

**RESOLUTION NO. 18-43**

**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. 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] (Pmg.)
- 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. (Pmg.)

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

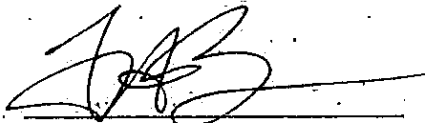
**Section 5:** City Council Approval.

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 7th day of November, 2018.



Mayor  
City of San Clemente, California

ATTEST:



City Clerk  
City of San Clemente, California

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

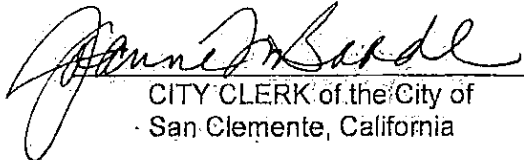
I, JOANNE BAADE, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. 18-43 was adopted at a regular meeting of the City Council of the City of San Clemente held on the 7th day of November, 2018, by the following vote:

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

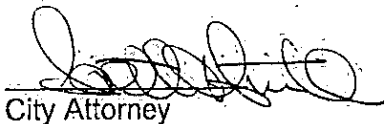
NOES: NONE

ABSENT: NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this 15<sup>TH</sup> day of NOV., 2018.

  
CITY CLERK of the City of  
San Clemente, California

Approved as to form:

  
City Attorney

## EXHIBIT A

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. (Png.)\_\_\_\_\_
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. (Png.)\_\_\_\_\_
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. (Png.)\_\_\_\_\_
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 1.1 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] (Png.)\_\_\_\_\_
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] (Png.)\_\_\_\_\_
6. Resolution 99-13, Condition 14, 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. ■■ (Png.)\_\_\_\_\_

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.)\_\_\_\_\_