

Key CC&R Revision Issues and Options

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View Protection

Issues

Writing in the 1950's, the drafters of the CC&Rs for the three Palisair tracts promoted strict view protection. Even though, due to topography, some homes would have better views than others, the original building pads were situated, and the original rooflines were designed, so as to interfere as little as possible with each home's ocean, canyon, mountain, city, sunrise, and sunset views. The drafters included provisions in the CC&Rs intended to protect views by not permitting residence additions or rebuilding that would harm views. The principal provision at issue is a 15 ½ ft. height limit relative to the construction pad.

The drafters did not anticipate that sixty years later, developers and owners would be allowed to tear down residences and put in new ones with much larger footprints where, although the new residence was not built above the height limit restriction, views from neighboring lots would be seriously harmed.

For example, see included with this document Exhibit 1, "View of Catalina Lost", showing story poles for a proposed addition that was approved by the Board (although the project was not actually built). There is considerable added view blockage, including obliterating the view of Catalina Island, even though the entire project is under the 15 ½ ft. limit. The reason this project was approved was that, in recent years, the Board, on legal advice, considered itself required by the language of the CC&Rs to give plan approval to construction where owners expand horizontally and vertically within the 15.5 foot height limit, without taking view blockage into account. This has resulted, *in some cases, in 30% to 100% view blockage for neighbors*. We are sure it was not the intent of the original drafters of the CC&Rs to allow this kind of view blockage.

The Board now believes that the CC&Rs should be enforced in a way that puts a heavier emphasis on view protection in future plan approvals, compared to how the Board has acted in some cases in the recent past. This derives from our considered analysis of the current language regarding view protection. This language is fairly convoluted, it is spread over several different sections, and it

includes changes inserted over the history of the CC&Rs and their two subsequent modifications.¹

According to the Davis-Sterling Common Interest Development Act, and according to the CC&Rs themselves: (1) the Board has considerable latitude in interpreting language and in finding facts in individual cases; and (2) If the Board decides that past Boards have made mistakes, it is not obligated to follow these as precedent, but instead should act correctly in the future.

However, regarding view protection, we feel that the CC&Rs as currently written require us to rely too much on the interpretation of sometimes obscure and contradictory language. This could encourage lawsuits, which could threaten continued CC&R enforcement because of our inability to afford insurance coverage against litigation costs.

Not only have homeowners lost views, but the Association has already been placed in financial jeopardy due to costs associated with individual homeowner conflicts over building interests and views. We are now running at a significant financial deficit that we project will continue next year. Recent lawsuit threats against the Association involving conflicts over building and views necessitated the submission of insurance claims with the accompanying deductible costs, but because of these claims our Directors and Officers Insurance was cancelled. The replacement insurance was well over twice the premium. We have also incurred attorney fees to assist in mediation of two disputes this past year alone.

Therefore, going forward, we want to see the CC&Rs rewritten where needed to make their meaning regarding view protection clearer. A layman should be able to understand the provisions, including those regarding view protection, without having to hire an attorney. We plan, after surveying the membership to find their preference regarding view protection vs. development, to draft revised CC&Rs that will then, we hope, obtain the required approval of at least fifty percent of the lot owners. In this way we hope to put changes in place that leave less room for future Boards to act in widely divergent ways.

¹ Language bearing on view obstruction is found in the CC&Rs, <http://palisair.org/wp-content/uploads/2014/08/PHOA-CCRs-3rd-modification.pdf>, in the following places: Article II, Section 2; Article III, Section 1, second paragraph; Article III Section 9, paragraphs 2, 3, and 4; Article IV, Section 2, Sub-Section (a), second from last paragraph; Article V, Section 8.

We intend soon to survey the preference of the lot owners regarding the following two general options for view protection. It is necessary to choose between them since they are contradictory. We shall then draft revised CC&Rs accordingly and put them before the homeowners for a vote.

View Protection Option 1: Maximize View Protection, but Allow for Increased Development to the Extent Possible

Given that residences have now been built on all lots in the three tracts where development is allowed, we can maximize future view protection as follows. The 15 ½ ft. height restriction will no longer apply. Instead, the policy will be that rebuilding, or adding on to existing construction, must not obstruct any view line from any other property in the tracts more than the extent of any obstruction by the existing construction. This would be adjudicated by the Board. After story poles have been put up, Board members would walk the periphery of the potentially affected properties to check sight lines.

In addition, we would allow the Board, at its discretion, and after consultation with affected neighbors, to grant a variance that allows construction, beyond the strict limits above, that does obstruct certain view lines, provided that this obstruction is not unreasonable

This approach emphasizes the desired result, reasonable view protection, without specifying how to accomplish this in individual cases – that is left up to the discretion of the Board. In individual cases, minor or unimportant obstruction of sightlines could be allowed. Development without unreasonably obstructing existing views would be supported by encouraging architects to add floor space by building down rather than up; this especially applies to properties that are built at the top of a down-slope. In general, the Board would encourage builders and their architects to come up with creative solutions that maximize the value of new construction while preserving the views and property values of existing construction.

View Protection Option 2: Favor Development Over View Protection

The current CC&Rs would be rewritten to keep, but clarify, the 15 ½ ft. requirement. View protection would not be considered for any construction under the 15 ½ ft. limit, explicitly favoring development over view protection.

The Board recommends Option 1. Anyone favoring Option 2 should consider this: after you have built something that blocks your neighbor's view, what is to stop a developer or another homeowner from subsequently building something even larger that blocks your view?

Flat Roofs

Issues

In one of the three Palisair tracts (19890), there are specific requirements on the percentage of the roof area (25%) that can be flat, and a requirement on the minimum pitch (at least 2 1/2 inches to each 12 inches) of the remaining 75%. These requirements do not apply in the other two tracts (15944 and 15948), where entirely flat roofs are allowed.²

Accordingly, several residence construction and rebuild projects with flat roofs have been approved over the years. But there are several issues regarding flat roofs:

1. **View Blockage.** Even if built on the same footprint as a residence with the same maximum height that satisfies the roof slope requirements, a residence with a flat roof can cause considerably more view blockage. The flat roof residence may have rooms with higher ceilings and larger overall room volumes, but at the expense of a neighbor's view.
2. **The Cool Roof Ordinance and Glare.** The City of Los Angeles recently passed the Cool Roof Ordinance that mandates high-reflectivity coatings for re-roofing and new roofs in residential communities, with a particularly stringent requirement for the coatings on flat roofs. The Tract Committee has determined that all of the current City-approved coatings for flat roofs cause excessive glare, and this violates the CC&R provision that roofs must not be "of such a nature as glaringly to reflect light." This situation may change in the future because either (1) new roof technologies that satisfy the Ordinance but do not glare may be developed, or (2) the City may amend the Ordinance in the future to permit less reflective coatings in hillside areas like ours, where roof glare can be a particular issue. At that point flat roofs could be permitted in some cases

² Tract maps can be found in the PHOA website at <http://palisair.org/wp-content/uploads/2014/03/Palisair-tract-19890.pdf> , <http://palisair.org/wp-content/uploads/2014/03/Palisair-tract-15948.pdf>, and <http://palisair.org/wp-content/uploads/2014/03/Palisair-tract-15944.pdf>.

The “quality and nature of the view” is referenced throughout our CC&Rs and is as important an aspect of the view as is its size or expansiveness. A glaring white roof even if it does not block a view can significantly damage the “quality and nature of the view” as it takes the eye away from a spectacular focal point such as the ocean or a sunrise. A darker roof in the view-line can go unnoticed, but glare is ‘front and center’ in one’s consciousness, never to be forgotten. Sometimes so harsh is the glare that one refrains from glancing out the window to the view. For examples, see included with this document Exhibit 2 titled “White Roofs” showing the before and after photos in two cases in our Association.

We plan to survey the lot owners regarding their preference among the following two options for revising the CC&Rs:

Flat Roof Option 1: Require Sloped Roofs in All Three Tracts, Allowing Flat Roofs Only With a Variance

Require sloped roofs in all three tracts. The Board may issue a variance to allow a flat roof in a specific case, provided (1) it satisfies the view protection limitations (see the previous section) and (2) it does not cause excessive glare. Under the current Cool Roof Ordinance, requirement (2) could only be met in those rare cases where the flat roof is not visible at all from other lots, or is only visible in a minor or unimportant way. This could change in the future.

Flat Roof Option 2: Continue the Current Rules

Retain the current language which requires sloped roofs in Tract 19890 but not does not restrict slope in Tracts 15944 and 15948.

In Tract 19890, all flat roofs will never be allowed. In Tracts 15944 and 15948, flat roofs will be allowed without a variance, but view protection rules and the rule against glare apply, which under the current Cool Roof Ordinance would apply only in rare cases.

The Board recommends Option 1.

Rooftop Decks

Issues

There have been increased submissions in recent years of building plans that include rooftop decks. Should the Palisair CC&Rs ban the construction of all rooftop decks in our tracts? If they are permitted, should we control their use? Do we want to restrict the furniture and objects such as umbrellas, balloons, barbecue equipment, potted plants, and people, that can extend their tangible height in unexpected ways and add visual and noise pollution to our tranquil environment? How can we let property owners maximize their real estate value, while also protecting neighbors from intrusive noises and peering eyes? For consistency and ease of enforcement, should we ban rooftop deck construction entirely? Or permit them to be built in locations where they do not block any existing protected view lines? If we do permit new rooftop decks, should they be subject to use and time restrictions? Lastly, will allowing roof top decks in our association negatively affect the architectural unity and aesthetic quality of the tract? Will their proliferation alter the quiet tranquility and peaceful character of our quiet residential neighborhood, as well as block views?

A deck on top of a house is an element appurtenant to the roof and therefore it is a flat area of the roof. As such, it is subject to restrictions in the CC&Rs regarding view protection, glare, and flat roofs, as discussed in the previous sections of this document.

Rooftop Decks Option 1: Permitted, if Not Unreasonably Blocking Views or Impinging Privacy

A rooftop deck can provide a spectacular view of the surrounding landscape and the ocean. It is a natural place for a party. A minority of homes in our tract do not enjoy an ocean view, or enough of one, and the owners want to create a view of the water or mountains for themselves and their guests to enjoy. Some homes in our association are backed up against a hill and do not have much outdoor living space. A roof top deck can help compensate for that. If the deck does not cause glare, block any neighbor's view, or impair their privacy, it would be allowed. It is important to note that people standing on a roof deck usually far

exceed the current height limit of 15.5 ft. Therefore, if rooftop decks become allowable then a more accurate evaluation of view obstruction and privacy should require story poles for the perimeter of the roof deck to extend 6 ft. above the deck floor to include the height of a person standing on the deck. For privacy protection the story poles should not be visible from neighboring windows.

Rooftop Decks Option 2: Permitted, if Not Unreasonably Blocking Views or Impinging Privacy, but Optionally Subject to Use and Time Restrictions

Where a roof does impinge on a neighbor's privacy, contractual restrictions could be put in place to control how many days per year the deck is permitted to be used for parties. They can require that all unattached party furniture and equipment be removed promptly after every use of the deck. Such restrictions can provide that notice shall be given to affected neighbors in advance of each permitted day and time of use. Such deck use restrictions have been used occasionally in our tract, and they appear to have worked so far.

As contracts, the restrictions burden the property in perpetuity and run with the land, just as the CC&Rs do. But there is concern that such restrictions potentially can provoke enforcement disputes, especially after the property with deck restrictions is sold several times over to subsequent owners.

On the other hand, providing such a restriction could be a good way for the Homeowners Association, in a specific situation, to promote the mutual benefit of both the owner of new construction and the owners of adjacent properties. This option does not include an evaluation of privacy invasion from neighboring homes.

Rooftop Decks Option 3: Rooftop Decks Banned Entirely

A roof top deck is often a highly visible architectural element, and many are seen from the street as well as from adjacent homes. To some eyes, they are jarring and destroy the quiet architectural aesthetics of our area. Due to visual and noise pollution, some may regard them as a public nuisance or an eyesore. Their associated potential for messiness and loud parties can cause an annoyance to the close neighbors, disturbing their privacy and the quiet enjoyment of their

homes. A roof top deck on a house, while it may increase that property's value, can decrease the quality of life and property values of adjacent homes by bringing visual or noise pollution and by impinging on views and privacy. Even when views are not specifically blocked, their character may be changed. For consistency in decision making and enforcement, and to protect overall neighborhood property values and amenities, these architectural elements would be entirely banned under our CC&Rs in this option.

The language of the ban would be similar to language in the Huntington Palisades CC&Rs, which forbids rooftop decks except in a few restricted cases where the deck is completely hidden from sight.

The Board recommends Option 1.