



VEGETATION AND VIEWS:

A Guide to Help Neighbors Find Creative Solutions to Manage Vegetation

Introduction

The word *neighborly* "...implies a disposition to live on good terms with others and to be helpful on principle."ⁱ Being a good neighbor and having good neighbors is an important component in the enjoyment of our homes and neighborhoods. However, some topics can put even the most neighborly relationships to the test. Vegetation is often a "hot button" topic because the same trees or shrubs that provide privacy, shade, and beauty for one person's property can block another's views. Oftentimes, a resident's most precious single item with regard to a home is his/her view.ⁱⁱ This guide has been prepared to help people find creative solution to manage vegetation. Simple steps can be taken before you plant to keep trees and shrubs from becoming a problem or source of contention in the first place. If conflicts occur, the guide also is intended to help people undertake and open, productive discussions with their neighbors about ways to a compromise so that views can be retained without sacrificing the value that trees provide to those who have them. The suggested approaches also may be utilized for discussing other concerns regarding vegetation, such as trees that block sun to solar collectors, vegetation that may be a fire hazard, or roots that are causing damage to foundations.

Think Before You Plant!

Many problems regarding vegetation can be avoided altogether by making informed decisions about the potential consequences of a particular plant choice and/or where it is planted. Take the time *before you plant* to make sure it's the *right tree or shrub in the right place*. Consider the following issues when selecting the type of plant material and deciding where to plant it, so you can avoid unintended future problems for your neighbors and for yourself from your landscaping.

- ☞ **Be considerate of your neighbors.** Your landscaping could negatively impact their property and/or their views.
- ☞ **Don't forget that we live in a desert and are in a declared state of drought!** Be conscious of the water needs of the plants you choose.
- ☞ **Prevent conflicts with utilities.** Trees can impact above-ground utility lines and invade underground utilities.
- ☞ **Protect the fire safety of your home and neighborhood.** Where you plant and what you plant can have an effect upon the safety of your home in the event of a fire and the degree to which a fire spreads

throughout an area. The following website includes a list of suggested plants for a defensible space.
<http://www.sdcounty.ca.gov/dplu/docs/SuggestedPlants.pdf>

- ✂ **Minimize root damage.** Costly damage to foundations, hardscapes, and other underground structures can be avoided.
- ✂ **Avoid invasive plant species.** The following website includes references for plants to avoid:
<http://www.cnpsd.org/invasives.html>
- ✂ **Once you plant it, you have to maintain it!** Be conscious of the ongoing need to maintain your vegetation to minimize the conflicts and potential problems noted above, as well as to protect the health of the plants. Trees that are not maintained properly can result in potential for property damage or personal injury. Of course, proper maintenance also preserves the aesthetic value the landscaping contributes to your property.

In addition to the websites included above, many resources are available to help you make the best choices possible regarding *what* to plant and *where* to plant—or where *not* to plant—them. The Urban Forest Ecosystems Institute has a very informative and helpful tree selection guide on-line at the following website: http://www.selectree.calpoly.edu/right_tree.html The Sunset Western Garden Book is an excellent resource. Consultation with a qualified landscape professional is another good option.

Neighbor-to-Neighbor Discussion

Ideally, issues regarding vegetation management will be resolved through friendly discussion. The owners of the trees or shrubs that are blocking or impeding views, or causing other property problems like the ones noted above, may not even be aware of the problems the vegetation is causing. The following suggestions are provided to help you achieve a successful resolution and maintain positive relationships.

- ✂ Approach your neighbors in a positive way, with the aim of sharing information and finding a solution that is acceptable to everyone.
- ✂ Recognize the value their trees and shrubs provide to them. This may include adding aesthetic and financial value to the property, privacy, shading and cooling effects, and environmental benefits of air quality improvement and wildlife habitat.
- ✂ Remember, property owners in Solana Beach do not have a “right” to a view unless they have negotiated an agreement, such as obtaining a view easement. Resolving this issue is ultimately about cooperation and good will. Be willing to accept partial view restoration as a middle ground. Keep your expectations realistic—don’t insist that they remove an excessive amount of vegetation to restore all views.

“While the spirit of neighborliness was important on the frontier because neighbors were so few, it is even more important now because our neighbors are so many.”
-Lady Bird Johnson

- ✂ Share the fact that proper pruning techniques may offer a way to improve or restore views without damaging trees, or may address other concerns you may have. (See Pages 5-6 for pruning techniques recommended by the International Society of Arboriculture and for links to its website.)
- ✂ Offer to pay for a qualified arborist or landscaping professional. Such a professional can objectively assess the condition of the vegetation in question, provide options regarding pruning, and could suggest alternative types of trees or plants that would address your neighbors' concerns while helping you recover views.
- ✂ If your neighbor agrees to tree removal, a qualified landscape professional can suggest replacement plants and/or an alternative location that provides your neighbor with the benefits of the vegetation that was removed but that will not block views when it reaches maturity. Your neighbor also should refer to the "Think Before You Plant!" section of this guide if replanting is an option.
- ✂ Offer to pay for the cost of resolving the issue, whether it's pruning, removal, and/or replanting. Remember that pruning to restore views will require ongoing maintenance, so you may want to offer to pay for that, as well.
- ✂ Another option is to ask one or more of your neighbors to consider allowing you to negotiate a view easement across their property. If you decide to pursue this option, be sure to consult an attorney who is familiar with view easements.

Mediation Option

Sometimes even the best intention to find an equitable resolution does not result in agreement about the problem or the solution. If you and your neighbor cannot reach agreement on how to restore the view, use of a mediator may be an alternative.

There are several local sources for mediation services. Some of which are listed below. We recommend you and your neighbor(s) jointly select a professional mediator with some type of nationally recognized credentials who is a disinterested third party (no personal interest in the outcome of the decision, not a relative, etc.). Please note that the City of Solana Beach does not recommend any one specific entity nor have we verified the credentials of any of the following contacts and that this information has been provided as a courtesy to assist in your selection process.

National Conflict Resolution Center
 (760) 494-4728 or 619-238-2400
<http://www.ncrconline.com>

Neutral Solutions
 (858) 456-1199
<http://www.neutralsolutions.com/pg11.cfm>

State of California Laws Regarding Vegetation

Ideally, the neighborly approaches suggested above will lead to cordial resolution. If that is not possible, you should be aware of 2 California laws that address specific issues regarding vegetation—“spite fences” and blockage of solar access to solar collectors. These laws are summarized below and links to the complete codes are provided.

Spite Fence Statute (California Civil Code Section 840-848)

Under this statute, any fence or other structure in the nature of a fence, which can include a line of trees, that is unnecessarily higher than 10 feet and that was maliciously erected or maintained for the purpose of annoying a neighbor is a private nuisance. The neighbor injured by the private nuisance has legal recourse in accordance with Title 3, Part 3, Division 4 of the Civil Code, i.e. Civil Code sections 3501–3503. Those sections of the Civil Code provide that the legal remedies available are (1) filing a civil action, and (2) abatement. (Civil Code § 3501.) A person can undertake abatement action by removing or destroying the thing that constitutes the nuisance, but only in a manner that doesn’t breach the peace or cause unnecessary injury.

In order to qualify as a “spite fence” under the law, a fence (or structure in the nature of a fence) must be (1) unnecessarily higher than 10 feet and (2) erected or maintained out of malice for the purpose of annoyance. A fence that exceeds 10 feet does not automatically qualify, if there are valid reasons for having the fence of such height. Determining whether the fence unnecessarily exceeds 10 feet is a fact-specific inquiry. Similarly, whether the fence was maliciously erected or maintained for the purpose to annoy is a fact-specific inquiry.

Enforcement of the spite fence statute lies with private residents, who have the option of filing a civil suit or abating the nuisance on their own. However, any action to abate the nuisance cannot violate the rights of the other homeowner or resident. For example, the aggrieved person cannot cut down offending trees or reduce the height of a fence because such actions would most likely involve trespassing as well as unlawful property damage. The spite fence statute can be found in its entirety at: <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=civ&group=00001-01000&file=840-848>

Solar Shade Control Act (California Public Resource Code Sections 25980-25986)

The Act protects “solar collectors” (basically solar energy systems used for water and/or space heating, pool heating, and power generation) by making it unlawful to plant trees that will cast a shadow on a solar collector or allowing existing trees to grow so that they cast a shadow. The shadow must be of a certain dimension and the statute specifies how to perform the measurements. There is a limited exception for pre-existing trees, i.e. if they cast a shadow at any time during the one annual solar cycle after the installation of the solar collector. (The intent appears to be that such shadows are or should have been readily apparent to the solar collector installer and thus he should have taken it into account when installing his system.)

Enforcement of the statute lies with the public agency. Upon receiving a complaint, the public prosecutor (district attorney or city attorney) sends out an abatement warning and notice. Failure to take corrective action upon receipt of the notice constitutes a violation of the Act, which is an infraction. Each and every day that the

violation is uncorrected constitutes a new offense. Each violation is punishable by a \$1,000 fine. Additionally, the provisions of the Act may be enforced via a private civil action. The Solar Shade Control Act can be found in its entirety at:

<http://www.leginfo.ca.gov/cgi-bin/waisgate?WAIIdocID=1036921815+1+0+0&WAIAction=retrieve>

Pruning Techniques Can Improve or Restore Views Without Damaging Trees

Appropriate pruning techniques may improve or restore views while maintaining or even improving the form, health, aesthetics, and value of the subject vegetation. To ensure that the pruning techniques do not affect the health of a tree, such actions should be carried out in accordance with standards established by the International Society of Arboriculture (ISA) for use in the State of California.

The following information regarding pruning techniques for mature trees and hiring an arborist is a verbatim excerpt from a brochure that is one in a series published by ISA as part of its Consumer Information Program. ISA is a non-profit organization supporting tree care research around the world and is dedicated to the care and preservation of shade and ornamental trees.ⁱⁱⁱ

The entire brochure can be accessed at: http://www.treesaregood.org/treecare/pruning_mature.aspx Other brochures produced by ISA regarding tree care information, including pruning techniques for young trees, can be accessed at: <http://www.treesaregood.org/treecare/treecareinfo.aspx>

Pruning Techniques

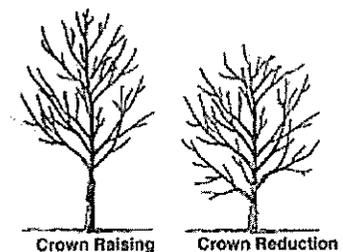
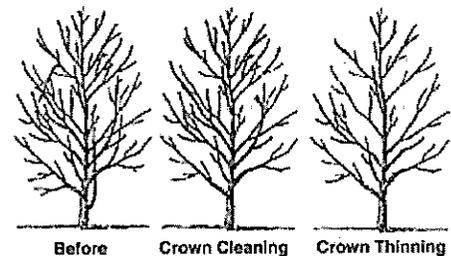
Specific types of pruning may be necessary to maintain a mature tree in a healthy, safe, and attractive condition.

Cleaning is the removal of dead, dying, diseased, crowded, weakly attached, and low-vigor branches from the crown of a tree.

Thinning is the selective removal of branches to increase light penetration and air movement through the crown. Thinning opens the foliage of a tree, reduces weight on heavy limbs, and helps retain the tree's natural shape.

Raising removes the lower branches from a tree in order to provide clearance for buildings, vehicles, pedestrians, and vistas.

Reduction reduces the size of a tree, often for clearance for utility lines. Reducing the height or spread of a tree is best accomplished by pruning back the leaders and branch terminals to lateral branches that are large enough to assume the terminal roles (at least one-third the diameter of the cut stem). Compared to topping, reduction helps maintain the form and structural integrity of the tree.



How Much Should Be Pruned?

The amount of live tissue that should be removed depends on the tree size, species, and age, as well as the pruning objectives. Younger trees tolerate the removal of a higher percentage of living tissue better than mature

trees do. An important principle to remember is that a tree can recover from several small pruning wounds faster than from one large wound.

A common mistake is to remove too much inner foliage and small branches. It is important to maintain an even distribution of foliage along large limbs and in the lower portion of the crown. Overthinning reduces the tree's sugar production capacity and can create tip-heavy limbs that are prone to failure.

Mature trees should require little routine pruning. A widely accepted rule of thumb is never to remove more than one-quarter of a tree's leaf-bearing crown. In a mature tree, pruning even that much could have negative effects. Removing even a single, large-diameter limb can create a wound that the tree may not be able to close. The older and larger a tree becomes, the less energy it has in reserve to close wounds and defend against decay or insect attack. The pruning of large mature trees is usually limited to removal of dead or potentially hazardous limbs.

Hiring an Arborist

Pruning large trees can be dangerous. If pruning involves working above the ground or using power equipment, it is best to hire a professional arborist. An arborist can determine the type of pruning necessary to improve the health, appearance, and safety of your trees. A professional arborist can provide the services of a trained crew, with all of the required safety equipment and liability insurance.

There are a variety of things to look for when selecting an arborist:

- membership in professional organizations such as the International Society of Arboriculture (ISA), the Tree Care Industry Association (TCIA), or the American Society of Consulting Arborists (ASCA)
- certification through ISA's Certified Arborist program
- proof of insurance
- list of references (don't hesitate to check)

Avoid using the services of any tree company that:

- advertises topping as a service provided; knowledgeable arborists know that topping is harmful to trees and is not an accepted practice
- uses tree climbing spikes to climb trees that are being pruned; climbing spikes can damage trees, and their use should be limited to trees that are being removed

Don't Top Trees!

The information provided above discusses *proper* pruning techniques. An *improper* technique that often is employed is topping trees. Topping damages trees and should be avoided. Please see the information at <http://www.treesaregood.com/treecare/topping.aspx> for an explanation of why topping should not be used.

ⁱ <http://www.merriam-webster.com/dictionary>

ⁱⁱ City of Solana Beach View Assessment Guidelines and Toolkit, August 15, 1994

ⁱⁱⁱ http://www.treesaregood.org/treecare/pruning_mature.aspx