



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: November 7, 2018

Agenda Item 7B

Approvals:

City Manager [Signature]

Dept. Head [Signature]

Attorney [Signature]

Finance [Signature]

Department: Community Development
Prepared By: City Attorney

Subject: AMENDMENT TO SITE PLAN PERMIT 98-63 AND TENTATIVE TRACT MAP 15718, MODIFICATION OF CONDITIONS OF APPROVAL FOR TREE REMOVAL AND REPLACEMENT POLICY

Fiscal Impact: None.

Summary: Staff recommends the City Council approve a modification to the Conditions of Approval for Site Plan Permit (SPP) 98-62 and Tentative Tract Map (TTM) 15718 for the Reserve Community relating to tree removal and replacement.

Background: On December 6, 2016, the City Council, with the Planning Commission's recommendation, adopted Resolution No. 16-70 amending SPP 98-62 and amending TTM 15718 for the Reserve Association, provided in Attachment 4. Conditions of Approval 4 and 11 of Resolution No. 16-70 required the Reserve Association to amend its CC&Rs to include a policy regarding the removal and replacement of trees in the common areas. Conditions of Approval 7 and 8 set the tree removal and replacement policy:

7. As part of the consideration for the replacement of a tree, an arborist shall be involved in evaluating the condition of the tree with the standards recognized and practiced by the International Society of Arboriculture. The arborist along with the landscape maintenance company shall evaluate the condition and location of the tree to determine if it meets the criteria identified below to consider removal. The replacement of a tree is authorized only when it meets at least one of the following criteria:
 - Dead/dying
 - Diseased
 - Dangerous
 - Destructive
 - Tree is inappropriately centered in the intended view corridor area for a home (as identified in the Plan View graphic below)
 - Topped trees that cannot be crown restored

8. Tree replacement requests reviewed and supported by an arborist and the tree landscape maintenance company that qualify for removal for: 1) skyline trees; and 2) trees along Avenida Vista Hermosa, Avenida Vera Cruz, and

Costero Risco, (as stated above) shall provide a submittal package to the City that includes the following information for review:

- Map identifying the tree location
- Description and condition of the tree, including photographs
- Criteria justifying the removal of the tree
- Proposal for replacement tree including location, type, and size. If a replacement is not proposed then the justification shall be provided.

Tree replacement requests shall be reviewed by the City Planning Division and the City's Landscape Architect to ensure the request complies with the removal criteria and the replacement is in compliance with the approved landscape design and remains in compliance with the HDO [Hillside Development Ordinance]. Tree replacement requests that do not meet the criteria shall be subject to City Planner review. The City Planner has the discretion to elevate the tree replacement decision to the Planning Commission.

Per San Clemente Municipal Code, Section 17.12.180, an applicant may request changes to approved applications. Generally, changes to Conditions of Approval are processed as modifications requiring review by the approval's final decision-making authority, with a notice, and a public hearing. (SCMC, § 17.12.180(C).)

Discussion:

The Reserve Association requests to change how the tree removal policy is recorded and put into effect. Rather than amend the CC&Rs, the Association Board of Directors proposes to adopt the tree removal and replacement policy and enter into a separate agreement with the City. To use this approach, Conditions of Approval 4 and 11 must be modified. Currently, Condition of Approval 11 requires the Reserve Association to amend its CC&Rs to reflect the tree removal and replacement policy (set by Conditions 7 and 8 above) before removing any trees. Condition 4 requires the Reserve Association to "commence" the CC&Rs amendment by December 6, 2019 (three years from adoption date of Resolution No. 16-70).

The proposed Resolution, shown in Attachment 1, would modify Conditions 4 and 11 of Resolution No. 16-70 as follows:

- The Reserve Association shall execute an agreement with the City, which provides that (i) the Reserve Association shall adopt, implement, and enforce a Board policy consistent with Conditions 7 and 8; (ii) the Reserve Association may not change the Board policy without the prior written approval of the City; and (iii) the City may, at the Reserve's expense, act to enforce the policy when necessary. The agreement shall be approved as to form by the City Attorney and executed by the Community Development Director.
- The Reserve Association shall adopt a policy consistent with Conditions 7 and 8 as contemplated by the agreement.
- The Reserve Association may not remove any tree until the agreement is executed and the board policy is adopted. The reserve must "commence"

execution the agreement and adoption the policy by December 6, 2019 (three years from the adoption of Resolution No. 16-70, per Condition 4).

The proposed modifications to Conditions of Approval 4 and 11 are shown in Attachment 2. The proposed Association Board policy is Attachment 3. The proposed agreement is Attachment 4.

The policy and agreement approach allows the City enforcement authority that is equivalent to the CC&Rs amendment approach. If the Association fails to execute the agreement or adopt the policy, fails to enforce the policy, or allows tree removal in violation of the policy, then the Association would be in violation of SPP 98-62, TTM 15718, and the agreement. Per the agreement, the City could take corrective action at the Association's expense or seek a remedy in court.

Environmental**Review:**

The proposed modifications to Conditions 4 and 11 in Resolution No. 16-70 are adequately addressed under the previously prepared the Forster Ranch Specific Plan Environmental Impact Report (1986), Forster Ranch Specific Plan Supplemental EIR (1991), and Forster Ranch Specific Plan Amendment Subsequent Program EIR (1998). Further, this action would not, in itself, in any way impact or alter the physical environment. Accordingly, this action is not a "project" under State CEQA Guidelines section, 15378, and exempt from environmental review under section 15061(b)(3) (the general-rule exemption).

Recommended**Action:**

STAFF RECOMMENDS THAT the City Council approve amendments to SPP 98-62 and TTM 15718 for the Reserve Community relating to tree removal and replacement.

Attachments:

1. Resolution
2. Condition of approval modifications (strike through and underline)
3. Policy for adoption by the Reserve Association Board
4. Agreement between Association and City
5. Staff report dated December 6, 2016 and Resolution No. 16-70

Notification:

Notice given pursuant to San Clemente Municipal Code, Section 17.12.100: Publication in a newspaper, mailing to residents within 300 feet of the subject property, and posting three notices adjacent to the subject property.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING SITE PLAN PERMIT 98-63 AND TENTATIVE TRACT MAP 15718, RESERVE LANDSCAPE AMENDMENT, TO MODIFY CONDITIONS OF APPROVAL FOR THE RESERVE COMMUNITY RELATING TO TREE REMOVAL AND REPLACEMENT

WHEREAS, on March 3, 1999, the City Council approved Site Plan Permit 98-63 and Tentative Tract Map 15718, allowing the development of 419 single family dwelling units in planning area 4 of Forster Ranch;

WHEREAS, on December 6, 2016, the City Council adopted Resolution No. 16-70 amending Site Plan Permit 98-62 and amending Tentative Tract Map 15718 for the Reserve Community, located in the Residential Low zoning district of the Forster Ranch Specific Plan, at the intersection of Camino Vera Cruz and Avenida Vista Hermosa. The amendment to the Site Plan Permit and Tentative Tract Map allowed modification of the approved landscape plan and requirements limiting the removal of trees for the Reserve Community;

WHEREAS, the Conditions 7 and 8 of Resolution No. 16-70 establish the following tree removal and replacement policy:

7. As part of the consideration for the replacement of a tree, an arborist shall be involved in evaluating the condition of the tree with the standards recognized and practiced by the International Society of Arboriculture. The arborist along with the landscape maintenance company shall evaluate the condition and location of the tree to determine if it meets the criteria identified below to consider removal. The replacement of a tree is authorized only when it meets at least one of the following criteria:
 - Dead/dying
 - Diseased
 - Dangerous
 - Destructive
 - Tree is inappropriately centered in the intended view corridor area for a home (as identified in the Plan View graphic below)
 - Topped trees that cannot be crown restored

8. Tree replacement requests reviewed and supported by an arborist and the tree landscape maintenance company that qualify for removal for: 1) skyline trees; and 2) trees along Avenida Vista Hermosa, Avenida Vera Cruz, and Costero Risco, (as stated above) shall provide a submittal package to the City that includes the following information for review:
- Map identifying the tree location
 - Description and condition of the tree, including photographs
 - Criteria justifying the removal of the tree
 - Proposal for replacement tree including location, type, and size. If a replacement is not proposed then the justification shall be provided.

Tree replacement requests shall be reviewed by the City Planning Division and the City's Landscape Architect to ensure the request complies with the removal criteria and the replacement is in compliance with the approved landscape design and remains in compliance with the HDO [Hillside Development Ordinance]. Tree replacement requests that do not meet the criteria shall be subject to City Planner review. The City Planner has the discretion to elevate the tree replacement decision to the Planning Commission.

WHEREAS, Conditions 4 and 11 of Resolution No. 16-70 required that the Reserve Association amend its covenants, conditions, and restrictions (CC&Rs) to effectuate the tree removal and replacement policy in Conditions 7 and 8;

WHEREAS, the Reserve Association requested that Conditions 4 and 11 of Resolution No. 16-70 be modified so that, instead of through a CC&Rs amendment, the tree removal policy in Conditions 7 and 8 is effectuated through a separate agreement executed with the City and through a policy adopted by the Board of the Reserve Association;

WHEREAS, the City Council finds that the modifications to Conditions 4 and 11 of Resolution No. 16-70 are administrative in nature and do not impact the project site, planning, design, or construction of development authorized by Site Plan Permit 98-62 and Tentative Tract Map 15718; and

WHEREAS, on November 7, 2018, the City Council of the City of San Clemente held a duly noticed public hearing on the request to modify Conditions 4 and 11, and considered the written evidence and testimony in the record.

NOW, THEREFORE, the City Council of the City of San Clemente does resolve as follows:

Section 1: Environmental.

The proposed modifications to Conditions 4 and 11 in Resolution No. 16-70 are adequately addressed under the previously prepared the Forster Ranch Specific Plan Environmental Impact Report (1986), Forster Ranch Specific Plan Supplemental EIR (1991), and Forster Ranch Specific Plan Amendment Subsequent Program EIR (1998). Further, this action would not, in itself, in any way impact or alter the physical environment. Accordingly, this action is not a "project" under State CEQA Guidelines, section 15378, and exempt from environmental review under section 15061(b)(3) (the general-rule exemption).

Section 2: Site Plan Permit Findings.

The City Council of the City of San Clemente finds that the modifications to Conditions 4 and 11 are administrative in nature and do not impact the project site, planning, design, or construction of development authorized by Site Plan Permit 98-63. Accordingly, the City Council finds that the modifications are consistent with and do not alter the findings in Resolution No. 16-70, section 2 for Site Plan Permit 98-63, per San Clemente Municipal Code, section 17.16.050(F)(1):

- a. The proposed development is permitted within the subject zone pursuant to the approval of a Site Plan Permit and complies with all the applicable provisions of the Forster Ranch Specific Plan, the goals, and objectives of the San Clemente General Plan, and the purpose and intent of the zone in which the development is being proposed.
- b. The site is suitable for the type and intensity of development that is proposed.
- c. The proposed development will not be detrimental to the public health, safety or welfare, or materially injurious to properties and improvements in the vicinity.
- d. The proposed development will not be unsightly or create disharmony with its locale and surroundings.
- e. The proposed development will minimize or eliminate adverse physical or visual effects which might otherwise result from unplanned or inappropriate development, design or location.

Section 3: Tentative Tract Map Findings.

The City Council of the City of San Clemente finds that the modifications to Conditions 4 and 11 are administrative in nature and do not impact the project site, planning, design, or construction of Tentative Tract Map 15718. Accordingly, the City Council finds that the modifications are consistent with and do not alter the findings in Resolution No. 16-70, section 3 for Tentative Tract Map 15718, per San Clemente Municipal Code, section 17.16.050(F)(1):

- a. The site is physically suitable for the type of development.
- b. The site is physically suitable for the proposed density of the development.
- c. The design of the subdivision or the proposed improvements is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
- d. The design of the subdivision or the type of improvements is not likely to cause serious public health problems.
- e. The subdivision, with its provisions for any design and improvements, is consistent with the General Plan and any applicable specific plan.
- f. The design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of the property within the proposed subdivision.

Section 4: Modifications to Conditions of Approval.

The modifications to Conditions 4 and 11 are as follows (additions shown in underline and deletions shown in ~~strikeout~~):

4. AMSP 98-63 shall become null and void if the landscape installation and amendment to the CC&Rs as well as execution of an agreement and adoption of a Board policy as described in Condition 11 are not commenced within three (3) years from the date of the approval thereof. Since the use requires the issuance of a building permit, the use shall not be deemed to have commenced until the date that the building permit is issued for the development. [Citation - Section 17.12.150.A.1 of the SCMC] (PIng.) _____
11. Prior to City approval for the replacement of any trees and the CC&R Recordation, the Reserve Association shall vote, and submit for review, pay a review fee and obtain City Attorney approval of the amended CC&Rs. After recordation a copy of the recorded CC&Rs shall be provided to the City. execute the agreement and adopt the Board policy as provided below:
 - a. The Reserve Association shall execute an agreement with the City, which provides that (i) the Reserve Association shall adopt, implement, and enforce a Board policy consistent with Conditions 7 and 8; (ii) the Reserve Association may not change the Board policy without the prior written approval of the City; and (iii) the City may, at the Reserve's expense, act to enforce the policy when necessary. The agreement shall be approved as to form by the City Attorney and executed by the Community Development Director. (PIng.) _____

- b. The Reserve Association shall adopt a policy consistent with Conditions 7 and 8 as contemplated by the agreement in Condition 11(a) above. (Plng.)

Section 5: City Council Approval.

Based on the findings above, the City Council of the City of San Clemente hereby approves Amendments to Site Plan Permit 98-63 and Tentative Tract Map 15718, subject to conditions of approval attached hereto as Exhibit A.

Section 6: Severability.

If any provision of this resolution or its application to any person or circumstance is held invalid, such invalidity has no effect on the other provisions or applications of the ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this resolution are severable. The City Council declares that it would have adopted this resolution irrespective of the invalidity of any portion thereof.

APPROVED AND ADOPTED at a regular meeting of the City Council of the City of San Clemente this _____ day of _____, _____.

Mayor
City of San Clemente, California

ATTEST:

City Clerk
City of San Clemente, California

RESOLUTION NO.

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STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF SAN CLEMENTE)

I, JOANNE BAADE, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. _____ was adopted at a regular meeting of the City Council of the City of San Clemente held on the _____ day of _____, _____, by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this _____ day of _____, _____.

CITY CLERK of the City of
San Clemente, California

Approved as to form:

City Attorney

CONDITIONS OF APPROVAL
AM SPP 98-63/AM TTM 15718
RESERVE LANDSCAPE AMENDMENT

1. Conditions of approval associated with Resolution No. 16-70 for TTM 15718 and SPP 98-63 are superseded by this Resolution. (PIng.)_____
2. Landscaping shall be in substantial conformance with the landscape plan, tree removal criteria, and any other applicable submittals approved by the City Council on December 6, 2016. (PIng.)_____
3. The applicant shall defend, indemnify, and hold harmless the City of San Clemente and its officers, employees, and agents from and against any claim, action, proceeding, fines, damages, expenses, and attorneys' fees, against the City, its officers, employees, or agents to attack, set aside, void, or annul any approval or condition of approval of the City concerning this project, including but not limited to any approval or condition of approval of the City Council, Planning Commission, or City Planner. Applicant shall pay all costs. The City shall promptly notify the applicant of any claim, action, or proceeding concerning the project and the City shall cooperate fully in the defense of the matter. The City reserves the right, at its own option, to choose its own attorney to represent the City, its officers, employees, and agents in the defense of the matter. If the applicant fails to so defend the matter, the City shall have the right, at its own option, to do so and, if it does, the applicant shall promptly pay the City's full cost of the defense. (PIng.)_____
4. Amendment to Site Plan Permit 98-63 shall become null and void if the landscape installation as well as execution of an agreement and adoption of a Board policy as described in Condition 11 are not commenced within three (3) years from the date of the approval thereof. Since the use requires the issuance of a building permit, the use shall not be deemed to have commenced until the date that the building permit is issued for the development. [Citation - Section 17.12.150.A.1 of the SCMC] (PIng.)_____
5. The owner or designee shall have the right to request an extension AMSP 98-63 if said request is made and filed with the Planning Division prior to the expiration date as set forth herein. The request shall be subject to review and approval in accordance with Section 17.16.160 of the Zoning Ordinance. [Citation - Section 17.12.160 of the SCMC] (PIng.)_____
6. Resolution 99-13, Condition 14.j shall be revised to allow the removal of trees if they comply with the criteria identified in the Tree Maintenance Plan and in condition of approval 7 and 8 below or if the removal request is approved by the City Planner or the designated public hearing review body, as stated in condition of approval 8 below. ■■(PIng.)_____

7. As part of the consideration for the removal of a tree, an arborist shall be involved in evaluating the condition of the tree with the standards recognized and practiced by the International Society of Arboriculture. The arborist along with the landscape maintenance company shall evaluate the condition and location of the tree to determine if it meets the criteria identified below to consider removal. The removal of a tree is authorized only when it meets at least one of the following criteria:

- Dead/dying,
- Diseased,
- Dangerous,
- Destructive,
- Tree is inappropriately centered in the intended view corridor area for a home (as identified in the plan view graphic in the City approved concept landscape plan), or
- Topped trees that cannot be crown restored 60 days from the identification of a dead tree it shall be removed and replaced with a new tree.

■(PIng.)_____

8. Tree replacement requests reviewed and supported by an arborist and the tree landscape maintenance company that qualify for removal for: 1) skyline trees; and 2) trees along Avenida Vista Hermosa, Avenida Vera Cruz, and Costero Risco, (as stated above) shall provide a submittal package to the City that includes the following information for review:

- Map identifying the tree location,
- Description and condition of the tree, including photographs,
- Criteria justifying the removal of the tree, and
- Proposal for replacement tree including location, type, and size. If a replacement is not proposed then the justification shall be provided.

Tree replacement requests shall be reviewed by the City Planning Division and the City's Landscape Architect to ensure the request complies with the removal criteria and the replacement is in compliance with the approved landscape design and remains in compliance with the HDO [Hillside Development Ordinance]. Tree replacement requests that do not meet the criteria shall be subject to City Planner review. The City Planner has the discretion to elevate the tree replacement decision to the Planning Commission.

■(PIng.)_____

9. The Reserve HOA shall install 33 percent of trees each year, over the course of three years, across all quadrants of the development (where needed) to improve the aesthetics and have varied growth to bring the development into compliance with the HDO and the General Plan requirements for the development.

■(PIng.)_____

10. The tree installations on the slopes and the replacement of inappropriately placed trees or topped trees that cannot be crown restored must be completed within three years from the City Council approval of Resolution No. 16-70 on December 6, 2016 to avoid citations for being out of compliance with their approved landscape plans and conditions of approval. An extension to the three year installation timeline would be subject to Community Development Director approval. ■■(PIng.)_____
11. Prior to City approval for the replacement of any trees, the Reserve Association shall execute the agreement and adopt the Board policy as provided below:
- a. The Reserve Association shall execute an agreement with the City, which provides that (i) the Reserve Association shall adopt, implement, and enforce a Board policy consistent with Conditions 7 and 8; (ii) the Reserve Association may not change the Board policy without the prior written approval of the City; and (iii) the City may, at the Reserve's expense, act to enforce the policy when necessary. The agreement shall be approved as to form by the City Attorney and executed by the Community Development Director. (PIng.)_____
- b. The Reserve Association shall adopt a policy consistent with Conditions 7 and 8 as contemplated by the agreement in Condition 11(a) above. (PIng.)_____
12. All tree replacements shall be in conformance with the Tree Maintenance Plan to ensure the tree location, type, and blend of trees on the common area slopes is consistent with the City Council approval of Resolution No. 16-70 on December 6, 2016 for the amended landscape plan and tree policy. ■■(PIng.)_____
13. The applicant shall comply with all applicable provisions of the San Clemente Municipal Code, adopted ordinances, and state laws. (PIng.)_____
14. Within thirty days after project approval, the owner or designee shall submit written consent to all of these imposed conditions to the Community Development Director or designee. The owner or designee understands that the resolution will be of no force or effect unless such written consent is submitted to the City. [*Citation – City Attorney Legal Directive*] (PIng.)_____

The modifications to Conditions 4 and 11 are as follows (additions shown in underline and deletions shown in ~~strikeout~~):

4. AMSPP 98-63 shall become null and void if the landscape installation ~~and amendment to the CC&Rs~~ as well as execution of an agreement and adoption of a Board policy as described in Condition 11 are not commenced within three (3) years from the date of the approval thereof. Since the use requires the issuance of a building permit, the use shall not be deemed to have commenced until the date that the building permit is issued for the development. *[Citation - Section 17.12.150.A.1 of the SCMC]* (PIng.) _____

11. Prior to City approval for the replacement of any trees ~~and the CC&R Recordation~~, the Reserve Association shall ~~vote, and submit for review, pay a review fee and obtain City Attorney approval of the amended CC&Rs. After recordation a copy of the recorded CC&Rs shall be provided to the City.~~ execute the agreement and adopt the Board policy as provided below:
 - a. The Reserve Association shall execute an agreement with the City, which provides that (i) the Reserve Association shall adopt, implement, and enforce a Board policy consistent with Conditions 7 and 8; (ii) the Reserve Association may not change the Board policy without the prior written approval of the City; and (iii) the City may, at the Reserve's expense, act to enforce the policy when necessary. The agreement shall be approved as to form by the City Attorney and executed by the Community Development Director. (PIng.) _____

 - b. The Reserve Association shall adopt a policy consistent with Conditions 7 and 8 as contemplated by the agreement in Condition 11(a) above. (PIng.) _____

ATTACHMENT 3

COMMON AREA TREE REMOVAL POLICY

The Board of Directors has the power under Article V, Section 2(m), of the Association's CC&Rs to adopt reasonable Rules and Regulations concerning the maintenance, improvement, use and/or occupancy of any portion of the Project. To further clarify the requirements for Common Area tree removal as stated in Article VIII, Section 29, of the Association's CC&Rs, as amended, and comply with City of San Clemente Resolution No. 16-70, the Board of Directors has adopted the following Common Area Tree Removal Policy:

1. No Owner shall remove or alter any tree in the Common Area. Any Owner requests for the Association to remove/replace trees in the Common Area shall be submitted to the Board for consideration as follows:
 - (a) Owner requests an application for Common Area tree removal/replacement from the Board. Owner must then submit a completed application to the Board for review.
 - (b) If the Board decides an application for Common Area tree removal/replacement has merit, the Board will request an evaluation from the Association's landscape maintenance contractor and engage the services of a third party arborist to inspect the tree(s), make a formal assessment of each tree's health and potential danger with the standards recognized and practiced by the International Society of Arboriculture, and provide a recommendation to the Board regarding removal/replacement.
 - (c) The Board will decide whether to approve or reject the application for Common Area tree removal/replacement. The removal and replacement of a tree will be authorized only when it meets at least one of the following criteria:

The tree is

- Dead/dying,
- Diseased,
- Dangerous,
- Destructive,
- Inappropriately centered in the intended view corridor area for a home (as identified in the plan view graphic in the City approved concept landscape plan),
or
- A topped tree that cannot be crown restored.

If the application is approved, unless the tree(s) also require City approval pursuant to Subsection (d) below, the Board will then engage the services of the Association's landscape maintenance contractor or other third party contractor to remove/replace the designated tree(s). Replacement trees shall be planted within 60 days of application approval by the Board or by the City in the case of "skyline trees" subject to Subsection (d) below, whichever is later.

- (d) If an application is for removal/replacement of "skyline trees" (shown on the City approved concept landscape plan) along the top of a slope between Residences or trees along Avenida Vista Hermosa, Camino Vera Cruz, and Costero Risco, then such request

will require a formal assessment of each tree's health-and potential danger from a third party arborist and approval from both the Board and the City before any such tree can be removed/replaced by the Association. If the tree removal/replacement application is approved by the Board, the Board will then submit a request to the City for review/approval along with the following information:

- Map identifying the tree location
 - Description and condition of the tree, including photographs
 - Reasons for removing the tree, including arborist's recommendations
 - Proposal for replacement tree including location, type, and size recommended by arborist. If a replacement tree is not proposed, then the justification shall be provided.
2. Such requests shall be in compliance with the City approved landscape concept plan for the Project and the City's Hillside Development Ordinance (Municipal Code sections 15.40.010 - 15.40.080).

No revisions, changes, or termination of the provisions of this Policy by the Board of Directors shall be effective without the prior written approval of the City Attorney and the City Council of the City of San Clemente. The Association shall forward, or cause to be forwarded, to the Community Development Director, or designee, of the City of San Clemente, a written notice, delivered by certified or registered mail with return receipt requested, of any such revision, change, or termination requesting approval thereof.

Any revisions or changes of the provisions of this Policy by the Board of Directors shall comply with City approved landscape concept plan for the Project and the City's Hillside Development Ordinance (Municipal Code sections 15.40.010-15.40.080) unless otherwise approved by the City Attorney and the City Council of the City of San Clemente.

Adopted by the Board of Directors on _____, 2018.

ATTACHMENT 4

TREE REMOVAL POLICY AGREEMENT BY AND BETWEEN THE CITY OF SAN CLEMENTE AND THE RESERVE MAINTENANCE CORPORATION

PARTIES AND DATE

This Tree Removal Policy Agreement (“Agreement”) is entered into as of _____, 2018 (“Effective Date”) by and between the City of San Clemente, a California municipal corporation (the “City”) and the Reserve Maintenance Corporation, a California nonprofit mutual benefit corporation, (the “Association”). The City and Association are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as the “Parties.”

RECITALS

- A. The Association is an “association” as defined in Civil Code section 4080, formed for the purpose of operating and managing the Reserve planned unit development including without limitation ownership of certain real property in the City of San Clemente, County of Orange, State of California, more particularly described in Exhibit A (Property Description);
- B. Per Site Plan Permit 98-63 and Tentative Tract Map 15718, as amended by City Council Resolution No. _____ on November 7, 2018, the Association must adopt a policy specific to tree removal (the “Tree Removal Policy”), as provided in Exhibit B (Tree Removal Policy).
- C. As demonstrated by the requirements of Site Plan Permit 98-63 and Tentative Tract Map 15718, the City has an interest in the careful and appropriate removal and replacement of trees on the Property.
- D. The City and the Association desire to enter into this agreement to ensure the adoption of, compliance with, enforcement of the Tree Removal Policy.

TERMS

Now therefore, in consideration of the mutual covenants and obligations of the parties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

- 1. Tree Removal Policy.
 - 1.1. Policy Adoption. The Association will adopt, comply with, and enforce the Tree Removal Policy provided in Exhibit B.
 - 1.2. Policy Modification. The Association will not rescind, amend, or change the Tree Removal Policy in any way, without the City’s prior written approval.

2. Enforcement.

2.1. Corrective Order. If the City determines that the Association is in violation of this Agreement, then the City may send the Association a written corrective order to take appropriate measures within five (5) calendar days of the date of the order.

2.2. Corrective Action. If the Association fails to comply with the corrective order described in Section 2.1 (Corrective Order), the City may, at the Association's expense, enter the Property to take corrective action.

2.3. Additional Enforcement. Any enforcement rights of the City as described in this Agreement are in addition to and not instead of the City's rights regarding enforcement of its ordinances, regulations, and policies and the City's rights

3. Term. The term of this Agreement shall commence on the Effective Date and shall, unless otherwise modified, continue until cancelled per Section 4 (Cancellation).

4. Cancellation. This Agreement may be cancelled only by the prior written consent of the City and the Association.

5. Miscellaneous.

5.1. Indemnification.

5.1.1. Indemnification of the City by the Association. The Association shall defend, indemnify and hold the City, its officials, officers, employees, and agents (the "Indemnified Parties") free and harmless from any and all liability from loss, damage, or injury to property or persons, including wrongful death, in any manner arising out of or incident to acts, omissions, and/or operations by the Association, its officials, officers, personnel, employees, contractors, and/or subcontractors as well as its contractors' and/or subcontractors' officials, officers, employees, and agents. Further, the Association shall defend at its own expense, including attorneys' fees, the Indemnified Parties in any legal action based upon such acts, omissions and/or operations.

5.1.2. The Association's Obligations. The Association's obligations under this Section 5.1 (Indemnification) shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, regardless of whether or not the City has prepared, supplied, or approved any plans or for the uses allowed by this Agreement, and regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

5.1.3. The City's Rights. The City does not and shall not waive any rights against the Association that the City may have under the indemnification provision in this Section 5.1 (Indemnification) because of the City's acceptance of any security deposits or insurance policies.

- 5.1.4. Survival. The indemnification provision in this Section 5.1 (Indemnification) shall survive the termination or expiration of this Agreement.
- 5.2. Attorneys' Fees. If any legal action or proceeding arising out of or relating to this Agreement is brought by either party to this Agreement, the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorneys' fees, costs, and expenses incurred in the action or proceeding by the prevailing party.
- 5.3. Governing Law and Venue. This Agreement shall be governed by the laws of the State of California. Venue shall be in Orange County.
- 5.4. Waiver. The City's failure to insist upon strict compliance with any provision of this Agreement or to exercise any right or privilege provided herein, or the City's waiver of any breach hereunder, shall not relieve the Association of any of its obligations hereunder, whether of the same or similar type. The foregoing shall be true whether the City's actions are intentional or unintentional. Further, the Association agrees to waive as a defense, counterclaim, or setoff any and all defects, irregularities, or deficiencies in the authorization, execution, or performance of this Agreement as well as any laws, rules, regulations, ordinances, or resolutions of the City with regard to this Agreement.
- 5.5. Supplement, Modification, and Amendment. No supplement, modification, and/or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.
- 5.6. Assignment or Transfer.
- 5.6.1. No Assignment without the City's Consent. The Association shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without prior written consent of the City. Any attempt to do so shall be null and void, and any assignee, hypothecatee, or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation, or transfer. Unless specifically stated to the contrary in the City's written consent, any assignment, hypothecation, or transfer shall not release or discharge the Association from any duty or responsibility under this Agreement.
- 5.6.2. Merger. The transfer of a majority of the ownership interests in the Association, however accomplished, and whether in a single transaction or in a series of related or unrelated transactions, or the merger of the Association into any other entity in which the Association is not the surviving entity, or the sale of all or substantially all of the Association's assets, shall be deemed an assignment of the Association's rights hereunder subject to the requirements of Section 5.6.1 (No Assignment without the City's Consent).

5.7. Construction, References, and Captions:

- 5.7.1. Simple Construction. It being agreed the Parties or their agents have participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party.
- 5.7.2. Section Headings. Section headings contained in this Agreement are for convenience only and shall not have an effect in the construction or interpretation of any provision.
- 5.7.3. Calendar Days. Any term referencing time, days, or period for performance shall be deemed calendar days and not work days.
- 5.7.4. References to the City. All references to the City shall include, but shall not be limited to, City Council, City Manager, City Attorney, City Engineer, or any of their authorized representatives. The City shall have the sole and absolute discretion to determine which public body, public official or public employee may act on behalf of the City for any particular purpose.
- 5.7.5. References to the Association. All references to the Association shall include all officials, officers, personnel, employees, agents, contractors, and subcontractors of Association, except as otherwise specified in this Agreement

- 5.8. Notices. All notices to be given hereunder shall be in writing and may be made either by personal delivery or by registered or certified mail, postage prepaid, return receipt requested. Mailed notices shall be addressed to the parties at the addresses listed below. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of two (2) days after mailing.

To City:

City of San Clemente
910 Calle Negocio, Suite 100
San Clemente, CA 92672
Attn: Community Development Dir.

To Association:

The Reserve Maintenance Corporation
c/o Action Property Management
2063 Main Street, Suite 500
Irvine, CA 92614
Attn: President of the Board

5.9. Entire Agreement and Severability.

- 5.9.1. Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements, either written or oral, express or implied.

5.9.2. Severability. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

5.10. Binding Effect.

5.10.1. The Parties. Each and all of the terms and conditions of this Agreement shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns.

5.10.2. Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

5.10.3. Recordation. The Association acknowledges and agrees that the City may cause a copy of this Agreement to be recorded in the Orange County Recorder's Office.

5.10.4. Not Authorization to Assign. This Section 5.10 (Binding Effect) shall not be construed as an authorization for any Party to assign any right or obligation under this agreement other than as provided in Section 5.5 (Assignment or Transfer).

Signatures on next page.

**SIGNATURE PAGE TO TREE REMOVAL POLICY AGREEMENT
BY AND BETWEEN THE CITY OF SAN CLEMENTE
AND THE RESERVE MAINTENANCE CORPORATION**

In witness thereof, the Parties here to have executed this Agreement:

City of San Clemente

Reserve Maintenance Corporation

By: _____
Cecilia Gallardo-Daly
Community Development Director

By: _____
Name: _____
President

APPROVED AS TO FORM:

By: _____
Scott C. Smith
Best Best & Krieger LLP
City Attorney

By: _____
Name: _____
Secretary

EXHIBIT A
PROPERTY DESCRIPTION

Lots A through AA, inclusive, of Tract No. 16210 as per Map recorded in Book 828, Pages 11 through 20, inclusive, of Miscellaneous Maps filed in the Office of the County Recorder of Orange County, State of California.

Lots A through DD, inclusive, of Tract No. 16211 as per Map recorded in Book 827, Pages 42 through 50, inclusive, of Miscellaneous Maps filed in the Office of the County Recorder of Orange County, State of California.

Lots A through HH, inclusive, of Tract No. 16212 as per Map recorded in Book 828, Pages 1 through 10, inclusive, of Miscellaneous Maps, filed in the Office of the County Recorder of Orange County, State of California.

Lots A through Y, inclusive, of Tract No. 16282 as per Map recorded in Book 827, Pages 33 through 41, inclusive, of Miscellaneous Maps, filed in the Office of the County Recorder of Orange County, State of California.

EXHIBIT B
TREE REMOVAL POLICY

B-1

11-7-18 / 7B-23



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING

Meeting Date: December 6, 2016

Approvals:

City Manager *JM*

Dept. Head *CSO*

Attorney

Finance *JV*

Department: Community Development/Planning Division
Prepared By: Cliff Jones, Associate Planner *CJ*

Subject: AMENDMENT TO SITE PLAN PERMIT 98-63 AND AMENDMENT TO TENTATIVE TRACT MAP 15718, RESERVE LANDSCAPE AMENDMENT, LOCATED IN THE RESERVE COMMUNITY IN THE GENERAL AREA BETWEEN AVENIDA VISTA HERMOSA AND COSTERO RISCO.

Fiscal Impact: None.

Summary: Staff recommends the City Council approve a request to amend the Reserve community's Site Plan Permit (SPP) and Tentative Tract Map (TTM). The requested modifications include: 1) modify the common area slope planting pallet, 2) identify new locations for trees and a three year tree restoration plan on the common area slopes, 3) amend the CC&Rs and conditions of approval to allow the Association to remove and replace incorrectly placed or topped trees, 4) establish criteria for when topped or inappropriately placed trees can be removed and replaced, and 5) approve a Conceptual Landscape Plan to identify where trees should be located to ensure the Reserve complies with the Hillside Development Ordinance (HDO).

Background: In the 1980s concerns were raised about hillside developments and their visual impacts from public places. As a result of this issue, the HDO was adopted (Attachment 4) to ensure hillside developments avoid stair stepping up the hillsides and are better integrated with the natural topography and open space character of the area. The HDO includes a number of design options that can be incorporated into a project to blend developments in with the natural environment. Design examples shown in the HDO Exhibits A, G, X, Z, AA and BB are similar to the landscape plan approved for the Reserve.

The Reserve community was originally proposed in another location in the Forster Ranch area; however, there were environmental issues with the site so the City and the developer relocated the development to the current hillside location as the alternative. While processing the application for the Reserve development, the City had concerns with the project meeting the requirements of the HDO because of its stair stepped design. To mitigate the stair stepped grading, a landscape plan was designed to blend the development into the natural topography. The City Council approval of the development in 1999, was contingent on conditions of approval that required the installation and ongoing maintenance of the project's landscaping. The conditions required the developer to plant and maintain trees at the top of the common area slopes to screen the development from public view while allowing ocean view corridors for the property owners (Attachment 5). To ensure the community stayed in compliance with the landscape design requirements, the City Council required the

developer to include the same landscape preservation requirements in the CC&Rs. Below are the original conditions of approval related to the landscape requirements for the Reserve (Attachment 3).

Condition 2(a) - A detailed landscaping and irrigation plan illustrating the landscape mitigation concept along Avenida Vista Hermosa, as discussed at the January 19, 1999 Planning Commission and February 17, 1999 City Council meetings (i.e. screening adverse view of the project while maintain important public views), shall be submitted to and approved by the Community Development Director prior to the issuance of any permit. Prior to approval of the landscape plan the applicant shall install a "mock-up" of the landscape installation for the consideration of the Community Development Director. The "mock-up" shall consist of a series of poles, stakes, or other identifying elements, installed in the precise, proposed location of trees. The height of the elements shall be representative of the height of the proposed tree at 3 years after installation.

Condition 14(i) - A statement indicating that trees, installed as part of the development approval, shall not be removed or altered beyond that which is required or necessary for normal maintenance.

During the initial sale of the houses, trees were young and had not fully matured which gave some property owners temporary 180° panoramic views of the ocean. In time, the trees began to mature and the panoramic views enjoyed by some homeowners were narrowed. Property owners whose views narrowed began pushing the Home Owner Association (HOA) board to top, alter, and even remove the trees from the common areas of the development. The alteration and the removal of the trees violated the HOA's tree maintenance obligations, CC&Rs, and the conditions of approval discussed above. The alteration and removal of trees made the Reserve community more visible from Avenida Vista Hermosa and Avenida Pico and out of compliance with the HDO and General Plan.

In 2012, the City began receiving complaints regarding the removal, altering, and damaging of trees and other landscape on the common area slopes within the Reserve. Code Enforcement Staff verified that there were trees removed and illegally topped. Since 2012, the City and the Reserve HOA have worked to resolve the violation. In settlement discussions following a Code Enforcement Administrative Hearing in 2015, the City and the HOA agreed the HOA would submit an amendment to the Site Plan Permit and the Tentative Tract Map (TTM). The amendments would modify the landscaping design, amend the Conditions of Approval and CC&Rs to allow for tree removals and replacements, where warranted. This application implements the City's agreement with the Reserve HOA to address the violation.

Discussion:

The Reserve HOA is working to resolve the code enforcement action regarding the illegal removal of trees to comply with the HDO. The Reserve is requesting an amendment to the landscape plan because the original approved planting plan is outdated due to the lack of drought tolerant and fire resistant planting, incompatibility with soil conditions, and susceptibility to disease. Staff worked closely with Pat

Murphy, Monarch Environmental and the HOA Board to develop an alternative landscape design that is better adapted to the site conditions, while meeting the criteria of the HDO and allowing flexibly criteria for the removal and replacement of trees. The discussion below identifies how the proposed amendment: 1) complies with the HDO, General Plan policy and replaces missing and damaged trees; 2) provides for a tree maintenance plan, and 3) amends the conditions of approval and the CC&Rs to ensure the landscape remains in compliance with the HDO.

1. Compliance with the Hillside Development Ordinance/General Plan

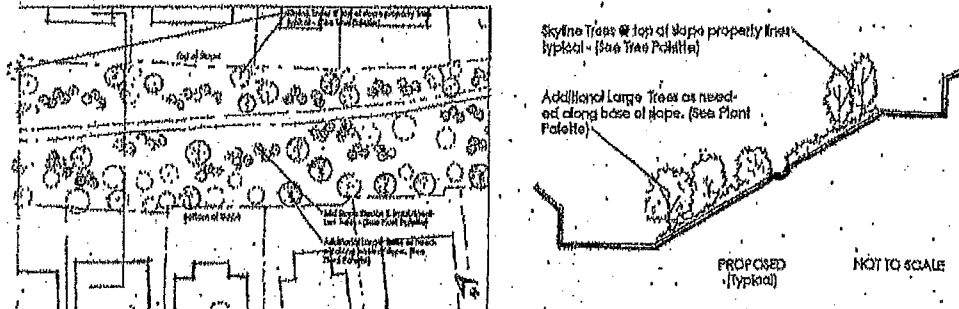
The General Plan policies UD-5.20 and M-1.30 require the maintenance of landscape for developed properties and the protection of Scenic Corridors (Avenida Vista Hermosa) by blending man-made and man-introduced features with the natural environment.

In order to address the code violations for the illegally removed and topped trees, the Reserve community proposes a new Concept Landscape Plan (Plan) to amend the approved landscape plan. The Plan is an update to the approved landscape plan, with new tree and shrub varieties including Strawberry Trees, Fernleaf Acacia, Crape Myrtle, Toyon, Willow Myrtle and African Sumac (see Attachment 9). These trees and shrubs have the size to meet the screening objectives, are drought tolerant, fire resistant, compatible with the soil conditions, less susceptible to disease and are complimentary to the neighborhood's architecture. The Plan identifies typical areas where trees should be placed to provide the necessary screening of houses from public vantage points. If approved, the Plan would be used as guidance for a three year replanting and restoration program. The Plan would also be used for all future tree removals and replacements, ensuring the landscape will continue to stay in conformance with City approvals.

The cross-sections (example on page four) depict a typical hillside condition of the Reserve community and the tree grouping that would be added to the common area hillside. Skyline trees (trees at the top of the slope) are placed in informal groupings of two and three trees to blend the hillside development in with the natural terrain and landscaping. Skyline trees are proposed along the side property lines and at the top of the slope to screen the houses and allow framed ocean views for the homeowners. Lower/mid slope trees would break-up the slope, provide stability, and screen the houses that are down slope from the houses above. The strategic placement of skyline trees identified in the proposed Concept Landscape Plan would achieve the intent of the HDO, and General Plan requirements for hillside developments.

To address the code violation, the Reserve proposes to replant the missing and damaged trees over the course of three years (33% replacement each year). This will resolve the code violation by bringing the community back into compliance with the HDO and the project's original conditions of approval. Trees will be planted throughout the community slopes, filling in where trees were removed, to ensure uniform growth and coverage. The City's contract Landscape Architect, Pat Murphy, recommends the planting of five and 15 gallon trees, as opposed to large sizes, to produce a better root to shoot ratio for the trees to improve slope stability and tree growth rates.

Exhibit 4: Proposed Landscape Concept Plan Design



2. Tree Maintenance Plan

The Tree Maintenance Plan was developed in partnership with the City and the Reserve's horticultural advisor, Monarch Environmental, to establish the rules and process that must be followed to allow the removal of topped, dangerous, dead, or inappropriately placed trees.

The applicant is proposing a Tree Maintenance Plan that requires City approval only when a tree removal/replacement does not comply with the Maintenance Plan criteria for the removal of skyline trees. Since the low/mid slope trees do not screen the homes from public areas, staff and Planning Commission are not requiring City review for the removal of these trees. However, both staff and the Planning Commission recommend City review of the removal of any skyline trees to ensure the on-going compliance with the HDO. The Planning Commission explained they think City oversight is necessary because even though the current HOA board has a great understanding of the maintenance rules, future boards, with less background and understanding, may not.

3. Amendment to Conditions of Approval and CC&Rs for Tentative Tract Map 15718

The approval of the Reserve in 1999, included conditions of approval, provided earlier, that restrict the removal of trees on the common area slopes to those that are dead, dying, or dangerous. The approved landscape plan from 1999, placed groupings of the trees along the side property lines to provide homeowners framed views of the ocean. However, some trees were improperly placed in intended homeowner ocean view corridors. The proposed amendment allows more flexibility to remove and replace trees that were planted in front of, rather than to the side of homeowner's direct view of the ocean. It also would allow topped trees whose form and health cannot be restored, to be removed and replaced. The amendment would allow the placement of new skyline trees in areas identified in the Concept Landscape Plan to meet the screening and design requirements of the City's hillside development policies. Staff's proposed modification to the tree preservation condition is provided as conditions of approval 7 and 8 in the Attachment 1 and shown below.

Condition of Approval 7: As part of the consideration for the removal of a tree, an arborist shall be involved in evaluating the condition of the tree with the standards recognized and practiced by the International Society of Arboriculture. The arborist along with the landscape maintenance company shall evaluate the condition and location of the tree to determine if it meets the criteria identified below to consider removal. The removal of a tree is authorized only when it meets at least one of the following criteria:

- *Dead/dying*
- *Diseased*
- *Dangerous*
- *Destructive*
- *Tree is inappropriately centered in the intended view corridor area for a home (as identified in the Plan View graphic below)*
- *Topped trees that cannot be crown restored*

60 days from the identification of a dead tree it shall be removed and replaced with a new tree.

Condition of Approval 8: Tree removal requests reviewed and supported by an arborist and the landscape maintenance company that qualify for removal for skyline trees (as stated above) shall provide a submittal package to the City that includes the following information for review:

- *Map identifying the tree location,*
- *Description and condition of the tree, including photographs,*
- *Criteria justifying the removal of the tree,*
- *Proposal for replacement tree including location, type, and size. If a replacement is not proposed then the justification shall be provided.*

Tree removal requests shall be reviewed by City Planning Division and the City's Landscape Architect to ensure the request complies with the removal criteria and the replacement is in compliance with the approved landscape concept plan to ensure the landscape design remains in compliance with the HDO. Tree removal requests that do not meet the criteria may be subject to City Planner review. The City Planner has the discretion to elevate the tree removal decision to the Planning Commission.

In the 1999 approval of the Reserve Site Plan Permit, a Condition of Approval was included (Resolution 99-13, C of A #14) that required the tree preservation conditions be incorporated into the CC&Rs. Therefore the proposed amendment to the Site Plan Permit must also include a requirement that the HOA amend their CC&R's to be consistent with the amendments as approved by the City Council. If the project is approved, Condition of Approval # 11 requires the CC&Rs be amended and approved by the Reserve HOA and recorded at the County. The City will have an opportunity to review the CC&R's prior to recordation to ensure compliance with the conditions of approval.

Recommended

Action: THE PLANNING COMMISSION RECOMMENDS THAT the City Council approve Conditional Amendments to Site Plan Permit 98-63 and Tentative Tract Map 15718, Reserve Landscape Amendment with staff's recommendation to require City oversight for the removal of all skyline trees and require the applicant to modify the CC&Rs to mirror the tree removal requirements and procedures identified in the Tree Maintenance Plan.

- Attachments:**
- Attachment 1 Resolution
 - Exhibit 1 Conditions of Approval
 - Attachment 2 1999 Reserve Development Staff Reports
 - Attachment 3 Resolution 99-13 for the Reserve Development
 - Attachment 4 Hillside Development Ordinance
 - Attachment 5 Approved Landscape Plans excerpted
 - Attachment 6 Planning Commission Staff Report and Minutes from October 19, 2016
 - Attachment 7 Proposed Reserve Maintenance Plan
 - Attachment 8 Reserve CC&R Edits Excerpted
 - Attachment 9 Concept Landscape Plans
 - Attachment 10 Vicinity Map
 - Attachment 11 Photos

Notification: All of the property owners within 300 feet were notified of the project

RESOLUTION NO. 16-70

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, TO APPROVE AMENDMENTS TO SITE PLAN PERMIT 98-63 AND TENTATIVE TRACT MAP 15718, RESERVE LANDSCAPE AMENDMENT, A REQUEST TO ALLOW THE MODIFICATION OF THE APPROVED LANDSCAPE PLAN AND THE REQUIREMENTS LIMITING THE REPLACEMENT OF TREES FOR THE RESERVE COMMUNITY, LOCATED IN THE RESERVE COMMUNITY IN THE GENERAL AREA BETWEEN AVENIDA VISTA HERMOSA AND COSTERO RISCO

WHEREAS, on August 7, 2015, an application was submitted, and completed on October 1, 2016, by Matt Davenport, 34237 Via Santa Rosa, San Juan Capistrano, CA 92674, for an amendment to Site Plan Permit 98-63 to allow the modification of the approved landscape plan and the requirements limiting the replacement of trees for the Reserve community. The project is located in the Residential Low zoning district of the Forster Ranch Specific Plan, at the intersection of Camino Vera Cruz and Avenida Vista Hermosa; and

WHEREAS, on August 20, 2015, the City's Development Management Team reviewed the proposed project for compliance with the General Plan, Zoning Ordinance, and other applicable City ordinances and codes; and

WHEREAS, on June 9, and August 24, 2016, the City's Design Review Subcommittee considered the project and supported it with some recommended modifications to the Maintenance Plan to ensure adequate City oversight is provide for the replacement of skyline trees; and

WHEREAS, on October 19, 2016, the Planning Commission held a duly noticed public hearing on the subject application and considered evidence presented by the City staff, the applicant, and other interested parties, and recommends the City Council approve the project, with the modifications specified in the conditions of approval attached hereto; and

WHEREAS, the Planning Commission recommends that the City Council determine this project scope was adequately addressed under the previously prepared Environmental Impact Reports (EIR) for the Forster Ranch Specific Plan EIR (1986), Forster Ranch Specific Plan Supplemental EIR (1991), and Forster Ranch Specific Plan Amendment Subsequent Program EIR (1998) because the project scope will only result in minor modifications to the landscape plan for the common area slopes of the community and will still be in conformance with the HDO, landscape design requirements, and City standards; and

The project also qualifies as categorically exemption from the requirements of the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15304 Class 4, because the proposal is to replace and install new landscaping that is fire resistant and low water usage landscaping; and

WHEREAS, on November 15, 2016 the City Council of the City of San Clemente held a duly noticed public hearing on the subject application, and considered evidence presented by the applicant, City staff, and other interested parties.

NOW, THEREFORE, the City Council of the City of San Clemente hereby resolves as follows:

Section 1. Based upon its review of the entire record, including the Staff Report, any public comments or testimony presented to the Planning Commission, and the facts outlined below, the Planning Commission hereby finds and determines that the proposed project scope was adequately addressed under the previously prepared Environmental Impact Reports (EIR) for the Forster Ranch Specific Plan EIR (1986), Forster Ranch Specific Plan Supplemental EIR (1991), and Forster Ranch Specific Plan Amendment Subsequent Program EIR (1998) because the project scope will only result in minor modifications to the landscape plan for the common area slopes of the community and will still be in conformance with the HDO, landscape design requirements, and City standards. All of the environmental documents are available for review in the Community Development Department Office. The project also qualifies as categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15304 (Class 4: Minor Alterations to Land), because the proposal is to replace and install new landscaping that is fire resistant and low water usage landscaping.

Section 2: With respect to Amendment to Site Plan Permit 98-63, the City Council finds as follows:

- A. The proposed development is permitted within the subject zone pursuant to the approval of an Amendment to the Site Plan Permit and complies with the San Clemente General Plan and the purpose and intent of the zone in which the project is being proposed in that the project is for a modification to the approved landscape plan and the conditions of approval and the CC&R requirements to remove trees on the common area slopes of the Reserve Community. The amendment to the landscape plan and the tree pallet is an improvement to the existing plan because the trees selected are more fire resistant and require less water than the previously approved trees. The landscape design and the specific placement of the trees comply with the Hillside Development Ordinance (HDO) which requires the trees screen the development. The revisions to the conditions of approval and the CC&Rs will allow the removal and replacement of trees that are dead/dying, diseased, dangerous, and destructive, inappropriately placed trees, and topped trees that cannot be

crown restored. The City will have oversight for the replacement of skyline trees that are critical in ensuring the development is screened from public areas to comply with the HDO. The project is compatible with Urban Design Policy UD-5.20 Landscape Maintenance because the proposed amendment will ensure that the Reserve community's landscape plan is developed in conformance with the HDO and continually maintained. The project is also in compliance with General Plan Policy M-1.30 Protection of Scenic Corridors since the landscape design will ensure the proposed landscape design screens the hillside development of the Reserve community and protects the integrity of the Avenida Vista Hermosa Scenic Corridor.

- B. The site is suitable for the type and intensity of development that is proposed in that the proposed amendment does not increase the density of the development, traffic, noise or pollution. The proposed amendment to the site plan improves the landscape design of the Reserve community and ensures compliance with the HDO that requires hillside developments screen the development from public view. The proposal will result in new landscaping that will be established in three years that will screen the community from public areas. This City is also requiring oversight for the removal and replacement of skyline trees to ensure the Reserve community is in compliance with the HDO by screening the development from public views.
- C. The proposed development will not be detrimental to the public health, safety or welfare, or materially injurious to properties and improvements in the vicinity in that the development will improve the safety of the community and the surrounding improvements given the new tree pallet for the common area slopes will be more fire resistant than the existing trees and the new tree pallet will also use less water than the existing trees in the community.
- D. The proposed development will not be unsightly or create disharmony with its locale and surroundings in that the plan pallet was reviewed by the City's Landscape Architect to ensure the landscape design for the proposed placement of the trees and the plant palette was compatible with the community and the adjacent communities. The placement and type of new trees will ensure the community is in compliance with the HDO with the requirement that skyline trees be placed at the top of the slope in groupings of twos and threes to screen the development and still provide property owners with corridor ocean views.
- E. The proposed development will minimize or eliminate adverse physical or visual effects which might otherwise result from unplanned or inappropriate development, design or location in that the plant pallet was reviewed by the City's Landscape Architect to ensure the landscape

design for the proposed placement of the trees and the plant pallet was compatible with the community and the adjacent communities. The placement and type of new trees will ensure the community is in compliance with the HDO with the placement of skyline trees at the top of the slope in groupings of twos and threes to screen the development and still provide property owners with corridor ocean views. This City is also requiring oversight for the removal and replacement of skyline trees to ensure the Reserve community is in compliance with the HDO by screening the development from public views.

Section 3: With respect to Amendment to Tentative Tract Map 15718, the City Council finds as follows:

- a. The proposed modification to the conditions of approval for the Tentative Tract Map still keeps the development compatible with the objectives, policies, general land uses and programs specified in the General Plan of the City of San Clemente. The project complies with all the applicable provisions of this the specific plan, as appropriate, the goals, and objectives of the San Clemente General Plan; and the purpose and intent of the zone in which the development is being proposed. The modified conditions ensure City oversight to ensure the landscape design for the community is in compliance with the HDO and the General Plan requirements to maintain the landscaping and screen the development from the public areas.
- b. The site is physically suitable for the proposed subdivision in that the site is not modified with the amendment to the conditions. The modified conditions ensure City oversight to ensure the landscape design for the community is in compliance with the HDO and the General Plan requirements to maintain the landscaping and screen the development from the public areas as the development was originally designed..
- c. The site is physically suitable for the proposed density of the subdivision given that the proposed amendment will not modify the site or condition of the subdivision.
- d. The subdivision will not cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat in that the site has already been developed and the conditions are associated with the landscape design of the developed area. The landscape design will still maintain the aesthetic design of the community and screen the development from public areas.
- e. The design of the subdivision and the types of improvements are not likely to cause serious public health problems given the site has already been developed and the modifications to the conditions of approval will not

change the design of the development. The revised conditions of approval will improve the safety of the community and the surrounding improvements given the new tree pallet for the common area slopes will be more fire resistant than the existing trees and the new tree pallet will also use less water than the existing trees in the community.

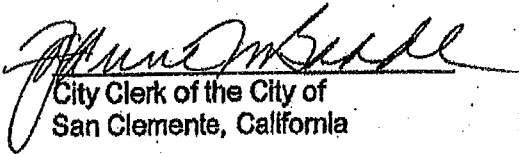
- f. The design of the subdivision and the type of improvements will not conflict with easements for use of property within the proposed subdivision given there are not easements on the site that would impact the design of the project or the Reserve community.
- g. The proposed amendment to the Tentative Tract Map is consistent with the Subdivision Map Act and the City of San Clemente Subdivision Ordinance given the amended conditions will not change the site and it will still comply with all of the required development standards and all requirements from the Subdivision Map Act.

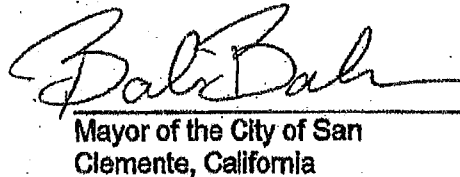
Section 4: The City Council of the City of San Clemente hereby approves of AMSPP 98-63 and AM TTM 15718, Reserve Landscape Amendment, to allow the modification of the approved landscape plan and the requirements limiting the replacement of trees for the Reserve community, subject to the above findings, and the conditions of approval attached hereto as Exhibit A.

Section 5. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED AND ADOPTED this 6th day of December, 2016.

ATTEST:


City Clerk of the City of
San Clemente, California


Mayor of the City of San
Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE) §
CITY OF SAN CLEMENTE)

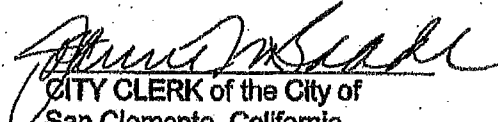
I, JOANNE BAADE, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. 16-70 was adopted at a regular meeting of the City Council of the City of San Clemente held on the 6th day of December, 2016, by the following vote:

AYES: BROWN, DONCHAK, HAMM, WARD, MAYOR BAKER

NOES: NONE

ABSENT: NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this 14TH day of Dec., 2016.


CITY CLERK of the City of
San Clemente, California

Approved as to form:

/s/ SCOTT SMITH
City Attorney

EXHIBIT A

**CONDITIONS OF APPROVAL
Reserve Landscape Amendment
AMSPP 98-63/AMTTM 15718**

1. Conditions associated with Resolution 99-13 for TTM 15718 and SPP 98-63 for the original approval of the Reserve community are still applicable and in effect with the exception to the new landscape design and tree replacement conditions associated with the project that are identified in condition of approval 6 through 8 below.
(PIng.)_____

2. The owner or designee shall develop the approved project in conformance with the site plan, elevations, and any other applicable submittals approved by the Planning Commission on October 19, 2016, subject to these Conditions of Approval.
(PIng.)_____

Any deviation from approved submittals shall require that, prior to the issuance of building permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the City Planner or designee. If the City Planner or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain the approval of the Planning Commission, as appropriate. (PIng.)_____

3. The applicant or the property owner or other holder of the right to the development entitlement(s) or permit(s) approved by the City for the project, if different from the applicant (herein, collectively, the "Indemnitor") shall indemnify, defend, and hold harmless the City of San Clemente and its elected city council, its appointed boards, commissions, and committees, and its officials, employees, and agents (herein, collectively, the "Indemnitees") from and against any and all claims, liabilities, losses, fines, penalties, and expenses, including without limitation litigation expenses and attorney's fees, arising out of either (I) the City's approval of the project, including without limitation any judicial or administrative proceeding initiated or maintained by any person or entity challenging the validity or enforceability of any City permit or approval relating to the project, any condition of approval imposed by City on such permit or approval, and any finding or determination made and any other action taken by any of the Indemnitees in conjunction with such permit or approval, including without limitation any action taken pursuant to the California Environmental Quality Act ("CEQA"), or (II) the acts, omissions, or operations of the Indemnitor and the directors, officers, members, partners, employees, agents, contractors, and subcontractors of each person or entity comprising the Indemnitor with respect to the ownership, planning, design, construction, and maintenance of the project and the property for which the project is being approved. The City shall notify the Indemnitor of any claim, lawsuit, or other judicial or administrative proceeding (herein, an "Action") within the scope of this indemnity obligation and request that

the Indemnitor defend such Action with legal counsel reasonably satisfactory to the City. If the Indemnitor fails to so defend the Action, the City shall have the right but not the obligation to do so and, if it does, the Indemnitor shall promptly pay the City's full cost thereof. Notwithstanding the foregoing, the indemnity obligation under clause (ii) of the first sentence of this condition shall not apply to the extent the claim arises out of the willful misconduct or the sole active negligence of the City. [Citation - City Attorney Legal Directive/City Council Approval June 1, 2010] (Ping.)_____

4. AMSPP 98-63 shall become null and void if the landscape installation and amendment to the CC&Rs are not commenced within three (3) year from the date of the approval thereof. Since the use requires the issuance of a building permit, the use shall not be deemed to have commenced until the date that the building permit is issued for the development. [Citation - Section 17.12.150.A.1 of the SCMC] (Ping.)_____

A use shall be deemed to have lapsed, and AMSPP 98-63 shall be deemed to have expired, when a building permit has been issued and construction has not been completed and the building permit has expired in accordance with applicable sections of the California Building Code, as amended. [Citation - Section 17.12.150.C.1 of the SCMC] (Ping.)_____

5. The owner or designee shall have the right to request an extension AMSPP 98-63 if said request is made and filed with the Planning Division prior to the expiration date as set forth herein. The request shall be subject to review and approval in accordance with Section 17.16.160 of the Zoning Ordinance. [Citation - Section 17.12.160 of the SCMC] (Ping.)_____

6. Resolution 99-13, Condition 14.j shall be revised to allow the replacement of trees if they comply with the criteria identified in the Tree Maintenance Plan and in condition of approval 7 and 8 below or if the replacement request is approved by the City Planner or the designated public hearing review body, as stated in condition of approval 8 below. ■■(Ping.)_____

7. As part of the consideration for the replacement of a tree, an arborist shall be involved in evaluating the condition of the tree with the standards recognized and practiced by the International Society of Arboriculture. The arborist along with the landscape maintenance company shall evaluate the condition and location of the tree to determine if it meets the criteria identified below to consider removal. The replacement of a tree is authorized only when it meets at least one of the following criteria:

- Dead/dying
- Diseased
- Dangerous
- Destructive

- Tree is inappropriately centered in the intended view corridor area for a home (as identified in the Plan View graphic below)
- Topped trees that cannot be crown restored

60 days from the identification of a dead tree it shall be removed and replaced with a new tree. ■■(PIng.)_____

8. Tree replacement requests reviewed and supported by an arborist and the landscape maintenance company that qualify for removal for: 1) skyline trees; and 2) trees along Avenida Vista Hermosa, Avenida Vera Cruz, and Costero Ricco, (as stated above) shall provide a submittal package to the City that includes the following information for review:

- Map identifying the tree location
- Description and condition of the tree, including photographs
- Criteria justifying the removal of the tree
- Proposal for replacement tree including location, type, and size. If a replacement is not proposed then the justification shall be provided

Tree replacement requests shall be reviewed by City Planning Division and the City's Landscape Architect to ensure the request complies with the removal criteria and the replacement is in compliance with the approved landscape concept plan to ensure the landscape design remains in compliance with the HDO. Tree replacement requests that do not meet the criteria shall be subject to City Planner review. The City Planner has the discretion to elevate the tree replacement decision to the Planning Commission.

■■(PIng.)_____

9. The Reserve HOA shall install 33 percent of trees each year, over the course of three years, across all quadrants of the development (where needed) to improve the aesthetics and have varied growth to bring the development into compliance with the HDO and the General Plan requirements for the development.

■■(PIng.)_____

10. The tree installations on the slopes and the replacement of inappropriately placed trees or topped trees that cannot be crown restored must be completed within three years from the City Council approval date to avoid citations for being out of compliance with their approved landscape plans and conditions of approval. An extension to the three year installation timeline would be subject to Community Development Director approval.

■■(PIng.)_____

11. Prior to the City approval for the replacement of any trees and the CC&R Recordation, the Reserve Association shall vote, and submit for review, pay a review fee and obtain City Attorney approval of the amended CC&Rs. After recordation a copy of the recorded CC&Rs shall be provided to the City.

■(Png.)_____

12. All tree replacements shall be in conformance with the Tree Maintenance Plan to ensure the tree location, type, and blend of trees on the common area slopes is consistent with the City Council approval. ■(Png.)_____

All Conditions of Approval are standard, unless indicated as follows:

- Denotes a modified standard Condition of Approval.
- Denotes a project specific Condition of Approval