

**CHAPTER 80**

**REGULATION FOR THE MODIFICATION OF LOCAL PROTECTIVE RESTRICTIONS**

80.01 Scope and Purpose. The purpose of this regulation is to provide a procedure whereby members may apply for, and the Board of Directors (“the Board”) may consider, the modification of covenants, conditions, restrictions and other recorded instruments described in Declarations 1, 2 and 3 [Paragraphs 165, 230 and 258 respectively] of the Protective Covenant, pursuant to the requirements of the Governing Documents. This regulation is applicable to the covenants, conditions and restrictions described in Article VI of Declaration No. 1 and the applicable provisions in Declarations 2 and 3 of the Protective Covenant. Such changes are referred to in this chapter as "Modification of Local Protective Restrictions."

80.02 Authority. This procedure is authorized by the Governing Documents, and is intended to be consistent with Declarations 1, 2 and 3 [Paragraphs 165, 170, 230 and 258 respectively] of the Protective Covenant, and Article IV, Section 6(b) and (d) of the Bylaws.

80.03 Definitions.

80.0301 “Certification Date” shall mean the date inserted by the Manager on the Document Package Certificate. Such date shall be considered the “date of issuance for circulation” pursuant to Article V, Section 4(e) [Paragraph 170] of the Protective Covenant and will begin the six-month period for which it remains valid.

80.0302 “Consent Area” shall mean all property under the jurisdiction of the Protective Covenant in Private Ownership located within 500 feet of the property boundaries for which the applicant is seeking a modification pursuant to this chapter.

80.0303 A “Consent Form” is the form to be signed by all Consent Area property owners of record acknowledging their consent to the requested modification.

80.0304 The “Document Package” is the packet of documents which contains all pertinent information as outlined in §80.05 to describe and validate the proposed modification.

80.0305 The “Document Package Certificate” shall mean a certificate signed and dated by the Manager (in his or her capacity as Secretary) which endorses the Document Package as complete and correct in form and description pursuant to Article V, Section 4(e) [Paragraph 170] of the Protective Covenant. The Certificate shall include a written description of time

limits and submittal and extension deadlines for the application pursuant to §80.07 and §80.0701, and Article V, Section 4(e) [Paragraph 170] of the Protective Covenant.

80.0306 The “Expiration Date” shall mean the date six months after the Certification Date.

80.0307 The “Extended Expiration Date” shall mean the date, set by the Board, on which the application, Document Package, and all signatures attached thereto shall become void after a time extension has expired, as described in 80.0701.

80.0308 “Private Ownership” shall mean property under the jurisdiction of the Protective Covenant owned in fee by any person or entity other than (i) a local municipal entity (e.g. County of San Diego, a public school district or fire district), (ii) the State of California or other state entity or (iii) the federal government.

80.0309 The “Submittal Deadline” shall mean the 30<sup>th</sup> day before the Expiration Date. However, if the Board grants an extension to the Expiration Date under the procedure in §80.0701 below, the Board shall set a new Submittal Deadline applicable to the Extended Expiration Date, as set forth in such section.

80.04 Application Procedure. An application for Modification of Local Protective Restrictions shall be submitted by a member with such documentation that is, in the opinion of the Manager, Art Jury and the Board, necessary to process and fully understand the application relative to the modification being sought. Such documentation may include, but is not limited to, drawings, data, plans and engineering studies. Submittals shall at a minimum include the following:

80.0401 Letter of Request. A letter to the Association explaining the requested change. The letter shall identify the property in question by Lot and Block, Assessor's Parcel Number and full legal description. The letter must be signed by all owners of record of the property for which the modification is requested. The applicant may, but is not obligated to, designate a representative for future communication with the Association. If a representative is designated, his or her name, title, contact information and signature shall also be included in the letter of request.

80.0402 Proof of Ownership for Application. Proof of ownership of the subject property in a form acceptable to the Manager to verify that all owners of record have signed the letter of request. If the property or any interest therein is owned by one or more trustees of a trust or one or more entities, the Association may require the owner to provide a copy of the trust instruments and entity formation documents, as applicable, to assist the Association in verifying the accuracy and authority of the signatories on the applicant's letter of request.

80.0403 Consent Area Map. One copy of a plat map, prepared, stamped and signed by a California registered civil engineer or California licensed land surveyor at a readable scale and

in a form acceptable to the Manager. The map shall show the property in question and all Consent Area properties, identified by Assessor's Parcel Numbers and owners' names.

80.0404 Reduced Map. One reduced copy of the map required to be submitted in §80.0403 (the Consent Area map). The reduced size map shall be scaled to fit on an 8.5 x 11 inch sheet of paper and be legible and reproducible in black and white.

80.0405 Digital File. A digital computer file of the map required to be submitted in §80.0403 (the Consent Area map). The digital map file shall be submitted in a form acceptable to the Manager and shall be consistent in every detail with submitted paper plans. In the case of inconsistencies between digital and paper plans, the duly stamped and ink signed paper plans shall prevail.

80.0406 Processing Fee. A fee as stated on the current “Rancho Santa Fe Planning Department Schedule of Fees for Land Use Applications.” The fee is non-refundable and the applicant must remit such fee to the Association concurrently with the other documents described in this §80.04 for the application to be deemed complete.

80.05 Document Package. The Manager will develop the Document Package after the applicant has provided all the required and additionally requested information, if any, relevant to the proposed modification. The Document Package shall consist of all of the following:

- a. An explanatory letter from the Manager to the owners of all property in Private Ownership located within the Consent Area.
- b. The application or another document containing a detailed description of the applicant's property and the requested change.
- c. A vicinity map.
- d. A Consent Form. The Consent Form shall contain a provision informing all potential signatories that their signatures, once given, are irrevocable until the Expiration Date or Extended Expiration Date (as applicable), absent misrepresentation or mistake in the inducement of such signatures.
- e. A form which explains how to obtain legally valid signatures on the Consent Form.
- f. A completed Document Package Certificate.

80.0501 Consent Signature Requirements. The applicant shall be responsible for circulating the Consent Form for signature. The applicant must obtain the signed consent of not less than two-thirds of the acreage held in Private Ownership within the Consent Area, pursuant to the requirements of Declaration No. 1 Article V, Section 3, Declaration No. 2, Article I, Section 11, and, Declaration No. 3, Article I, Section 11 [Paragraphs 165, 230 or 258, respectively] of the Protective Covenant. Signatures of all of the owners of record for a parcel must be obtained for that parcel to be counted as consenting. Signatures that are obtained in person must be notarized or witnessed. Signatures that are obtained by mail must be notarized.

80.0502 Validity of Signatures. Duly obtained owner(s) signatures on the Consent Form shall be considered valid and consenting for the duration of the application period, irrespective of either changes of the signatories' opinion or ownership of the signatories' property; provided,

however, if a signatory to the Consent Form alleges that his or her signature in favor of the proposed modification was obtained by misrepresentation or mistake, and if the Board has not yet formally approved the proposed modification, then the Board shall have the authority, after a noticed hearing in which both the applicant and the party who signed the Consent Form are provided an opportunity to be heard, to declare such signature as non-consenting to the proposed modification.

80.0503 Consent for Association-Owned Property. In some instances, property owned by the Association will be located within the Consent Area. The Board finds that Association property is property in Private Ownership. Absent an affirmative vote by the Board, Association-owned property will be counted as non-consenting. If an applicant intends to have the Board count Association-owned property in consent of the proposed Modification of Local Protective Restrictions, a separate request must be made to the Association. The request for consent will be separately docketed for the Board's consideration. As a general policy, staff will not schedule such an action at a Board meeting until the consent of Association-owned property would allow the applicant to meet or exceed the two-thirds Consent Area acreage requirement.

80.0503.01 Criteria. In evaluating the consent request, the Board will consider the proposed modification solely on the basis of its effect on the particular Association-owned property affected by the proposed modification. The applicant should not construe consent of the Board at this juncture as an indication of the Board's ultimate approval of the proposed modification itself or as a waiver of the Board's rights in §80.08 et. seq. Ultimate approval will be based on the larger issue of the appropriateness of the proposed modification to the Association as a whole.

80.0504 Notification. The Association shall send, no later than five days after the Certification Date, the explanatory letter described in §80.05 to all property owners within the Consent Area. Additional noticing may be required at the discretion of the Manager.

80.06 Post-Signature Submittals. After a sufficient number of valid signatures are collected on the Consent Form, the applicant shall submit all of the following documents to the Association:

80.0601 Signed Consent Forms. Original Consent Forms duly signed and witnessed or notarized.

80.0602 Certified Coded Map. One copy of the Consent Area Map with shading, coloring or other distinctive markings showing those parcels for which signatures were obtained. The map shall be prepared, stamped and signed by a California registered civil engineer or California licensed land surveyor and shall include a statement of: (a) the total number of acres in Private Ownership in the Consent Area, but not including the applicant's property, (b) the total number of acres represented by the signatures on the Consent Forms, (c) the percentage of the Consent Area for which signatures were obtained.

80.0603 Reduced Copy of Coded Map. One reduced copy of the certified coded map required above in §80.0602, scaled to fit on an 8.5 x 11 inch sheet of paper so that it is legible and reproducible in black and white.

80.0604 Digital File of Coded Map. A digital computer file of the map required to be submitted in §80.0602 (the Certified Coded Map). The digital map file shall be submitted in a form acceptable to the Manager and shall be consistent in every detail with submitted paper plans. In the case of inconsistencies between digital and paper plans, the duly stamped and ink signed paper plans shall prevail.

80.0605 Proof of Ownership for Consenting Signatures. Current copies of recorded vesting deeds, title policies, Association voting registration forms or other proof of ownership showing that the persons and entities having signed the Consent Forms were, in fact, the owners of record of the applicable property on the date they signed the Consent Form. If the property or any interest therein is owned by one or more trustees of a trust or one or more entities, the Association may require the signatories to provide a copy of the trust instruments and entity formation documents, as applicable, to assist the Association in verifying the accuracy and authority of the signatories on the Consent Form.

80.07 Time Limit. An application for Modification of Local Protective Restrictions shall be valid for six months from the Certification Date. The application and all signatures on the Consent Form shall become void after the Expiration Date. The applicant must complete the gathering of consent signatures and submit all required post-signature materials described in §80.0601 through §80.0605 to the Association no later than the Submittal Deadline. The Board must take final action on the application on or before the Expiration Date. Applicants are strongly advised to submit all required materials as far in advance of the Submittal Deadline as is possible. This will allow the applicant time to develop and submit any additional information required by the Association and will also allow the Association time to adequately consider and take action on the proposal prior to the Expiration Date. If final action by the Association is not taken by the Expiration Date, the application will be considered null and void (excluding the time extension outlined in §80.0701 below) and the applicant will be required to start the application process anew pursuant to Article V, Section 4(e) [Paragraph 170] of the Protective Covenant. It is the responsibility of the applicant to budget the time allocated efficiently in order to ensure that adequate time is available for the Association to complete its review process. Applicants should note that the Board meets twice per month, but meets only once in the months of August and December.

80.0701 Extension of Time Limit. The applicant may seek an extension of the time limit in §80.07 by making a written request to the Board. Such request must be submitted no later than the 15<sup>th</sup> day prior to the Expiration Date and shall not be valid unless it includes the time extension processing fee as stated on the current “Rancho Santa Fe Planning Department Schedule of Fees for Land Use Applications”. If the Board adopts a resolution to grant the extension, the Extended Expiration Date may not be more than one year after the Certification Date (i.e., six months after the original Expiration Date). The Extended Expiration Date shall be established by the Board and shall correspond with the date of a regularly-scheduled Board meeting. The new Submittal Deadline shall be at least 60 days prior to the Extended Expiration Date. The Board may establish an earlier Submission Deadline based on the complexity of the application and the possibility of a long review process. The intent is to provide the Association

with adequate time to review proposals prior to the expiration of the application. Only one time extension may be granted by the Board.

80.08 Association Review. The Association will not begin its review process until the applicant has returned, and the Manager has verified as complete, the documents described in §80.04 and §80.06.

80.0801 Notice. Subsequent to the receipt of the required documents and certifications, the Manager shall set the date for the Art Jury's review of the application and the tentative date for the subsequent public hearing and Board meeting. Mailed notification of these dates shall be provided by the Association to all Consent Area property owners as well as posted on Association bulletin boards at least ten days prior to the Art Jury meeting at which the proposed modification will be first reviewed.

80.0802 Findings. Applications for the Modification of Local Protective Restrictions shall only be recommended for approval by the Art Jury and approved by the Board where the Art Jury has considered, and the Board can make, all of the following findings:

80.0802.01 The property affected by the proposed modification contains an adequately-sized building area for the applicant's proposed use, and is physically and topographically suitable for and consistent with the class of use district proposed for or applicable to the property;

80.0802.02 The rural character and ambiance of the community will remain protected;

80.0802.03 The general welfare of the community will be protected, maintained and preserved; and,

80.0802.04 All new lot lines will conform to applicable Covenant Acceptance Agreements pursuant to Chapter 61 of the Code.

80.0803 Art Jury Review. The Art Jury will schedule the application to be reviewed at its first regularly scheduled meeting after the completion of noticing pursuant to § 80.0801, subject to agenda constraints. Upon being satisfied that the necessary information has been provided, pursuant to §§80.04, 80.05 and 80.06 et. seq., the Art Jury will review the application and provide the Board with the Art Jury's recommendation of approval, conditional approval, or denial.

80.0804 Public Hearing and Board Determination. Upon being satisfied that all information necessary to understand and process the application has been provided, pursuant to §§80.04, 80.05 and 80.06 et. seq., the Board will conduct a public hearing and review the application and Art Jury recommendation. At or subsequent to the hearing, the Board may, subject to the Bylaws Article IV, Section 6(b), approve, conditionally approve or deny the application. If the application is approved or conditionally approved, the applicant will be notified of the Board's approval, and notice will be posted on the Association bulletin boards for 30 days. The Board's approval of the application is subject to member petition and disapproval rights pursuant to Article IV, Section 6(d) of the Bylaws.

80.0805 Board Denial. If the Board, or the membership at a duly-called public meeting or hearing pursuant to Article IV, Section 6(d) of the Bylaws, denies the application, the Board will so notify the applicant. The application for the proposed Modification of Local Protective Restrictions cannot be reconsidered until one year after the date of denial, pursuant to Article V, Section 4(e) [Paragraph 170] of the Protective Covenant.

80.0806 Approvals for Additional Building Sites. The following conditions shall be included in the resolution of approval for Modification of Local Protective Restrictions which create an additional building site(s):

80.0806.01 A statement which clearly designates to which portion of the existing Covenant Acceptance Agreement area (Block, Lot, Parcel) the additional building site(s) is to be located; and,

80.0806.02 A statement that an approved application for subdivision will be required pursuant to Chapter 60 of the Code prior to development of any newly created buildings site(s).

80.09 Finalization. After the Board approves the applicant's modification request pursuant to the requirements of this chapter and the Governing Documents, and the time period for member challenge of the approval has expired, the Manager shall:

- a. Verify that all the prerequisite conditions attached to the modification approval have been fulfilled and are in substantial conformance with the approval or conditioned approval granted by the Board.
- b. Upon the completion of the foregoing, prepare for recording with the San Diego County Recorder the approved modification and any conditions attached thereto (the "Amendment to Covenant Acceptance Agreement"). The Amendment to Covenant Acceptance Agreement shall be signed and notarized by the Manager and the applicable owners of the affected property, and shall contain a list of consenting property owners in the Consent Area.
- c. Direct the applicant to record with the San Diego County Recorder the Amendment to Covenant Acceptance Agreement. The applicant shall be responsible for the recording costs of all documents required to be recorded. The modification shall not be considered effective or complete until the Amendment to Covenant Acceptance Agreement is recorded by the applicant and a copy thereof is received and approved by the Manager.

80.0901 Time Requirements for Finalization. The property owner shall have up to one year, as determined by the Board, from the date of final Association approval pursuant to the Bylaws Article IV, Sections 6(b) and (d), to meet all the requirements and conditions of the approval necessary for the Manager to allow the applicant to record the modification document. If the conditions of approval are not met and the Amendment to Covenant Acceptance Agreement not recorded as outlined in §80.09 et. seq., the approval of the modification will be deemed null and void at the end of the one year time frame. No time extensions shall be granted.

80.10 Effective Date. The effective date of this chapter is June 1, 1995.

80.11 Amended Date. This chapter was amended on January 15, 1998. This chapter was amended and restated on November 1, 2007.