



COUNTY OF SAN DIEGO

LAND USE AGENDA ITEM

BOARD OF SUPERVISORS

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DATE: January 29, 2025

05

TO: Board of Supervisors

SUBJECT

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.

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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

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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

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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

ADVISORY BOARD STATEMENT

N/A

BACKGROUND

The Project site is subject to several past approvals and Board of Supervisors (Board) actions. On December 13, 1995, the Board of Supervisors adopted SP-95-001 for the Santa Fe Valley Specific Plan and Adopted the Resolution approving TM 5069. The Specific Plan covered 3,164 acres and allows for up to 1,200 units. The Specific Plan designated the subject property and surrounding lots as residential and established criteria that new homes and development would need to obtain a Site Plan to demonstrate compliance with criteria for landscaping, grading, fencing, architectural style, and slope requirements. These criteria were added to a "D1" special area zoning designator, which was established to minimize the visual impact of residential construction on sensitive ridgelines and hillsides in the Specific Plan Area, as viewed from Del Dios Highway, the San Dieguito River, and Camino del Norte.

On May 4, 2015, the Director of PDS approved Site Plan PDS2014-STP-14-016, which approved a 6,150 square foot single-family residence, a 620 square foot second dwelling unit, and a 1,080 square foot garage along with landscaping, a pool, and driveway. The site plan was found to be in

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conformance with the "D1" criteria established by the Specific Plan.

On September 10, 2024, PDS approved a Site Plan Minor Deviation (Attachment D) and adopted the notice of exemption subject to this appeal (Attachment A). This Project was in response to a code compliance case and updated the approved Site Plan to include 76 Cape Honeysuckle plants that had been planted but were not included in the original site plan. These plants were planted on an existing slope along the southern end of the property that was graded with a permit as part of the original subdivision. In addition, the Project updated the plans to reflect the location of 18 California Pepper trees on this same slope. PDS found the landscaping to comply with the criteria for a minor deviation and in conformance with the Specific Plan, including the criteria contained within the "D1" designator.

In many circumstances, a minor deviation, an application that can allow minor changes to approved permits up to 10 percent, is not required for changes to landscaping or addition of accessory structures on residential lots. However, the "D1" designator and Specific Plan contain criteria for ridgeline and hillside landscaping within this portion of the Specific Plan, including requirements that the landscaping be reviewed to ensure it is primarily of indigenous, drought-tolerant plant materials and that it is natural, meandering, and informal in layout. In addition, the original site plan and landscape plan indicated different landscaping on this slope that did not match what was installed.

Today, the Board is being asked to consider an appeal of the environmental determination for this Project. The appeal of the environmental determination is in accordance with the San Diego County Administrative Code and can only be considered by the Board after all administrative appeals have been pursued and "exhausted" by an appellant. All administrative appeals have been exhausted since the Director's Decision of approval for the Site Plan Minor Deviation is final.

The Board is only considering the Project's environmental determination, which is a finding that the Project is exempt from further environmental review. The appeal of the environmental determination is before the Board for consideration because the California Environmental Quality Act (CEQA) requires that environmental determinations be appealable to the elected decision-making body. The Site Plan Minor Deviation is not before the Board for consideration.

If the Board denies the appeal, the Director's approval of the Site Plan Minor Deviation shall remain effective. If the appeal is granted, the Board can remand the environmental determination to the Director for reconsideration or a different environmental determination.

The Board can take one of the following actions on the environmental determination:

1. Deny the appeal and uphold the environmental determination for the Project. If the appeal is denied, the Director's approval of the Project on September 10, 2024, becomes effective. No further appeals of the Project are allowed, and the Director's Decision is final.
2. Grant the appeal and make a different environmental determination. Additional analysis

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and documentation may be required if the Board chooses to make a different environmental determination.

3. Grant the appeal and remand the 15304 exemption to PDS for reconsideration, including any additional direction from the Board. PDS would then reconsider both the environmental determination and the project decision in view of any direction or instruction from the Board.

Code Compliance

Over the past several years, PDS has received multiple complaints from one neighboring property owner and opened several code compliance cases involving the appellant's property (7640 Top O The Morning Way) and Project site (7633 Road to Singapore). The location of these properties is shown below in Figure 1. PDS has held several meetings with the applicant and appellant to discuss and resolve these cases. PDS strives to work with neighbors and property owners to resolve concerns regarding potential violations without escalating enforcement. During the processing of these projects, PDS responded to a total of 28 Public Records Act requests and held numerous meetings with the property owners in an effort to resolve these issues in a transparent and productive manner, responding to questions and concerns. A summary of the code compliance cases generated from these efforts is included below.



Figure 1: Aerial of 7640 Top O The Morning Way and 7633 Road to Singapore

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7640 Top O the Morning Way (Appellant property)

The appellant, Pete Blasi, owns the lot directly to the south of the Project site. Beginning in August 2019, PDS received several requests to open a code compliance case for the appellant's property located at 7640 Top O the Morning Way. The concerns included that an elevated patio, pool fountain, landscaping, lighting, and barbecue had been constructed without permits and not in compliance with zoning regulations. PDS investigated the complaints and determined that a permit was needed for a gas line and electrical and plumbing work related to these structures and that the structures were consistent with the properties' development standards. The case was subsequently closed after the owner obtained the required building permit.

On February 18, 2020, PDS also approved PDS2019-STP-05-052M1, a minor deviation submitted by the owner of 7640 Top O the Morning Way. This Project included new landscape features, retaining walls, and hardscape, and it was found to be exempt from CEQA.

The appellant also proposed a "30-foot no tree planting zone" located on the neighboring (applicant's) property as part of this Minor Deviation. Since this change was not included in the project description and the owner of 7633 Road to Singapore had not been informed and did not authorize this change, PDS informed both parties that this no-tree planting zone was not part of the approval.

7633 Road to Singapore (Applicant Property)

In May 2020, PDS received a complaint regarding landscaping installed on a slope along the southern property line of the applicant's property, which conflicted with the approved Landscape and Site Plan permits associated with the property and the complainant claimed it interfered with their view.

On September 10, 2024, PDS approved PDS2021-STP-14-016M1, which reflects the existing landscaping and resolved the code compliance case. This Project updated the approved site plan to include 76 new Cape Honeysuckle plants. In addition, the Project updated the plans to reflect the location of 18 California Pepper trees that currently exist on the southern slope. As outlined in the Site Plan Minor Deviation Decision, PDS reviewed this Project and determined it was in conformance with the Specific Plan and the D1 designator, qualifying as a minor deviation. The existing landscaping was found to be similar to what it replaced, consistent with the surrounding area, did not alter the overall character of the site, and was in conformance with the Specific Plan.

Point of Appeal

The appeal filed by Pete Blasi states the Project does not qualify for a CEQA Section 15304 exemption for the reasons listed below under Point of Appeal. The point of the appeal has been analyzed, and PDS has not identified any deficiencies in the environmental review. As explained below, the appeal has not identified any new impacts or reasons why the Project would not qualify for a CEQA Section 15304 exemption.

Point of Appeal

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The Project does not qualify for a CEQA Section 15304 exemption for the following reasons:

- *CEQA Section 15304 is not appropriate for this Project because "The changes to the grading on the slope is in a scenic area as defined by the County through the designation as a "Special Area Designator D1 for visually sensitive hillsides and ridgelines." 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,..." Section 15304 is not an appropriate exemption for this reason.*
- *The Project does not qualify for a CEQA Section 15304 exemption The added landscape is not described as fire resistant in the NOE, just drought tolerant. CEQA Guidelines Section 15304(i) exempts fuel management activities within 30 feet of structures. This change in landscaping is within 30-feet of both the subject property's residence and my residence in a very high fire sensitivity area.*

Analysis and Response

This Project's scope included updating the Site Plan to reflect existing landscaping including 76 Cape Honeysuckle plants and 18 California Pepper trees. These plants already exist on the site and were previously planted on a slope that was legally graded after the property was subdivided in preparation for construction of the home. CEQA Section 15304 applies to minor public or private alterations to land, water, and/or vegetation that do not involve the removal of healthy, mature, scenic trees (except for forestry or agricultural purposes). While this section provides nine examples of projects that may qualify for the exemption, these examples are not exhaustive.

CEQA lists grading on land with a slope of less than 10 percent (15304(a)) and fuel management within 30 feet of structures (15304(i)) only as two examples of the types of projects that may qualify for this exemption. The CEQA guidelines make it clear that projects are not limited to the examples provided. This exemption lists seven other examples of projects that can qualify for this exemption, including new gardening or landscaping and minor trenching and backfilling, and it states that the exemption is not limited to these examples. PDS has routinely applied this exemption for similar projects, including recent minor grading permits, a recent landscape ordinance update, and the remodel of a golf course. This exemption was deemed appropriate in this case because the Project involves landscaping and gardening, and Section 15304(b) explicitly covers new landscaping and gardening.

While Section 15304 is not limited to fuel management, the landscaping included within the approval complies with fire district requirements. To ensure there are no conflicts in the future with fuel modification, the approval allows changes if required by the Fire District. In addition, honeysuckle is on the suggested plant list for defensible space.

Further, the property is within a scenic area. However, it is located a substantial distance from the closest scenic highways (approximately 4,500 feet from Del Dios Highway and 10,500 from Via De La Valle). While Section 15304 cannot be applied to grading in a scenic area, this project proposes landscaping, which is listed as an example of a project that may qualify for the Section

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15304 exemption. This landscaping blends in with the surrounding area. Both Peppertrees and Cape Honeysuckle are included within the approved planting palette of the Santa Fe Valley Specific Plan and are consistent with the landscaping found on nearby properties and the surrounding area. Views of the landscaping are also obscured by intervening hilly terrain and changes in topography, as well as existing structures and landscaping located between this slope and Del Dios and Villa De La Valle. Therefore, the project was determined to not damage a scenic resource. Furthermore, the “D1” designator requires landscaping on this hillside.

The Project was found to be in conformance with Section 15300.2 of CEQA. The project does not impact any environmental resources of critical concern, contribute to cumulative impacts, have a significant environmental effect, damage scenic or historical resources, or involve hazardous waste. The Project proposes replacement landscaping on an existing slope that has been previously graded. The Specific Plan designates this area as residential and requires landscaping on this slope. The landscaping is in compliance with the landscaping guidelines established by the Specific Plan, and no cumulative impacts or unusual circumstances were identified. The closest scenic highway, Del Dios Highway, is over 4,500 feet to the north. No impacts on a scenic highway were identified based on the distance between the Project and Del Dios Highway as well as intervening topography and landscaping, and the landscaping is consistent with the surrounding area. Finally, the Project is not listed as a hazardous waste site, and no impacts on historical resources were identified.

Since the site has already been disturbed, and the Project includes new landscaping on a previously disturbed site, PDS determined that the CEQA Section 15304 exemption is appropriate. This exemption applies more broadly to minor alterations in vegetation and gardening, and this Project falls within the criteria required to qualify for a CEQA Section 15304 exemption.

ENVIRONMENTAL STATEMENT

The Project has been reviewed for compliance with CEQA. Denying the appeal will confirm the prior determination that the Project is exempt from additional environmental review pursuant to Section 15304 (Minor Alterations to Land) of the CEQA Guidelines, because the Project includes landscaping and gardening that do not involve the removal of healthy, mature, scenic trees. The Project is not subject to any of the exceptions to the Categorical Exemptions listed in Section 15300.2 of the CEQA Guidelines.

LINKAGE TO THE COUNTY OF SAN DIEGO STRATEGIC PLAN

The proposed action supports the Community Strategic Initiative in the County of San Diego's 2025-2030 Strategic Plan by promoting opportunities for property owners to exercise their right to be civically engaged and find solutions to current and future challenges. Denying the appeal will confirm the prior determination that the Project is exempt from additional environmental review for existing landscaping that was installed on private property within an area that was previously disturbed.

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Respectfully submitted,



DAHVIA LYNCH
Deputy Chief Administrative Officer

Note: Due to the size of the attachments, the documents are available online through the Clerk of the Board's website at <https://www.sandiegocounty.gov/content/sdc/cob/bosa.html>.

ATTACHMENT(S)

Attachment A - Henkel Landscape Update CEQA and Environmental Findings

Attachment B - Appeal Forms

Attachment C - Defense and Indemnification Agreement Between the County of San Diego and Applicant

Attachment D - Form of Decision Approving PDS2019-STP-14-016M1

Attachment E - Planning Documentation

Attachment F - Ownership Disclosure

Attachment G - Environmental Documentation