

**COUNTY OF SAN DIEGO
BOARD OF SUPERVISORS - LAND USE
WEDNESDAY, JANUARY 29, 2025**

MINUTE ORDER NO. 5

**SUBJECT: NOTICED PUBLIC HEARING:
APPEAL OF THE ENVIRONMENTAL DETERMINATION FOR THE HENKEL
LANDSCAPE UPDATE; PDS2024-AA-24-001 - CALIFORNIA
ENVIRONMENTAL QUALITY ACT SECTION 15304 EXEMPTION
(DISTRICT: 3)**

OVERVIEW

This is a request for the Board of Supervisors (Board) to consider an appeal of the environmental determination for the Henkel Landscape Update; Site Plan Minor Deviation PDS2021-STP-14-016M1 (Project) in accordance with Sections 86.401 through 86.406 of the San Diego County Regulatory Code. This is a landscape-focused plan change for an existing single-family home that is being appealed by a neighbor based on staff's environmental determination. The decision to approve the Project will be stayed (i.e., paused) until the Board considers the environmental determination.

This Project updates a previously approved Site Plan to reflect existing landscaping planted along an existing slope on a lot that contains a single-family residence, driveway and pool. This landscaping includes 76 Cape Honeysuckle plants and 18 California Pepper trees. The Project was processed to resolve a Code Compliance case. The site is located within the San Dieguito Community Plan at 7633 Road to Singapore, San Diego, CA 92127, north of Top O The Morning Way and Artesian Way.

On September 10, 2024, the Director of Planning & Development Services (PDS) found the Project to be exempt from the California Environmental Quality Act (CEQA) Guidelines in conformance with Section 15304 (Attachment A on file with Clerk of the Board). This exemption applies to projects that consist of minor public or private alterations in the condition of land, water, and/or vegetation that do not involve the removal of healthy, mature, scenic trees except for forestry or agricultural purposes. To qualify for this exemption, projects must be found to not impact environmental resources of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies; have a cumulative impact; significant effect; damage to scenic resources; be located on a hazardous waste site; or damage historical resources.

The environmental determination is being appealed by Pete Blasi. The appeal states that the Project does not qualify for the CEQA Section 15304 exemption for two reasons (Attachment B on file with Clerk of the Board):

1. The slope is in a scenic area and CEQA Guidelines Section 15304(a) specifically states, "Grading on land with a slope of less than 10 percent, except that grading shall not be exempt in ... an officially designated scenic area..."
2. The added landscaping is not described as fire resistant in the Notice of Exemption (NOE), just drought tolerant. CEQA Guidelines Section 15304(i) exempts fuel management activities within 30 feet of structures. Since the landscaping is not specifically fire resistant, it does not qualify as a "fuel management activity". This change in landscaping is within 30 feet of both the subject property's residence and Pete Blasi's residence in a very high fire sensitivity area.

PDS recommends that the appeal be denied as it has not identified any deficiencies in the environmental review of the Project. The appellant is only focusing on two of the types of projects that may qualify for this exemption. CEQA lists seven other examples of projects that may qualify for this exemption (including gardening and landscaping) and states that use of this exemption is not limited to the examples listed. In addition, this slope was previously legally graded and disturbed and the new landscaping matches what is found in the surrounding area. Because of this, staff has determined that the appeal has not identified any new issues with the environmental review that was completed for the Project, and the Project complies with all requirements of CEQA Section 15304.

Section 86.406 of the San Diego County Regulatory Code states that the Board can:

1. Deny the appeal and uphold the Director's environmental determination of the Project which found the Project to be exempt from CEQA in accordance with Section 15304;
2. Grant the appeal and make a superseding environmental determination; or
3. Grant the appeal and remand the environmental determination to the Director of PDS for reconsideration including any additional direction from the Board.

If the appeal is granted, further environmental analysis may need to be performed, and the Project's environmental documents will have to be reconsidered by the Director of PDS.

RECOMMENDATION(S)

CHIEF ADMINISTRATIVE OFFICER

The Board is only considering the environmental determination that the Project is exempt pursuant to California Environmental Quality Act (CEQA) Section 15304. The Site Plan Minor Deviation decision is final and cannot be appealed and is stayed until the Board considers the environmental determination. The Board is considering the appeal of the environmental determination because CEQA requires that environmental determinations be appealable to the elected decision-making body.

Pursuant to Section 86.201 of the County of San Diego Regulatory Code, each applicant for a discretionary land use project is responsible for payment of all court costs, costs associated with litigation, and attorneys' fees, which arise out of County's processing and/or approval of the Project. When required, security typically ranges from \$50,000 for small-scale projects with limited legal risk to more than \$1,500,000 for larger, complex projects with significant legal risk, especially in circumstances where the CEQA analysis has been challenged. The Board of Supervisors makes the determination to require security, determines the form and amount of the security, and the time the security is to be provided to the County. Due to previous litigation regarding the landscaping that was installed, PDS has also included a recommendation to require the Applicant to enter into a standard defense and indemnification agreement within 10 days after the date of the Board hearing and to provide security in the amount of \$150,000 within 10 days of litigation, if filed. Language has also been included within this recommendation to direct PDS to rescind the approval of STP-14-016M1 if the applicant fails to enter into an agreement or provide this security within the timeline provided.

If the appeal is denied by the Board, the PDS Director's approval of the Site Plan Minor Deviation shall remain effective. PDS recommends that the Board make the following determinations, including an additional recommendation related to providing indemnification:

1. Deny the appeal of the environmental determination for the reasons discussed in this Board Letter.

2. Uphold the environmental determination of the Director of PDS, finding the Project is in conformance with Section 15304 of the California Environmental Quality Act (CEQA) Guidelines. The Director's decision of approval of the Project shall remain effective.
3. Require Mark A. Henkel and Tiffany Marie Henkel (Applicant) to enter into a standard Defense and Indemnification Agreement (Attachment C on file with the Clerk of the Board) with the County of San Diego (County) in accordance with County Code Section 86.201 et seq. within 10 business days after the date of this hearing and authorize the Director of PDS to execute the Agreement. If litigation is filed challenging the Board's action on the Project, require Mark A. Henkel and Tiffany Marie Henkel to provide security in the amount of \$150,000 in the form of an irrevocable letter of credit or bond, in the form acceptable to County Counsel, within 10 days of litigation being filed. In the event this signed Agreement is not received by PDS within 10 business days from the Applicant or the Applicant fails to provide security as required herein, require the Director of PDS to rescind approval of STP-14-016M1.

EQUITY IMPACT STATEMENT

Denying the appeal will support the Director's decision that the Project is exempt from CEQA. The Project updates the approved landscape plan to reflect current conditions and resolves an open code compliance case. The landscaping is in compliance with all zoning requirements, conforms with the Santa Fe Valley Specific Plan (Specific Plan), matches the landscaping in the surrounding area, and is exempt from CEQA. The honeysuckle included on the plan is also on the suggested plant list for defensible space and the Rancho Santa Fe Fire Protection District approved the landscape plan with fuel modification requirements in 2018. The Project will enable the property owner to improve their property and add landscaping that remains consistent with the Specific Plan and fire protection requirements.

SUSTAINABILITY IMPACT STATEMENT

The Project updates the approved landscape plan to reflect current conditions and resolves an open code compliance case. The landscaping complies with all zoning and fire safety requirements, is in conformance with the Specific Plan, and matches the surrounding area. The landscaping minimizes the visual impact of residential construction on sensitive ridgelines and hillsides, as seen from Del Dios Highway, the San Dieguito River, and Camino del Norte as required for the site and surrounding properties. Denying the appeal will support the Director's decision that the Project is exempt from CEQA and support the County of San Diego's Sustainability Goal No. 2, allowing the applicant just and equitable access to develop their land. The Project will benefit the property owner by improving their ability to use and improve their property.

FISCAL IMPACT

There is no fiscal impact associated with these recommendations. There will be no change in net General Fund costs and no additional staff years.

BUSINESS IMPACT STATEMENT

N/A

ACTION:

ON MOTION of Supervisor Lawson Remer, seconded by Supervisor Anderson, the Board of Supervisors closed the Hearing and took action as recommended.

AYES: Anderson, Lawson-Remer, Montgomery Steppe
NOT PRESENT: Desmond
ABSENT: (District 1 Seat Vacant)

State of California)
County of San Diego)

I hereby certify that the foregoing is a full, true and correct copy of the Original entered in the Minutes of the Board of Supervisors.

ANDREW POTTER
Clerk of the Board of Supervisors



Signed
by Andrew Potter