence that documents the date of property purchase or occupation of the residence.

**624 8th Street - From 1999 for roughly 16 years, Nigel and the previous owner, Jane Martin, were on very friendly terms. Every couple of years Nigel would ask Jane if our gardeners might trim and she always said "Yes, do whatever you like Nigel". The conflict over our ocean view began 5 1/2 years ago before Matt closed on the house. The hedge was trimmed by our gardener after Jane died and before Matt closed. That trimming was consistent with previous trimmings. Matt was extremely unhappy and concerned the hedge would die. We suggested waiting 6 months and to reassess the situation and, if the hedge died, we would replace it. The hedge survived as it had many times. See the attached email with information including pictures.**

Exhibit B



**Jennifer Gavin**

---

**From:** Janet Wilson <Janet@silverhook.com>  
**Sent:** Thursday, January 7, 2021 10:59 AM  
**To:** Chelsea Bullen  
**Cc:** Matt Ziskin; Matt Bator; Nigel Hook; Jennifer Gavin  
**Subject:** Re: TSVS Application / Janet Wilson & Nigel Hook / 635 Hoska Dr.  
**Attachments:** 20210107\_635Hoska\_OceanView.jpg

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Photograph from 1.7.2021

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Jennifer,  
Please see below and attached photo taken today.  
Thanks, Janet

On Wed, Jan 6, 2021 at 2:56 PM Chelsea Bullen <[chelseabullen@gmail.com](mailto:chelseabullen@gmail.com)> wrote:  
Janet and Nigel,

While we don't want to be unfriendly neighbors or disrespect the process the city has in place, we feel that mediation wouldn't help us reach resolution. We have met several times to try and iron out this issue and it's clear that there is no middle ground for either of us. You have made it clear that you are "entitled" to cut our hedges and we feel that they aren't yours to cut.

We are comfortable moving forward with the next step in this process if the city is ok with that.

Best regards,  
Chelsea and Matt Ziskin

Sent from my iPhone

On Dec 18, 2020, at 1:27 PM, Janet Wilson <[Janet@silverhook.com](mailto:Janet@silverhook.com)> wrote:

Hello Chelsea & Matt,  
Would you be willing to discuss the view blockage with a mediator (see below).  
Nigel and I agree mediation is the next logical step toward resolving this situation.  
Thanks, Janet & Nigel

On Thu, Dec 17, 2020 at 2:53 PM Jennifer Gavin <[jgavin@delmar.ca.us](mailto:jgavin@delmar.ca.us)> wrote:

Hi Janet and Nigel,



Push Button

**Jennifer Gavin**

---

**From:** Janet Wilson <Janet@silverhook.com>  
**Sent:** Friday, March 26, 2021 7:39 AM  
**To:** Jennifer Gavin  
**Cc:** Matt Bator; Nigel Hook  
**Subject:** Re: TSVS Application / Janet Wilson & Nigel Hook / 635 Hoska Dr.  
**Attachments:** 635HoskaPrimaryView.jpg; 20210322\_HoskaView\_IMG-2693.jpg; 635Hoska\_19990409\_GrantDeed.PDF; 20150405\_HookView\_IMG\_7240.JPG

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Jennifer,

Attached are the requested:

1. Google Earth Image showing: a) View Corridor, b) Window Location, and c) North Arrow
2. Grant Deed
3. The vegetation to be maintained include hedges and trees (at least one tree, but there might be more).  
also attached
4. Picture showing how the view is blocked (3/22/2021)
5. Pictures from April 2015

Let me know what else is needed.

Thanks, Janet

On Wed, Mar 17, 2021 at 10:52 AM Jennifer Gavin <[jgavin@delmar.ca.us](mailto:jgavin@delmar.ca.us)> wrote:

Hi Janet and Nigel,

I have reviewed your TSVS application and am needing the information needed in the attached letter. Please let me know if you have any questions.

**Jennifer Gavin | Associate Planner**

**City of Del Mar | Planning and Community Development**







**2015/10/02**



**2020/10/12**



**2015/10/02**



**2020/10/12**



**2015/10/02**



**2020/10/12**

April 5, 2015



April 5, 2015



April 5, 2015



**Jennifer Gavin**

**From:** Janet Wilson <Janet@silverhook.com>  
**Sent:** Thursday, April 8, 2021 10:00 AM  
**To:** Jennifer Gavin  
**Cc:** Matt Bator; Nigel Hook  
**Subject:** Re: TSVS Application / Janet Wilson & Nigel Hook / 635 Hoska Dr.

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Sure. The hedge which has been allowed to grow out of control is inside the red circle at Chelsea and Matt's property.

BTW the green square is an Oleander hedge which has been allowed to grow 30+ tall. It is absurd and rude to allow a hedge to become a jungle. Privacy can be achieved at that location with a 8-10 foot hedge. Now the west side of our house has black stuff probably from lack of sun :-(

Is there anything I can do when I don't have pictures showing that hedge at a normal height?



## Google Earth Historical Images 624 8<sup>th</sup> Street and 635 Hoska Drive

Ocean view corridor from the primary living area at 635 Hoska Drive is over the top of 624 8<sup>th</sup> Street.

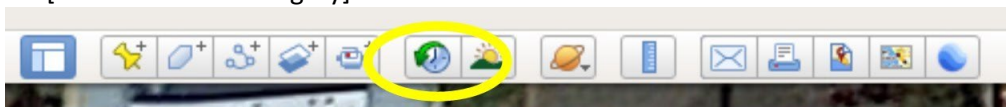


Fortunately, Google Earth captured one of the hedge topping prior to 2015. It was in 2012.

Not every trimming and topping done in between 1999 and 2015 is in the historical imagery database (because the Google Earth capture is sporadic and older captures are poor quality).

### GOOGLE EARTH HISTORICAL IMAGERY

1. Launch Google Earth
2. Zoom to the address: 635 Hoska Dr.
3. Click the [Show Historical Imagery] button



Which displays a slider bar in the upper left:

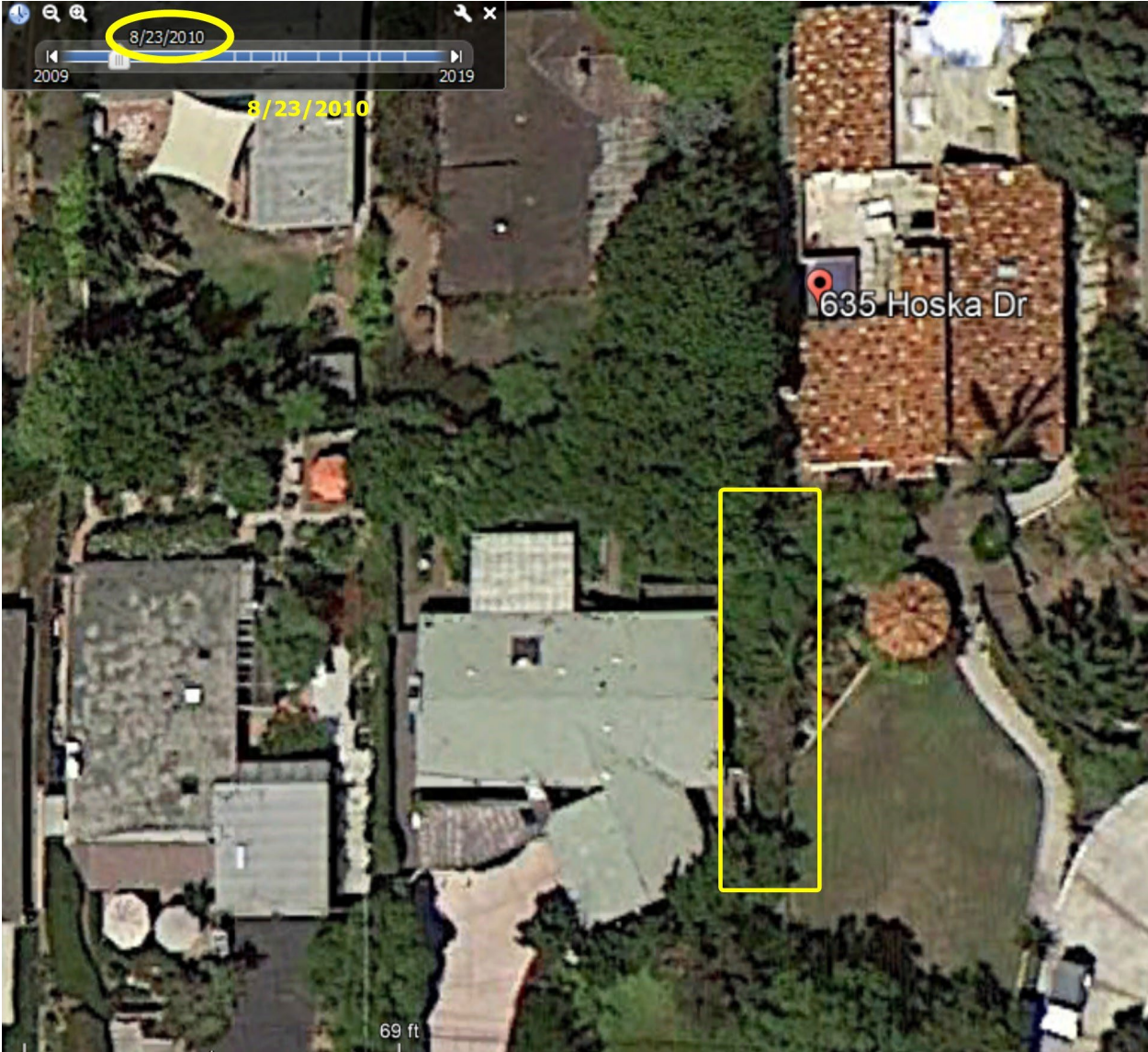


# Google Earth Historical Images 624 8<sup>th</sup> Street and 635 Hoska Drive

On 8/23/2010

Click the left slider button (or drag the slider) to jump back in time to 8/23/2010.

The vegetation is **green** (inside the yellow rectangle).

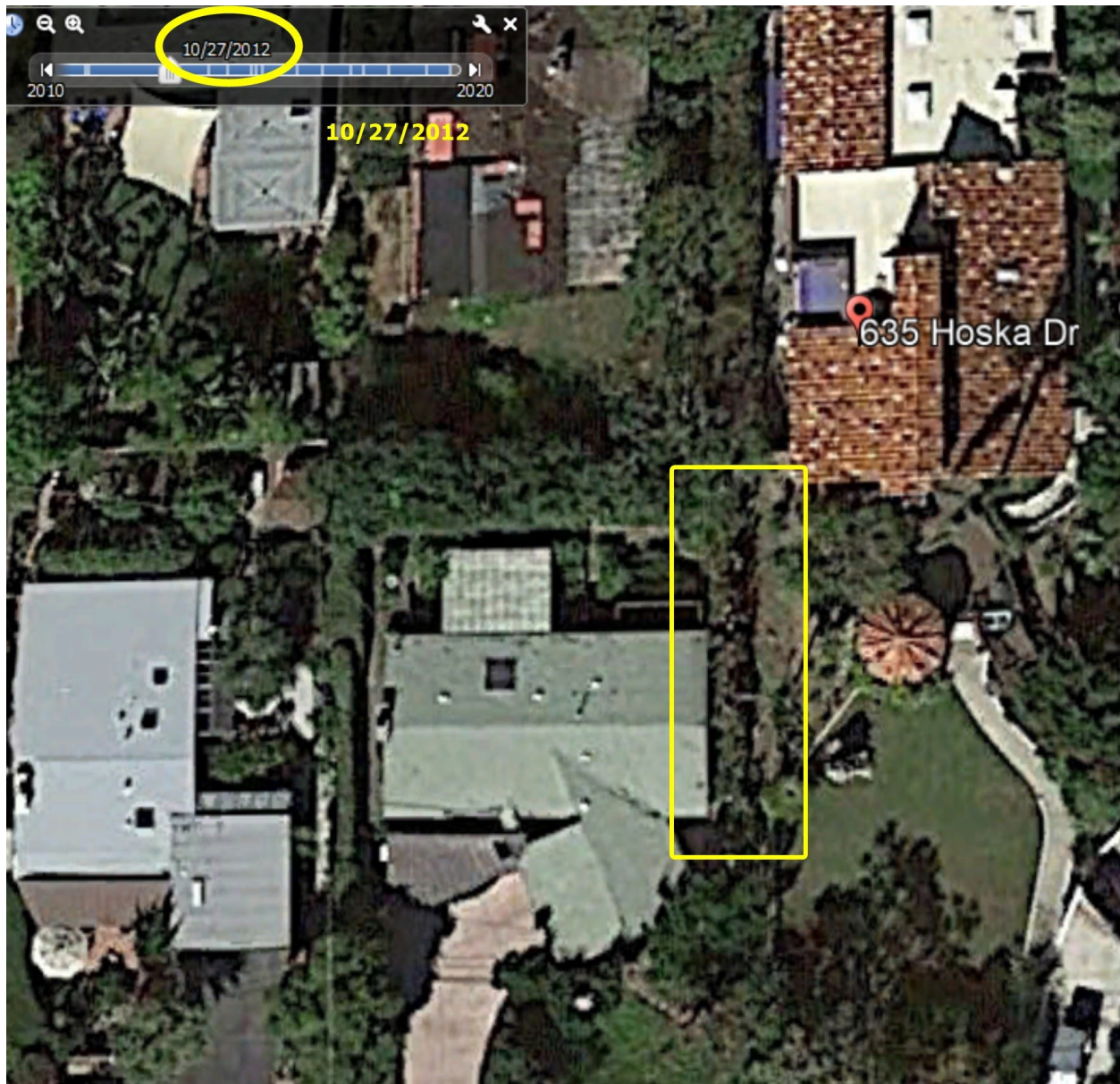


## Google Earth Historical Images 624 8<sup>th</sup> Street and 635 Hoska Drive

On 10/27/2012.

The vegetation is **brown**. This is because the hedge was topped to the trunks earlier in the summer in preparation for our big house party June 16, 2012. I don't know the exact date of this particular trimming but I know it was *before* the party. Jane Martin was unable to attend, but she wrote a nice note afterward. NOTE: These hedges were topped 6 or so times in 16 years and they always filled back in.

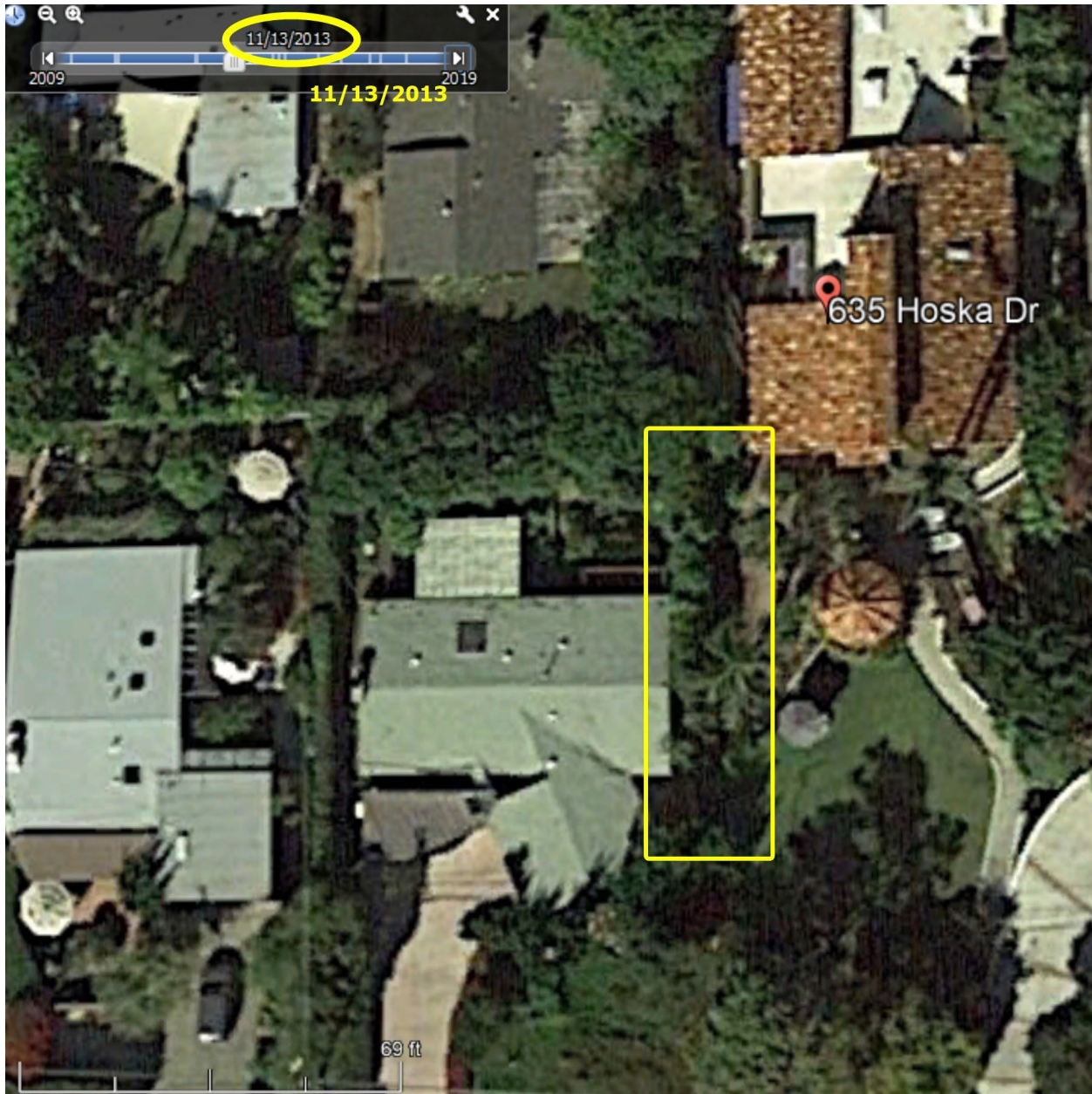
There were 100 or so people in attendance (the party permit is on last page) and all of our guests enjoyed our ocean view. Most of them still live in Del Mar and they will attest to the ocean view if needed.



**Google Earth Historical Images  
624 8<sup>th</sup> Street and 635 Hoska Drive**

**On 11/13/2013**

The hedge has filled back in as it always did and it is **green** again.

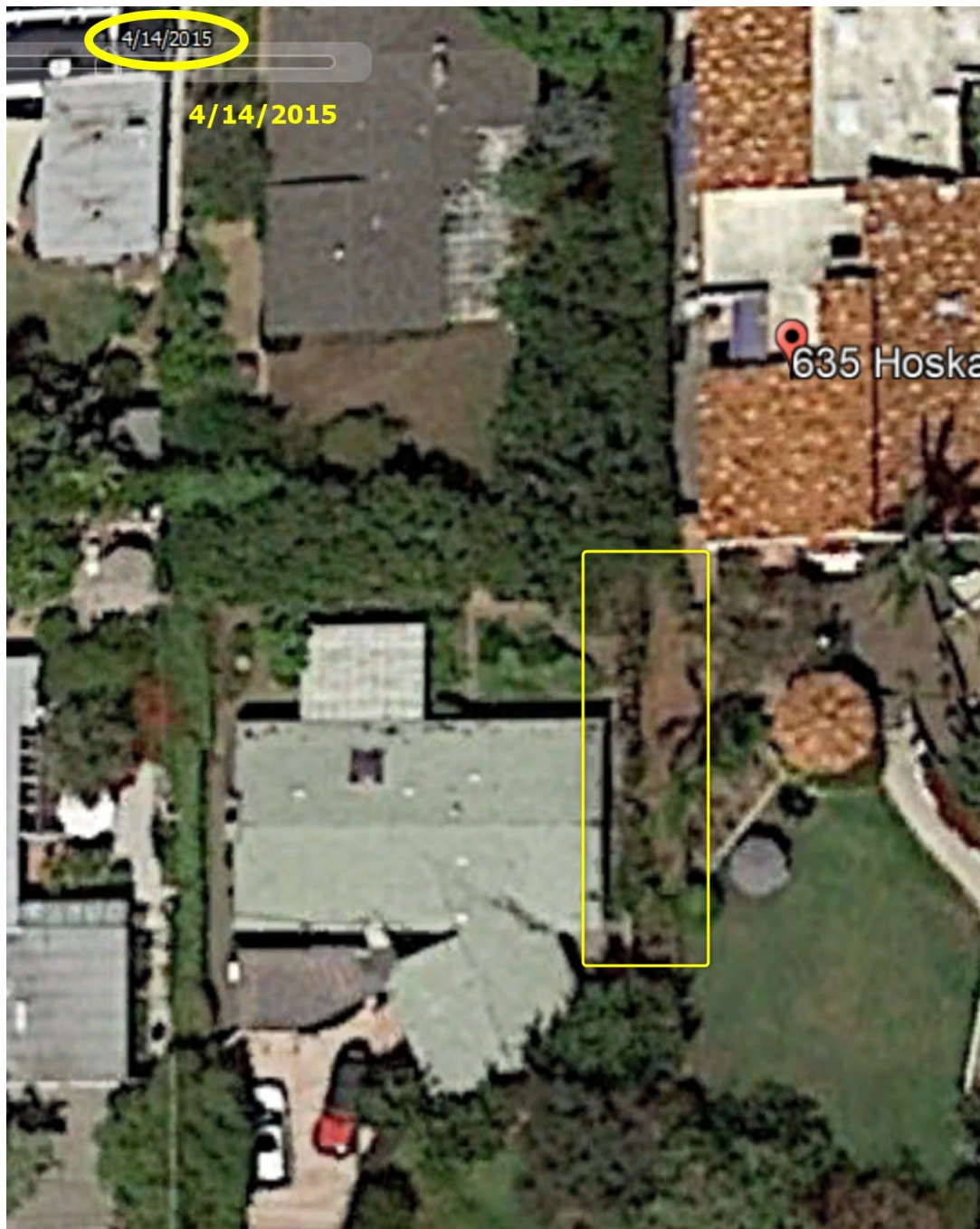


**Google Earth Historical Images  
624 8<sup>th</sup> Street and 635 Hoska Drive**

**On 4/14/2015**

The hedge is **brown** again. I don't know the exact date of this trimming but, it was before 4/14. In this picture the stumps look fresh.

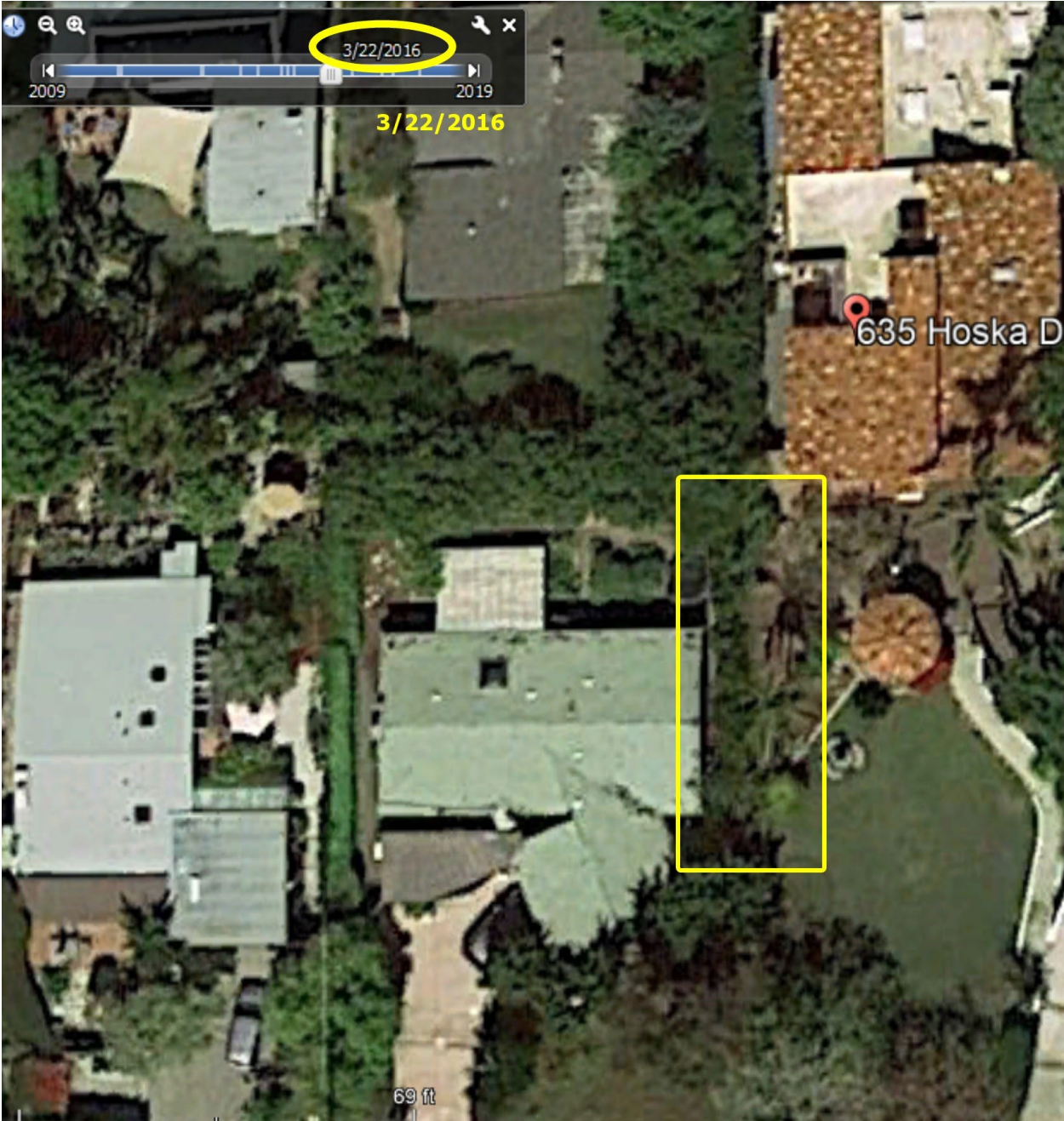
Two days *after* this picture was captured the house was sold. This is when we began to carefully document the view from our primary living area.



**Google Earth Historical Images  
624 8<sup>th</sup> Street and 635 Hoska Drive**

**On 3/22/2016**

The hedge has filled back in and is green again. Just as it had at least 6 times since 1999.



The last time this vegetation was properly maintained was the begin of 2015. Since then, it has been allowed to grow out of control and additional trees have been planted.

# Google Earth Historical Images

## 624 8<sup>th</sup> Street and 635 Hoska Drive



[Edit](#) [Save](#) [Share](#) [More](#)

3 bd | 2 ba | 1,577 sqft

624 8th St, Del Mar, CA 92014

● [Off market](#) | [Zestimate®](#): **\$2,565,871** | [Rent Zestimate®](#): **\$7,862/mo**

**Est. refi payment:** \$11,285/mo [\\$ Refinance your loan](#)

[Home value](#) [Owner tools](#) [Home details](#) [Neighborhood details](#) [Similar homes](#)

### Price history

| Date      | Event | Price       |              |
|-----------|-------|-------------|--------------|
| 4/16/2015 | Sold  | \$1,600,000 | \$1,015/sqft |

Source: **Public Record** Report

# Google Earth Historical Images

## 624 8<sup>th</sup> Street and 635 Hoska Drive

Date Application Issued: 6/4/12  
 Issued by: [Signature]

Date Application Received: \_\_\_\_\_  
 (Comm-Services Stamp Required)

**APPLICATION FOR USE OF PUBLIC FACILITY**  
**CITY OF DEL MAR COMMUNITY SERVICES DEPARTMENT**  
 1700 Coast Blvd., Del Mar, CA 92014 Phone (858) 755-1524 Fax (858) 259-3264

DATE OF EVENT 6/16/12 TYPE OF EVENT residential permit  
 FACILITY OR LOCATION 635 Hoska # ATTENDEES EXPECTED \_\_\_\_\_  
 APPLICANT \_\_\_\_\_ ALCOHOL SERVED \_\_\_\_\_  
 ADDRESS \_\_\_\_\_, CITY \_\_\_\_\_, STATE \_\_\_\_\_ ZIP \_\_\_\_\_  
 DAY PHONE NO. (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ CELL PHONE (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_  
 E-mail address: janet@racewater.com  
 NAME & PHONE NO. OF CONTACT PERSON AT EVENT \_\_\_\_\_  
 NAME & PHONE NO. OF CATERER & CONTACT PERSON \_\_\_\_\_

**RULES**

**Cancellation Fees Apply:** When an event is cancelled by the applicant for any reason, at least three months before the event date, only one-half (50%) of ALL Monies Paid, for facility and/or Park use, will be refunded, and notice must be given in writing to the Community Services Department. If cancelling within three months of event date, No money will be refunded.

**Publicity Prior to Permit and Sales:** No advertising or other public notice shall occur until all fees have been paid and all required permits have been approved and obtained. Any advertising or ticket sales undertaken by the sponsor is undertaken at the sponsor's risk, should the application be disapproved. Absolutely **NO SALES of ANYKIND on the CITY PREMISES.**

**General Policy:** Permission to use our public facilities is granted by permit only. Users are subject to observance of all City regulations. Permits may be revoked for violation of any City regulation or other federal, state, or county laws, ordinances, regulations, and rules, including those relating to public health, sanitation and safety, are binding upon all persons using the facility.

**Limitations of Use:** The use of the Powerhouse Community Center must be compatible with the established purpose of the facility. The primary use of the facility is for leisure activities of a constructive recreational or educational nature, both active and passive. The setting of tables, chairs, etc., and storage of the same at the conclusion of the activity is the responsibility of the permittee. The duty employee (or assistant) is authorized to refuse the use of the facility, or any portion thereof, to any person whose use, in the sole judgment of the employee, would constitute a hazard to the health and safety of the person or others, including protecting the facility.

|                               | REQUIRED                  | PAID / date / ck#                     |
|-------------------------------|---------------------------|---------------------------------------|
| *Letter of Intent             | Yes                       | Due NOW update due 60 days prior      |
| Certificate of Insurance      | Yes                       | Due 60 days prior to event            |
| Park / Beach Fees:            | \$ <u>10<sup>00</sup></u> | DUE NOW                               |
| PHCC Hourly Rate:             | \$ 550.00                 |                                       |
| PHCC 1st 3-hours:             | \$ 1650.00                | DUE NOW ( Balance due 60 days prior ) |
| PHCC or Park Damage Deposit   | \$ 800.00                 | Due 60 days prior                     |
| PHCC Outdoor Patio Heaters    | \$ 200.00                 | Heaters Payable on event day          |
| PHCC Parking Meter Pass ( 6 ) | \$ 150.00                 | Designated meters only: Pass on dash  |

**\*FULLY EXPLAIN WHAT WILL TAKE PLACE AT YOUR EVENT IN A SEPARATE LETTER** (include equipment, entertainment plans, who will setup and clean-up, arrival and departure times...etc.)  
 Community Services Dept. Approval: \_\_\_\_\_ Sheriff Department Approval \_\_\_\_\_

T:\lifeguard\vay\rsvp2001.doc

DATE: September 27, 2021

FROM: Janet Wilson and Nigel Hook  
635 Hoska Drive  
Del Mar, CA 92014

TO: Jennifer Gavin and Del Mar Planning Commission  
City of Del Mar

REGARDING: TSVS21-001 View claim filed by Janet Wilson and Nigel Hook (owners of 635 Hoska Drive) to preserve ocean view over the property located at 624 8<sup>th</sup> Street currently owned by Matt and Chelsea Ziskin.

---

**1. Introduction**

We live at 635 Hoska Drive. We purchased our home in 1999 and have lived here ever since. Our primary living area and viewing area is our living room. From our living room we have a blue water ocean view over the property at 624 8<sup>th</sup> Street (currently owned by Matt and Chelsea Ziskin). This is the only unobstructed ocean view from inside our home.

In 1999 when we moved in, and continuing until 2015 (when the Ziskin family purchased 624 8<sup>th</sup> Street), we enjoyed an ocean view from our living room (primary living area). From inside our home, our ocean view corridor is to the southwest, over the roof of the house at 624 8<sup>th</sup> Street (Ziskin property) and then crosses over the property at 610 8<sup>th</sup> Street (this property is owned by Dr. Paa). (Exhibit A – Birds eye view of 635 Hoska Dr.) We have a blue water view of the ocean and the Del Mar hillside out toward the ocean. (Exhibit B – The view corridor from the primary living area to the southwest.)

We have attached photos to demonstrate the ocean view we have had since 1999. (See Exhibits A and B.)

There is a hedge of Eugenia bushes between our house (635 Hoska) and the Ziskin house (624 8<sup>th</sup> Street). From 1999 until 2015 (when the Ziskin family purchased 624 8<sup>th</sup> Street) this hedge was topped and trimmed when needed to keep it at or below the height of the house on the Ziskin property. This is low enough to preserve our blue water ocean view and the privacy for the Ziskin property. However, since 2015 when the Ziskins purchased their home they have refused to allow the hedge to be trimmed or topped. This has caused the total loss of our only ocean view.

In addition, several trees have also been planted along the property line next to the hedge. These trees are now tall enough that they are starting to block our ocean view because they are growing above the height of the Ziskin's roof.

We have numerous photos and letters from neighbors and others to confirm that we have had an ocean view over the hedge and roof at 624 8<sup>th</sup> Street since 1999 and continuing thereafter until 2015 when the Ziskins purchased their house.

**2. History of Our View**

In 1999 when we moved in Jane Martin lived at 624 8<sup>th</sup> Street. Nigel and Jane had a good relationship and he would take flowers over every few months. Since 1999, our gardeners have been trimming the Eugenia hedge to maintain the ocean view from our living room. Eugenia grows very fast. Whenever the hedges got too wild and tall, then Nigel would check in with Jane and let her know the hedge needed to be trimmed and topped so it did not exceed the height of her roof. Jane always said "Yes, Nigel do whatever you like." So Nigel would schedule and pay for our gardeners, Daniel Marcedo, Tree Trimmer (Exhibit C – Letter from Daniel Marcedo.) or Enrique Martinez, our Gardener since 1999 (Exhibit D – Letter from Enrique Martinez.), to do the trimming and topping.

Dr. Paa lives at 610 8<sup>th</sup> Street and he knew Jane too. During 2010, Nigel asked Dr. Paa if our gardener might trim one of his trees to reduce the gradual loss and preserve our ocean view. Nigel paid for that trimming. Both Daniel Marcedo (Exhibit C – Letter from Daniel Marcedo.) the tree trimmer and Dr. Paa remember this happening (Exhibit E- Statement from Dr. Paa.). This was done to preserve our ocean view. Why would we pay to trim a tree on the property of a neighbor two lots down unless we had an ocean view over that neighbor's property? Certainly we would not do so if we did not have an ocean view over the Eugenia hedge.

For 15 years we've always had permission to trim and top the Eugenia hedge between our home and 624 8<sup>th</sup> Street (the Ziskin property). Nigel would confirm with Jane prior to any serious toppings of the hedge. The last topping was in March 2015 after Jane's death in January 2015.

Over the years, Nigel and I have done improvement projects to enhance our home to enable us to better enjoy and appreciate our ocean view over the Eugenia hedge. We installed nice doors with large windows. They provide a better view of the ocean from our living area. The doors open onto a deck which we added. We are still planning to extend that deck into an outdoor living space so that we can enjoy the ocean view from this area. In order to design this deck expansion project we retained Dean Meredith as our architect. In 2006 Dean designed a fabulous outdoor living area specifically so that we could enjoy this ocean view. (Exhibit F - Dean Meredith's Design & Invoices – 2006-2009.) Geotechnical Exploration did soils reports which included this outdoor living area. (Exhibit G – Geotechnical Exploration Papers - 2009.) Dean has spent time in our house and has seen the ocean view many times over the years from 2006 until present (Exhibit H – Letter from Dean – 9252021.), as has his wife, Monica Meredith (Exhibit I – Letter from Monica – 9252021.).

Dave Druker (Exhibit J – Letter from Dave Druker – 9272021.) and his wife have been in our living room on many occasions and have seen the ocean view from inside our home prior to 2015.

I have substantial evidence that the hedge was regularly maintained (trimmed and topped) from 1999 to March 2015 and that we had a blue water ocean view during this more than fifteen-year period over the hedge from our living room.

I would like to add that Jane Martin was a wonderful neighbor. She wrote a sweet note in 2012 and I've kept all these years because it touched my heart. (Exhibit N – Letter from Jane Martin and her caregiver Debbie – 6182012.)

**3. The Dispute**

The last time the Eugenia hedge was topped was March of 2015. This occurred several weeks before the Ziskins purchased their house at 624 8<sup>th</sup> Street on April 16, 2015. The hedge has been neglected ever since they moved in. On several occasions we have offered to pay for the maintenance to have our view restored, but they refused.

This has been an ongoing struggle for over five years. It is very frustrating to look out at wild bushes blocking the ocean view we used to have from our primary living area (living room).

Earlier this year the situation came to a head during the Community Participation Program meeting concerning the Ziskin's proposed remodel of their house to add a second floor level. They would like to build a two-story home on their property, and of course, they would like our support. During the meeting we asked about topping the hedge and the newly growing trees to restore our ocean view and it became clear that Matt Ziskin was sidestepping the issue when we pressed him. Our comment at that time was "We don't see how we'll ever agree to a two-story if we can't agree on this hedge."

The stance taken by the Ziskins is that the Eugenia hedge had never been topped before 2015, therefore we never had a view of the ocean. Of course, we have numerous witnesses to confirm the hedge has been regularly topped since 1999 through 2015 and it provides our blue water ocean view. Also, the topplings of the hedge are easily verified using Google Earth Historical Imagery. (See Exhibit K – Google Earth Historical Imagery.)

We have asked that the hedge and new property line trees be maintained at the height of the existing roof at the Ziskin house. We believe they are opposed to doing this so that they can claim their proposed new second story will not block our ocean view.

**4. Efforts to Resolve the Dispute**

In 2015 we had several meetings and email exchanges with the Ziskins. (Exhibit L – Emails between Wilson-Hook and Ziskin from 2015.) Matt Ziskin maintained that the topping probably killed the hedge. We reassured Matt that the hedge had been topped many times over the prior fifteen years and it had never died. We agreed to evaluate the impacts from the topping of the hedge that had occurred in March 2015 to see how it looked in six months, and we promised Matt that if the hedge died we would replace the vegetation. After six months the hedge was still healthy and thriving. We emailed pictures to Matt after six months showing the Eugenia hedge and it looked great. (Exhibit O – Six-month update on Hedge Health 20151002.)

Earlier this year, we again attempted to resolve the dispute. Matt and Chelsea came to our home. However, while standing at our bar and looking at the hedge which is blocking our ocean view, it became obvious they were not willing to trim, much less top, the hedge (and the adjacent property line trees that were gradually growing up into our view next to the hedge).

**5. The Requested Action**

Based upon all of the information and evidence provided, it is clear that the hedge has been trimmed and topped to maintain our blue water ocean view since 1999 through March 2015. Therefore, we have had this ocean view for this fifteen year period. Also, the evidence is clear that we have made reasonable efforts to resolve this dispute.

We request that this hedge (and the trees along the property line next to the hedge) be topped and trimmed to maintain them at or below the height of the existing roofline of the Ziskins' house. This height is tall enough to provide privacy to the Ziskins and also preserves our blue water ocean view and sunlight. A scheduled maintenance of four times a year will preserve our ocean view.

We can provide additional information and evidence to support our view claim if the Commission desires more evidence.

Thank you for considering our view claim.

Sincerely,

Janet Wilson and Nigel Hook

**6. Exhibits**

Exhibit A – Birds eye view of 635 Hoska Dr. showing primary living area – Depicted in March/April 2021

Exhibit B – The view corridor from the primary living area to the southwest – 10/2/2015

Exhibit C – Letter from Daniel Marcedo, Tree Trimmer – 9/24/2021

Exhibit D – Letter from Enrique Martinez, Gardener since 1999 – 9/24/2021

Exhibit E- Letter from Dr. Paa, neighbor to the west at 610 8<sup>th</sup> St. – 9/28/2021

Exhibit F- Dean Meredith's Design & Invoices – 2006-2009

Exhibit G – Geotechnical Exploration Papers - 2009

Exhibit H – Letter from Dean – 9/25/2021

Exhibit I – Letter from Monica – 9/25/2021

Exhibit J – Letter from Dave Druker – 9/27/2021

Exhibit K – Google Earth Historical Imagery – Captured via screen prints in 2021

Exhibit L – Emails between Wilson-Hook and Ziskin from 2015

Exhibit M - Emails between Wilson-Hook and Ziskin from 2021

Exhibit N – Letter from Jane Martin and her caregiver Debbie – 6/18/2012

Exhibit O – Six-month update on Eugenia Hedge Health - 10/2/2015

Exhibit P - 20150405\_Hook\_View.pdf ← documenting the 2015 topping

Exhibit Q - 20151002\_Hook\_Wilson\_View ← documenting health of hedge after 6 months

Exhibit A – Birds eye view of 635 Hoska Dr. showing primary living area – Depicted in March/April 2021



Exhibit B – The view corridor from the primary living area to the southwest – 10/2/2015



Exhibit C – Letter from Daniel Marcedo, Tree Trimmer – 9/24/2021

September 24, 2021

To Whom It May Concern,

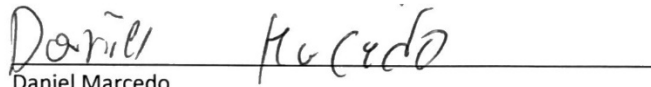
My name is Daniel Marcedo and I am a professional tree trimmer and gardener. I asked Nigel to write me this letter.

I used to prune and thin trees for Susie MacNamara (623 Hoska Dr). Susie introduced me to Nigel to trim his trees and hedges. I would top off the hedge between the other neighbor (Jane Martin, 624 8th Street) who lived behind Susie. I've done this job for Nigel many times since he moved in, but I haven't worked that hedge since 2015, when the new neighbors moved in.

Nigel paid me to trim a tree at Paa's house (612 8th St.) because it blocked the view from his house. This was done with the approval of Mr. Paa.

You can call me if you have questions.

Sincerely,

  
Daniel Marcedo  
442.303.5125

24 de septiembre de 2021

A quien le interese,

Mi nombre es Daniel Marcedo y soy podador de árboles y jardinero profesional. Le pedí a Nigel que me escribiera esta carta.

Solía podar y ralear árboles para Susie MacNamara (623 Hoska Dr). Susie me presentó a Nigel para que podara sus árboles y setos. Yo remataría el seto entre la otra vecina (Jane Martin, 624 8th Street) que vivía detrás de Susie. He hecho este trabajo para Nigel muchas veces desde que se mudó, pero no he trabajado en ese seto desde 2015, cuando se mudaron los nuevos vecinos.

Nigel me pagó para que podara un árbol en la casa de Paa (612 8th St.) porque bloqueaba la vista desde su casa. Esto se hizo con la aprobación del Sr. Paa.

Puedes llamarme si tienes preguntas.

Atentamente,


  
Daniel Marcedo  
442.303.5125

Exhibit D – Letter from Enrique Martinez, Gardener since 1999 – 9/24/2021

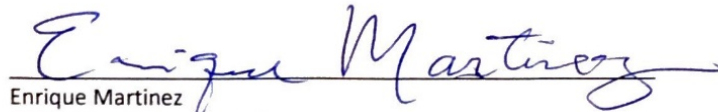
September 25, 2021

To Whom It May Concern,

I have been the gardener for Nigel and Janet since they moved in 1999.

The hedge between Nigel's house and 624 8<sup>th</sup> Street grows very fast. It has been topped many times between 1999 and 2015. After the new neighbors moved in they would not allow the hedge to be trimmed and it has grown out of control.

Sincerely,

A handwritten signature in blue ink that reads "Enrique Martinez". The signature is written in a cursive style and is positioned above a horizontal line.

Enrique Martinez  
1204 N Escondido Blvd #B  
Escondido, CA 92026  
(760) 481-9192

TSVS21-001

Exhibit F - Dean Meredith's Design &amp; Invoices - 2006-2009

**AGREEMENT FOR PROJECT PLANNING AND DESIGN SERVICES**

DATE: March 20, 2006

CLIENT: Janet Wilson & Nigel Hook  
635 Hoska Dr.  
Del Mar, CA 92014

Tel: 858-481-0992 (home)  
619-733-1428 (Janet cell)  
619-977-3000 (Nigel cell)  
858-755-3800 (Nigel work - ask for Barbara)

*key for office?*

PROJECT: 635 Hoska Dr., Del Mar, California

PROJECT SCOPE: Remodel, exterior improvementsPLANNING/DESIGN PHASE:

- 1 Coordinate with Civil Engineer for a record of survey
- 2 Entry gate and arrival walls
- 3 New design - garage door
- 4 New arrival to entry - planters, walls, pool (infinity edge), gazebo, exterior fire place, water/fire elements, and deck;
- 5 Expand living room - exterior room extension designed to create interior/exterior space
- 6 Rework exterior windows & doors; rework dining room window
- 7 Living room - raise floor, simple fireplace & window on each side; hardwood floor; pool table
- 8 Dining room carpet; enhance courtyard north of living room with plants; waterfall element (side yard setback)
- 9 Hall - arch to bedroom
- 10 Conceal 8x15 pump

Agreement for Project Planning and Design Services  
Wilson/Hook Project  
Page 2 of 5  
March 20, 2006

PLANNING/DESIGN PHASE:

- 11 East retaining wall
- 12 Rework square corners on doors so they relate to arches
- 13 Rework garage, storage, and spa equipment
- 14 Install deck all around office to south above garage
- 15 Step
- 16 May be two stations
- 17 No closets
- 18 Remove jacuzzi and replace with exercise space - check FAR
- 19 Link separate office entry to house

Prepare Design Review Board exhibits:

- . Site plan with technical data
- . Floor plans
- . Roof plan
- . Elevations (4)
- . Sections (2)
- . Review final design exhibits with Owner prior to submitting to City
- . Fill out Design Review Board application
  
- . Prepare/coordinate with the City of Del Mar regarding 300-ft. noticing
  - . A 300-ft. radius map drawn on Assessor's Parcel Map measured from the exterior boundaries of the property
  - . A typewritten property owners list keyed to correspond with the radius map containing names, addresses, and Assessor's Parcel Number
  - . Stamped business-size envelopes with typed address labels and City of Del Mar return address
  - . Prepare for and attend Design Review Board meeting to present project

CLIENT'S RESPONSIBILITIES:

- . Civil Engineer
- . Del Mar Fees

Agreement for Project Planning and Design Services  
Wilson/Hook Project  
Page 3 of 5  
March 20, 2006

DESIGN FEE:

The work will be performed on an hourly basis (Dean Meredith:  
[REDACTED] and is based on the above described services.

REIMBURSABLE EXPENSES:

These costs are in addition to the fee stated. Such costs would include actual expenditures made by the Architect in the interest of the project (i.e., blueprints, photographs, deliveries, and miscellaneous direct expenses) and will be billed at cost plus 15%.

TERMS:

Payments are due and payable upon receipt. Amounts unpaid Ten (10) days after the invoice date shall bear interest at 18% per year or 1.5% per month for any amount past due by ten (10) days. If Client fails to make payments to Architect within fourteen (14) days from the date of Architect's invoice, such failure shall be considered substantial nonperformance and cause for termination or, at Architect's option, cause for suspension of performance of services under this Agreement. If Architect elects to suspend services, prior to suspension of services, Architect shall give seven (7) days' written notice to Client. In the event of a suspension of services, Architect shall have no liability to Client for delay or damage caused Client because of such suspension of services. Before resuming services, Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of Architect's services. Architect's fees for the remaining services and the time schedules shall be equitably adjusted. Client shall pay all costs of collection, including reasonable attorney's fees.

WARRANTY:

Architect makes no warranty, either express or implied, as to its drawings, recommendations, specifications, or other work except that these are prepared with generally accepted practices and under the direction of a registered professional architect.

Agreement for Project Planning and Design Services  
Wilson/Hook Project  
Page 4 of 5  
March 20, 2006

STANDARD OF CARE:

Services provided by Architect under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

INDEMNIFICATION:

Architect agrees to the fullest extent permitted by law to indemnify and hold harmless Client, its officers, directors, and employees (collectively "Client") against all damages, liabilities, or costs, including reasonable attorneys' fees and defense costs, to the extent caused by Architect's negligent performance of professional services under this Agreement and that of its subconsultants or any for whom Architect is legally liable. Client agrees to the fullest extent permitted by law to indemnify and hold harmless Architect, its officers, directors, employees, and subconsultants (collectively "Architect") against all damages, liabilities, or costs including reasonable attorneys' fees and defense costs to the extent caused by Client's negligent acts in connection with the Project and the acts of its contracts, subcontractors, or consultants or anyone for whom Client is legally liable. Neither Client nor Architect shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

MEDIATION:

In an effort to resolve any conflicts that arise during the design and construction of the Project or following the completion of the Project, Client and Architect agree that all disputes between them arising out of or relating to this Agreement or the Project shall be submitted to mediation and/or arbitration (the American Arbitration Association - AAA).

Agreement for Project Planning and Design Services  
Wilson/Hook Project  
Page 5 of 5  
March 20, 2006

MEDIATION (cont.):

In the event of dispute or litigation relating to this Agreement, the prevailing party shall be entitled to recover all reasonable collections expenses, litigation expenses, and attorneys fees and costs from the non-prevailing party. Mediation shall take place at Architect's principal place of business. Client and Architect further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with their subcontractors, subconsultants, suppliers, and fabricators, thereby providing for mediation as the primary method of dispute resolution between the parties to all those agreements.

PROPOSAL ACCEPTANCE:

If this proposal meets with your approval, please sign both copies and return one copy with a retainer [redacted] in order to initiate the start of your project.

APPROVED BY:


\_\_\_\_\_  
Janet Wilson, Client

Date: \_\_\_\_\_

\_\_\_\_\_  
Nigel Hook, Client

Date: \_\_\_\_\_

Thank you for the opportunity to work with you.

  
\_\_\_\_\_  
W. Dean Meredith, Architect

Date: Mar 23 2006

W Dean Meredith Architect AIA

PO BOX 2142 • DEL MAR • CA • 92014 • TEL 755-5591

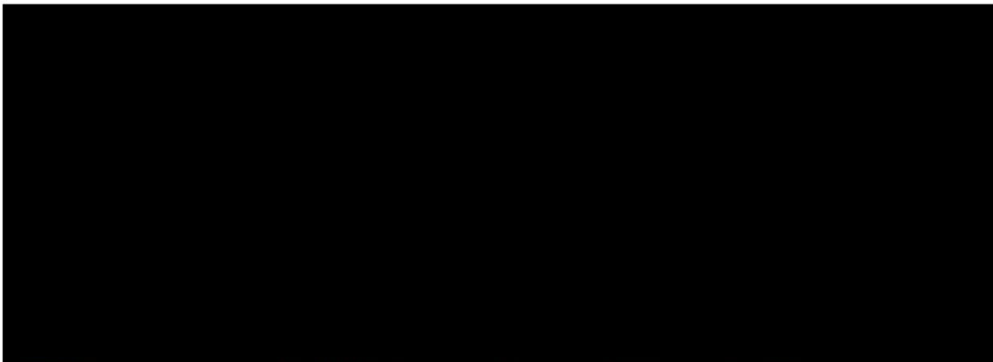
January 10, 2007

Wilson/Hook  
635 Hoska  
Del Mar, CA 92014

REVISED

SCOPE OF WORK COMPLETED:

|             |   |                  |
|-------------|---|------------------|
| Dec. 11     | . Prepared conceptual design studies of interior floor plan and site design   | 8.00 hrs.        |
| Dec. 12     | . Finished house floor plan, outdoor room, fireplace, entry trellis, entry gate, garage drive, gate, and house/garage separation wall | 6.00 hrs.        |
| Dec. 13     | . Finished house floor plan, outdoor room, fireplace, entry trellis, entry gate, garage drive, gate, and house/garage separation wall | 8.00 hrs.        |
| Dec. 14     | . Finished house floor plan, outdoor room, fireplace, entry trellis, entry gate, garage drive, gate, and house/garage separation wall | 7.50 hrs.        |
| Dec. 18     | . Meeting with Nigel and Janet  | 2.00 hrs.        |
| Dec. 20-21  | . Prepared garage/office elevations   | 9.50 hrs.        |
| TOTAL HOURS |   | Dean: 41.00 hrs. |



CBF \$ 3,072.22 DUE

W Dean Meredith Architect AIA



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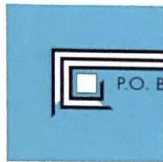
February 26, 2007

Wilson/Hook  
635 Hoska  
Del Mar, CA 92014

SCOPE OF WORK COMPLETED:

|             |   |                                     |
|-------------|---|-------------------------------------|
| Jan. 10     | . Design meeting<br>. Coordination with Soils Engineer<br>. Coordination with Civil Engineer  | 1.25 hrs.                           |
| Jan. 12     | . Site meeting with Nigel, Janet, Soils Engineer, east neighbor, and Architect  | 1.75 hrs.                           |
| Jan. 17     | . Prepared site/floor plan revision<br>. Filled in exterior space for family room<br>. Redesigned outdoor room and patio space<br>. Prepared site/floor plan revision<br>. Meeting with Zoning regarding 45% open concept   | 8.00 hrs.<br>2.50 hrs.<br>0.75 hrs. |
| Feb. 25-31  | . Meeting with Nigel and Janet<br>. Prepared FAR calculations<br>. Prepared 1/4"=1'-0" front elevation studies<br>. Prepared 1/4"=1'-0" living/dining room sections<br>. Outdoor room and entry trellis drawings<br>. 1/8"=1'-0" front elevation drawings<br>. 1/8"=1'-0" front elevation from street<br>. 1/8"=1'-0" west elevation<br>. 1/8"=1'-0" entry great room plan locating the barbecue, sink, refrigerator counter on the east side of the great room | 1.25 hrs.<br><br><br><br>38.50 hrs. |
| TOTAL HOURS |   | Dean: 54.00 hrs.                    |





W DEAN MEREDITH ARCHITECT AIA

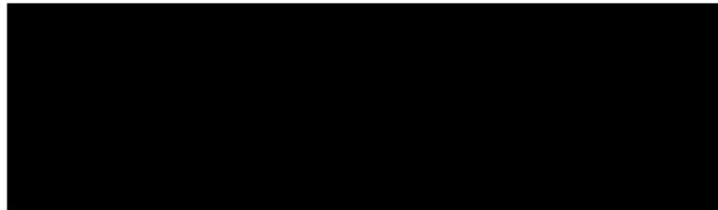
P.O. BOX 2142 • DEL MAR • CA • 92014 • TEL 858-755-5591

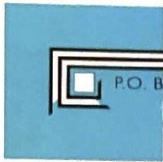
April 15, 2007

Wilson/Hook  
635 Hoska  
Del Mar, CA 92014

SCOPE OF WORK COMPLETED:

|             |  |                  |
|-------------|--|------------------|
| Mar. 02     | . Design meeting   | 1.25 hrs.        |
| Mar. 02-31  | . Refined entry studies, studied west side walls and grades  | 26.00 hrs.       |
| Mar. 07     | . Coordination with Janet and Jay (Soils Engineer)<br>. Coordination with City regarding notifying us when Peter submits | 0.75 hrs.        |
| Mar. 16     | . Meeting with Peter and Bob Scott   | 1.00 hrs.        |
| Mar. 29     | . Reviewed Peter's plan  | 1.75 hrs.        |
| TOTAL HOURS |  | Dean: 30.75 hrs. |





W DEAN MEREDITH ARCHITECT AIA

P.O. BOX 2142 • DEL MAR • CA • 92014 • TEL 858-755-5591


May 15, 2009

Janet Wilson & Nigel Hook  
635 Hoska  
Del Mar, CA 92014

SCOPE OF WORK COMPLETED:

|             |  |                                     |
|-------------|--|-------------------------------------|
| Apr. 01     | . Meeting with Janet, Structural Engineer, and Ralph   | 1.75 hrs.                           |
| Apr. 15     | . Meeting with Matt at house - reviewed project, discussed fireplace, crib wall vs. retaining wall height with height issues, site visit to look at a bee hive fireplace | 2.00 hrs.                           |
| Apr. 28     | . Prepared floor plans   | 7.50 hrs.                           |
| Apr. 29     | . Prepared floor plans<br>. Janet  | 3.50 hrs.<br>3.00 hrs.              |
| Apr. 30     | . Telecoordination with Janet regarding kitchenette and floating stair<br>. Meeting with Janet<br>. Janet  | 0.50 hrs.<br>0.25 hrs.<br>3.00 hrs. |
| TOTAL HOURS |  | Dean: 16.50 hrs.                    |

Apr. . Field measured existing garage, guest house, and portions of second floor  
. Prepared existing plans and elevation of main house fireplace wall





# Geotechnical Exploration, Inc.

SOIL AND FOUNDATION ENGINEERING • GROUNDWATER • ENGINEERING GEOLOGY

03 November 2006

**RETURN COPY**

Janet Wilson and Nigel Hook  
63 5 Hoska Drive  
Del Mar, CA 92014

Proposal No. P06-6189

Subject: **Proposal for Limited Geotechnical Investigation**  
Wilson-Hook Residence Remodel and Additions  
63 5 Hoska Drive  
Del Mar, California

Dear Ms. Wilson and Mr. Hook:

At the request of your architect, Mr. Dean Meredith, *Geotechnical Exploration, Inc.* herein submits a proposal to perform a limited geotechnical investigation for the above-mentioned subject project. It is our understanding that the existing structure is to be remodeled, including a new single-story addition on the southwest side of the existing residence, a new swimming pool and eastern property line retaining wall, a new driveway and front entry improvements. As part of this proposal preparation, we visited the site to observe the existing residence and current site conditions. The objectives of the proposed investigation are as follows:

1. To evaluate the existing subsurface soil conditions at the site of the proposed additions and improvements.
2. To evaluate representative samples of the soils for their engineering properties.
3. To provide recommendations for site preparation.
4. To provide preliminary foundation design criteria and recommend active and passive earth pressures suitable to the proposed new structural loads, retaining walls, and improvements.

**Geotechnical Exploration, Inc.** shall accomplish the proposed geotechnical investigation in compliance with all criteria and specifications as prescribed by the City of Del Mar. With the above in mind, we present the proposed Scope of Services.

### SCOPE OF SERVICES

The **Scope of Services** proposed for this investigation includes:

1. Review of all available soil reports and building plans.
2. Excavation of 7 to 8 exploratory test pits utilizing hand tools. The soils, groundwater encountered in the excavations will be logged by our field representative and undisturbed and loose bag samples will be collected at regular intervals in the various soil types to the maximum depth of exploration. Undisturbed samples will be obtained by drive sampler to evaluate the relative density of the soils. In cases where such sampling is impractical, in situ field density tests will be performed and undisturbed chunk samples will be obtained. Three of the test pits need to be excavated on the adjacent neighbors property for design of the property line retaining wall.
3. The performance of laboratory tests on the collected samples to aid in assessing their classification by the **Unified Soil Classification System**, as well as their field moisture content and density. Representative soils were tested for maximum dry density and optimum moisture content by the ASTM 01 557 method of compaction. Consolidation tests will be performed on any soils considered to possess a significant settlement potential. Direct shear tests may be conducted on representative samples to determine the shear strength of the existing soils. Further, expansion tests will be performed on any foundation soils classified as possessing significant clay content.



4. The results of field and laboratory testing, along with our findings, conclusions and recommendations (with appropriate cross sections, excavation logs and other graphics), will be presented in a final report. Our recommendations will include those for site preparation, temporary slopes, retaining wall design criteria, allowable soil bearing values, estimated settlement, and preliminary foundation design Information.

### **SCHEDULE**

Our existing work schedule indicates we would be able to commence the field investigation within 5 to 7 working days after receiving our signed contract and **Retainer Fee**. The field and basic data collection phase of the investigation should require approximately 3 working days, assuming the project is not delayed by setbacks such as foul weather. The data analysis and report phases will require an additional 4 to 5 weeks. We estimate that our final report would be completed and ready for release within 5 to 6 weeks after our receipt of the signed contract. We will provide a verbal report of findings and recommendations immediately following the fieldwork.

### **FEES**

Our fees for the outlined **Scope of Services** will be billed on a time and expense basis, in accordance with our enclosed **Schedule of Fees**. Our total fee through completion and release of the geotechnical report is estimated to be approximately \$5,200. Although we make our best effort to estimate project costs based on visual site conditions, more time than anticipated may be required. In addition, subsurface conditions revealed during site work may reveal the need to expand field and laboratory exploratory efforts beyond those anticipated at the time of proposal preparation. Should such extended work be required, additional costs will be incurred. **A Retainer Fee of \$2,500** will be required before work commences. The balance will be due upon completion of the report. All subsequent communications with your engineers, government agencies, architects, etc. will be charged at our prevailing rate.



This proposal, along with the attached "Standard Work Agreement" and the "Schedule of Fees," constitutes the agreement between you, the Client, and ***Geotechnical Exploration, Inc.***, the Consultant. If this proposal meets with your approval, please indicate your authorization to commence work by endorsing and forwarding to us the **Return Copy** of our contract. We will proceed with scheduling fieldwork upon receipt of the signed copy and the required Retainer Fee. We reserve the right to revise, if necessary, our estimated fees and schedule of work for the proposed services after a period of 90 days.





Janet Wilson <racewater@gmail.com>

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## Wilson-Hook home/project

1 message

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**Dean Meredith** <wdeanmeredith@gmail.com>  
To: Janet Wilson <Janet@silverhook.com>

Sat, Sep 25, 2021 at 10:51 AM

Jennifer and Planning Commission,

I am writing to confirm that I was the architect for the Wilson-Hooks on their Hoska project in 2007, engaged to design their outdoor room specifically to take advantage of their ocean view.

As proof, please find in an email from Janet Wilson, along with documentation, invoices and drawings that I prepared back in 2006 and 2007.

In addition, I was present at a social event held at the Wilson-Hook home in 2012 celebrating the inside remodel and new deck with ocean view. The neighbor's hedge was topped off and there was clearly an ocean view from where we were, which the homeowner's call the 'rainbow bar' in their primary living space.

If you have any questions, please give me a call, I am happy to answer them.

Best regards,  
Dean Meredith

--

**Dean Meredith, A.I.A**

A R C H I T E C T

cell: 858.245.6892

fax: 858-755-9171

[www.deanmereditharchitecture.com](http://www.deanmereditharchitecture.com)



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## Wilson-Hook project

1 message

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**Monica Meredith** <monicammeredith@gmail.com>

Sat, Sep 25, 2021 at 10:55 AM

To: Janet Wilson <Janet@silverhook.com>

To: Jennifer Gavin & Del Mar Planning,

This letter is pertaining to the Wilson-Hook project and is specifically referencing their ocean view from inside their living room.

Being a friend of Janet's, I have been over to their home many times between 2012 and present, and seen the view of the ocean over the years from their living room. It seems the neighbor to the west trims their hedge periodically, and when trimmed the ocean is clearly visible.

Respectfully,  
Monica Meredith

**Monica Meredith**  
858.761.1891  
COMPASS - Combs Group  
DRE # 01831776



Janet Wilson <racewater@gmail.com>

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**TVS21-001**

1 message

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**David Druker** <ddruker@dataskill.com>  
To: "jgavin@delmar.ca.us" <jgavin@delmar.ca.us>  
Cc: Janet Wilson <janet@silverhook.com>

Mon, Sep 27, 2021 at 5:25 PM

Jennifer Gavin

[jgavin@delmar.ca.us](mailto:jgavin@delmar.ca.us)

TVS21-001

Jennifer,

I have known Nigel Hook and Janet Wilson for over 25 years. I have been to their house at 635 Hoska many times prior to 2015. When the trees were trimmed to the west of their house, I had a view of the Pacific Ocean from the living room.

Thank you.

***David S. Druker***

Dataskill, Inc.

2190 Carmel Valley Rd. Suite D

Del Mar, CA 92014

[ddruker@dataskill.com](mailto:ddruker@dataskill.com)

[www.dataskill.com](http://www.dataskill.com)

858-342-1203 (cell)

### Google Earth Historical Imagery

You can use Google Earth's historical imagery tool to essentially go back in time. Google Earth's tool lets you view what certain points on the globe looked like many years in the past.

Google Earth – Historical Imagery – 2010 vs 2012

**2010 – The hedge & trees are green and lush**

**2012 – The hedge & trees are “stumps” – this topping was paid for by Nigel with Jane Martin’s permission. This was a severe topping / pruning.**

GoogleEarth\_2010August.jpg

GoogleEarth\_2012October.jpg



Google Earth – Historical Imagery – 2012 topping vs 2015 topping

**2012 – The hedge & trees are “stumps” – this topping was paid for by Nigel with Jane Martin’s permission. This was a severe topping / pruning.**

**2015 – The hedge & trees are “stumps” – this topping was paid for by Nigel after Jane passed and PRIOR to Ziskin’s closing on the house. This was another severe topping / pruning.**

GoogleEarth\_2012October.jpg

GoogleEarth\_2015April.jpg



2010- This angle shows the greenery of a lush hedge in 2010:



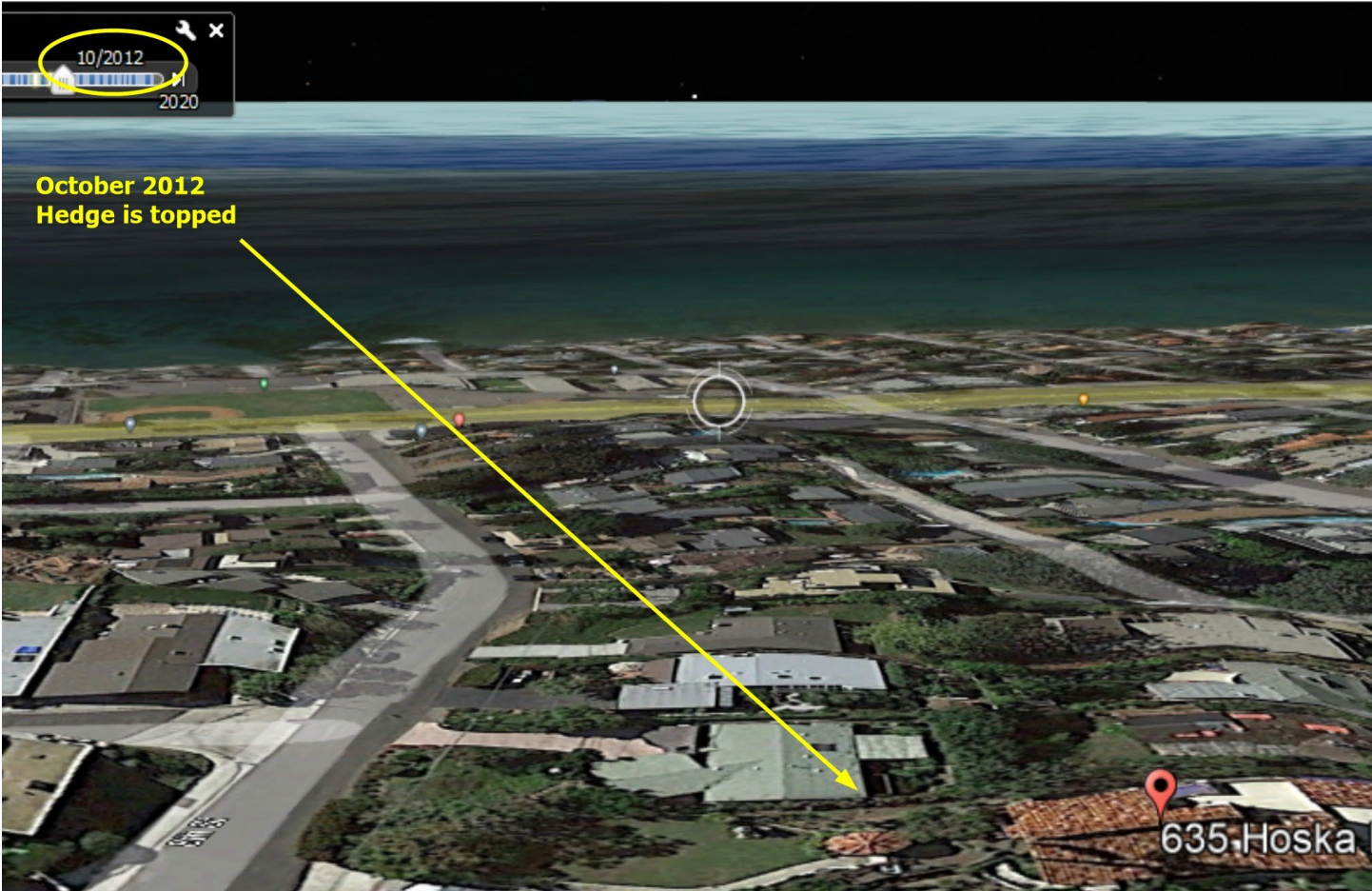
2012 - This angle shows the brown stumps of a severe topping / pruning:



2015 - This angle shows the brown stumps of a severe topping / pruning.



2012 - This angle shows the brown stumps of the severe topping below the roofline of 624 8<sup>th</sup> Street.







Janet Wilson &lt;racewater@gmail.com&gt;

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**RE: 624 8th Street Trees**

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**Nigel Hook** <nigel@dataskill.com>

Fri, Apr 3, 2015 at 3:41 PM

To: Matt Ziskin &lt;mattziskin@gmail.com&gt;

Cc: "ziskin@alum.mit.edu" &lt;ziskin@alum.mit.edu&gt;, Janet Wilson SilverHook &lt;janet@silverhook.com&gt;, Chelsea Bullen &lt;chelseabullen@gmail.com&gt;, Julia Maxwell &lt;jmaxwell@prusd.com&gt;, "chiquitaabbott@roadrunner.com" &lt;chiquitaabbott@roadrunner.com&gt;

Hi Matt,

We look good for 6:30pm (Janet is up in LA today so we hope traffic is not too bad).

I was just rereading below and wanted to suggest this addition to the section (below) - "or with a solution as outlined in following sentence."

By linking the two I believe it achieves the ultimate goal of having the privacy and better than having the original saplings. Cheers, Nigel

1. and replace them to restore what was planted there originally .... or with a solution as outlined in following sentence. We could set a time period of 3 to 6 months to determine whether new growth is appearing and maybe have an arborist provide an opinion if there are concerns. If the trees subsequently don't provide adequate privacy for Matt and Chelsea's master bedroom Nigel and Janet offer to plant on their side some mutually acceptable bushes or whatever to provide lateral fill in for that privacy.

On Apr 1, 2015, at 10:03 AM, Matt Ziskin <mattziskin@gmail.com<mailto:mattziskin@gmail.com>> wrote:

Nigel,

Thank you for your quick response. 6:30pm this Friday will work well. We have scheduled a babysitter and will plan to meet you at your house.

If there is any work that can be done beforehand (for example, taking a picture of your view), that would be helpful.

Thank you,  
Matt

On Apr 1, 2015, at 8:29 AM, Nigel Hook <nigel@dataskill.com<mailto:nigel@dataskill.com>> wrote:

Would 6:30pm Friday work?

I'm in Hong Kong now not sure what Janet's schedule is

On Apr 1, 2015, at 11:24 PM, Matt Ziskin <ziskin@alum.mit.edu<mailto:ziskin@alum.mit.edu>> wrote:

Nigel and Janet,

I haven't heard back yet and wanted to see if we could schedule a time to meet on Friday when Nigel is back in town. We will need to make a decision whether we will move forward with the purchase or not this weekend as that is when we need to remove the contingencies. Please let us know a time that works for you on Friday.

Thank you,  
Matt

On Mon, Mar 30, 2015 at 6:38 PM, Matt Ziskin <ziskin@alum.mit.edu<mailto:ziskin@alum.mit.edu>> wrote:  
Thanks Nigel.

Janet,

Our goal is to have something we can all agree on and sign this week since we will need to remove contingencies by the end of the week. Ideally we could work with you this week to get the language of the statement finalized and maybe we

could meet to settle on the minimum and maximum heights. Then once Nigel is back, we would just need to get the statement signed and notarized.

For creating the wording of the statement, would you like to do write it up or do you want us to draft it?

I included a recap of the items we would like to include in the statement including the comments you and Nigel offered.

1. An agreement to the minimum height and the maximum height of your view corridor for the growth of the existing trees and future trees/bushes/walls/structures that would affect your view. An understanding that any future significant tree trimming be conducted with a mutual agreement of the work to be completed prior to work commencing or in accordance with to Del Mar City Codes. See <http://www.delmar.ca.us/DocumentCenter/Home/View/433>.
2. A statement accepting financial responsibility for any irreparable damage from the trees and plants dying as a result of the work completed last weekend. Essentially, if any of the trees that were cut have been damaged to the point that they die, you will incur the costs to remove the dead plants and dead trees and replace them to restore what was planted there originally. We could set a time period of 3 to 6 months to determine whether new growth is appearing and maybe have an arborist provide an opinion if there are concerns. If the trees subsequently don't provide adequate privacy for Matt and Chelsea's master bedroom Nigel and Janet offer to plant on their side some mutually acceptable bushes or whatever to provide lateral fill in for that privacy.
3. Photographs from inside your house with lines drawn to indicate where the scenic view is and a statement referencing the photographs to enable us to get on the same page with regard to any future improvements we may consider.

Feel free to give me or Chelsea a call at anytime to discuss this or set up a time to meet. My cell number is 408-607-9620<tel:408-607-9620> and Chelsea's is 415-866-8919<tel:415-866-8919>.

Thanks,  
Matt

On Fri, Mar 27, 2015 at 12:01 AM, Nigel Hook <[nigel@dataskill.com](mailto:nigel@dataskill.com)<mailto:nigel@dataskill.com>> wrote:  
I'm back Thursday

On Mar 26, 2015, at 5:13 PM, Matt Ziskin <[ziskin@alum.mit.edu](mailto:ziskin@alum.mit.edu)<mailto:ziskin@alum.mit.edu>> wrote:

Janet,  
Thank you for your quick response. Taking photographs from your house and drawing lines showing the view would be perfect to address item number 3.

I agree completely with your suggestion to agree to a minimum and maximum height for the trees/shrubs in question. The "mutual agreement" suggestion was intended for major work. We don't want this to be something that's a hassle for either of us, but we do want to prevent a significant change from occurring without input from both sides - particularly when we are discussing work being conducted by one neighbor on the other neighbor's property.

I think it would be worthwhile to meet to iron out any details (like the min/max heights). Are you be available to meet on Monday or Tuesday of next week? We very much appreciate your help with this.

To help plan for getting the signatures we need on the document we are creating, what date will Nigel be back in the U.S.?

Best regards,  
Matt

On Thu, Mar 26, 2015 at 7:04 AM, Janet Wilson <[Janet@silverhook.com](mailto:Janet@silverhook.com)<mailto:Janet@silverhook.com>> wrote:  
Good morning,

Nigel has left for his trip, but he has tried to keep me updated, although we have been like ships passing in the dark this past week, so I may not have a complete understanding. But I would like to welcome you to the neighborhood and I am sure we can quickly resolve this situation to everyone's satisfaction.

Suggestions

#1 below

Would it be a good idea for us to agree to the minimum height and the maximum height of our view corridor for [future] trees/bushes/walls/structures that would affect our view? The minimum height would protect your privacy and the maximum height would protect our view. Section 23.51.00 is fourteen pages because Trees, Scenic Views and Sunlight are important to everyone living in Del Mar.

Nigel and I agree that we should be more diligent about keeping the plants in that view corridor maintained (pruned and trimmed) to prevent the "jungle affect" (which should minimize the shock we all just experienced).

Would us agreeing to "any future tree trimming be conducted with mutual agreement to the work to be completed prior to work commencing" prevent the normal pruning and trimming in that area? Tree trimming done correctly and in a timely manner is normal gardening. I really don't want to have to ask for permission every time our gardeners need to do normal maintenance (assuming that normal maintenance would be within our [proposed] minimum/maximum height agreement). I agree to that statement for major work, but perhaps we should have a clear definition of what major work is.

#3 below

We can shoot photographs from inside our house and draw lines of where the scenic view is?

I look forward to meeting everyone.

Thanks, Janet

On Wed, Mar 25, 2015 at 9:57 PM, Matt Ziskin <[ziskin@alum.mit.edu](mailto:ziskin@alum.mit.edu)<<mailto:ziskin@alum.mit.edu>>> wrote:  
Nigel,

Thank you for your response. The changes you proposed are acceptable to us. During our conversation today, you suggested Janet might be able to put something together regarding the view.

Janet,

We look forward to meeting you. Hopefully Nigel has been able to fill you in on our conversation earlier today.

Please let us know if you need any assistance putting together a statement highlighting the items mentioned below and the rough timing on when you might be able to provide something to us. Unfortunately, we are under a tight timeline to move everything along according to the escrow schedule. We would be happy to meet in person if that would be helpful.

I have cc'd our real estate agent and the seller's agent as they may have some insight into the language that would be most appropriate for the statement.

Best regards,  
Matt

On Wed, Mar 25, 2015 at 7:02 PM, Nigel Hook <[nigel@dataskill.com](mailto:nigel@dataskill.com)<<mailto:nigel@dataskill.com>>> wrote:  
Matt and Chelsea,

It was certainly my pleasure to meet you both (and Duke!) and I look forward to getting together with Janet too.

I think we have the makings of a plan and I've quickly added my input below for you to consider.... as Janet is still out and I leave the house tomorrow at 4:30am for LAX - Hong Kong - Kuala Lumpur. I will be available as I can by email and will do my very best to responsive while out of country as I understand your timeline.

Cheers,

Nigel (619) 977-3000 mobile

From: [mattziskin@gmail.com](mailto:mattziskin@gmail.com)<<mailto:mattziskin@gmail.com>> [<mailto:mattziskin@gmail.com><<mailto:mattziskin@gmail.com>>]  
On Behalf Of Matt Ziskin

Sent: Wednesday, March 25, 2015 5:53 PM

To: [nigel@silverhook.com](mailto:nigel@silverhook.com)<<mailto:nigel@silverhook.com>>

Cc: Julia Maxwell; [chiquitaabbott@roadrunner.com](mailto:chiquitaabbott@roadrunner.com)<<mailto:chiquitaabbott@roadrunner.com>>; Chelsea Bullen

Subject: 624 8th Street Trees

Nigel,

Thank you for your time this afternoon. Chelsea and I enjoyed meeting you. We would like to move forward with our escrow to purchase 624 8th Street pending a level of comfort on some of the items we discussed today. We understand the timing is a challenge as you are leaving tomorrow for three weeks and we need to remove contingencies by April 3rd to move forward with the purchase.

We had discussed a written statement by you and your wife addressing the major items of concern raised by the recent tree work. Those items are:

Those items are:

1. An understanding that any future tree trimming be conducted with a mutual agreement to the work to be completed prior to work commencing or in accordance with to Del Mar City Codes. See <http://www.delmar.ca.us/DocumentCenter/Home/View/433>

Chapter 23.51, TREES, SCENIC VIEWS AND SUNLIGHT, 23.51.010 Purpose.[Ord. 747, 780]

2. A statement accepting financial responsibility for any irreparable damage from the trees and plants dying as a result of the work completed last weekend. Essentially, if any of the trees that were cut have been damaged to the point that they die do not grow back, you will incur the costs to remove the dead plants and dead trees and replace them to restore what was planted there originally before. We could set a time period of 3 to 6 months to determine whether new growth is appearing and maybe have an arborist provide an opinion if there are concerns. If the trees subsequently don't provide adequate privacy for Matt and Chelsea's master bedroom Nigel and Janet offer to plant on their side some mutually acceptable bushes or whatever to provide lateral fill in for that privacy.

1. A statement indicating the area above our roofline that falls within the ocean view from your house. This will enable us to get on the same page with regard to any future improvements we may consider. I don't think either of us are interested in having something drafted by attorneys, but in talking with Chiquita and Julia, we would want to have this statement notarized as it will need to be included in our escrow documents.

How can we work with you to get this statement prior to you leaving so we are able to meet our deadlines and close escrow on time? Please give me a call if you have any questions. My cell number is 408-607-9620<tel:408-607-9620>.

[Quoted text hidden]

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 **winmail.dat**  
26K



Janet Wilson <racewater@gmail.com>

Hook Ocean View

Matt Ziskin <ziskin@alum.mit.edu> Mon, Apr 13, 2015 at 10:29 PM
Reply-To: ziskin@alum.mit.edu
To: Nigel Hook <nigel@dataskill.com>
Cc: Janet Wilson SilverHook <janet@silverhook.com>, Chelsea Bullen <chelseabullen@gmail.com>

Nigel,
I was disappointed to receive your email. I had thought we put together a fair agreement that was beneficial for both of us. Clearly, you disagree. Despite the actions you took when you turned the trees in the backyard of 624 8th Street into stumps, I would have hoped we could start off the neighbor relationship on a friendlier note. We did not initiate this issue, but we are trying to find a fair way to resolve it.

The attached agreement is a simplified version of what we started with. It removes anything I thought could be perceived as controversial. I am merely asking for you to take responsibility for replacing any trees that are dead as a result of what your workers did. If the trees recover, there are no consequences. If we decide to move forward purchasing the house and the trees don't recover, I am hoping you would take responsibility for your actions so we aren't stuck with a liability that exists as a result what you did. Obviously, I can't force you to sign it, but to me, it seems like the right thing to do.

Matt

On Thu, Apr 9, 2015 at 10:47 AM, Nigel Hook <nigel@dataskill.com> wrote:

Hi Matt,

We are super busy right now, but I want to get back to you because of your timeline.

We've loved living here for 17 years and you are considering buying and we welcome you.

Bottom line is we don't wish to start off a neighbor relationship litigiously. Friday night at our house you and I polished off a six pack while our wives enjoyed wine - now that's how I like our neighborhood to be. We've shared our general concerns, and our intentions is all we can offer.

Del Mar has codes and ordinances with decades of precedence to take care of such. I don't wish to reinvent wheels or feather the nest of lawyers, especially with prospective buyers. If you become owners we'd welcome getting together again.

Cheers,
Nigel

On Apr 8, 2015, at 3:13 PM, Matt Ziskin <ziskin@alum.mit.edu> wrote:

Nigel,
Thank you for your email. I just left you a voicemail. I understand it might be tough to get everyone together, but if you and I could meet to review the agreement, I think that would be helpful.

When I talked with a few people regarding the agreement, the advice I received was to have something written up by someone more knowledgeable than myself to ensure there were no unintended consequences of the agreement. The attached agreement is intended to be something that protects both our interests with regard to the trees and their ongoing maintenance. As I mentioned above, I think it would be helpful to walk through it together.

Please give me a call at 408-607-9620 when you have an opportunity.

Best regards,
Matt

On Wed, Apr 8, 2015 at 11:50 AM, Nigel Hook <nigel@dataskill.com> wrote:

Hi Matt,

Timing is quite tough now. We've just launched our five day countdown to the first test session, we've got crew flying in from UK today through Tuesday, Janet is up in LA everyday now so to get together again in person for us all will be hard. Like I said on Friday if you could just send me a soft copy of your draft Agreement I can have our attorney review.

Cheers.

Nigel

On Apr 7, 2015, at 8:58 PM, Matt Ziskin <ziskin@alum.mit.edu> wrote:

Nigel and Janet,

Are you available to meet at some point tomorrow? I'm available anytime after 1pm. I'd like to review the agreement and talk about some of our updates. I think it would be helpful to meet in person so we can discuss any questions you might have.

Thanks,  
Matt

On Mon, Apr 6, 2015 at 2:00 PM, Matt Ziskin <ziskin@alum.mit.edu> wrote:

Janet,

Thank you for sending these pictures over. We have asked the seller for a few additional days to get this resolved and we now have until Wednesday to lift contingencies. Based on some suggestions we received, we are making a few adjustments to clarify and simplify the statement we brought over on Friday. I will send over the revised soft copy once we have it put together.

Thanks,  
Matt

On Sun, Apr 5, 2015 at 4:45 PM, Janet Wilson <Janet@silverhook.com> wrote:

Hi Chelsea, Hi Matt,

It was nice having you over on Friday evening.

Attached are some pics showing our view. After our discussion on Friday, it seemed your plans for a 2nd story would be right over the current garage's footprint and since that is agreeable to us, we won't need to draw lines on pictures.

Nigel is waiting on the soft copy. Were you planning to send it soon?

Janet

<Property Agt Ziskin Hook Del Mar Trees.DOC>





Janet Wilson &lt;racewater@gmail.com&gt;

---

## 8th Street Neighbors - Welcome to the Neighborhood

---

Janet Wilson <Janet@silverhook.com>  
To: Matt Ziskin <mattziskin@gmail.com>  
Cc: Chelsea Bullen <chelseabullen@gmail.com>, Nigel Hook <nigel@dataskill.com>

Sat, May 23, 2015 at 1:14 PM

Matt,

We have assured you several times that we are more than willing to sort out this situation. Nigel wrote:

"If the trees subsequently don't provide adequate privacy for Matt and Chelsea's master bedroom Nigel and Janet offer to plant on their side some mutually acceptable bushes or whatever to provide lateral fill in for that privacy."

Our intention is still to protect your privacy and retain our view.

We did not ignore your attempts at a resolution. It was after many email exchanges and various meetings, that you presented a multi-page lawyers contract which required "witnesses", which would be "recorded", and which contained this clause: "binding upon Buyers and Owners and their respective successors and assigns and shall run with the land." Nigel emailed you the next day saying:

"Del Mar has codes and ordinances with decades of precedence to take care of such. I don't wish to reinvent wheels or feather the nest of lawyers, especially with prospective buyers."

Four days later you replied with a "simplified" agreement, but it still included "mediation" and "attorney fees".

The facts are:

- For the last 10 years or so, Nigel had an agreement with Jane Martin regarding our view and her trees and bushes.
- It was with Jane's permission, that these trees were topped many times in the last 10 years.
- Since last fall, Nigel had been trying to schedule Danny, (the person who normally would trim the trees), but Danny was unresponsive.
- Therefore, in an effort to get the job done, we asked our gardener to top the trees.
- The result was sub par and unintentional.

All of this occurred *prior* to you owning the house.

Now that you do own it, we can just follow Del Mar Ordinances 747 and 780 to the letter. [Chapter 23.51 Trees, Scenic Views and Sunlight](#).

Janet

On Sat, May 23, 2015 at 10:19 AM, Matt Ziskin <mattziskin@gmail.com> wrote:

Janet,

Thank you for your email. In the excitement of your race, you may have forgotten that you and Nigel already welcomed us to the neighborhood when you: massacred the 40+ year old trees on our property, met with us twice to assure us it was unintentional and you were going to make it right, and then ultimately ignored our attempts at a resolution. Every day we look at our new house and beautiful yard and then when we glance east it is a reminder of the one dark cloud over an otherwise very exciting time for our family. Forgive our lack of enthusiasm for your invitation, but we are looking for you take some real measures to make this situation right before we can have the type of courteous, respectful relationship we would hope to have with our neighbors.

Chelsea and Matt

On May 20, 2015, at 10:07 AM, Janet Wilson <[Janet@silverhook.com](mailto:Janet@silverhook.com)> wrote:

Hi Matt, Hi Chelsea,

Welcome to the neighborhood!

We would like to have you over for a BBQ. How does Sunday look for you guys?

Janet

PS And please accept apologies for this late welcome as we have been totally consumed preparing for the first race. That event is now behind us, so we have a little more breathing room in our schedules.



Janet Wilson &lt;racewater@gmail.com&gt;

---

**Re: 624 8th Street Trees as of October 2, 2015**

---

**Janet Wilson** <Janet@silverhook.com>

Fri, Oct 2, 2015 at 10:48 AM

To: Nigel Hook &lt;nigel@dataskill.com&gt;

Cc: Matt Ziskin &lt;mattziskin@gmail.com&gt;, "ziskin@alum.mit.edu" &lt;ziskin@alum.mit.edu&gt;, Chelsea Bullen &lt;chelseabullen@gmail.com&gt;, Julia Maxwell &lt;jmaxwell@prusd.com&gt;, "chiquitaabbott@roadrunner.com" &lt;chiquitaabbott@roadrunner.com&gt;

Hello Matt & Chelsea,

We are at the 6 month mark and, as we promised, time to review tree regrowth regarding your privacy and our views.

Attached are current views from our home and yard taken from [about] the same angle as the photos from April 5, 2015 (which are also re-attached).

Nigel and I are pleased with the regrowth and hope you are comfortable now too.

Please let me know if you would like to discuss further.

Janet

On Fri, Apr 3, 2015 at 3:41 PM, Nigel Hook <nigel@dataskill.com> wrote:

Hi Matt,

We look good for 6:30pm (Janet is up in LA today so we hope traffic is not too bad).

I was just rereading below and wanted to suggest this addition to the section (below) - "or with a solution as outlined in following sentence."

By linking the two I believe it achieves the ultimate goal of having the privacy and better than having the original saplings.

Cheers, Nigel

1. and replace them to restore what was planted there originally .... or with a solution as outlined in following sentence. We could set a time period of 3 to 6 months to determine whether new growth is appearing and maybe have an arborist provide an opinion if there are concerns. If the trees subsequently don't provide adequate privacy for Matt and Chelsea's master bedroom Nigel and Janet offer to plant on their side some mutually acceptable bushes or whatever to provide lateral fill in for that privacy.

On Apr 1, 2015, at 10:03 AM, Matt Ziskin <mattziskin@gmail.com<mailto:mattziskin@gmail.com>> wrote:

Nigel,

Thank you for your quick response. 6:30pm this Friday will work well. We have scheduled a babysitter and will plan to meet you at your house.

If there is any work that can be done beforehand (for example, taking a picture of your view), that would be helpful.

Thank you,  
Matt

On Apr 1, 2015, at 8:29 AM, Nigel Hook <nigel@dataskill.com<mailto:nigel@dataskill.com>> wrote:

Would 6:30pm Friday work?  
I'm in Hong Kong now not sure what Janet's schedule is

On Apr 1, 2015, at 11:24 PM, Matt Ziskin <[ziskin@alum.mit.edu](mailto:ziskin@alum.mit.edu)<mailto:[ziskin@alum.mit.edu](mailto:ziskin@alum.mit.edu)>> wrote:

Nigel and Janet,  
I haven't heard back yet and wanted to see if we could schedule a time to meet on Friday when Nigel is back in town. We will need to make a decision whether we will move forward with the purchase or not this weekend as that is when we need to remove the contingencies. Please let us know a time that works for you on Friday.

Thank you,  
Matt

On Mon, Mar 30, 2015 at 6:38 PM, Matt Ziskin <[ziskin@alum.mit.edu](mailto:ziskin@alum.mit.edu)<mailto:[ziskin@alum.mit.edu](mailto:ziskin@alum.mit.edu)>> wrote:  
Thanks Nigel.

Janet,  
Our goal is to have something we can all agree on and sign this week since we will need to remove contingencies by the end of the week. Ideally we could work with you this week to get the language of the statement finalized and maybe we could meet to settle on the minimum and maximum heights. Then once Nigel is back, we would just need to get the statement signed and notarized.

For creating the wording of the statement, would you like to do write it up or do you want us to draft it?

I included a recap of the items we would like to include in the statement including the comments you and Nigel offered.

1. An agreement to the minimum height and the maximum height of your view corridor for the growth of the existing trees and future trees/bushes/walls/structures that would affect your view. An understanding that any future significant tree trimming be conducted with a mutual agreement of the work to be completed prior to work commencing or in accordance with to Del Mar City Codes. See <http://www.delmar.ca.us/DocumentCenter/Home/View/433>.
2. A statement accepting financial responsibility for any irreparable damage from the trees and plants dying as a result of the work completed last weekend. Essentially, if any of the trees that were cut have been damaged to the point that they die, you will incur the costs to remove the dead plants and dead trees and replace them to restore what was planted there originally. We could set a time period of 3 to 6 months to determine whether new growth is appearing and maybe have an arborist provide an opinion if there are concerns. If the trees subsequently don't provide adequate privacy for Matt and Chelsea's master bedroom Nigel and Janet offer to plant on their side some mutually acceptable bushes or whatever to provide lateral fill in for that privacy.
3. Photographs from inside your house with lines drawn to indicate where the scenic view is and a statement referencing the photographs to enable us to get on the same page with regard to any future improvements we may consider.

Feel free to give me or Chelsea a call at anytime to discuss this or set up a time to meet. My cell number is [408-607-9620](tel:408-607-9620)<tel:[408-607-9620](tel:408-607-9620)> and Chelsea's is [415-866-8919](tel:415-866-8919)<tel:[415-866-8919](tel:415-866-8919)>.

Thanks,  
Matt

On Fri, Mar 27, 2015 at 12:01 AM, Nigel Hook <[nigel@dataskill.com](mailto:nigel@dataskill.com)<mailto:[nigel@dataskill.com](mailto:nigel@dataskill.com)>> wrote:  
I'm back Thursday

On Mar 26, 2015, at 5:13 PM, Matt Ziskin <[ziskin@alum.mit.edu](mailto:ziskin@alum.mit.edu)<mailto:[ziskin@alum.mit.edu](mailto:ziskin@alum.mit.edu)>> wrote:

Janet,  
Thank you for your quick response. Taking photographs from your house and drawing lines showing the view would be perfect to address item number 3.

I agree completely with your suggestion to agree to a minimum and maximum height for the trees/shrubs in question. The "mutual agreement" suggestion was intended for major work. We don't want this to be something that's a hassle for either of us, but we do want to prevent a significant change from occurring without input from both sides - particularly when we are discussing work being conducted by one neighbor on the other neighbor's property.

I think it would be worthwhile to meet to iron out any details (like the min/max heights). Are you be available to meet on

Monday or Tuesday of next week? We very much appreciate your help with this.

To help plan for getting the signatures we need on the document we are creating, what date will Nigel be back in the U.S.?

Best regards,  
Matt

On Thu, Mar 26, 2015 at 7:04 AM, Janet Wilson <[Janet@silverhook.com](mailto:Janet@silverhook.com)<mailto:Janet@silverhook.com>> wrote:  
Good morning,

Nigel has left for his trip, but he has tried to keep me updated, although we have been like ships passing in the dark this past week, so I may not have a complete understanding. But I would like to welcome you to the neighborhood and I am sure we can quickly resolve this situation to everyone's satisfaction.

Suggestions

#1 below

Would it be a good idea for us to agree to the minimum height and the maximum height of our view corridor for [future] trees/bushes/walls/structures that would affect our view? The minimum height would protect your privacy and the maximum height would protect our view. Section 23.51.00 is fourteen pages because Trees, Scenic Views and Sunlight are important to everyone living in Del Mar.

Nigel and I agree that we should be more diligent about keeping the plants in that view corridor maintained (pruned and trimmed) to prevent the "jungle affect" (which should minimize the shock we all just experienced).

Would us agreeing to "any future tree trimming be conducted with mutual agreement to the work to be completed prior to work commencing" prevent the normal pruning and trimming in that area? Tree trimming done correctly and in a timely manner is normal gardening. I really don't want to have to ask for permission every time our gardeners need to do normal maintenance (assuming that normal maintenance would be within our [proposed] minimum/maximum height agreement). I agree to that statement for major work, but perhaps we should have a clear definition of what major work is.

#3 below

We can shoot photographs from inside our house and draw lines of where the scenic view is?

I look forward to meeting everyone.

Thanks, Janet

On Wed, Mar 25, 2015 at 9:57 PM, Matt Ziskin <[ziskin@alum.mit.edu](mailto:ziskin@alum.mit.edu)<mailto:ziskin@alum.mit.edu>> wrote:  
Nigel,

Thank you for your response. The changes you proposed are acceptable to us. During our conversation today, you suggested Janet might be able to put something together regarding the view.

Janet,

We look forward to meeting you. Hopefully Nigel has been able to fill you in on our conversation earlier today.

Please let us know if you need any assistance putting together a statement highlighting the items mentioned below and the rough timing on when you might be able to provide something to us. Unfortunately, we are under a tight timeline to move everything along according to the escrow schedule. We would be happy to meet in person if that would be helpful.

I have cc'd our real estate agent and the seller's agent as they may have some insight into the language that would be most appropriate for the statement.

Best regards,  
Matt

On Wed, Mar 25, 2015 at 7:02 PM, Nigel Hook <[nigel@dataskill.com](mailto:nigel@dataskill.com)<mailto:nigel@dataskill.com>> wrote:  
Matt and Chelsea,

It was certainly my pleasure to meet you both (and Duke!) and I look forward to getting together with Janet too.

I think we have the makings of a plan and I've quickly added my input below for you to consider.... as Janet is still out and I leave the house tomorrow at 4:30am for LAX - Hong Kong - Kuala Lumpur. I will be available as I can by email and will do my very best to responsive while out of country as I understand your timeline.

Cheers,  
Nigel (619) 977-3000 mobile

From: [mattziskin@gmail.com](mailto:mattziskin@gmail.com)<mailto:mattziskin@gmail.com> [mailto:mattziskin@gmail.com<mailto:mattziskin@gmail.com>] On Behalf Of Matt Ziskin  
Sent: Wednesday, March 25, 2015 5:53 PM  
To: [nigel@silverhook.com](mailto:nigel@silverhook.com)<mailto:nigel@silverhook.com>  
Cc: Julia Maxwell; [chiquitaabbott@roadrunner.com](mailto:chiquitaabbott@roadrunner.com)<mailto:chiquitaabbott@roadrunner.com>; Chelsea Bullen  
Subject: 624 8th Street Trees

Nigel,  
Thank you for your time this afternoon. Chelsea and I enjoyed meeting you. We would like to move forward with our escrow to purchase 624 8th Street pending a level of comfort on some of the items we discussed today. We understand the timing is a challenge as you are leaving tomorrow for three weeks and we need to remove contingencies by April 3rd to move forward with the purchase.

We had discussed a written statement by you and your wife addressing the major items of concern raised by the recent tree work. Those items are:  
Those items are:

1. An understanding that any future tree trimming be conducted with a mutual agreement to the work to be completed prior to work commencing or in accordance with to Del Mar City Codes. See <http://www.delmar.ca.us/DocumentCenter/Home/View/433>

Chapter 23.51, TREES, SCENIC VIEWS AND SUNLIGHT, 23.51.010 Purpose.[Ord. 747, 780]


2. A statement accepting financial responsibility for any irreparable damage from the trees and plants dying as a result of the work completed last weekend. Essentially, if any of the trees that were cut have been damaged to the point that they die do not grow back, you will incur the costs to remove the dead plants and dead trees and replace them to restore what was planted there originally before. We could set a time period of 3 to 6 months to determine whether new growth is appearing and maybe have an arborist provide an opinion if there are concerns. If the trees subsequently don't provide adequate privacy for Matt and Chelsea's master bedroom Nigel and Janet offer to plant on their side some mutually acceptable bushes or whatever to provide lateral fill in for that privacy.

1. A statement indicating the area above our roofline that falls within the ocean view from your house. This will enable us to get on the same page with regard to any future improvements we may consider.  
I don't think either of us are interested in having something drafted by attorneys, but in talking with Chiquita and Julia, we would want to have this statement notarized as it will need to be included in our escrow documents.

How can we work with you to get this statement prior to you leaving so we are able to meet our deadlines and close escrow on time? Please give me a call if you have any questions. My cell number is [408-607-9620](tel:408-607-9620)<tel:408-607-9620>

Thank you for your help,  
Matt

2 attachments

 **20150405\_Hook\_View.pdf**  
729K

 **20151002\_Hook\_Wilson\_View.pdf**  
578K



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## Follow-Up to Conversation on Friday

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**Nigel Hook** <Nigel@tradesun.com>  
To: Janet Wilson <janet@silverhook.com>

Sat, Nov 28, 2020 at 9:21 AM

Hi Chelsea and Matt,

I was hoping for a reasonable outcome from the meeting. While we understand you want to hold leverage over us to not oppose your two story dream house, i wish you could understand that over the last few years we have steadily lost our ocean view.

Everyday it is a shame that we cannot enjoy the ocean view that we had enjoyed for the first two decades in our house. The last couple of years have seen rampant growth of the hedge with all the rain and the compromised view is very unreasonable, especially as we have even offered to pay for the trimming.

I'm quite surprised what you wrote in your last sentence as your family members often climb over the hedge into our property to collect balls and such creating a liability for us. When the major limb from your unkempt tree crashed into our yard braking the fence we were very accommodating to let you onto our property to cut it up into logs so you could reclaim it. Bye the way our fence is still not fixed.

As we had asked on many occasions for you to be reasonable in supporting us having our ocean view back whilst still providing your privacy we will have to seek help from the City.

I wish we could have a better relationship to respect each other's position.

Best regards,  
Nigel

Begin forwarded message:

**From:** Matt Ziskin <ziskin@alum.mit.edu>  
**Date:** November 16, 2020 at 4:23:17 PM PST  
**To:** Nigel Hook <Nigel@tradesun.com>, Janet Wilson <Janet@silverhook.com>  
**Cc:** Matt And Chelsea Ziskin <chelseaziskin@gmail.com>  
**Subject:** Follow-Up to Conversation on Friday  
**Reply-To:** ziskin@alum.mit.edu

[Quoted text hidden]

[\*\*\*\*\* EXTERNAL EMAIL MESSAGE \*\*\*\*\*]



Janet Wilson <racewater@gmail.com>

**RE: Follow-Up to Conversation on Friday re: Ocean View compromised by unfettered hedge growth**

Matt Ziskin <ziskin@alum.mit.edu>

Mon, Dec 7, 2020 at 8:35 PM

Reply-To: ziskin@alum.mit.edu

To: Nigel Hook <Nigel@tradesun.com>

Cc: Matt And Chelsea Ziskin <chelseaziskin@gmail.com>, Janet Wilson <janet@silverhook.com>

Nigel,

Thank you for your email. I would like to address your points one by one.

- Accessing Your Property: Our comment about trespassing/vandalism was related to someone damaging our property. Our children retrieving their balls on your property does not seem to be comparable, but nevertheless, we have instructed our children not to go on your property going forward.
- Damage to the Fence: Once we became aware of the tree limb that fell into your yard, we promptly removed it and cleaned the mess that it made. The bend visible in the fence was not caused by that branch falling. The fence has been like that since we moved in. I had always been curious why the fence was like that. I attached a photo from when we bought the house in 2015 that shows the fence with that bend visible.
- The Hedge: The hedge and the plans for the new house are two separate issues. The hedge provides privacy and was one of the aspects of the home that contributed to our decision to purchase the house. Janet was the first one to link the hedge and the new house with her statement, "I don't know how we are going to be able to agree to a two-story house if we can't come to an agreement on trimming the hedge." Our position is that we would like the hedge to be restored to the height it was before your gardener trespassed on the property and cut the hedge down to stumps.

We will be designing our new house with input from the neighborhood and hope to accommodate a view from your property while maintaining privacy for our own house and yard.

Chelsea and Matt



On Sat, Nov 28, 2020 at 10:17 AM Nigel Hook <[Nigel@tradesun.com](mailto:Nigel@tradesun.com)> wrote:

Hi Chelsea and Matt,

I was hoping for a different outcome from the meeting.

The last couple of years have seen rampant growth of the hedge and we have offered to pay for the trimming.

Every day it is a shame that we cannot enjoy our ocean view.

I'm quite surprised that you wrote "*Any trimming or modification of these trees without our consent will be treated as trespassing and vandalism.*" as your family members often climb over the fence into our property to collect balls and such, creating a liability for us. Another liability is your unkempt tree next to our property. A huge limb crashed into our yard for no apparent reason damaging our fence which is still not fixed.

During the last meeting, your reluctance to maintain the hedge was centered around

- a) related to how you first saw the property and
- b) leverage to our agreeing to a 2-story house.

As Janet explained, we can't possibly agree to something which we haven't seen. It hasn't been story-poled, and quite frankly, a new construction project may be years away from completion.

Holding our ocean view hostage unless we agree to a 2-story house is an unreasonable position.

We are submitting the complaint to the City of Del Mar on Monday.

Nigel and Janet

---

**From:** Matt Ziskin <[ziskin@alum.mit.edu](mailto:ziskin@alum.mit.edu)>  
**Sent:** Monday, November 16, 2020 4:23 PM  
**To:** Nigel Hook <[Nigel@tradesun.com](mailto:Nigel@tradesun.com)>; Janet Wilson <[janet@silverhook.com](mailto:janet@silverhook.com)>  
**Cc:** Matt And Chelsea Ziskin <[chelseaziskin@gmail.com](mailto:chelseaziskin@gmail.com)>  
**Subject:** Follow-Up to Conversation on Friday

Hi Janet and Nigel,

Thank you for meeting with us on Friday to discuss the trees on the east side of our property. We do not want them to be trimmed at this time. Once we have approved plans for our new house, we are willing to work with you on trimming the trees. As we discussed on Friday, we intend to be fair and reasonable and take your interests into consideration while designing our new house.

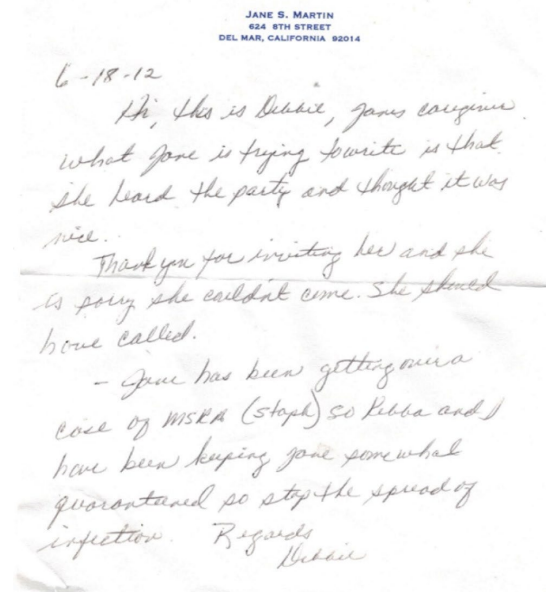
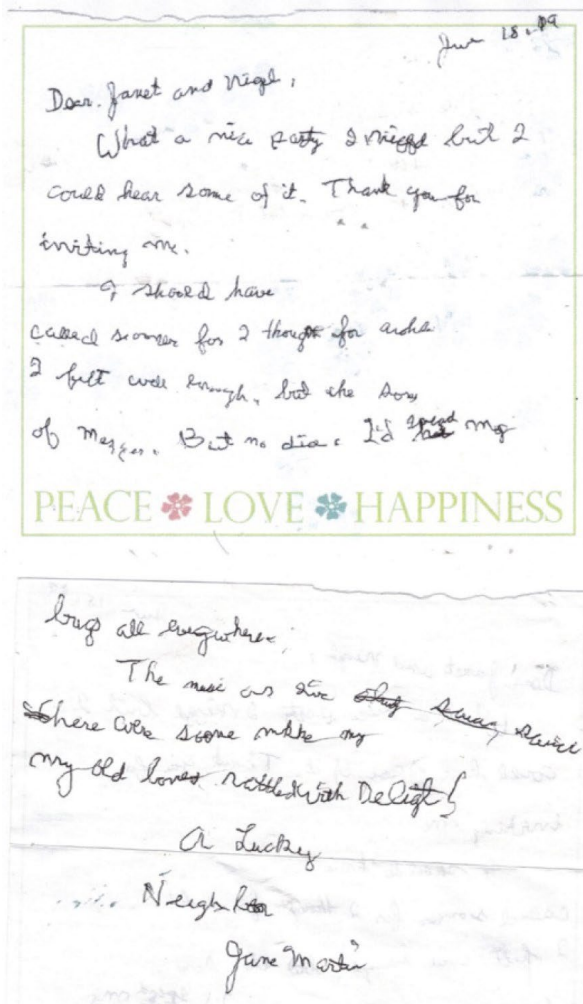
Our understanding is the trees can be at the height they were before you had them trimmed in the spring of 2015. Any trimming or modification of these trees without our consent will be treated as trespassing and vandalism.

Best regards,  
Chelsea and Matt

[\*\*\*\*\* EXTERNAL EMAIL MESSAGE \*\*\*\*\*]

TSVS21-001

Exhibit N – Letter from Jane Martin and her caregiver Debbie – 6/18/2012



From Jane Martin:

Dear Janet and Nigel,

What a nice party I missed but I could hear some of it. Thank you for inviting me.

I should have called sooner for I thought for a while I felt well enough, but the ??? of ???. But no ??? I'd spread my bugs all everywhere.

The music as I've ??? here were ? make my old bones rattle with Delight!

A lucky neighbor Jane Martin

Clarification from Debbie (Jane's Caregiver):

6-18-12

Hi, this is Debbie, Jane's caregiver. What Jane is trying to write is that she heard the party and thought it was nice.

Thank you for inviting her and she is sorry she couldn't come. She should have called.

Jane has been getting over a case of MSRA (staph) so Rebbi and I have been keeping Jane somewhat quarantined to stop the spread of infection.

Regards, Debbie



---

**Re: 624 8th Street Trees as of October 2, 2015**

2 messages

---

**Janet Wilson** <Janet@silverhook.com>

Fri, Oct 2, 2015 at 10:48 AM

To: Nigel Hook &lt;nigel@dataskill.com&gt;

Cc: Matt Ziskin &lt;mattziskin@gmail.com&gt;, "ziskin@alum.mit.edu" &lt;ziskin@alum.mit.edu&gt;, Chelsea Bullen &lt;chelseabullen@gmail.com&gt;, Julia Maxwell &lt;jmaxwell@prusd.com&gt;, "chiquitaabbott@roadrunner.com" &lt;chiquitaabbott@roadrunner.com&gt;

Hello Matt & Chelsea,

We are at the 6 month mark and, as we promised, time to review tree regrowth regarding your privacy and our views.

Attached are current views from our home and yard taken from [about] the same angle as the photos from April 5, 2015 (which are also re-attached).

Nigel and I are pleased with the regrowth and hope you are comfortable now too.

Please let me know if you would like to discuss further.

Janet

On Fri, Apr 3, 2015 at 3:41 PM, Nigel Hook <nigel@dataskill.com> wrote:

Hi Matt,

We look good for 6:30pm (Janet is up in LA today so we hope traffic is not too bad).

I was just rereading below and wanted to suggest this addition to the section (below) - "or with a solution as outlined in following sentence."

By linking the two I believe it achieves the ultimate goal of having the privacy and better than having the original saplings.

Cheers, Nigel

1. and replace them to restore what was planted there originally .... or with a solution as outlined in following sentence. We could set a time period of 3 to 6 months to determine whether new growth is appearing and maybe have an arborist provide an opinion if there are concerns. If the trees subsequently don't provide adequate privacy for Matt and Chelsea's master bedroom Nigel and Janet offer to plant on their side some mutually acceptable bushes or whatever to provide lateral fill in for that privacy.

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If there is any work that can be done beforehand (for example, taking a picture of your view), that would be helpful.

Thank you,  
Matt

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Would 6:30pm Friday work?

I'm in Hong Kong now not sure what Janet's schedule is

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Thank you,  
Matt

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Thanks Nigel.

Janet,

Our goal is to have something we can all agree on and sign this week since we will need to remove contingencies by the end of the week. Ideally we could work with you this week to get the language of the statement finalized and maybe we could meet to settle on the minimum and maximum heights. Then once Nigel is back, we would just need to get the statement signed and notarized.

For creating the wording of the statement, would you like to do write it up or do you want us to draft it?

I included a recap of the items we would like to include in the statement including the comments you and Nigel offered.

1. An agreement to the minimum height and the maximum height of your view corridor for the growth of the existing trees and future trees/bushes/walls/structures that would affect your view. An understanding that any future significant tree trimming be conducted with a mutual agreement of the work to be completed prior to work commencing or in accordance with to Del Mar City Codes. See <http://www.delmar.ca.us/DocumentCenter/Home/View/433>.
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3. Photographs from inside your house with lines drawn to indicate where the scenic view is and a statement referencing the photographs to enable us to get on the same page with regard to any future improvements we may consider.

Feel free to give me or Chelsea a call at anytime to discuss this or set up a time to meet. My cell number is [408-607-9620](tel:408-607-9620)<tel:408-607-9620> and Chelsea's is [415-866-8919](tel:415-866-8919)<tel:415-866-8919>.

Thanks,  
Matt

On Fri, Mar 27, 2015 at 12:01 AM, Nigel Hook <[nigel@dataskill.com](mailto:nigel@dataskill.com)<mailto:nigel@dataskill.com>> wrote:  
I'm back Thursday

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Janet,

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I agree completely with your suggestion to agree to a minimum and maximum height for the trees/shrubs in question. The "mutual agreement" suggestion was intended for major work. We don't want this to be something that's a hassle for either of us, but we do want to prevent a significant change from occurring without input from both sides - particularly when we are discussing work being conducted by one neighbor on the other neighbor's property.

I think it would be worthwhile to meet to iron out any details (like the min/max heights). Are you be available to meet on Monday or Tuesday of next week? We very much appreciate your help with this.

To help plan for getting the signatures we need on the document we are creating, what date will Nigel be back in the U.S.?

Best regards,  
Matt

On Thu, Mar 26, 2015 at 7:04 AM, Janet Wilson <[Janet@silverhook.com](mailto:Janet@silverhook.com)<mailto:Janet@silverhook.com>> wrote:  
Good morning,

Nigel has left for his trip, but he has tried to keep me updated, although we have been like ships passing in the dark this past week, so I may not have a complete understanding. But I would like to welcome you to the neighborhood and I am sure we can quickly resolve this situation to everyone's satisfaction.

Suggestions

#1 below

Would it be a good idea for us to agree to the minimum height and the maximum height of our view corridor for [future] trees/bushes/walls/structures that would affect our view? The minimum height would protect your privacy and the maximum height would protect our view. Section 23.51.00 is fourteen pages because Trees, Scenic Views and Sunlight are important to everyone living in Del Mar.

Nigel and I agree that we should be more diligent about keeping the plants in that view corridor maintained (pruned and trimmed) to prevent the "jungle affect" (which should minimize the shock we all just experienced).

Would us agreeing to "any future tree trimming be conducted with mutual agreement to the work to be completed prior to work commencing" prevent the normal pruning and trimming in that area? Tree trimming done correctly and in a timely manner is normal gardening. I really don't want to have to ask for permission every time our gardeners need to do normal maintenance (assuming that normal maintenance would be within our [proposed] minimum/maximum height agreement). I agree to that statement for major work, but perhaps we should have a clear definition of what major work is.

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We can shoot photographs from inside our house and draw lines of where the scenic view is?

I look forward to meeting everyone.

Thanks, Janet

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Nigel,

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Janet,

We look forward to meeting you. Hopefully Nigel has been able to fill you in on our conversation earlier today.

Please let us know if you need any assistance putting together a statement highlighting the items mentioned below and the rough timing on when you might be able to provide something to us. Unfortunately, we are under a tight timeline to move everything along according to the escrow schedule. We would be happy to meet in person if that would be helpful.

I have cc'd our real estate agent and the seller's agent as they may have some insight into the language that would be most appropriate for the statement.

Best regards,  
Matt

On Wed, Mar 25, 2015 at 7:02 PM, Nigel Hook <nigel@dataskill.com<mailto:nigel@dataskill.com>> wrote:  
Matt and Chelsea,

It was certainly my pleasure to meet you both (and Duke!) and I look forward to getting together with Janet too.

I think we have the makings of a plan and I've quickly added my input below for you to consider... as Janet is still out and I leave the house tomorrow at 4:30am for LAX - Hong Kong - Kuala Lumpur. I will be available as I can by email and will do my very best to responsive while out of country as I understand your timeline.

Cheers,  
Nigel (619) 977-3000 mobile

From: mattziskin@gmail.com<mailto:mattziskin@gmail.com> [mailto:mattziskin@gmail.com<mailto:mattziskin@gmail.com>] On Behalf Of Matt Ziskin  
Sent: Wednesday, March 25, 2015 5:53 PM  
To: nigel@silverhook.com<mailto:nigel@silverhook.com>  
Cc: Julia Maxwell; chiquitaabbott@roadrunner.com<mailto:chiquitaabbott@roadrunner.com>; Chelsea Bullen  
Subject: 624 8th Street Trees

Nigel,  
Thank you for your time this afternoon. Chelsea and I enjoyed meeting you. We would like to move forward with our escrow to purchase 624 8th Street pending a level of comfort on some of the items we discussed today. We understand the timing is a challenge as you are leaving tomorrow for three weeks and we need to remove contingencies by April 3rd to move forward with the purchase.

We had discussed a written statement by you and your wife addressing the major items of concern raised by the recent tree work. Those items are:  
Those items are:

1. An understanding that any future tree trimming be conducted with a mutual agreement to the work to be completed prior to work commencing or in accordance with to Del Mar City Codes. See <http://www.delmar.ca.us/DocumentCenter/Home/View/433>

Chapter 23.51, TREES, SCENIC VIEWS AND SUNLIGHT, 23.51.010 Purpose.[Ord. 747, 780]

2. A statement accepting financial responsibility for any irreparable damage from the trees and plants dying as a result of the work completed last weekend. Essentially, if any of the trees that were cut have been damaged to the point that they die do not grow back, you will incur the costs to remove the dead plants and dead trees and replace them to restore what was planted there originally before. We could set a time period of 3 to 6 months to determine whether new growth is appearing and maybe have an arborist provide an opinion if there are concerns. If the trees subsequently don't provide adequate privacy for Matt and Chelsea's master bedroom Nigel and Janet offer to plant on their side some mutually acceptable bushes or whatever to provide lateral fill in for that privacy.


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I don't think either of us are interested in having something drafted by attorneys, but in talking with Chiquita and Julia, we would want to have this statement notarized as it will need to be included in our escrow documents.

How can we work with you to get this statement prior to you leaving so we are able to meet our deadlines and close escrow on time? Please give me a call if you have any questions. My cell number is [408-607-9620](tel:408-607-9620)<tel:408-607-9620>

Thank you for your help,  
Matt

---

**2 attachments**

 **20150405\_Hook\_View.pdf**  
729K

 **20151002\_Hook\_Wilson\_View.pdf**  
578K

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**Janet Wilson** <Janet@silverhook.com>


Wed, Oct 7, 2020 at 6:22 PM

To: Chelsea Bullen <chelseabullen@gmail.com>, Matt Ziskin <mattziskin@gmail.com>, "brian@brianchurcharchitecture.com" <brian@brianchurcharchitecture.com>

[Quoted text hidden]

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**2 attachments**

 **20150405\_Hook\_View.pdf**  
729K

 **20151002\_Hook\_Wilson\_View.pdf**  
578K

**April 5, 2015**

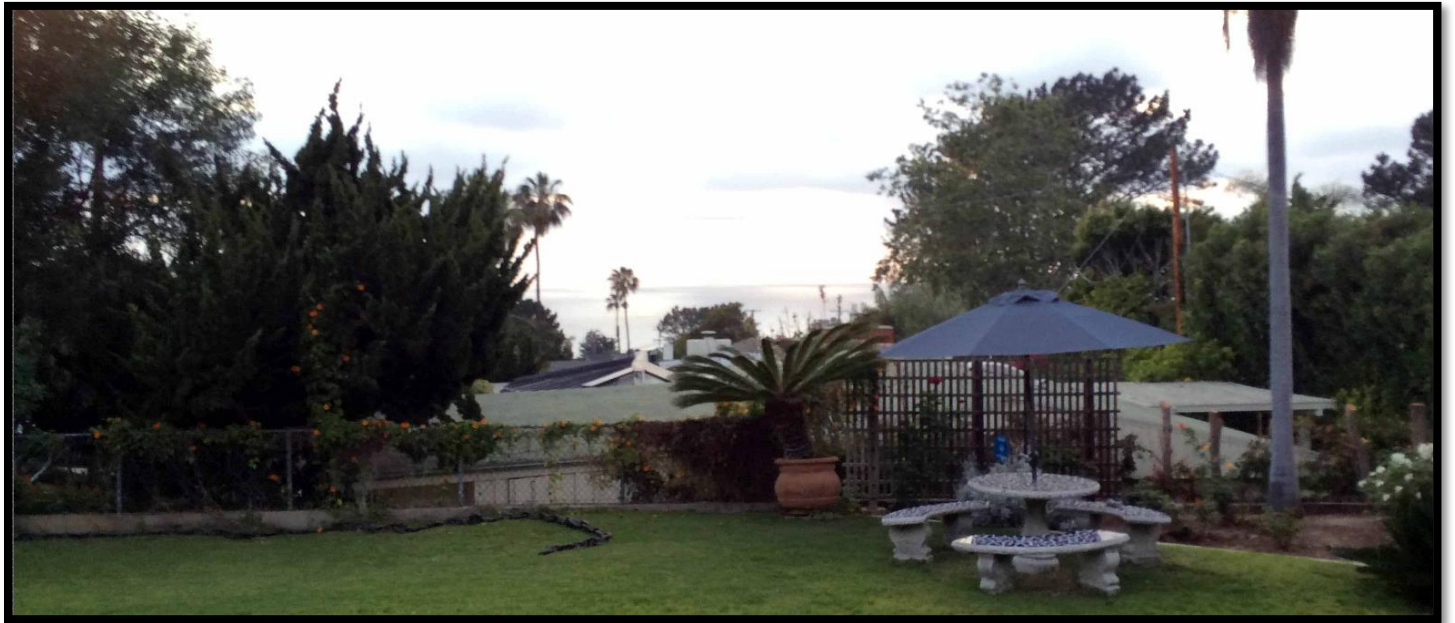
Exhibit P - 20150405\_Hook\_View.pdf documenting the 2015 topping



April 5, 2015



April 5, 2015



**October 2, 2015**

**View from 635 Hoska**



October 2, 2015  
View from 635 Hoska





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**Updated Re: 624 8th Street Trees as of October 2, 2015**

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Janet Wilson &lt;Janet@silverhook.com&gt;

Mon, Oct 12, 2020 at 3:33 PM

To: Chelsea Bullen &lt;chelseabullen@gmail.com&gt;, Matt Ziskin &lt;mattziskin@gmail.com&gt;, "brian@brianchurcharchitecture.com" &lt;brian@brianchurcharchitecture.com&gt;

Cc: Nigel Hook &lt;Nigel@tradesun.com&gt;

Hi Brian, Matt & Chelsea,  
Attached are pictures taken today alongside photos from 10/02/2015.  
Janet  
619.733.1428

On Wed, Oct 7, 2020 at 6:22 PM Janet Wilson <Janet@silverhook.com> wrote:

----- Forwarded message -----

From: Janet Wilson <Janet@silverhook.com>

Date: Fri, Oct 2, 2015 at 10:48 AM

Subject: Re: 624 8th Street Trees as of October 2, 2015

To: Nigel Hook <nigel@dataskill.com>

CC: Matt Ziskin <mattziskin@gmail.com>, ziskin@alum.mit.edu <ziskin@alum.mit.edu>, Chelsea Bullen <chelseabullen@gmail.com>, Julia Maxwell <jmaxwell@prusd.com>, chiquitaabbott@roadrunner.com <chiquitaabbott@roadrunner.com>

Hello Matt & Chelsea,

We are at the 6 month mark and, as we promised, time to review tree regrowth regarding your privacy and our views.

Attached are current views from our home and yard taken from [about] the same angle as the photos from April 5, 2015 (which are also re-attached).

Nigel and I are pleased with the regrowth and hope you are comfortable now too.

Please let me know if you would like to discuss further.

Janet

On Fri, Apr 3, 2015 at 3:41 PM, Nigel Hook <nigel@dataskill.com> wrote:

Hi Matt,

We look good for 6:30pm (Janet is up in LA today so we hope traffic is not too bad).

I was just rereading below and wanted to suggest this addition to the section (below) - "or with a solution as outlined in following sentence."

By linking the two I believe it achieves the ultimate goal of having the privacy and better than having the original saplings.

Cheers, Nigel

1. and replace them to restore what was planted there originally .... or with a solution as outlined in following sentence. We could set a time period of 3 to 6 months to determine whether new growth is appearing and maybe have an arborist provide an opinion if there are concerns. If the trees subsequently don't provide adequate privacy for Matt and Chelsea's master bedroom Nigel and Janet offer to plant on their side some mutually acceptable bushes or whatever to provide lateral fill in for that privacy.

On Apr 1, 2015, at 10:03 AM, Matt Ziskin <mattziskin@gmail.com<mailto:mattziskin@gmail.com>> wrote:

Nigel,

Thank you for your quick response. 6:30pm this Friday will work well. We have scheduled a babysitter and will plan to meet you at your house.

If there is any work that can be done beforehand (for example, taking a picture of your view), that would be helpful.

Thank you,  
Matt

On Apr 1, 2015, at 8:29 AM, Nigel Hook <nigel@dataskill.com<mailto:nigel@dataskill.com>> wrote:

Would 6:30pm Friday work?

I'm in Hong Kong now not sure what Janet's schedule is

On Apr 1, 2015, at 11:24 PM, Matt Ziskin <ziskin@alum.mit.edu<mailto:ziskin@alum.mit.edu>> wrote:

Nigel and Janet,

I haven't heard back yet and wanted to see if we could schedule a time to meet on Friday when Nigel is back in town. We will need to make a decision whether we will move forward with the purchase or not this weekend as that is when we need to remove the contingencies. Please let us know a time that works for you on Friday.

Thank you,

Matt

On Mon, Mar 30, 2015 at 6:38 PM, Matt Ziskin <[ziskin@alum.mit.edu](mailto:ziskin@alum.mit.edu)<mailto:ziskin@alum.mit.edu>> wrote:  
Thanks Nigel.

Janet,

Our goal is to have something we can all agree on and sign this week since we will need to remove contingencies by the end of the week. Ideally we could work with you this week to get the language of the statement finalized and maybe we could meet to settle on the minimum and maximum heights. Then once Nigel is back, we would just need to get the statement signed and notarized.

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3. Photographs from inside your house with lines drawn to indicate where the scenic view is and a statement referencing the photographs to enable us to get on the same page with regard to any future improvements we may consider.

Feel free to give me or Chelsea a call at anytime to discuss this or set up a time to meet. My cell number is [408-607-9620](tel:408-607-9620)<tel:408-607-9620> and Chelsea's is [415-866-8919](tel:415-866-8919)<tel:415-866-8919>.

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Cheers,

Nigel (619) 977-3000 mobile

From: [mattziskin@gmail.com](mailto:mattziskin@gmail.com)<mailto:mattziskin@gmail.com> [mailto:[mattziskin@gmail.com](mailto:mattziskin@gmail.com)<mailto:mattziskin@gmail.com>] On Behalf Of Matt Ziskin

Sent: Wednesday, March 25, 2015 5:53 PM

To: [nigel@silverhook.com](mailto:nigel@silverhook.com)<mailto:nigel@silverhook.com>

Cc: Julia Maxwell; [chiquitaabbott@roadrunner.com](mailto:chiquitaabbott@roadrunner.com)<mailto:chiquitaabbott@roadrunner.com>; Chelsea Bullen

Subject: 624 8th Street Trees

Nigel,

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Chapter 23.51, TREES, SCENIC VIEWS AND SUNLIGHT, 23.51.010 Purpose.[Ord. 747, 780]

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I don't think either of us are interested in having something drafted by attorneys, but in talking with Chiquita and Julia, we would want to have this statement notarized as it will need to be included in our escrow documents.

How can we work with you to get this statement prior to you leaving so we are able to meet our deadlines and close escrow on time? Please give me a call if you have any questions. My cell number is [408-607-9620](tel:408-607-9620)<tel:408-607-9620>.

Thank you for your help,  
Matt

**Jennifer Gavin**

---

**From:** Chelsea Bullen <chelseabullen@gmail.com>  
**Sent:** Wednesday, January 6, 2021 2:56 PM  
**To:** Janet Wilson  
**Cc:** Matt Ziskin; Matt Bator; Nigel Hook; Jennifer Gavin  
**Subject:** Re: TSVS Application / Janet Wilson & Nigel Hook / 635 Hoska Dr.

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Janet and Nigel,

While we don't want to be unfriendly neighbors or disrespect the process the city has in place, we feel that mediation wouldn't help us reach resolution. We have met several times to try and iron out this issue and it's clear that there is no middle ground for either of us. You have made it clear that you are "entitled" to cut our hedges and we feel that they aren't yours to cut.

We are comfortable moving forward with the next step in this process if the city is ok with that.

Best regards,  
Chelsea and Matt Ziskin

Sent from my iPhone

On Dec 18, 2020, at 1:27 PM, Janet Wilson <Janet@silverhook.com> wrote:

Hello Chelsea & Matt,  
Would you be willing to discuss the view blockage with a mediator (see below).  
Nigel and I agree mediation is the next logical step toward resolving this situation.  
Thanks, Janet & Nigel

On Thu, Dec 17, 2020 at 2:53 PM Jennifer Gavin <[jgavin@delmar.ca.us](mailto:jgavin@delmar.ca.us)> wrote:

Hi Janet and Nigel,

I have taken a look at your application materials and I did not see documentation that you offered to engage in third party mediation services- if you have this please email over to me. If you have not yet completed this step then you will want to do this before I can take in an

application. Additionally, may I please have a basic floor plan that shows which room you are taking the photographs from? This is to show that the view is from a Primary Living Area.

Two things that I wanted to touch base with you on before taking in your application otherwise:

1. Due to the COVID-19 pandemic, and the restrictions that the City's COVID protocols have put on "in-home" site visits, this application would not be able to be placed on a Planning Commission agenda until the City's pandemic protocols have been lifted or revised to allow the Planning Commissioners to safely observe the view obstruction claim from inside your primary living area.

2. I just want to make sure that you know that once you apply and pay the applicable application fees that they are non-refundable- this is important since there may be a significant gap of time in between now and when protocols change to allow processing of this application.

Please let me know if you have any questions and I would be happy to set up a call to go over this further.

Thank you,

**Jennifer Gavin | Associate Planner**

**City of Del Mar | Planning and Community Development**

1050 Camino del Mar

Del Mar, CA 92014

☎ 858.755.9313 | 📠 858.755.2794 | ✉ [jgavin@delmar.ca.us](mailto:jgavin@delmar.ca.us)

**Please note that effective July 7, 2020, City Hall hours are 7:30 AM - 5:30 PM, Monday – Thursday. Until the COVID – 19 pandemic ends, service to the public will be provided remotely. Please check our City website at [www.delmar.ca.us](http://www.delmar.ca.us) for more information regarding online services or to submit requests for information.**

---

**From:** Janet Wilson <[Janet@silverhook.com](mailto:Janet@silverhook.com)>  
**Sent:** Friday, December 11, 2020 1:01 PM  
**To:** Jennifer Gavin <[jgavin@delmar.ca.us](mailto:jgavin@delmar.ca.us)>  
**Cc:** Matt Bator <[MBator@delmar.ca.us](mailto:MBator@delmar.ca.us)>; Nigel Hook <[nigel@silverhook.com](mailto:nigel@silverhook.com)>  
**Subject:** TSVS Application / Janet Wilson & Nigel Hook / 635 Hoska Dr.

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Jennifer, Hi Matt,

My husband, Nigel Hook, and I have had several conversations with our south-westerly neighbors, Matt & Chelsea Ziskin, about the compromised ocean views from our main living/entertainment area in our home. The view is south-westerly, but instead of sunsets and ocean, the view has become overgrown hedges and trees.

Nigel and I have attempted to resolve this situation in a neighborly fashion, but we are now in a deadlock.

Please see our attached TSVS application and other documents (detailed below). Let me know what other information would be helpful as we would like this resolved as soon as possible.

Thank you,

Janet Wilson 619.733.1428

Nigel Hook 619.977.3000

635HoskaDr\_TSVS-application\_submitted.pdf

ViewCorridor.jpg

Gmail - RE\_ Follow-Up to Conversation on Friday re\_ Ocean View  
compromised by unfettered hedge growth.pdf

Gmail - Updated Re\_ 624 8th Street Trees as of October 2, 2015.pdf

20201012\_Hook\_Wilson\_View.pdf

## Overview of Tree Dispute

Our neighbors at 635 Hoska are claiming that the trees on the northeast side of our property are obscuring the view from the southwest corner of their home. We do not believe that our neighbors have the right to restore the claimed view for the following reasons:

- The view did not exist during the last ten years until 2015 when gardeners employed by Nigel Hook (at the instruction of Nigel) aggressively cut 17 of the 23+ foot tall Eugenia trees residing on the 624 8<sup>th</sup> Street property. They did so without notifying the owners of 624 8<sup>th</sup> St, without permission to access the property, and without any authorization to cut the trees. See Exhibits A through H for supporting information related to this point.
- Chapter 23.51 of the Del Mar Municipal Code acknowledges the benefits derived from Trees, Scenic View, and Sunlight and provides a process to restore Scenic View obstructed by growth and/or installation of Trees and Vegetation. In the case of the Eugenia trees in question, the unapproved cutting of the trees by the 635 Hoska residents in 2015 resulted in a substantial degradation of the aesthetic value and visual and auditory privacy afforded by the trees. After over 6 years, the Eugenia trees are still between 6 and 10 feet shorter than they were prior to the unauthorized cutting. Instead of requiring the trees to be trimmed, we believe the trees should be allowed to grow back to their height prior to the unauthorized trimming. See Exhibit C for supporting information related to this response.

## Introduction to Our Family

We are Chelsea and Matt Ziskin and our family has lived in Del Mar since 2014 and at 624 8<sup>th</sup> Street since 2015. We have four sons, Jack (9), Duke (8), Bo (5) and Nate (4) who attend Del Mar Heights Elementary School and Del Mar Hills Nursery School. Chelsea grew up in the San Diego area and graduated from Torrey Pines High School. She works in sales for a credit card processing company. Matt grew up in the Los Angeles area and is a partner in a small business that fabricates and installs architectural signage. We feel incredibly fortunate to be able to raise our sons in Del Mar. We are thankful to be a part of such a tight knit community through our neighborhood, schools, and our children's activities.



**Responses to Claims in Trees, Scenic Views and Sunlight Application**

**Item 2:** Nigel Hook and Janet Wilson claimed that we “refused to trim the hedge and tree unless [they] agree to approve the 2-story home [we] hope to build”. There is no truth to this claim. We did however, mention that the trees are still not back to the height they were before they trespassed on our property and cut the trees without our permission. We said we would not agree to trim the trees, especially considering that we are in the midst of planning a potential renovation of our property.

**Item 3:** Nigel Hook and Janet Wilson claimed that they were on friendly terms with the previous owner Jane Martin and that the unauthorized tree trimming that occurred in 2015 was consistent with previous trimmings. Upon conversations with the son of the previous owner, with our neighbor to the north who was close with the previous owner and spent a substantial amount of time in our yard, and with our gardener who has been the gardener on our property since 2006, we became aware that the aggressive trimming that occurred in 2015 was in no way consistent with any trimming that had occurred previously. See Exhibits A through H for supporting information related to this response.

**Additional Support Information:** Nigel Hook and Janet Wilson provided a number of photos of the view in question as support for their Trees, Scenic Views and Sunlight Application. However, each of those photos are from after the aggressive, illegal trimming of the trees. They have provided no evidence that this view existed prior to that unauthorized trimming.

**Mediation:** We opted not to attend mediation regarding this issue. Nigel and Janet created their own view through the illegal cutting of the trees on the 624 8<sup>th</sup> Street property and there is no evidence that a primary view existed prior to that cutting. Therefore, there is no view to restore and nothing to settle through mediation. Our position has been consistent that we would like the trees to be restored to their height before the illegal cutting in 2015. Despite the fact that we have never given Nigel or Janet permission to trim the trees, they have done so on multiple occasions. Exhibit H includes a detailed timeline of our interactions with Janet and Nigel and over the past 6+ years.

Exhibit A: Satellite Images of 635 Hoska, 624 8<sup>th</sup> St, and Eugenia Trees/Hedges in Question



- 624 8TH STREET PROPERTY
- 635 HOSKA PROPERTY
- EUGENIA TREES/HEDGES

**Exhibit B: Photos of Tree Condition Before and After Unauthorized Cutting**

Photos of northeast corner of 624 8th St taken on March 20, 2015 from the roof while the home was in escrow. The photo on the left was taken while we were in escrow before the unauthorized cutting and the photo on the right was taken two days later. The Eugenia trees had been cut to stumps by the 635 Hoska neighbors' gardeners without permission to access the property or cut the trees. Before the unauthorized cutting, the disputed ocean view from 635 Hoska did not exist.

**3/20/2015**



**3/22/2015**



Additional photo from 3/22/2105 showing the extent of the damage caused by the unauthorized tree cutting that exposed the view in question.



**Exhibit C: Photos of Trees from the Same Spot Before the Unauthorized Cutting and Now**

Note that prior to the unauthorized cutting, the Eugenia trees shown on the right side of the photo provide complete privacy from 635 Hoska with only the very top of their roofline visible when standing on the roof of 624 8<sup>th</sup> Street.

**3/20/2015**



**7/29/2021**



**Exhibit D: Correspondence from Del Mar Code Enforcement Officer, Patty Malik After Unauthorized Tree Cutting**

Matt Ziskin &lt;mattziskin@gmail.com&gt;

**Fwd: Vegetation Matter at 624 8th Street**

Chelsea Ziskin &lt;chelseaziskin@gmail.com&gt;

Fri, Apr 10, 2015 at 4:02 PM

To: Matt Ziskin &lt;mattziskin@gmail.com&gt;, julia maxwell &lt;juliamaxwellhomes@gmail.com&gt;

FY!!!!

Sent from my iPhone

Begin forwarded message:

**From:** Patty Malik <pmalik@delmar.ca.us>  
**Date:** April 10, 2015 at 3:36:13 PM PDT  
**To:** "chelseaziskin@gmail.com" <chelseaziskin@gmail.com>  
**Cc:** 'Al' <owl9939@gmail.com>, "chiquitaabbott@roadrunner.com" <chiquitaabbott@roadrunner.com>  
**Subject:** Vegetation Matter at 624 8th Street

Hi Chelsea and Al,

My name is Patty Malik and Chelsea and I met yesterday and Al and I earlier today - regarding the recently cut trees at the above address. I hope I have some good news for you .... To make a long story short ... you don't think you'll have to worry too much about your neighbors claiming a previous right to a view. I made a site visit to the house after Al left. Although the house may have been empty, I did knock and after no answer, I let myself into the rear yard and captured the attached pictures. I think they demonstrate the scope of view and that the trees/bushes were freshly cut.

The row of trees that were cut, only appears to afford them a view from their front door, patio or front yard. Chapter 23.51.030 states the eligible view or the potential of sunlight that one has the right to, has to be from a **Primary Living Area**. The exterior of a home, in any direction, is not a Primary Living Area. Now, with that said, the front door in the pictures enters into their living room/great room – so they could try to claim some view but with the pictures we have of an aerial view, your pictures before the cut and Ms. Abbot's marketing flyer (if you can get that), will all be your defense to let those trees grow. Further, the onus, both by process and financially, falls to them to prove they had a previous view. I have attached all that I have, to include the ordinance explaining what they have to prove and how, and will keep a file of the duplicates here at City Hall. I think it would be of great benefit to obtain written testimony now, from anyone involved in what happened. Memories are short and these testimonies may come in handy someday.

FYI, The sunlight term is more for, if your neighbor's had solar panels and your vegetation was blocking the sun rays to the panels. I hope all this helps.

**Exhibit D: Correspondence from Del Mar Code Enforcement Officer, Patty Malik After Unauthorized Tree Cutting (cont'd)**

Good Luck,

Patty Malik  
Code Enforcement Officer  
City of Del Mar  
(858) 704-3651

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**9 attachments**



**P4101797.JPG**  
3032K



**P4101795.JPG**  
3037K

**P4101800.JPG**  
3086K


**Exhibit D: Correspondence from Del Mar Code Enforcement Officer, Patty Malik After Unauthorized Tree Cutting (cont'd)**




**P4101799.JPG**  
2911K




**P4101796.JPG**  
3039K

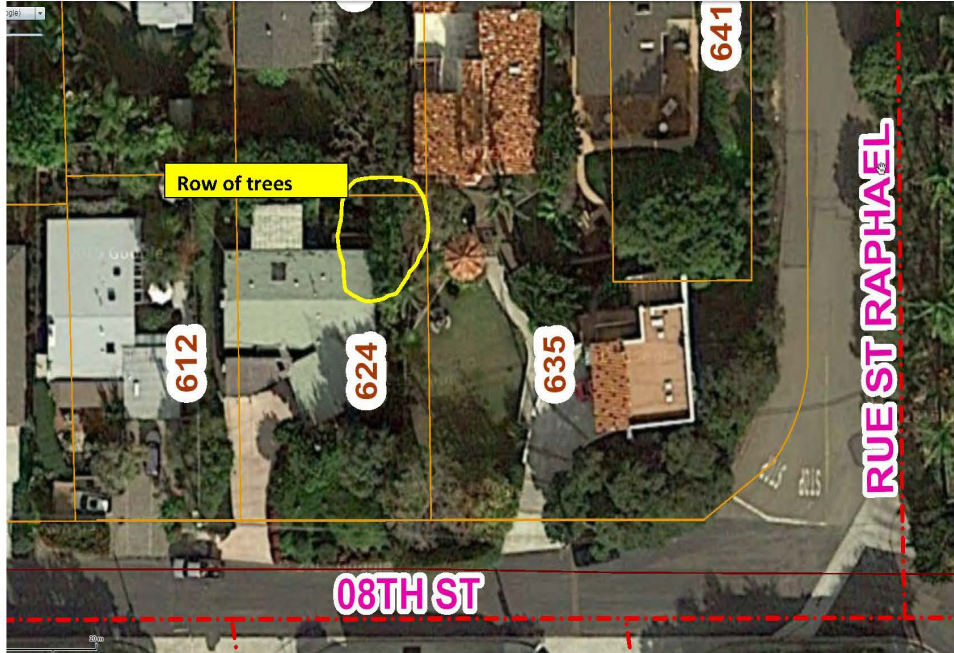
 **624 8th Street - Del Mar Vegetation pics.docx**  
6132K

 **624 8th Street.docx**  
2315K

 **Scenic View Defined.docx**  
19K

 **2607\_001.pdf**  
1337K

**Exhibit D: Correspondence from Del Mar Code Enforcement Officer, Patty Malik After Unauthorized Tree Cutting (cont'd)**



624 8<sup>th</sup> Street - aerial view - Taken from San Diego County GIS April 10, 2015 P. Malik

Attachment: 624 8th Street.docx

**Exhibit D: Correspondence from Del Mar Code Enforcement Officer, Patty Malik After Unauthorized Tree Cutting (cont'd)**



Google Maps - Taken from web April 10, 2015

p.malik



**Exhibit E: Letter from Al Martin (previous owner) to the City of Del Mar**

Letter from Al Martin, son of previous owner Jane Martin and owner of 624 8<sup>th</sup> Street during the time the unauthorized trimming occurred in 2015 while the house was in escrow.

April 10, 2015

City of Del Mar Planning and Community Development Department  
1050 Camino Del Mar  
Del Mar, CA 92014

To Whom It May Concern:

My name is Alan Martin and I am the Successor Trustee to the Jane S. Martin Trust. Jane Martin lived at 624 8<sup>th</sup> Street in Del Mar for over 40 years. Jane passed on January 1, 2015. On that day, the Trust she set up became irrevocable. Pursuant to Jane's directions I consulted with the Trust beneficiaries, and put the real property up for sale.

On March 16, 2015 we received an offer which was accepted on March 17, 2015. The property went into escrow and is under contract with the buyer.

On the morning of March 22, 2015 my wife and I were at the property, performing some minor maintenance work. We were shocked to catch workers employed by the next door neighbor completing the cutting down of 17 of the over 50-year-old Eugenia trees that were on the property.

The neighbor, Nigel Hook, who resides at 635 Hoska Avenue, never contacted me prior to the tree work. He did not have permission to access the property, and he certainly did not have permission to cut the trees on the property. I have attached a picture taken on March 20, 2015 of the trees as they were when the home was placed under contract with the buyers (Exhibit A). I have also attached a picture taken from the same angle showing the trees on March 22, 2015 after they were cut (Exhibit B) and another picture showing a greater extent of the damage caused by the tree cutting (Exhibit C).

The illegal actions of the neighbor have destroyed the aesthetic value, as well as the visual and auditory privacy afforded by the Eugenia trees that existed when the buyer entered into contract to purchase the home. We are requesting the City of Del Mar recognize the trees as they were before they were cut, and permit the buyers of the home to allow the trees to regrow to the height they were before the neighbors had them cut (see Exhibit A). We would like that to be recorded as the condition of the home at the time the buyers take possession of the property.

Thank you for your consideration and please let me know if you need any additional information on this matter.

Very truly yours,



Alan S. Martin, Successor Trustee  
Jane S. Martin Trust  
9910 Anderson Ranch Road  
Descanso, CA 91916

**Exhibit E: Letter from Al Martin (previous owner) to the City of Del Mar (cont'd)**

Exhibit A: Photo taken March 20<sup>th</sup>, 2015 at 4:35pm of the Trees before Cutting



The Eugenia trees in question are in the right half of the picture. Note how they provide privacy from the 635 Hoska Drive home and only the very top portion of the roofline is visible through the tops of the trees.

**Exhibit E: Letter from Al Martin (previous owner) to the City of Del Mar (cont'd)**

Exhibit B: Photo taken March 22<sup>nd</sup>, 2015 at 4:57pm of the Trees after Cutting



This picture is taken of the same area featured in the Exhibit A photo. The Eugenia trees in question in the right half of the picture have been severely cut, removing any aesthetic benefit or privacy from the 635 Hoska Drive home.

**Exhibit E: Letter from Al Martin (previous owner) to the City of Del Mar (cont'd)**

Exhibit C: Photo taken March 22<sup>nd</sup>, 2015 at 4:57pm of the Trees after Cutting



This picture shows the full extent of the damage caused by the neighbors to the 17 Eugenia trees that had provided privacy for our back yard and rear half of our home from the 635 Hoska Drive home.

**Exhibit F: Letter from Susie MacNamara, owner of 623 Hoska since 1978 and close friend of the previous owner of 624 8<sup>th</sup> Street**

August 5, 2021

Dear Members of the Committee,

I am writing this letter on behalf of Chelsea and Matt Ziskin.

I live directly to their north and share an eastern boundary with the Hooks. I have lived at this location since 1978 (43 years).

Jane Martin, who previously owned the Ziskin home was a dear and trusted friend. I was appointed to relieve Al Martin as the executor of her estate if he was unable to perform those duties. Al remained the executor of the home and was in possession of the house until escrow closed. During that time, just before the Ziskin's were to take possession, the Hooks directed their gardener to cut the Eugenia hedges from approx. 40 feet to approx. 3 feet. They received no permission to do so by Al Martin as the hedges were on the Martin property. The pictures that are being circulated to the neighbors are of that view.

In all of the years I have lived here, at no time were those Eugenia cut to that extent. They would have completely taken Jane's privacy in not only her master bedroom, but her patio as well. I had dinners on that patio for over 20 years and never observed the hedges cut to that extent.

I have known 4 different neighbors at the Hook residence. The second, Gary Byrnes, demolished the existing home and built the present structure. The house did not have an ocean view from the living room or the entire Western corridor. I bought 55 Eugenia hedges for the eastern boundary between Gary and my home (Jane's were already planted). Gary planted and maintained them to preserve our privacy. I doubt that he would have done that if he had an ocean view. The master bedroom over the garage has an extensive ocean view.

In 2011, I believe, the Hook's replaced the old Western facing windows with arched windows, placed much higher than the previous windows. I am not aware that you can remodel, cut your neighbors foliage and claim a view. Not only is this an incredibly insensitive action against brand new neighbors, but I believe against the law.

It is unfortunate that this conflict exists. Chelsea and Matt are a wonderful couple and honest neighbors. They along with their 4 children are fantastic additions to the community.

Sincerely,

Susie MacNamara

**Exhibit G: Letter from Gabriel Guzman who has been the gardener at 624 8<sup>th</sup> Street since 2006**

April 28, 2021

To Whom It May Concern,

I have been the gardener at 624 8<sup>th</sup> Street since 2006. During that time, I have been at the property one day each week. I worked for Jane Martin from 2006 to 2015. During that time the hedges on the east side of the back yard had always grown wild. They were at the same height as the hedges on the north side of the back yard. Jane had requested that part of the yard be allowed to grow.

After Jane passed away, I continued to work as the gardener at 624 8<sup>th</sup> Street for Jane's family. When Chelsea and Matt Ziskin purchased the property in 2015 up until now, I continued as the gardener for the property. At the time the house was sold to Chelsea and Matt in 2015, the hedges were aggressively trimmed. I was not involved in that trimming. I don't recall those hedges ever being trimmed during my prior 9 years as the gardener at 624 8<sup>th</sup> Street and I had never seen them cut down to the level they were in 2015.



Please contact me with any additional questions about this matter.


Sincerely,


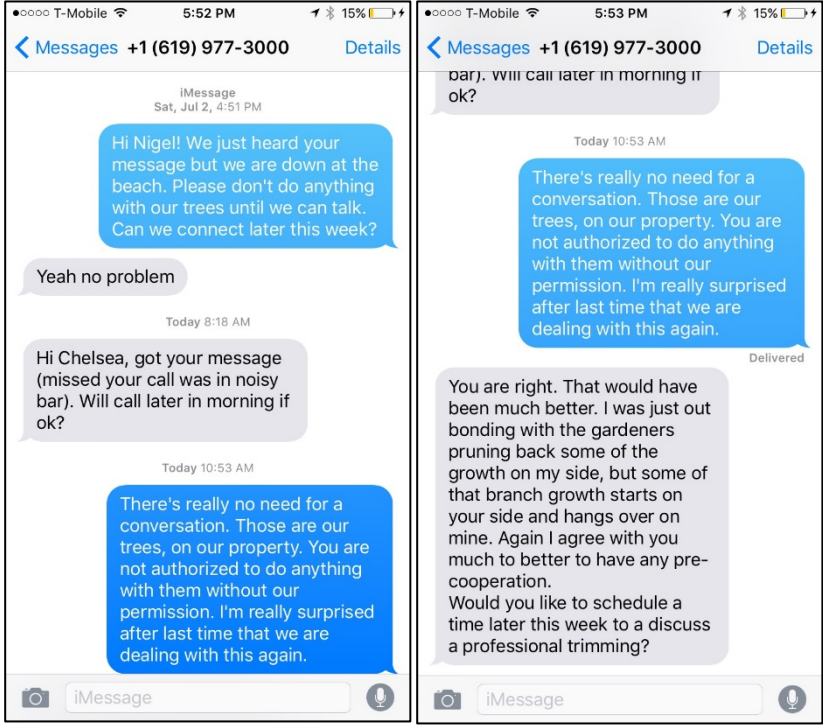
Gabriel Guzman


A handwritten signature in black ink that reads "Gabriel Guzman". The signature is written in a cursive style with a large, prominent "G" and "G" at the end.


## Exhibit H: Timeline of Tree Trimming Related Interactions with Residents of 635 Hoska

| Date           | Interaction  |
|----------------|--|
| March 16, 2015 | We visited 624 8 <sup>th</sup> Street for the first time and put in an offer that same day.  |
| March 17, 2015 | <p data-bbox="391 369 1455 432">Our offer was accepted and a “sale pending” sign was put up on the “for sale” sign in the front yard.</p>    |
| March 20, 2015 | <p data-bbox="391 942 1479 1047">We visited the home again and took the picture shown below from the roof showing the hedges on the east side of the property at the same height as the hedges on the north side of the property.</p>    |
| March 22, 2015 | <p data-bbox="391 1625 1495 1827">We visited the property for the inspection and saw the hedges to the east of the property had been cut down to stumps. We were in shock that someone would do this without permission or any sort of conversation. These hedges are several feet onto the 624 8<sup>th</sup> Street property and it was done without any prior conversation with anyone associated with the property – by trespassing onto the property. We approached the neighbors on the other side of the hedges and this had been done by their gardener.</p> |

| Date           | Interaction  |
|----------------|--|
|                |   |
| March 23, 2015 | Alan Martin, the Successor Trustee, and seller of the property filed a report with the sheriff's department with reference number E 2394645.   |
| March 25, 2015 | We met with Janet and Nigel to try to figure out some resolution to the issue. We were appalled someone would do this to a new neighbor, had concerns they had killed the hedges, and were trying to determine if we were still interested in purchasing the home. We discussed coming up with some sort of agreement.   |
| April 9, 2015  | <p>After much discussion about an agreement and the terms both parties would be comfortable with, we presented an agreement we had drafted by an attorney to stipulate how we would handle the hedge issue. Nigel responded that he would not sign an agreement and we should defer to the city's ordinances.</p> <p>Separately, Chelsea met with Patty Malik, Code Enforcement Officer from The City of Del Mar to explain the situation with the hedges.</p>   |
| April 10, 2015 | Alan Martin, the Successor Trustee, and seller of the property met with Patty Malik and delivered a letter explaining the situation with the trees and requesting that the city recognize the hedges prior to them being cut down as the condition of the property when it changes hands. Patty Malik visited the property and sent an email to us (Exhibit D) indicating that Nigel and Janet would have to prove they had a view prior to cutting the trees down to claim any view or prevent us from allowing the trees to grow to their height before they were cut. |

| Date                 | Interaction   |
|----------------------|---|
|                      | <p>Despite disappointment in the response from Nigel and Janet, we had an opportunity to meet other neighbors who were fantastic. It was our dream to be able to live somewhere like this. With that information and the email from Patty Malik, we made the decision to move forward with the purchase.</p>  |
| <p>April 9, 2017</p> | <p>After returning from a trip overseas to visit relatives, we found Nigel and Janet’s gardeners had trimmed our hedges again without asking us and without our permission. There were dead branches hanging from the hedges and on our side of the property showing a second instance of trespassing and vandalism. We filed the second report with the sheriff’s department related to these neighbors trespassing and trimming our hedges without permission.</p>  |
| <p>July 2017</p>     | <p>Nigel contacted us about trimming the trees and we made it very clear that they are not authorized to do trimming of the trees without our permission. The text conversation is included below.</p>    |
| <p>July 2020</p>     | <p>We encountered Nigel and Janet’s gardeners trimming the Eugenia trees again without our consent. We told the gardeners to stop.</p>  |

| Date              | Interaction  |
|-------------------|--|
| July 18, 2020     | Janet came over to our house to discuss trimming the trees. I let her know again that those trees are on our property and they do not have our permission to trim them and mentioned they have still not grown to the level they were before they cut them in 2015.  |
| Sept/Oct/Nov 2020 | Janet contacted us after receiving the CPP notice for our pending home improvement project. Janet's correspondence with Chelsea became more frequent and more aggressive in her requests to trim our trees.  |
| November 10, 2020 | Chelsea spoke with Patty Malik at the City of Del Mar regarding the requests and claims made by Janet relating to trimming the trees to understand more clearly what our rights were. Patty suggested that if our neighbors are trimming our trees without our consent, we should file a police report.  |
| November 11, 2020 | We filed a report with the sheriff's department with incident report number E 7123646.   |
| November 13, 2020 | <p>Chelsea and I met with Nigel and Janet at their home to discuss the tree trimming issue. During the meeting Nigel made it clear he feels we have no rights or recourse to them cutting our hedges down in 2015 because it was done during before the title transferred. Nigel said that unless we agreed to cutting the hedges by Monday, they will go to the city and make us cut them. They stated several times that they were entitled to continuing to trim those hedges.</p> <p>Nigel and Janet also said if we didn't agree to cut our hedges, they will oppose any 2 story house that we propose. Janet said "if we can't agree on the hedges, I don't see how we will be able to agree on a 2 story house." We made it clear that we would like the hedges to return to the height they were in 2015 before their unauthorized, aggressive cutting.</p> <p>The email correspondence following this meeting is included below:</p> <p>Initial Follow-Up Email from Ziskins:</p> <div data-bbox="399 1199 1495 1696" style="border: 1px solid black; padding: 10px;">  <div style="text-align: right;">Matt Ziskin &lt;mattziskin@gmail.com&gt;</div> <hr/> <p><b>Follow-Up to Conversation on Friday</b><br/>1 message</p> <hr/> <p><b>Matt Ziskin</b> &lt;ziskin@alum.mit.edu&gt; <span style="float: right;">Mon, Nov 16, 2020 at 4:23 PM</span><br/> Reply-To: ziskin@alum.mit.edu<br/> To: nigel@tradesun.com, Janet Wilson SilverHook &lt;janet@silverhook.com&gt;<br/> Cc: Matt And Chelsea Ziskin &lt;chelseaziskin@gmail.com&gt;</p> <p>Hi Janet and Nigel,<br/> Thank you for meeting with us on Friday to discuss the trees on the east side of our property. We do not want them to be trimmed at this time. Once we have approved plans for our new house, we are willing to work with you on trimming the trees. As we discussed on Friday, we intend to be fair and reasonable and take your interests into consideration while designing our new house.</p> <p>Our understanding is the trees can be at the height they were before you had them trimmed in the spring of 2015. Any trimming or modification of these trees without our consent will be treated as trespassing and vandalism.</p> <p>Best regards,<br/> Chelsea and Matt</p> </div> |

| Date | Interaction  |
|------|--|
|      | <p>Response from Nigel:</p> <div data-bbox="402 268 1494 1386" style="border: 1px solid black; padding: 10px;"> <div style="display: flex; justify-content: space-between; align-items: center;">  <span data-bbox="1175 310 1482 331">Matt Ziskin &lt;mattziskin@gmail.com&gt;</span> </div> <hr/> <p data-bbox="410 384 1463 436"><b>RE: Follow-Up to Conversation on Friday re: Ocean View compromised by unfettered hedge growth</b></p> <hr/> <p data-bbox="410 457 1482 520"> <b>Nigel Hook</b> &lt;Nigel@tradesun.com&gt; <span style="float: right;">Sat, Nov 28, 2020 at 10:17 AM</span><br/>       To: "ziskin@alum.mit.edu" &lt;ziskin@alum.mit.edu&gt;, Matt And Chelsea Ziskin &lt;chelseaziskin@gmail.com&gt;<br/>       Cc: Janet Wilson &lt;janet@silverhook.com&gt;     </p> <p data-bbox="427 558 589 579">Hi Chelsea and Matt,</p> <p data-bbox="427 632 841 653">I was hoping for a different outcome from the meeting.</p> <p data-bbox="427 705 1268 726">The last couple of years have seen rampant growth of the hedge and we have offered to pay for the trimming.</p> <p data-bbox="427 779 898 800">Every day it is a shame that we cannot enjoy our ocean view.</p> <p data-bbox="427 821 1446 898">I'm quite surprised that you wrote "<i>Any trimming or modification of these trees without our consent will be treated as trespassing and vandalism.</i>" as your family members often climb over the fence into our property to collect balls and such, creating a liability for us. Another liability is your unkempt tree next to our property. A huge limb crashed into our yard for no apparent reason damaging our fence which is still not fixed.</p> <p data-bbox="427 951 1076 972">During the last meeting, your reluctance to maintain the hedge was centered around</p> <ul style="list-style-type: none"> <li data-bbox="427 993 792 1014">a) related to how you first saw the property and</li> <li data-bbox="427 1035 784 1056">b) leverage to our agreeing to a 2-story house.</li> </ul> <p data-bbox="427 1108 1446 1150">As Janet explained, we can't possibly agree to something which we haven't seen. It hasn't been story-poled, and quite frankly, a new construction project may be years away from completion.</p> <p data-bbox="427 1203 1170 1224">Holding our ocean view hostage unless we agree to a 2-story house is an unreasonable position.</p> <p data-bbox="427 1276 938 1297">We are submitting the complaint to the City of Del Mar on Monday.</p> <p data-bbox="443 1350 573 1371">Nigel and Janet</p> </div> |

| Date | Interaction   |
|------|---|
|      | <p data-bbox="399 235 716 266">Response from the Ziskins:</p> <div data-bbox="399 268 1495 1556" style="border: 1px solid black; padding: 10px;"> <div data-bbox="410 300 578 342">  Gmail </div> <div data-bbox="1175 310 1481 331" style="text-align: right;"> Matt Ziskin &lt;mattziskin@gmail.com&gt; </div> <hr/> <div data-bbox="410 384 1463 436"> <b>RE: Follow-Up to Conversation on Friday re: Ocean View compromised by unfettered hedge growth</b> </div> <hr/> <div data-bbox="410 457 1481 541"> <p> <b>Matt Ziskin</b> &lt;ziskin@alum.mit.edu&gt; <span style="float: right;">Mon, Dec 7, 2020 at 8:35 PM</span><br/> Reply-To: ziskin@alum.mit.edu<br/> To: Nigel Hook &lt;Nigel@tradesun.com&gt;<br/> Cc: Matt And Chelsea Ziskin &lt;chelseaziskin@gmail.com&gt;, Janet Wilson &lt;janet@silverhook.com&gt; </p> </div> <p data-bbox="427 562 992 604"> Nigel,<br/> Thank you for your email. I would like to address your points one by one. </p> <ul data-bbox="589 621 1344 940" style="list-style-type: none"> <li>• <u>Accessing Your Property</u>: Our comment about trespassing/vandalism was related to someone damaging our property. Our children retrieving their balls on your property does not seem to be comparable, but nevertheless, we have instructed our children not to go on your property going forward.</li> <li>• <u>Damage to the Fence</u>: Once we became aware of the tree limb that fell into your yard, we promptly removed it and cleaned the mess that it made. The bend visible in the fence was not caused by that branch falling. The fence has been like that since we moved in. I had always been curious why the fence was like that. I attached a photo from when we bought the house in 2015 that shows the fence with that bend visible.</li> <li>• <u>The Hedge</u>: The hedge and the plans for the new house are two separate issues. The hedge provides privacy and was one of the aspects of the home that contributed to our decision to purchase the house. Janet was the first one to link the hedge and the new house with her statement, "I don't know how we are going to be able to agree to a two-story house if we can't come to an agreement on trimming the hedge." Our position is that we would like the hedge to be restored to the height it was before your gardener trespassed on the property and cut the hedge down to stumps.</li> </ul> <p data-bbox="427 957 1419 999"> We will be designing our new house with input from the neighborhood and hope to accommodate a view from your property while maintaining privacy for our own house and yard. </p> <p data-bbox="427 1016 565 1037"> Chelsea and Matt </p> <div data-bbox="427 1056 1060 1528" style="text-align: center;">  </div> </div> |

## Jennifer Gavin

---

**From:** Dean Meredith <wdeanmeredith@gmail.com>  
**Sent:** Friday, October 1, 2021 11:13 AM  
**To:** Jennifer Gavin  
**Subject:** Fwd: Wilson  
**Attachments:** Wilson (1).pdf; Wilson (2).pdf

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Jennifer, this goes to the Wilson Hook project that Janet submitted Monday. Along with her submittal she has invoices for architectural work that I did. And these are part of the exhibits that she paid for and she mentioned in her submittal. If you have any questions please give me a call 858-245-6892 thanks Jennifer

Sent from my iPhone

Begin forwarded message:

**From:** Michael Mellor <mmellor@delmarblue.com>  
**Date:** September 30, 2021 at 1:14:30 PM PDT  
**To:** Dean Meredith <wdeanmeredith@gmail.com>  
**Subject:** Wilson

Hello,

Attached are the Wilson scans.

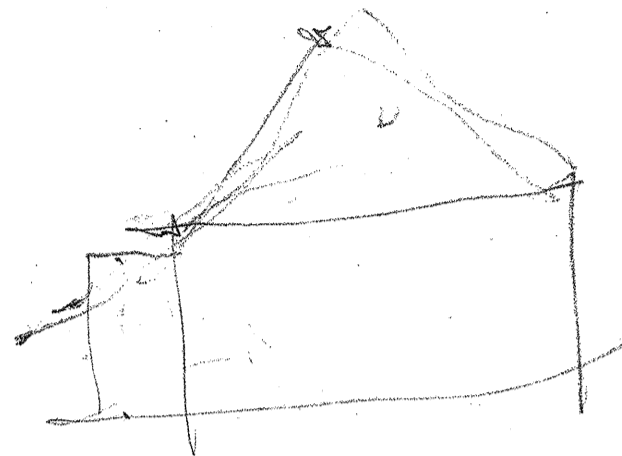
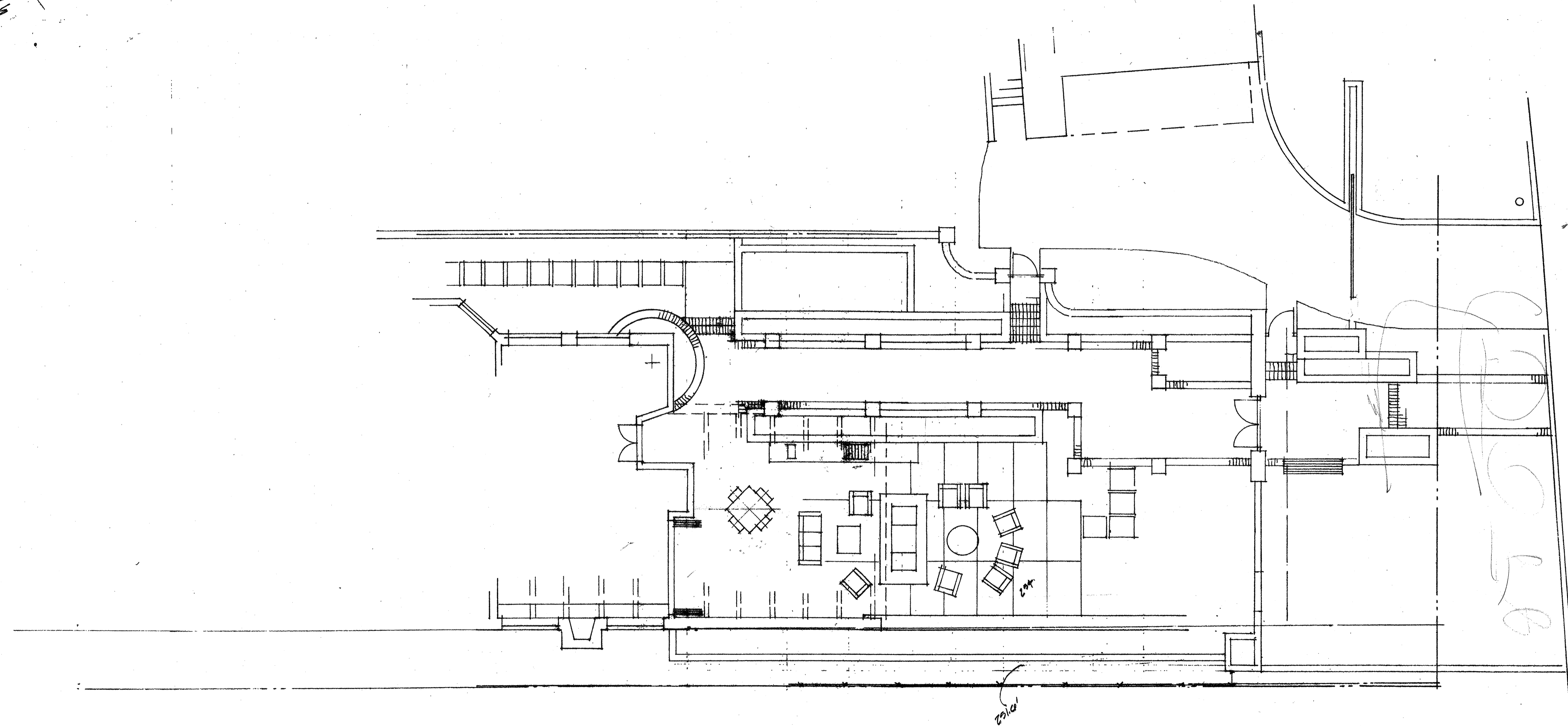
Thanks,

**Michael Mellor aka M4**  
2201 San Dieguito Drive  
Del Mar, CA 92014  
[858-755-5134](tel:858-755-5134)  
7AM – 5PM, Mon. – Fri.



[eOrder Form](#)

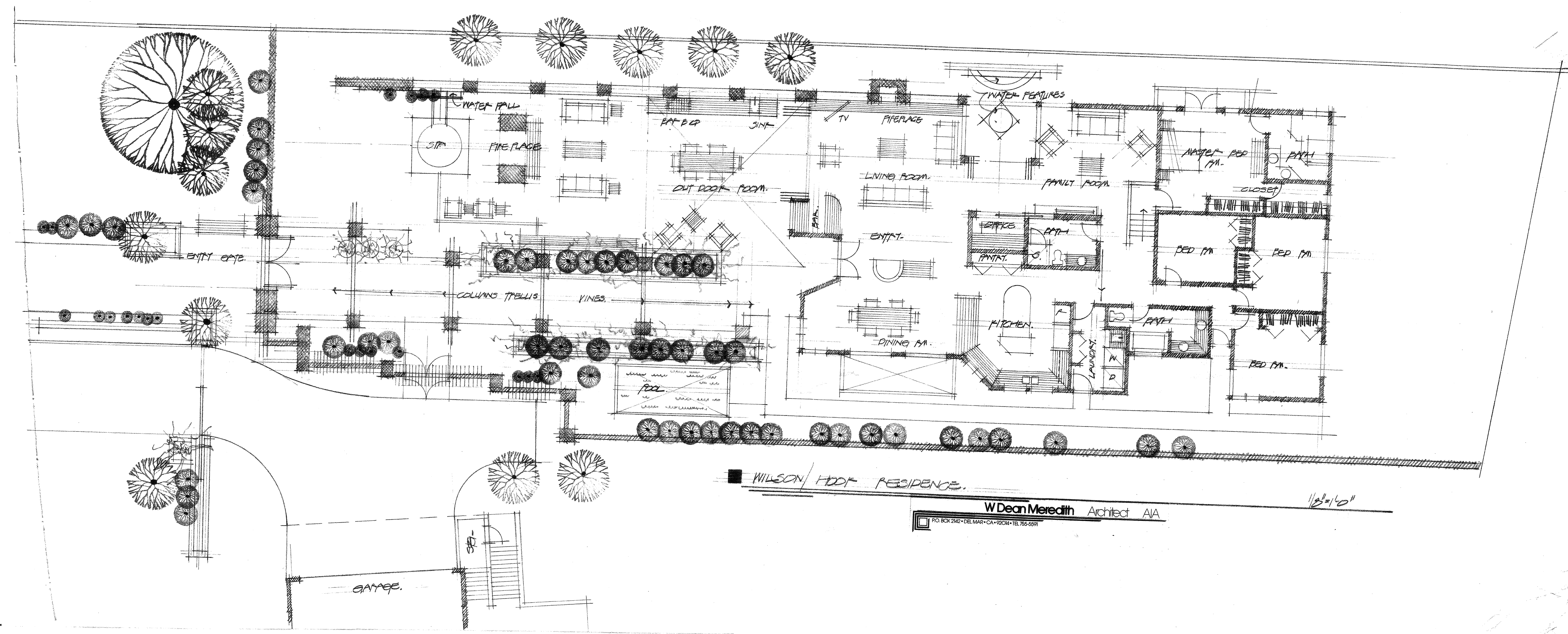
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Handwritten text, possibly a signature or initials, written vertically on the right side of the floor plan.

8TH STREET



October 4, 2021

Dear Members of the Del Mar Planning Commission:

We have been residents of Del Mar since 1982, and have lived at our current address of 667 Hoska Dr. since 1999. We have known Janet Wilson and Nigel Hook since shortly after we moved to our current house.

Janet and Nigel's house on the interior is one of the most strikingly beautiful homes we have ever been in, with dramatically high, backlit beams and a spacious feeling. Unfortunately, given the way the house was sited on the property and the slope of the hill where their lot sits, they have essentially no ocean view from their interior spaces.

One of the few oceans views accessible to Janet and Nigel is towards the southwest from the corner of their living room, a space that we have been in perhaps half a dozen times over the years. At previous times, this view has been a beautiful spot to enjoy the best of Del Mar's beautiful ocean views. Currently, their view is completely blocked by vegetation near their property line.

We deplore hostile interactions between neighbors over vegetation, particularly when this could so easily be corrected by judicious pruning of bushes that have been allowed to grow between Janet and Nigel's house and their neighbor on 8<sup>th</sup> street. If this vegetation were trimmed, this certainly wouldn't harm any views from the neighbors' property, nor does it seem that it would represent a loss of privacy. However, it would restore a spectacular view that was previously available to Janet and Nigel for many years.

We encourage the planning Commission to help restore the views that Janet and Nigel were previously able to enjoy!

Thank you, Dan Donoghue  
667 Hoska Dr.  
Del Mar, CA 92014

A handwritten signature in cursive script that reads "Daniel J. Donoghue".

**Jennifer Gavin**

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**From:** Keli Gunn <keligunn899@gmail.com>  
**Sent:** Monday, September 27, 2021 1:28 PM  
**To:** Jennifer Gavin  
**Cc:** Janet Wilson  
**Subject:** 635 Hoska Dr - Janet & Nigel Hook - Obstructed View - TSVS21-001

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To Jennifer Gavin and The City of Del Mar,

I have been friends with Janet & Nigel Hook for over 20-years. During this time frame I have spent many days and evenings enjoying their lovely home, celebrating birthdays and holiday's inside and telling stories at the "Rainbow Bar" in their living room while enjoying their beautiful ocean view and amazing sunsets. I was present while the new patio was being built and at their celebration in 2012. The view as always was stunning. Now all you see are bushes.

Please feel free to call me if you have any questions.

Thank you,  
Keli & Richard Gunn

--

**Keli Gunn**

[KeliGunn899@gmail.com](mailto:KeliGunn899@gmail.com)

760-473-8623



# City of Del Mar Staff Report

PLANNING COMMISSION  
STAFF REPORT  
October 12, 2021

APPLICATION: Zoning Amendment ZA21-001, Local Coastal Program Amendment LCPA21-001

REQUEST: A request for a recommendation from the Planning Commission to the City Council on proposed amendments to the City's Parking Code, Del Mar Municipal Code (DMMC) Chapter 30.80 (Exhibit A).

**NOTE: This item is a recommendation by the Planning Commission to the City Council. The City Council will consider whether to adopt the proposed amendments in a future noticed public hearing that is anticipated to occur in November 2021.**

APPLICANT: City of Del Mar

STAFF CONTACTS: Amanda Lee, Principal Planner  
Jennifer Gavin, Associate Planner

LOCATION: Citywide

ENVIRONMENTAL STATUS: Pursuant to the California Environmental Quality Act (CEQA), the proposed project has been analyzed and determined to be Categorical Exempt pursuant to CEQA Guidelines Section 15301 (Class 1 – Existing Facilities) in that the proposed code changes in and of itself will not have a significant impact on the environment because it involves existing facilities with a negligible or no expansion of use. It has been determined that none of the six exceptions to the use of a Categorical Exemption are applicable (Guidelines Section 15300.2). The reduction in parking would help to reduce vehicle miles traveled (VMT) and greenhouse gas emissions (GHG) by encouraging alternative modes of transportation resulting in fewer vehicular trips. Further, parking is not a consideration under the requirements of CEQA.

BACKGROUND:

The Del Mar City Council approved a work program as a part of the FY2021-2022 budget, adopted on June 21, 2021, that directed staff to prepare draft amendments to the City's parking code (DMMC Chapter 30.80) in an effort to support the local business community and facilitate economic recovery in response to the COVID-19 pandemic. The draft code changes are included as Exhibit A of this report. Following is a link to the existing parking code: [https://library.municode.com/ca/del\\_mar/codes/municipal\\_code?nodeId=TIT30ZO\\_CH30.80PA](https://library.municode.com/ca/del_mar/codes/municipal_code?nodeId=TIT30ZO_CH30.80PA)

In preparation for this item, staff worked with the City's consulting transportation engineer, Michael Baker International (MBI), to understand how the draft code amendments align with industry standards and best practices implemented by other cities, including those with common

community-oriented planning goals. MBI summarized their analysis and conclusions in a technical document (Exhibit B).

### **COVID-19 Temporary Use Permits to Facilitate Outdoor Dining**

In 2020, the City Council approved a special COVID-19 Emergency Temporary Use Permit (TUP) program that has allowed businesses during the COVID-19 pandemic to temporarily expand their existing restaurant use area to provide outdoor dining, without the need to provide required parking. This has been a successful program with community-wide benefits and support. The flexibility this program provides has enabled local restaurants to create spaces on private property for the public to get outside and dine at their establishments. In turn, this has helped local businesses remain open through the pandemic by maintaining a level of commercial activity that supports all local businesses and contributes towards the City's goals for a vibrant Downtown.

During the last year, COVID-19 TUPs were submitted and approved authorizing three businesses to temporarily expand in order to provide outdoor dining including: Zels (1247 Camino Del Mar), Seaside Grill (1328 Camino Del Mar), and Viewpoint Brewing (2201 San Dieguito Road). Currently, these COVID-19 TUP approvals are set to expire March 31, 2022, unless the City Council decides to further extend the program approvals. The participating restaurant owners and other members of the community have expressed an interest in maintaining these temporary outdoor dining spaces on a permanent basis. For context, other cities (i.e. City of San Diego) have already taken action to permanently accommodate these types of outdoor dining spaces that were initially created on a temporary basis.

One benefit of the proposed parking amendments is that, by reducing the number of required parking spaces for restaurant use, it could help these businesses continue on a permanent basis to operate within and maintain the outdoor dining spaces that are currently enjoyed by the community.

### **Public Workshop- October 5, 2021**

On October 5, 2021, the City held a public workshop for the Del Mar Village Association (DMVA), the Del Mar Business Community, and other interested members of the public to provide input on the draft code amendments. The workshop participants expressed appreciation to the City Council for inclusion of this work program in the FY2021-2022 budget. Generally, the comments expressed a desire for the code amendments to further accommodate existing business operations within the Downtown Village in an effort to 1) help long-standing businesses transition from a "non-conforming" status into compliance with the parking code, 2) further accommodate outdoor dining areas, and 3) support continued activation of commercial activity in tenant spaces with storefronts located at the street level on Camino del Mar and on 15<sup>th</sup> Street. The Del Mar Village Association (DMVA) noted that trends for transportation to local restaurants include rideshare, walking, and biking that further reduce the need for parking.

Input provided via the workshop is further described below and includes a description of how each of the respective comments is being addressed:

1. It was brought to staff's attention that the proposed requirement for accessory food stands/carts to be "open to the air on all sides" may be in conflict with the design standards required by the San Diego County Health Department.

Response: The proposed draft was modified accordingly to address this.

2. It was brought to staff's attention that the application form/guidelines for the City's In-Lieu Parking Fee Program is not consistent with the applicable section of the City's parking code (DMMC Section 30.80.170). More specifically, the concern is that, contrary to the intended flexibility, the City's form states that "In no event shall a property owner be allowed to utilize the In-Lieu Parking Fee Program to reduce the number of on-site parking spaces existing at a property".

Response: No modification is needed to the draft code language. This comment is being addressed via an administrative clean-up of the In-Lieu Parking Fee Program application form to ensure consistency with the City's parking code as previously adopted by the City Council and certified by the California Coastal Commission (CCC).

3. It was recommended that the City consider allowing property owners to utilize both the City's Shared Parking Agreement process (DMMC Section 30.80.140) and the In-Lieu Parking Fee Program (DMMC Section 30.80.170) to accommodate a reduction in on-site parking.

Response: The City's parking code (DMMC Section 30.80.170 A. 5.) explicitly precludes an owner from relying upon a shared parking agreement and the In-Lieu Fee Program together to meet the applicable parking requirement. This restriction was required by CCC as a condition of approval for certification of the parking code in 2017. If there is interest in pursuing this modification, City staff can consult with CCC staff to understand what concerns if any they may have if the City proposes to remove this requirement.

4. It was recommended that the City consider either exempting a restaurant's outdoor dining space from the required parking calculation and/or modify the methodology for the parking calculation to better accommodate outdoor dining spaces and clarify how parking should be calculated for outdoor dining (i.e. spaces that do not meet the definition of gross floor area).

Response: Staff is seeking Planning Commission's recommendation as to how best to incorporate and address this request in the proposed ordinance that will be presented to the City Council at a future date. Some coastal jurisdictions in the region allow outdoor dining to be exempted from parking requirements (i.e. City of Carlsbad and City of San Diego). For example, in the City of Carlsbad Village and Barrio Specific Plan, outdoor dining does not need to provide parking if the outdoor dining space is found to be equal to or less than the size of the interior dining space.

5. Multiple restaurant owners addressed the concern that the existing parking code requires too much parking for restaurants. Currently, the restaurant parking rate is calculated based on the size of a restaurant. For restaurants 4,000 square feet (sf) or less, parking is required at 1 space per 90 sf; and restaurants larger than 4,000 sf require parking at a more restrictive rate of 1 space per 45 sf for any restaurant area beyond 4,000 sf. Concern was expressed related to the higher parking rate that is currently required for space above 4,000 sf and the fact that the amendment would continue to require a higher parking rate. It was recommended that the City consider either eliminating the higher parking rate concept or modify the size to accommodate existing restaurants some of which may be greater than 4,000 square feet.

Response: The draft provided to the Planning Commission regulates parking based on the existing 4,000 sf threshold from the current parking code. To facilitate a recommendation from the Planning Commission on how best to address this concern, staff is collecting data to better understand the existing size of restaurants in Del Mar.

In addition to the public workshop and the Planning Commission recommendation hearing, an additional public meeting to solicit public input prior to City Council consideration will be via the City Council Advisory Committee on Traffic and Parking (TPAC) meeting on October 13, 2021.

#### ANALYSIS:

The draft code amendments (included in Exhibit A) are summarized below and reflect changes that were incorporated to address public input provided at the October 5, 2021 public workshop:

*Proposed Change #1: Allow existing commercial buildings with non-conforming parking in the Central Commercial (CC) zone to more easily change-out tenants and accommodate retail, restaurant, or personal service use in vacant tenant spaces (5,000 sf maximum size) without a need to provide parking.*

The proposed flexibility would allow for this change-out of tenants to occur in reliance on existing parking as of January 1, 2020. As currently written, this would allow up to three restaurants per lot, including existing restaurant tenants. Consistent with the existing code, additional parking would be required for any proposed expansion of tenant spaces, including any proposed addition of outdoor dining space.

The business community has consistently identified existing parking requirements as a barrier to accommodating new tenants in vacant spaces. It is particularly difficult for lots in the CC zone since most CC zone properties are not equipped with the number of off-street parking spaces that is currently required by the parking code and are therefore classified as “non-conforming”. This is a common obstacle for property owners seeking to maintain commercial tenants in compliance with the City’s zoning code requirements.

Within the CC zone, the City’s Horizontal Zoning requirements (DMMC Section 30.22.030) limit the types of uses that can be located within tenant spaces with storefronts located at the street level on Camino del Mar and on 15<sup>th</sup> Street. It precludes office uses (i.e. professional, medical, and real

estate offices and financial institutions) from locating in the street level spaces that are reserved primarily for restaurants, retail, and personal service uses. These types of uses are desirable street frontage uses because they promote commercial activity that helps create a more vibrant Downtown. The CC zone still accommodates office uses, but limits those uses only to spaces that are located above street level or in non-street frontage commercial spaces in the Downtown Area. By allowing tenant spaces to be able to more easily switch out the retail, restaurant, and personal service tenants, without having to provide additional parking, this can help to minimize the number of vacant spaces. In addition, the proposed amendments can help the City ensure compliance with the Del Mar Community Plan policies and Horizontal Zoning requirements that are intended to facilitate an active mix of retail and commercial uses Downtown.

The proposed Change #1 is not expected to result in negative impacts. There would be no overall increase in the total number of businesses in operation. Most of the commercial buildings and local businesses have been established in Del Mar for many years with very little change in the existing off-street parking available on the respective commercial properties. The main changes related to parking capacity that have occurred Downtown (prior to the COVID-19 pandemic) include development of the public parking garage at City Hall (2018) and improvements to on-street parking, pedestrian, and bicycle access as part of the Downtown Streetscape improvements project (2019). As outlined in the technical report from MBI, there is a similar parking exemption in the City of San Diego (note the proposal for the City of Del Mar is more restrictive than that applicable within San Diego). Also, within the City of Imperial Beach the parking for local businesses is supported by the use of shared public parking lots, which is similar to the current availability of public parking at City Hall in the City of Del Mar.

*Proposed Change #2: Allow restaurants to have one on-site accessory food and beverage cart (no more than 100 sf in area) that is not subject to required parking.*

This exemption is intended to allow restaurants to provide a smaller accessory food and/or beverage cart as an accessory retail component for quick “to-go” orders. The City has received inquiries over the years expressing interest in this type of option. Currently, Zels (1247 Camino Del Mar) has an accessory coffee cart that was established after obtaining DRB review and providing one parking space in accordance with the existing code. The proposed amendment clarifies that the design of the accessory stand/cart is intended to be an open air design to the extent possible, except where it would preclude compliance with the San Diego County Health Department requirements applicable to food and beverage carts.

The proposed Change #2 is not expected to result in negative impacts. There would be no overall increase in the total number of businesses in operation. Further, as an accessory retail component for “to-go” orders, the intent is to accommodate pedestrian walk up business. Patrons, including those who arrive by car, would not be at the restaurant for long, which provides for a quick changeover of parking space use.

*Proposed Change #3: Reduce the required parking rate for restaurants that are 4,000 sf or less in size from 1 parking space per 90 sf of gross floor area to 1 parking space per 300 sf; and modify the parking requirement for restaurants that are greater than 4,000 sf in size from 1 parking space per 45 sf of gross floor area for any space above 4,000 sf to a rate of 1 parking space per 90 sf.*

The business community has consistently identified the City's required parking ratio for restaurants as a limiting factor for establishing new restaurants within the City's Downtown area. Restaurants are a use which have been identified as a desirable street frontage business through the City's horizontal zoning requirements in the Central Commercial Zone. Restaurants are also a use type that draws people to eat, walk, and shop thereby also supporting other businesses Downtown.

The proposed Change #3 is not expected to result in negative impacts. The proposed parking rate has already been implemented in approved Parking Management Plans (PMP) for multi-tenant commercial properties in the Downtown Area. It should be noted that PMPs offer additional parking rate reductions (i.e. not counting interior hallways and storage areas in the parking calculation) whereas properties without a PMP would continue to count these areas towards their overall required parking. As outlined in the technical report from MBI (Exhibit B), the reduced parking rate for restaurants is within the range of required parking required in other jurisdictions. During the public workshop, DMVA noted that trends for transportation to local restaurants include rideshare, walking, and biking that further reduce the need for parking.

*Additional Considerations:*

Staff is also seeking Planning Commission feedback on the following:

1. Parking for Outdoor Dining - Should the City exempt a certain portion of the outdoor dining area from parking or continue to require parking for both indoor and outdoor dining areas; and how should the outdoor dining spaces be calculated since they do not meet the definition of gross floor area?
2. Parking for Restaurants Greater than 4,000 sf - Should the City modify the restaurant parking rate to remove the differentiation requiring a higher parking rate for restaurants greater than 4,000 sf?
3. Utilization of Shared Parking together with the In-Lieu Fee Option - Should the City consult with CCC about the potential to amend the code to accommodate future application requests for a parking reduction that utilizes both the Shared Parking Agreement and In-Lieu Parking Fee Program options?

### **Consistency with City of Del Mar Community Plan (General Plan) and Climate Action Plan**

The proposed code changes are consistent with the following Community Plan goals:

- *Transportation Goal 2 to minimize the impact of the automobile on the character of Del Mar and emphasize a more pedestrian oriented environment, safer sidewalks, landscaped buffer zones, and alternative means of transportation.*

The proposed changes would facilitate the location of restaurants and commercial services in the Downtown Village, which would encourage a more pedestrian oriented environment and further would be consistent with the intent of Policy E of Goal 2 to minimize air pollution by encouraging alternative transportation choices to the use of the automobile.

- *Community Development Goal 4 to focus major retail and office activity into an economically viable, pedestrian oriented and attractive area that serves the needs of both residents and visitors and is well integrated into the residential fabric of the community.*

The proposed changes would meet the intent of Policy A 1. to encourage retail oriented commercial uses within the downtown area and B 1. by encouraging alternative transportation choices to the use of the automobile for tourist access to the downtown.

Additionally, the proposed code changes are consistent with the City's Climate Action Plan (CAP):

- *Key goals of the CAP are to reduce vehicle miles traveled (VMT) and reduce greenhouse gas (GHG) emission levels.*

The proposed changes provide for a reduction in required parking for restaurants. The proposed effort to "right-size" parking can help the City meet its targets for a reduction in GHG emissions that are otherwise generated by vehicles which burn fossil fuels. The reduced off-street parking requirement provides additional benefits by helping to reduce the amount of non-permeable hardscape associated with the typical design of parking spaces in Del Mar and can help maximize usable commercial area and pedestrian activity in public spaces along Camino del Mar. Further, the reduction of required parking for individual restaurant tenants incentivizes business patrons to combine trips and/or use alternative modes of transportation, which can be expected to result in greater transportation efficiencies and reduce VMT.

### **Prior City Actions Supporting the Proposed Code Changes**

The City has taken the following actions that support reduced parking demand in the Downtown Area:

1. City's Complete Street Policy (adopted by City Council 10/16/2017)
  - Is expected to be applied to future City Right of Way improvements, particularly along the Downtown commercial corridor, to ensure design elements that provide safe access to all users (vehicles, walking, biking, using public transit, etc.)

2. Construction of New City Hall Facility (completed in 2018)
  - Added public parking spaces both in the parking lot and at the street
  - Added bicycle lockers
  
3. City's Downtown Streetscape Project (completed in 2019)
  - Improved pedestrian access
  - Improved bicycle lanes and new bicycle parking facilities, including short term bicycle racks and secure bicycle lockers in the City Hall public parking garage
  - Improved and additional parking spaces for vehicles and motorcycles
  - Improved parking layout along Camino del Mar to minimize conflict between vehicles and pedestrian/bicycle traffic
  - Implemented the principles set forth in the City's Complete Street Policy, including a variety of design amenities to encourage pedestrian use and enjoyment of public spaces along Camino del Mar (i.e. benches, landscape, and public art)

In summary, these City policies and projects spanning from 2017-2019 established transportation and traffic calming improvements within the Downtown Village to establish a public parking reservoir at City Hall, create safer and more accessible routes of travel, and facilitate use of alternative modes of transportation (i.e., walking, bicycling, and bus transit). These improvements made it more accessible and feasible for members of the public to find available spaces to park a vehicle or lock up a bicycle within a short walk of commercial destinations in the Downtown Village and adjacent public amenities and entertainment venues, including the public beach, parks, and State Fairgrounds. In addition to these physical improvements, advances in technology have provided opportunities for ride share (i.e., Uber, Lyft, etc.) thereby further reducing the need for parking.

RECOMMENDATION:

The Planning Commission is asked to review the proposed Zoning Code Amendment/Local Coastal Program Amendment (LCPA) and provide a recommendation to the City Council, including feedback on the additional considerations noted in the analysis section:

1. Parking for Outdoor Dining - Should the City exempt a certain portion of the outdoor dining area from parking or continue to require parking for both indoor and outdoor dining areas; and how should the outdoor dining spaces be calculated since they do not meet the definition of gross floor area?
  
2. Parking for Restaurants Greater than 4,000 sf - Should the City modify the restaurant parking rate to remove the differentiation requiring a higher parking rate for restaurants greater than 4,000 sf?
  
3. Utilization of Shared Parking together with the In-Lieu Fee Option - Should the City consult with CCC about the potential to amend the code to accommodate future application requests for a parking reduction that utilizes both the Shared Parking Agreement and In-Lieu Parking Fee Program options?

The Planning Commission recommendation will be provided to the City Council for consideration at a future noticed public hearing. If adopted, the associated Ordinance/LCPA will be submitted to the California Coastal Commission for certification, which is required in order for the Ordinance to become effective.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jennifer Gavin', with a stylized flourish at the end.

Jennifer Gavin  
Associate Planner

Exhibit A – Draft Parking Code Amendments (DMMC Chapter 30.80)  
Exhibit B – MBI Technical Memo- Comparison to Industry Standards

## **Draft Code Language to Amend the Existing Parking Code**

Draft amendments are shown in red line edit format with text to be deleted in ~~strike through~~ and language to be added in underline:

### **Chapter 30.80 - PARKING**

#### **30.80.010 - Purpose.**

The purpose of this Chapter is to establish a unified set of regulations, standards, and procedures pertaining to the provision of off-street parking spaces in a manner that preserves the community character and effectively addresses the peak parking needs of allowed uses. The intent is to offer a range of parking options that support multi-modal transit alternatives consistent with the City's Community Plan and Climate Action Plan, and to facilitate efficient use of parking in commercial zones in order to reduce the potential for adverse impacts on adjacent residential neighborhoods.

(Ord. No. 509; Ord. No. 722; Ord. No. 778; Ord. No. 815; Ord. No. 817; Ord. No. 821; Ord. No. 850; Ord. No. 856; Ord. No. 924, § 1, 12-5-2016)

#### **30.80.020 - General Parking Regulations.**

- A. Unless otherwise permitted pursuant to the Del Mar Municipal Code, every person conducting a use on private property shall provide permanently maintained off-street parking spaces reserved for parking purposes only, with such off-street parking spaces designed and installed in the amount and in the manner required by this Chapter.
- B. Off-street parking spaces may be provided in a common area to meet the required parking for two or more uses located on the same site. Separate areas for the parking spaces corresponding to each use are not required. The use of common parking areas shall not modify the minimum parking requirements, which shall remain the sum of the required spaces of all uses computed separately, unless otherwise authorized pursuant to a Shared Parking Permit.
- C. When an existing use with a structural nonconformity per Section 30.76.030 does not meet the off-street parking requirement and is proposed to be enlarged, then additional off-street parking shall be provided for the proposed enlargement at the rate required by Section 30.80.030.
- D. Unless approved through a Conditional Use Permit (CUP) pursuant to Chapter 30.74, the parking of motor vehicles shall be without monetary charge when such parking is required pursuant to this Chapter. This Section shall not prohibit measures to limit the use of such parking to the owners, proprietors, employees, and customers for which the parking is required and provided. Any

CUP authorized to allow a monetary charge for parking shall be subject to conditions and the findings for approval in Section 30.74.020 and shall only be allowed during times at least 30 minutes before or after the hours of operation for which the parking is required to ensure that the monetary charge will not result in adverse impacts to the availability of parking either in the public right-of-way or on other private properties in the vicinity.

E. Accessible parking spaces shall be provided in accordance with Title 24 of the California Building Code and shall be designed to meet applicable State and Federal standards for accessibility. Section 30.80.085 provides a process for existing uses to bring existing parking into compliance in cases where no expansion of the existing use is proposed.

F. Notwithstanding Section 30.80.020(C), within the Central Commercial Zone, no additional parking spaces shall be required for a change in commercial use to a retail sales, restaurant, or personal services use, including associated tenant improvements within an existing commercial building with non-conforming parking where the change in use and tenant improvements are consistent with the following:

1. The commercial tenant space was existing as of January 1, 2020;
2. All existing parking spaces on the lot or off-site parking spaces that are relied upon by the existing commercial development through a recorded parking agreement shall be maintained unless and until a "Release of Covenant" is approved by the City and recorded with the County Recorder;
3. The proposed change in use may involve the combination of existing tenant spaces, however, no tenant space on the lot shall exceed a maximum size of 5,000 square feet in gross floor area;
4. If a tenant space is proposed to be expanded, additional parking spaces must be provided for the area of expansion (includes indoor and outdoor use areas) at the rate set forth in Section 30.80.030;
5. No more than three restaurants shall be permitted per lot, including existing restaurant tenants; and
6. All changes in use must comply with the horizontal zoning requirements of the Central Commercial zone in Section 30.22.030.

G. A restaurant establishment is permitted to have one accessory food/beverage stand or cart on-site that is not subject to required parking provided that all of the following provisions are met:

1. The stand/cart shall not exceed one hundred square feet in area;

2. The stand/cart shall be open to the air on all sides to the extent possible except where it would preclude compliance with the San Diego County Health Department requirements applicable to food and beverage carts;

3. The parking exemption shall apply to a maximum of one accessory food/beverage stand or cart;

4. The location of the stand/cart shall not interfere with access to required off-street parking spaces; and

5. A Design Review Permit is obtained in accordance with Section 23.08.030.

**SECTION TWO:** That DMMC Section 30.80.030 C. 1. (Required Number of Off-Street Parking Spaces for Non-Residential Uses) be amended as follows:

30.80.030 - Required Number of Off-Street Parking Spaces.

A. The number of off-street parking spaces required for each use shall not be less than those set forth in this Section.

1. The required off-street parking ratios are specified in Tables within Subsection B. for residential uses and Subsection C. for non-residential uses. References within the Parking Tables to "GFA" shall mean "gross floor area" and references to "sq. ft." shall mean "square feet".

2. Where the required parking ratio is based on the gross floor area of a use, any areas devoted to parking shall be excluded from the calculation.

3. When the calculation of required parking results in a fractional part of an automobile parking space, a remaining fraction of one-half space or more shall be construed as one space; and a remaining fraction of less than one-half space shall be disregarded.

B. Residential Use Parking Requirements.

1. The following Table identifies the required off-street parking for specified residential uses:

| Residential Land Use                                       | Required Off-Street Parking Ratio   |
|--|---|
| Boarding House; Lodging House; Fraternity-Sorority Housing | 1 space per 2 sleeping rooms  |
| Community Care Facility; Residential Care Facility         | 1 space for the facility operator plus 1 additional space for each employee during the largest shift; see Subsection B.3. |

|  |                                 |  |
|--|---------------------------------|--|
| Dwelling Unit,<br>Single-Family        | Unit with 3<br>bedrooms or less | 2 garage spaces per unit                         |
|  | Unit with 4<br>bedrooms or more | 3 spaces per unit (minimum 2 spaces in a garage) |
| Dwelling Unit,<br>Multiple-Family      | Studio or 1-<br>bedroom unit    | 1 garage space per unit                          |
|  | 2-bedroom or 3-<br>bedroom unit | 2 spaces per unit (minimum 1 space in a garage)  |
|  | Unit with 4+<br>bedrooms        | 3 spaces per unit (minimum 2 spaces in a garage) |
|  | Guest Parking                   | See Subsection B.2.                              |
| Mobile Home Park                       |                                 | 1.5 spaces per mobile home or trailer site       |
| Senior Care Facility; Nursing Facility |                                 | 1 space for every 3 beds; see Subsection B.3.    |

2. In addition to the required off-street parking ratio specified in Subsection B.1., Multi-Family Dwelling Unit development shall comply with the following:
  - a. Provide one guest parking space per every four dwelling units;
  - b. Provide the guest parking spaces on the same parcel of land where the dwelling units are located;
  - c. Identify the spaces as "Guest Parking"; and
  - d. Prohibit the storage of recreational vehicles, boats, trailers, or similar oversized vehicles in guest parking spaces.
3. The parking rate for any community care, residential care or senior care facility may alternatively be provided at the same parking rate required for an equivalent dwelling unit.
4. The proposed remodel or enlargement of an existing dwelling unit with nonconforming garage parking is subject to Section 30.76.075.

C. Non-Residential Use Parking Requirements.

1. The following Table identifies the required off-street parking rate for specified non-residential uses that are grouped in the following general use categories:

Commercial Services, Institutional, Office, Retail Sales, Vehicle and Vehicular Equipment Sales and Services, and Industrial.

| Non-Residential Land Use   | Required Off-Street Parking Ratio   |
|--|---|
| <i>Commercial Services</i>   |   |
| Billiard Parlor  | 1 space per 150 sq. ft. GFA   |
| Bowling Alley  | 4 spaces for each bowling lane  |
| Child Daycare Facility   | 1 space per employee, plus 1 space per 5 children   |
| Church or Religious Facility/<br>Auditorium/Public Assembly  | 1 space for each 5 seats of permanent seating; or 1 space for each 18 inches of bench seating (lineal inches); or 1 space per 7 sq. ft. of seating floor area where there is no permanent seating   |
| Dance-Ballroom Hall/Meeting Hall   | 1 space per each 40 sq. ft. of GFA or 2 spaces for every 6 seats plus 1 additional space for each 30 sq. ft. of dance floor area  |
| Golf Course  | 10 spaces for each hole or tee  |
| Golf Driving Range   | 3 spaces for each hole or tee   |
| Hotel/Motel  | 1.25 spaces for each lodging room/suite; and additional spaces for accessory commercial service uses greater than 500 sq. ft. GFA (using parking rate for that use type)  |
| Miniature Golf Course  | 3 spaces for each hole or tee   |
| Mortuary/Funeral Home/<br>Commercial Chapel  | 1 space for each 50 sq. ft. of assembly room GFA  |
| Motion Picture and Live Theater  | 1 space for every 4 seats   |
| <i>Personal Services</i>   |   |
| • 5,000 sq. ft. or less of GFA   | 1 space for each 300 sq. ft. of GFA   |
| • 5,001 to 20,000 sq. ft. of GFA   | 17 spaces, plus 1 space for each additional 150 sq. ft. of GFA in excess of 5,000 sq. ft. of GFA  |
| • More than 20,000 sq. ft. of GFA  | 17 spaces, plus 1 space for each additional 100 sq. ft. of GFA in excess of 20,000 sq. ft. GFA  |
| Pet Services—Grooming  | 1 space per 300 sq. ft. of GFA  |
| Restaurant/Bar/Cocktail Lounge/Tea Room/Other Business for the On-Site Consumption of Food and/or Beverage | 1 space per <del>90</del> <b>300</b> sq. ft. of GFA up to 4,000 sq. ft. and 1 space for each <del>45</del> <b>90</b> sq. ft. of GFA in excess of 4,000 sq. ft. including all outdoor space, covered or uncovered, used for any restaurant |

|  |   |
|--|---|
|  | purpose (Note: a restaurant is permitted one on-site accessory food/beverage stand or cart that is not subject to required parking in accordance with Section 30.80.020(G). |
| Sports & Recreation Club/Facility                          | 1 space per 400 sq. ft. GFA   |
| Swimming Pool/Ice-Roller Skating Rink                      | 1 space per 100 sq. ft. of pool/rink surface area   |
| Tennis/Handball/Volleyball Courts                          | 2.5 spaces for each court   |
| Veterinarian/Boarding Kennel                               | 1 space for each 200 sq. ft. of GFA (excludes overnight animal holding areas)   |
| Warehouse/Storage Facility                                 | 1 space for each 1,000 sq. ft. of GFA   |
| <i>Institutional</i>                                       |   |
| Hospital   | 1 space for each bed  |
| Library  | 1 space for each 250 sq. ft. of GFA   |
| Museum   | 1 space for each 250 sq. ft. of GFA   |
| Post Office  | 1 space for each 300 sq. ft. of GFA, plus 1 additional space for each commercial vehicle operated or kept in connection with the use  |
| Public Utilities   | 1 space for each 2 employees on the largest shift, plus 1 additional space for each commercial vehicle operated in connection with the use                                  |
| <i>School</i>  |   |
| • Elementary/Junior High                                   | 1 space per employee, plus 5 additional spaces (playground areas available for parking may be used to satisfy parking for an accessory auditorium where included)           |
| • High School/Vocational/Adult Extension                   | 1 space for every 5 students plus parking for accessory auditorium, as applicable   |
| • College/University                                       | 1 space for every 3 students plus parking for accessory auditorium, as applicable   |
| <i>Office</i>  |   |
| Banks/Financial Institutions                               | 1 space for every 300 sq. ft. of GFA  |
| Medical/Dental/Clinical/Real Estate Mortgage Broker Office | 1 space for each 200 sq. ft. of GFA   |
| Professional/Business Office                               | 1 space for each 300 sq. ft. of GFA   |
| <i>Retail Sales</i>  |   |
| Appliance/Furniture Sales                                  | 1 space for each 600 sq. ft. of GFA, plus 1 additional space for each commercial  |

|   |   |
|---|---|
|   | business vehicle operated in connection with the use  |
| Liquor Store  | 1 space per 300 sq. ft. GFA   |
| Outdoor Sales   | 1 space for each 200 sq. ft. of GFA for all areas used for sales, displays, viewing aisles/walkways or storage (required parking spaces shall be located in an area distinct from all sales, displays, viewing aisles, walkways, and storage areas) |
| Retail Food and Beverage Establishment (no table service)   | 1 space per 300 sq. ft. GFA   |
| Retail Nursery/Open Sales/Rental Yards  |   |
| <ul style="list-style-type: none"> <li>• 10,000 sq. ft. or less of open sales and/or rental area</li> </ul>   | 1 space for each 500 sq. ft. of GFA, plus 1 additional space for each 1,000 sq. ft. of indoor/outdoor open sales and/or rental area   |
| <ul style="list-style-type: none"> <li>• More than 10,000 sq. ft. of open sales and/or rental area</li> </ul> | 10 spaces for first 10,000 sq. ft. of GFA, plus 1 additional space for each 5,000 sq. ft. of indoor/outdoor open sales and/or rental area in excess of 10,000 sq. ft.   |
| Other Sales that do not fit in a category listed above:   |   |
| <ul style="list-style-type: none"> <li>• 5,000 sq. ft. or less of GFA</li> </ul>                              | 1 space for each 300 sq. ft. of GFA   |
| <ul style="list-style-type: none"> <li>• 5,001 to 20,000 sq. ft. of GFA</li> </ul>                            | 17 spaces, plus 1 additional space for each additional 150 sq. ft. of GFA in excess of 5,000 sq. ft. of GFA   |
| <ul style="list-style-type: none"> <li>• More than 20,000 sq. ft. of GFA</li> </ul>                           | 17 spaces, plus 1 space for each additional 100 sq. ft. of GFA in excess of 20,000 sq. ft. GFA  |
| <i>Vehicle and Vehicular Equipment Sales and Services</i>   |   |
| Automobile/Boat Sales   |   |
| <ul style="list-style-type: none"> <li>• 10,000 sq. ft. or less of open sales and/or rental area</li> </ul>   | 1 space for each 500 sq. ft. of GFA, plus 1 additional space for each 1,000 sq. ft. of indoor/outdoor open sales and/or rental area   |
| <ul style="list-style-type: none"> <li>• More than 10,000 sq. ft. of open sales and/or rental area</li> </ul> | 10 spaces for first 10,000 sq. ft. of GFA, plus 1 additional space for each 5,000 sq. ft. of indoor/outdoor open sales and/or rental area in excess of 10,000 sq. ft.   |
| Automobile Washing  |   |

|  |  |
|--|--|
| • Automatic  | 1 space for every 2 employees, plus 1 space for each queue space per queue line  |
| • Manual   | 1 space for each car wash bay, plus 2 spaces for each queue space per queue line   |
| Gasoline Service Station   | 1 space for each gasoline pump, plus 1 additional space for each employee of the largest shift and 1 space per 300 sq. ft. gross floor area for any retail sales area (Note: parking spaces adjacent to the pump count towards the required parking) |
| Vehicular Repair and Maintenance Facility                        | 2 spaces per service bay, plus 1 additional space for each employee of the largest shift, and 1 additional space for each commercial business vehicle operated in connection with the use  |
| <i>Industrial</i>  |  |
| Industrial/Manufacturing/<br>Wholesale Printing      Laboratory/ | 1 space for each 500 sq. ft. of GFA, plus 1 additional space for each commercial vehicle operated in connection with the use   |

September 9, 2021

**Amanda Lee**  
**City of Del Mar**  
**Planning and Community Development Department**  
1050 Camino del Mar  
Del Mar, CA 92014

## **Subject: Del Mar Parking Amendments**

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Michael Baker International (Michael Baker) has completed a review of the potential parking amendments proposed by the City of Del Mar in an effort to reestablish the business district in response to COVID-19. The two project-related changes are aimed at facilitating the process for commercial building owners to establish new tenants in existing vacant spaces and encouraging small business owners to establish business in Del Mar, specifically the Downtown Area.

The focus of this technical memorandum is to summarize how the current proposed parking amendments are consistent with other Cities, industry standards, and best management practices.

### ***Proposed Parking Amendments***

The proposed parking amendments include modifications to the Del Mar Municipal Code Section 30.80.030 (Non-Residential Parking Ratios) and 30.80.20 (General Parking Regulations). Additional details for the proposed amendments are as follows:

1. 30.80.30 (Non-Residential Parking Ratios) – Reduce the off-street parking ratio for restaurants
  - Current ratio - 1 space per 90 square feet (SF) (equates to 11.11 per 1,000 SF) of gross floor area up to 4,000 square feet plus 1 space per 45 square feet (22.22 per 1,000 SF) in excess of 4,000 square feet.
  - Reduced ratio - 1 space per 300 square feet, (equates to 3.33 per 1,000 SF) of gross floor area up to 4,000 square feet plus 1 space per 90 square feet (11.11 per 1,000 SF) in excess of 4,000 square feet.
2. 30.80.20 – Provide parking exemption to help fill vacancies in existing commercial buildings
  - A. through E. – No Change
  - New Item F. – “No new parking spaces shall be required for new retail sales, restaurant, or personal services use that locates within an existing commercial tenant spaces located in the Central Commercial Zone that was an existing commercial tenant space as of January 1, 2020 and where the development meets the following:
    1. All existing parking spaces on the lot or parking spaces that are otherwise relied upon by the existing commercial development shall be maintained.
    2. Each Commercial tenant space shall not exceed a maximum of 5,000 square feet in gross floor area.
    3. No more than three restaurants shall be permitted per lot, including existing restaurant tenants.
    4. All new tenants must comply with the horizontal zoning requirements of the Central Commercial Zone in Section (30.22.030).

**Reduced Parking & Transportation Impacts**

When it comes to parking requirements, the provision of too much parking often leads to an over-reliance on personal vehicle trips. When people know there is an abundance of parking, they are encouraged to make additional trips in their vehicles which causes more congestion on local roadways and increases vehicle miles travelled (VMT) and greenhouse gas emissions (GHG).

Best practices in parking have been clearly documented through research by Donald Shoup<sup>1</sup> and others, which have demonstrated that lower parking rates may result in a reduction of single purpose, single occupant vehicle trips. Studies show that in areas where parking is prevalent, individuals are more likely to drive to work compared to denser cities with limited parking where public transit use is generally higher. In addition, excessive minimum parking requirements end up wasting land area with unnecessary empty lots instead of densifying tax-paying businesses. With an over reliance on parking, communities and cities are designed wholly around the dependance on cars making it more difficult for people who can't afford cars to get around.

By reducing parking requirements, developments can increase density to utilize the land area more efficiently. Increased density increases the potential for a park once strategy thereby reducing the need for individual use parking and a shift towards shared parking. People are also encouraged to choose alternative modes (i.e. transit, walking, biking) or carpool when the parking supply is constrained. Fewer vehicle trips results in improved roadway operations and a reduction in VMT and GHG. These changes in travel behavior ultimately result in a corresponding reduction in parking demand.

**Best Practices For Restaurant Parking Rates**

The proposed parking rate adjustments for restaurant uses that are described above are summarized in **Table 1**. Based on input from the City, the current parking requirements for restaurant uses (including bars, cocktail lounges, tea rooms, and other business for on-site consumption of food and/or beverages) is the most frequently identified regulatory barrier that is a limiting factor that for establishing new restaurants within the City's business district.

**TABLE 1 – PROPOSED RESTAURANT PARKING RATE AMENDMENT**

| City of Del Mar (Current) <sup>(1)</sup>      |  |
|---|--|
| Restaurants/Bars/Cocktail Lounges (≤ 4.0 KSF) | 1 space per 90 SF or 11.11 spaces per 1,000 SF |
| plus (> 4.0 KSF)                              | 1 space per 45 SF or 22.22 spaces per 1,000 SF |
| City of Del Mar (Proposed)                    |  |
| Restaurants/Bars/Cocktail Lounges (≤ 4.0 KSF) | 1 space per 300 SF or 3.33 spaces per 1,000 SF |
| plus (> 4.0 KSF)                              | 1 space per 90 SF or 11.11 spaces per 1,000 SF |

<sup>(1)</sup> City of Del Mar Municipal Code - 30.80.020

The lower parking rate has already been approved through parking management plans (PMP) for multi-tenant developments within the Downtown Area. It should be noted with the proposed parking amendments, future developments with a PMP could remove non-dining areas such as interior hallways and storage areas from the overall area; however, developments without a PMP would continue to base parking calculations on the gross floor area of the restaurant.

The proposed parking rate modification has been compared to other jurisdictions with similar characteristics to the City of Del Mar Downtown Area. These comparisons include the following jurisdictions:

<sup>1</sup> *The High Cost of Free Parking* (2005); *Parking and the City* (2018)

- City of Carlsbad – Village & Barrio Master Plan
- City of Laguna Beach
- City of Encinitas – Downtown Specific Plan
- City of San Diego
- City of Imperial Beach

In addition, standard industry parking rates researched and published by two nationally recognized sources were also considered and include the following:

- Urban Land Institute (ULI) – “Shared Parking”, 2<sup>nd</sup> Edition (2005)
- Institute of Transportation Engineers (ITE) – “Parking Generation Manual”, 5<sup>th</sup> Edition (2019)

The parking rates established by ITE and ULI are based on actual parking survey data collected over the last 30 years. These publications provide guidance for traffic engineers, planners, developers, and public jurisdictions in determining realistic parking demand for various land uses; however care must be given to local conditions in a given community. In many cases, the parking rates are skewed towards standalone business sites and do not consider the interaction of land uses and activities within a downtown setting.

A review of the various parking rates for restaurants show that most jurisdictions include outdoor dining areas and consider the total gross floor area (GFA) of the building, which is consistent with the City of Del Mar requirements. Alternatively, some jurisdictions also consider the total number of seats or square footage of seating area. Only one jurisdiction (City of Carlsbad – Standalone Brewery) has a tiered parking rate based on the square footage of the tasting room (seating area). All other jurisdictions and land uses provide a flat rate parking requirement per restaurant regardless of the size of the restaurant. It should be noted that ITE and ULI rates are based on a multitude of surveys, regardless of the surrounding area, land uses, or other characteristics that may be more appropriate to a walkable commercial district area like the Downtown Area of Del Mar.

As shown in **Table 2**, the proposed parking rate of 1 space per 300 SF (plus 1 space per 90 SF > 4,000 SF) is consistent with other local jurisdictions as well as industry standards. The parking rates included in the review range from 3.33 per 1,000 SF (incidental Delicatessen Use – City of Carlsbad) to 18.0 per 1,000 SF (Fine/Casual Dining – ULI). It should be noted that the City of San Diego rates for the location specific “coastal overlay zone” and “central urbanized” area are among the lowest rates found in the research and are similar to the parking rate proposed by the City of Del Mar. The parking rates within the City of San Diego are tailored to specific areas/zones of the City and the land use characteristics of these communities (such as Pacific Beach and La Jolla) closely aligns with Downtown Area of Del Mar.

The parking demand rates shown in **Table 2** generally reflect the peak parking demand of a standalone restaurant and do not consider that the peak parking characteristics of other nearby land uses varies throughout the day. The distribution of peak parking requirements throughout the day allows some parking to be shared by more than one land use.

Due to the mix of land uses within the Downtown Area of Del Mar with offices, restaurants, retail, and entertainment venues in close proximity to one another, people are most likely visiting two or more businesses in a single trip. Under these conditions, people often “park-once” and visit multiple destinations. Therefore, the overall parking need would be less than the sum of individual parking requirements for each land use since the peak parking demand times for unique land uses are different, and many visitors to the uses can be considered “captive”. The ability to reduce parking is influenced by the ability to share private parking or to establish more public parking that can be shared by all. This concept of shared parking has not been explored as part of this assessment.

**TABLE 2 – RESTAURANT PARKING RATE COMPARISON**

| Land Use   | Parking Rates |                                |
|--|---------------|--------------------------------|
|  | (1 space per) | (spaces per 1,000 square feet) |
| City of Del Mar (Current) <sup>(1)</sup>                       |               |                                |
| Restaurants/Bars/Cocktail Lounges (≤ 4,000 SF)                 | 90 SF         | 11.11                          |
| plus (> 4,000 SF)  | 45 SF         | 22.22                          |
| City of Del Mar (Proposed)                                     |               |                                |
| Restaurants/Bars/Cocktail Lounges (≤ 4,000 SF)                 | 300 SF        | 3.33                           |
| plus (> 4,000 SF)  | 90 SF         | 11.11                          |
| City of Carlsbad (Village & Barrio Master Plan) <sup>(2)</sup> |               |                                |
| Restaurant   | 170 SF        | 5.88                           |
| Restaurant (Delicatessen)                                      | 300 SF        | 3.33                           |
| Restaurant (Fast Food)   | 240 SF        | 4.17                           |
| Brewery/Distillery/Winery (incidental)                         | 415 SF        | 2.41                           |
| Brewery/Distillery/Winery (standalone)                         | 150 SF        | 6.67 / KSF Tasting Room        |
| plus   | 415 SF        | 2.41 / Remaining KSF           |
| City of Laguna Beach <sup>(3)</sup>                            |               |                                |
| Food Services  | 100 SF        | 10.00                          |
| City of Encinitas Downtown Specific Plan <sup>(4)</sup>        |               |                                |
| Restaurants, Bars, Lounges                                     | 100 SF        | 10.00                          |
| Take-Out (no seating)  | 250 SF        | 4.00                           |
| City of San Diego <sup>(5)</sup>                               |               |                                |
| Coastal Overly Zone  | 235 SF        | 4.3                            |
| Central Urbanized  | 475 SF        | 2.1                            |
| City of Imperial Beach <sup>(6)</sup>                          |               |                                |
| Drive-In/Drive-Through   | 50 SF         | 20.00                          |
| Restaurants  | 75 SF         | 13.33                          |
| ULI <sup>(7)</sup>   |               |                                |
| Fine/Casual Dining   | 55 SF         | 18.00                          |
| Family Restaurant  | 95 SF         | 10.50                          |
| Fast Food with Drive-Thru                                      | 65 SF         | 15.00                          |
| ITE <sup>(8)</sup>   |               |                                |
| Fine/Casual Dining   | 95 SF         | 10.52                          |
| High-Turnover (Sit-Down)                                       | 105 SF        | 9.44                           |
| Fast Food with Drive-Thru                                      | 115 SF        | 8.66                           |
| Fast Food without Drive-Thru                                   | 100 SF        | 9.91                           |

SF = square feet; GLA = gross leasable area; GFA = gross floor area

Source:

<sup>(1)</sup> City of Del Mar Municipal Code - 30.80.020

<sup>(2)</sup> City of Carlsbad Village & Barrio Master Plan Table 2-3

<sup>(3)</sup> City of Laguna Beach Municipal Code - 25.52.012G

<sup>(4)</sup> City of Encinitas Downtown Specific Plan - 3.3.3C

<sup>(5)</sup> City of San Diego Municipal Code Table 142-05E

<sup>(6)</sup> City of Imperial Beach Municipal Code - 19.48.050E-F

<sup>(7)</sup> Source: Urban Land Institute (ULI) - "Shared Parking", 2nd Edition (2005)

<sup>(8)</sup> Institute of Transportation Engineers (ITE) - "Parking Generation Manual", 5th Edition (2019). ITE rates shown are weighted averages.

In addition, the standalone parking rates do not consider modal splits, which reflect the potential for people to walk, ride their bicycles, or take transit into the Downtown Area. Individuals that do not drive to their destinations inherently reduce the demand for parking. Certain land uses such as restaurants and bars are experiencing a surge in ride-sharing use by their guests (including carpooling, taxi's, and Transportation Networking Companies [TNC's] like Uber and Lyft) and many bars are subsidizing ride-sharing fees. Recent research show guest arrivals by car-sharing services can be as high as 25% - 50% with the high end applying to bars.

### ***Parking Exemptions***

The second revision proposed to the City's parking code is the provision of a parking exemption within the Central Commercial Zone in order to help fill vacancies in existing commercial buildings. The City's Village business district is primarily located in the Central Commercial Zone and is characterized by small, older commercial buildings with limited capacity for on-site parking.

The parking exemption states that "no new parking spaces shall be required" for the following types of uses within the Central Commercial Zone:

- Retail sales – antique shop, apparel, bakery, book shops, florist, furniture sales, gift shops, grocery/food, jewelry, music shop, etc.
- Restaurants – bars/cocktail lounges/wine bars, cafes/tea rooms, delicatessens, ice cream shop, restaurant, sandwich shop, etc.
- Personal services – barber shops/beauty parlors, day spas, health studios, dry cleaning, laundromat, postal services, tailors etc.

In order to be eligible for a parking exemption, new developments must be located within an existing commercial tenant space that was previously a commercial tenant space as of January 1, 2020 and meet the following requirements:

1. Maintain all existing parking spaces
2. Each tenant does not exceed 5,000 square feet in gross floor area
3. No more than three restaurant uses per lot (including existing uses)
4. Comply with horizontal zoning requirements in Section 30.22.030 of the Municipal Code

A similar parking exemption was passed in the City of San Diego in 2020 which allows Small Lot Commercial Development (less than 15,000 square feet) to use reduced parking rates<sup>2</sup> or be exempt from parking requirements entirely<sup>3</sup>. The City of San Diego's parking exemption extends to a wider array of commercial uses and larger developments than what is currently proposed in Del Mar.

Within the City of Imperial Beach, specific zones are allowed to use shared or off-site parking within one-thousand feet of a commercial site to satisfy minimum parking requirements with the approval of a conditional use permit. For mixed-use (and residential developments over commercial use), required parking may be reduced by up to 25% with approval of a conditional use permit.<sup>4</sup>

In various other jurisdictions, including City of San Francisco, City of Berkeley, and City of Sacramento, have amended their parking requirements in recent years to reduce or even eliminate city-wide parking minimum

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<sup>2</sup> City of San Diego Municipal Code; Section 142.0540(a)

<sup>3</sup> City of San Diego Municipal Code; Section 156.0313(b)(3)

<sup>4</sup> City of Imperial Beach Municipal Code; Section 19.48.050(J)

requirements. In some cases, jurisdictions have begun to implement parking maximums to discourage excess parking.<sup>5</sup>

Based on the review of various other jurisdictions and the parking exemptions allowed, the proposed amendments to the City of Del Mar's parking code consistent with standard practices and is more conservative with the size and type of developments allowed under the exemption.

## **Conclusion**

As shown, the parking amendments proposed to modify the City of Del Mar Municipal Code Sections 30.80.030 (Non-Residential Parking Ratios) and 30.80.020 (General Parking Regulations) are consistent with other jurisdictions, industry standards, and best management practices. Overall, reduced parking helps to reduce VMT and GHG by encouraging alternative modes of transportation resulting in fewer vehicular trips. It should also be noted that parking is not a consideration under the California Environmental Quality Act (CEQA).

The proposed modifications support the following City Policy Documents:

- **General Plan**
  - **Transportation Goal 2** – Minimize the impact of automobiles on the character of Del Mar and emphasize a more pedestrian oriented environment, safer sidewalks, landscape buffer zones, and alternative means of transportation. These changes are further consistent in that they meet the intent of Policy E of Goal 2 of minimizing air pollution by encouraging alternatives to the use of personal vehicles.
  - **Community Development Goal 4** – Focus on major retail and office activity into an economically viable, pedestrian oriented and attractive area that serves the needs of both residents and visitors and is well integrated
- **Climate Action Plan (CAP)**
  - The proposed modifications to the parking code would contribute to the overarching goal of the CAP to reduce Greenhouse gasses (GHG) generated by vehicles which burn fossil fuels. One of the target areas of the CAP is to reduce vehicle miles traveled (VMT). Reducing the amount of required parking incentivizes business patrons to use alternative modes of transportation thus contributing to the reduction in VMT which in turn reduces GHG levels.
- **Complete Streets Policy**
  - Was applied to the design of the City's Downtown Streetscape Project (see below).
  - Expected to be applied to future right-of-way improvements to ensure design elements to provide safe access to all users (vehicles, walking, biking, public transit, etc.)

In addition, the following recent actions also support proposed parking amendments:

- **Downtown Streetscape Project (completed in 2019)**
  - Improved pedestrian access
  - Improved bicycle lanes and provided bicycle parking facilities
  - Improved and added parking spaces for passenger cars and motorcycles
- **Construction of new City Hall (completed in 2018)**
  - Added public parking spaces both in the parking structure and adjacent streets
  - Added bicycle lockers

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<sup>5</sup><https://www.rmmenvirolaw.com/more-california-cities-eliminate-parking-minimums-to-promote-low-carbon-transportation-and-affordable-housing/>

Another factor to be considered in relation to parking, specifically in the Downtown Area, is the provision of public parking. Free parking is provided at the public parking garage at City Hall as well as on-street along Camino Del Mar 15<sup>th</sup> Street, 11<sup>th</sup> Street and several other side streets within the Downtown Area. Additional paid parking is available at L 'Auberge Del Mar parking garage. This public parking is available to supplement the private development parking lots as necessary. In addition, shared parking and parking management plans (PMP's) can further reduce parking requirements but are not considered in this assessment.

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If you have any questions pertaining to the analysis results summarized in this memo, please call me at (760) 603-6266.

Sincerely,

A handwritten signature in cursive script that reads "Dawn Wilson".

Dawn Wilson, PE TE  
Associate Vice President | Transportation Planning Manager