

Law Offices of Andrea Contreras
LAND USE | REAL ESTATE | ENVIRONMENTAL

January 27, 2025

Chair Pro Tem Anderson
and San Diego County Board of Supervisors
County Administration Center
1600 Pacific Highway, San Diego, CA 92101

Meeting Date: January 29, 2025
Agenda Item No.: 05
Distribution Date: January 28, 2025
Batch No.:01

Re: January 29, 2025 Agenda Item No. 5
Appeal of Notice of Exemption for STP-14-016

Chair Pro Tem Anderson and Supervisors:

I represent Peter Blasi, who owns the property at 7640 Top O the Morning Way, adjacent to a Homeowner's Association ("HOA") Easement, the property that is the subject of the Project ("Subject Property"). The purpose of this letter is to provide the legal basis for my Client's appeal of the Notice of Exemption for the Project.

The project application was submitted by Mark and Tiffany Henkel ("Project Applicants") who own the property located at 7633 Road to Singapore, on the other side of the HOA Easement. The project application was for approval of a minor deviation to STP-14-016 ("Project"), to "modify the rear yard landscaping in conformance with Special Area Designator D1 for visually sensitive hillsides and ridgelines, with landscaping that has already been installed." (Notice of Exemption.)¹ The Director's Decision ("Decision") relies on a California Environmental Quality Act guideline ("CEQA Guideline") exemption for Minor Alterations to Land. (See Cal. Code Regs., tit. 14, ch. 3, §15304 [hereinafter this California Code of Regulations title will be referred to "CEQA Guidelines"].) As is discussed more fully below, the Project is not exempt from CEQA because it is not a "minor" alteration of land and the exemption does not apply by virtue of the statute's own language.

Background

The Subject Property is a slope owned by the Project Applicants, subject to an easement owned by The Crosby Homeowner's Association ("HOA") and located between my Client's fence line and the Project Applicants' fence line. In 2017, the HOA gave the Project Applicants a license to manage the slope. Importantly, that license states, "All work shall be consistent with the most current Design Guidelines for The Crosby Estate at Rancho Santa Fe Master Association." (License, p. 2, para. 3). The license is attached hereto and incorporated herein by reference as Exhibit "A".

The Project Applicants failed to obtain County permission to plant the slope and proceeded to landscape in violation of the D-1 Designator that limits the manner of landscaping on the subject property.

¹ Notably, the installation occurred years ago and was subject to an ongoing code enforcement action with which the applicant only now is attempting compliance with the minor deviation application.

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Instead, they planted one hundred and twenty-five (125) Cape Honeysuckles² and seventeen (17) Pepper Trees on a fifty percent (50%) slope.

In May 2020, County Code Enforcement personnel informed my Client that the Project Applicants' illegal plantings would be removed and the slope would be returned to the last approved condition of 2001, particularly because all of the plantings were in violation of D-1 Designator regulations. On October 28, 2020, County Code Enforcement issued a Compliance Notice to the Project Applicants to remove the unpermitted landscaping. The Project Applicants never complied.

Instead, on March 17, 2021, the Project Applicants requested the County issue a minor deviation to allow the illegal plantings, and the County found the project exempt from CEQA as a "Minor Alteration of Land." Despite my Client's ongoing communication with County staff, pleading for code enforcement to take care of the issue, the application sat for more than three years. On September 10, 2024, the Planning Director issued a decision on the application, blessing the years-old code enforcement violations with an approval of a minor deviation and a CEQA exemption for minor alterations to land. Today, the honeysuckle has grown into a one hundred and fifty (150) foot-long, twelve-foot-high dense, opaque privacy hedge. It cannot be said to be a minor alteration to land.

The Project does not Consist of Minor Private Alterations

"Exemption categories are not to be expanded beyond the reasonable scope of their statutory language." (*California Farm Bureau Fed. v. California Water Conservation Bd* (2006) 143 Cal.App.4th 173, 192 [citations omitted].) An agency's decision to apply an exemption must be supported by substantial evidence. (*Los Angeles Dept. of Water and Power v. County of Inyo* 67 Cal.App.5th 1018, 1036 (2021).) Here, the Decision expands the exemption category beyond the reasonable scope of its language and does not support the exemption with substantial evidence.

The Project does not involve a minor alteration. The Project is requesting to deviate from the D1 Designator standards precisely because the landscaping is *not* minor. In fact, the Project violates the D1 ordinance, Criterion 11, which requires compliance with the following two standards:

- A. Landscaping shall be composed of primarily indigenous, drought tolerant plants materials, and
- B. Landscaping shall be natural, meandering and informal in layout rather than planting in formal rows or straight lines.

The Decision admits the landscaping proposed is not indigenous. (STP-14-016M1, p. 1) The Decision suggests that because the Cape Honeysuckle is included in the Planting Palette of the Santa Fe Valley Specific Plan ("SFVSP"), it is acceptable—however, that section of the SFVSP specifically applies to golf courses, not to hillsides protected by the D1 Designator. In fact, the Cape Honeysuckle is specifically identified in The Crosby Design Guidelines, as a species of "inconsistent character" only to be used in an isolated manner "so as not to present an overall theme of a tropical nature inconsistent with the Crosby

² While the project application asserts only 76 Honeysuckle plants were installed, Mr. Blasi's personal counsel, Mr. Castro, counted them and they totaled 125. Mr. Castro's declaration regarding the number of Honeysuckles is attached hereto as Exhibit "B".

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Community Landscape Character.” (See The Crosby Design Guidelines, “Allowed Plant Species” Exhibit, p. 88. The pertinent section is attached hereto as Exhibit “C”.) Approval of a plant species of inconsistent character cannot be characterized as “minor.”

It also cannot be disputed that the Project’s planting of the Cape Honeysuckle is *not* natural, meandering or informal in layout. In fact, per the site plan, it is planted in a straight line along the property line. It was specifically planted as a privacy hedge. It is not, as the Decision suggests, approximately 6’-8’ tall, but twelve (12) feet tall and towers over my Client’s backyard, destroying the pre-existing view. It is not well-maintained, constantly grows into my Client’s property, and debris from the hedge blows into Mr. Blasi’s yard and swimming pool. Furthermore, it attracts so many bees that Mr. Blasi’s daughter, who is allergic to bee stings, cannot go into the backyard in the summertime. The hedge is dense, approximately six to eight (6-8) feet deep and is unquestionably a closed fence. In fact, it directly violates condition 4 of the 2015 approval, which requires “[w]here fencing is desired, only open fencing, as defined in The Zoning Ordinance, shall be permitted for yard or property line fencing where such fencing runs in a direction generally parallel to the slope contours.” The hedge’s density cannot be described as open fencing.

The Decision’s conclusion that the 12-foot fence “appears to be more informal in layout as viewed from other vantage points” is meaningless, as Criterion 11 does not indicate a view from other vantage points would change the requirement. It is certainly not informal from my Client’s vantage point. The planting and growth of the Cape Honeysuckle directly contradicts the second requirement of Criterion 11 of the D1 Special Designator.

Furthermore, the deviation exceeds the limit of the D-1 Designator. The D-1 Designator states that an alteration cannot be more than 10%. Mr. Blasi earlier submitted a calculation by an engineer finding the deviation was actually 30%, not the 10% the Decision claims. Exceeding the D-1 maximum deviation contradicts the use of “minor” alteration. The County’s measurement of the deviation relies solely on the number of plants installed (and as is discussed above, that number is wrong). Consider, however, that the seventeen (17) new Pepper Trees alone will grow to as much as fifty (50) feet high and expand to fifty (50) feet wide; such an expanded use of the slope easily exceeds ten percent (10%). (See https://en.wikipedia.org/wiki/Schinus_molle.)

Finally, the Project does not involve a minor deviation because it includes the planting of an enormous number of new plants: one hundred and twenty-five (125) Cape Honeysuckle bushes that span the property boundary and have grown to nearly twelve feet tall. They tower over the property boundary, blocking the view. The Project is not minor private landscaping.

The Project Involves the Removal of Healthy, Mature, Scenic Trees

The Minor Alterations to Land exemption specifically excludes projects that remove healthy, mature, scenic trees. The Notice of Exemption reveals the Project includes the removal of Sycamore trees that were part of the original landscape plan. Sycamore trees can only be described as scenic trees, they are “a species of plane tree native to California, [] a tall, distinctive tree that stands out in any landscape.” ([https://calscape.org/Platanus-racemosa-\(Western-Sycamore\)](https://calscape.org/Platanus-racemosa-(Western-Sycamore)).) No additional analysis is necessary to conclude the exemption does not apply. Removal of the Sycamore trees precludes use of the Minor

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Alterations to Land exemption. The statutory language is clear and the lead agency cannot expand it to suit its own purposes. (*California Farm Bureau Fed.*, 143 Cal.App.4th at 192.)

An Exception Applies to the CEQA Exemption

Notwithstanding the above, the exemption does not apply because it is subject to a location exception. A project that is ordinarily insignificant may be significant in a particularly sensitive environment. (CEQA Guidelines §15300.2.) The Minor Alterations to Land exemption, which is a Class 4 exemption, does not apply where the project may impact on an environmental resource of critical concern where that resource has been designated, precisely mapped, and officially adopted pursuant to local law. (*Id.*)

Here, the Class 4 exemption does not apply because the Project impacts an environmental resource of critical concern that has been designated, precisely mapped, and officially adopted by the County. The Notice of Exemption incorrectly states the project is not in an environmentally sensitive location. The County adopted Special Area Designator D1 to protect sensitive hillside and ridgelines from certain development impacts. D1 applies to the premises. Therefore, the Minor Impact to Land exemption is invalid because it falls within the exception listed in CEQA Guidelines 15300.2(a)

The Subsections to the Exemption Do Not Apply to the Project

In addition, the exemption does not apply on its own terms. CEQA Guidelines section 15304(a) provides an example of the application of the exemption as grading on land with a slope of less than ten (10) percent. The example indicates that grading on any slope that is more than ten percent would not fall within the exemption.

The slope on the Premises is steep, and likely measures at fifty percent (50%). The removal of existing landscaping and installation of one hundred and twenty-five (125) Cape Honeysuckle bushes and seventeen (17) Pepper Trees certainly involved excavation and removal of soil and was subject to the County's Grading Ordinance. This activity would therefore be excluded from this exemption.

The County purports to be using CEQA Guidelines 15304(b), which provides an exemption for new landscaping, including the replacement of existing conventional landscaping with water efficient or fire resistant landscaping. The landscaping contemplated by the Minor Deviation is not new landscaping, it is replacement landscaping and it is not water efficient. The state's Water Use Classification of Landscape Species (WUCOLS) does not classify the Cape Honeysuckle as a low water species, as the Decision states, but as a moderate use water species, giving it a three out of four rating. (<https://ccuh.ucdavis.edu/wucols-db>.)

Fire Hazard

Prior to the Project Applicants' illegal installation of the landscape, my Client received County permission to build a fire pit and barbeque. These items are located near the property line. The prior existing sparsely planted chapparal did not raise a concern about fire. The new, dense Honeysuckle and pepper trees, however, create a real concern for fire hazard.

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For the foregoing reasons, the County has improperly applied the Minor Alterations of Land exemption to this Project. We respectfully request the Board grant our appeal, deny the use of the exemption, and direct staff to comply with CEQA.

Sincerely,



Andrea Contreras

EXHIBIT “A”



Feb 15, 2017 02:56 PM

OFFICIAL RECORDS
Ernest J. Dronenburg, Jr.,
SAN DIEGO COUNTY RECORDER
FEES: \$42.00

PAGES: 10

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

The Crosby Estate at Rancho Santa Fe
Master Association
Cheryl Moulton
On-site General Manager
P.O. Box 5000, PMB 534
Rancho Santa Fe, CA 92067

A.P.N.267-210-22-00

(Above Space for Recorder's Use)

**LICENSE AGREEMENT FOR MAINTENANCE AND INDEMNITY
REGARDING FENCING IMPROVEMENT**

This Agreement is made by and between Mark A. Henkel and Tiffany Marie Henkel, individuals("Owner"), and The Crosby Estate at Rancho Santa Fe Master Association, a California non-profit mutual benefit corporation ("Association"), with reference to the following:

RECITALS

A. Owner is the record owner of a "Separate Interest," as defined in Civil Code Section 4185, commonly known as Lot 316 located at 7633 Road to Singapore, San Diego, California, 92127 and more particularly described as follows ("Subject Property"):

See Exhibit A attached hereto.

B. The Subject Property is part of a "Common Interest Development," as defined in Civil Code Section 4100, which is located in San Diego County, California and subject to the control and operation of The Crosby Estate at Rancho Santa Fe Master Association ("Project").

C. A First Amended and Restated Master Declaration of Covenant Conditions and Restrictions for The Crosby Estate at Rancho Santa Fe was recorded on May 22, 2001, as Document No. 2001-0325863 of the Official Records of the San Diego County, California ("Declaration"). The term "Declaration" is intended to include the aforesaid document and any annexations and amendments to which have been or subsequently may be recorded.

D. Article VII, Section 7.1 (A) of the Declaration requires the Association to maintain areas within in the Project, including a portion of Lot 316 as an HOA Easement Area.

E. The HOA Easement Area and the Subject Property are more fully designated and described in the Declaration.

F. Owner desires to install new landscaping improvements including plantings, drainage and irrigation in an area on the Subject Property as more fully described in Exhibit B attached hereto ("Improvement").

G. The Improvement, in whole or in part, affects a portion of the HOA Easement Area for which the Association has the responsibility to maintain ("Subject Area").

H. Association has agreed to permit the Owner to construct and maintain the Improvement on the Subject Area, subject, however, to the terms and conditions of this Agreement which are intended to specify the respective rights and duties of Owner and Association.

AGREEMENT

NOW THEREFORE, in consideration of the terms and conditions set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Association agree as follows:

1. **Recitals:** The above Recitals form an integral part of this Agreement.
2. **License:** Association hereby permits Owner to make and construct the Improvement in the Subject Area consistent with Exhibit B, in the location and according to the plans and specification submitted to and approved by the Association's Design Review Committee ("DRC") pursuant to Article 8 of the Declaration, subject however to the terms and conditions set forth in this Agreement.
3. **Approval:** Owner agrees to submit plans and specifications for any future improvements to the HOA Easement Area to the DRC, and obtain approval for said improvements prior to commencing the work therefor. All work shall be consistent with the most current Design Guidelines for The Crosby Estate at Rancho Santa Fe Master Association.
4. **Costs:** Owner covenants and agrees to pay all costs and expenses incurred in and related to the construction of the Improvement, and to be fully responsible for the maintenance, repair and replacement of the Improvement as shown on Exhibit B. Owner shall not be responsible for costs and expenses related to the recycled water main. Owner further covenants and agrees to assume all responsibility for any damages to persons, property or otherwise which may result from the construction, maintenance, use or continued existence of the Improvement.
5. **Agreement:**
 - a. Owner agrees to maintain the HOA easement area in the side yard of its property; including all landscaping (i.e. trees, shrubs and groundcover), irrigation lines, and drainage on the slope, upon the completion of items 5.b., c., and d.
 - b. Association agrees to replant the slope to the original condition and provide water from the mainline, however, Owner must install the off-shoot irrigation lines to the slope.
 - c. Association agrees to pay to bury the mainline and Owner agrees to pay to modify the existing irrigation to accommodate the Owner's plantings and pay for and connect to the mainline with its own irrigation lines. If Owner changes the landscaping (which can occur only with DRC approval) such that the lines have to be moved, Owner will pay the cost.

- d. Association will release the Owner's \$10,000 construction deposit once the Association issues its final approval in accordance with Item 5.f.
- e. Association and Design Review Committee ("DRC") hereby approve the landscape modification plans received 05/18/16 that the Owner has submitted to the Association.
- f. Association will issue its final approval for all of the work done by Owner only after a final walk-through is conducted by the DRC and any departures from previously approved work is corrected or the work is approved by the DRC in accordance with the First Amended and Restated Master Declaration and the Design Guidelines, and other applicable documents.
- g. The Association will take no action against the Owner for the neighbors' encroachment or improvements into the HOA easement area.

6. **Maintenance:** Owner covenants and agrees that the Improvement shall be constructed and maintained strictly in compliance with the plans and specifications approved by Association and that the Improvement shall be kept in good maintenance and repair.

7. **Building Permits:** Owner covenants and agrees that all construction, maintenance and continued use of the Improvement shall be in accordance with generally accepted construction, maintenance and repair practices and in compliance with all applicable laws and building codes. Association's consent to the terms of this Agreement shall not be construed as an acknowledgment that the Improvement complies with applicable laws, and Owner shall be responsible for any necessary building permits and inspections.

8. **Failure to Maintain:** Owner covenants and agrees that the Improvement shall remain subject in all respects to the jurisdiction of the Association and to the Declaration, Bylaws, Design Guidelines, Rules and Regulations and other Governing Documents (collectively "Governing Documents") of the Association. Owner covenants and agrees that, if Owner fails to construct, maintain and use the Improvement in accordance with the terms of this Agreement, Association shall have the power, at its sole option, to maintain or repair the Improvement, or remove them, after notice and reasonable time to cure is afforded Owner at Owner's expense.

9. **Insurance:** Owner shall be responsible for securing and maintaining adequate insurance for the Improvement. Association shall have no obligation to insure the Improvement.

10. **Indemnity:** Owner shall defend, indemnify and hold harmless (including payment of all legal fees and costs) Association, and their respective Board of Directors, officers, members, agents, attorneys and employees ("Indemnitees") from and against any and all injuries, damages, causes of action or claims which may exist or be brought or instituted against any or all of said parties because of, arising out of, or in any manner caused by the construction, installation, maintenance, repair, replacement, existence or use of the Improvement except for that which is caused by the gross negligence or willful misconduct of the Indemnitees. Owner shall also defend, indemnify and hold harmless the Indemnitees from and against all injuries, damages, causes of action or claims which may exist or be brought or instituted against any or all of said parties for any damages, erosion or other failures that may occur at any location on the slope in the Subject Area

caused in part or in whole, whether directly or indirectly, by the installation, maintenance, use or repair of the Improvement.

11. **Release:** Owner releases Association, their Board of Directors, officers, members, agents and employees from any duty or obligation to pay, or from otherwise being responsible, for the cost of construction, maintenance, repair or replacement of the Improvement or any portion of the HOA Easement Area or the Subject Area affected or impacted by the Improvement, and further releases said parties from any and all claims, injuries, damages and causes of action which may arise as a result of the construction, maintenance, repair or replacement of the Improvement or the continued existence or use of the Improvement. The recycled water main is excluded from this release.

12. **Material Breach:** If Owner materially breaches any of the terms or conditions of this Agreement, Owner agrees and covenants personally and for Owner's successors and assigns that: (i) any and all costs incurred by the Association that are attributable to Owner's failure to abide by the terms of this Agreement shall be the personal obligation of the record owner of the Subject Property at the time they are incurred by the Association and shall be a special assessment which may become a lien upon the Subject Property pursuant to Civil Code Section 5700 *et seq.*, from and after the date incurred, which lien may be enforced and collected in the same manner as any assessment levied under the Declaration; (ii) Association shall be entitled to injunctive relief compelling the removal of Improvement or barring Owner from using or occupying the area; (iii) Association may remove the Improvement and charge Owner for the cost; and (iv) Association may pursue any other remedy afforded by law.

13. **Attorney's Fees:** In any action or proceeding pertaining to or arising out of the terms of this Agreement, or the breach thereof, the prevailing party shall be entitled to recover attorneys' fees, costs and expenses, including expert witness fees, along with any other relief granted.

14. **Conflict:** Unless otherwise stated herein, if there is any conflict between the terms of this Agreement and the terms of the Governing Documents of the Association, the applicable provisions of the Governing Documents shall control.

15. **Independent Counsel:** Each party to this Agreement has been advised to seek legal counsel and, in entering this Agreement, has had the opportunity to rely upon the advice, evaluation and recommendation of its own counsel and not opposing counsel. This Agreement shall be construed without reference to the identity of the party or parties preparing the same. It is understood and agreed that the parties hereto participated equally or had equal opportunity to participate in the drafting of this Agreement.

16. **Integration Clause:** This Agreement is intended by the parties as the final expression of their agreement with respect to the construction and costs of maintenance, repair and replacement of the Improvement, and is a complete and exclusive statement of the terms thereof. This Agreement supersedes all prior representations, understandings or agreements of the parties and the parties rely solely upon the contents of this Agreement. This Agreement may be modified only by a writing signed by the parties or their respective successors in interest and recorded in the same manner as this Agreement.

17. **Severability:** If any of the terms or provisions of this Agreement shall be declared by a court of competent jurisdiction to be invalid or inoperative, all of the remaining terms and provisions shall remain in full force and effect and, to this extent, the terms and provisions of this Agreement are deemed to be severable.

18. **Notice:** Notices to be given under this Agreement shall be in writing and sent by certified mail, return receipt requested, a nationally recognized overnight carrier, or by telecopy or similar means if a copy is also sent by United States Certified Mail, in which case notice shall be deemed delivered on transmittal by telecopier or other similar means, as follows:

Association:

The Crosby Estate at Rancho Santa Fe
Master Association
Cheryl Moulton
On-site General Manager
P.O. Box 5000, PMB 534
Rancho Santa Fe, CA 92067

Owner:

Mark A. Henkel and Tiffany Marie Henkel,
Individuals
P.O. Box 5000, PMB 151
Rancho Santa Fe, CA 92067

These addresses may be changed by written notice to the other party, provided that no change of address shall be effective until actual receipt by the parties of the notice.

19. **Gender:** The use of any gender in this Agreement shall also include other genders, and the use of singular or plural number shall include the other whenever the context so requires.

20. **Recording:** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors in interest and assigns. In the furtherance thereof, the parties hereto agree that this Agreement shall be recorded against title the Subject Property in the Office of the County Recorder.

IN WITNESS WHEREOF, the parties to this Agreement have signed and acknowledged it below.

Association:

The Crosby Estate at Rancho Santa Fe
Master Association, a California non-profit
mutual benefit corporation

By:  2/7/17
Date

Its: BOARD PRESIDENT

Owner:

Mark A. Henkel and Tiffany Marie Henkel,
Individuals

By:  2/1/17
Date

Mark A. Henkel, Individual

By:  2/8/17
Date

Its: BOARD TREASURER/SECRETARY

By:  2-1-17
Date

Tiffany Marie Henkel, Individual

17. **Severability:** If any of the terms or provisions of this Agreement shall be declared by a court of competent jurisdiction to be invalid or inoperative, all of the remaining terms and provisions shall remain in full force and effect and, to this extent, the terms and provisions of this Agreement are deemed to be severable.

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The Crosby Estate at Rancho Santa Fe
Master Association, a California non-profit
mutual benefit corporation

Owner:

Mark A. Henkel and Tiffany Marie Henkel,
Individuals

By: _____
Date

Its: _____

By: Mark A. Henkel 2/1/17
Mark A. Henkel, Individual Date

By: _____
Date

Its: _____

By: Tiffany Marie Henkel 2-1-17
Tiffany Marie Henkel, Individual Date

ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

COUNTY OF SAN DIEGO)

On 2/1/17 before me, Raquel R. Fang, Notary Public, personally appeared Mark Alan Henkel, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Notary Public



ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

COUNTY OF SAN DIEGO)

On 2-1-17 before me, Raquel R. Fang, Notary Public, personally appeared Tiffany Marie Henkel, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Notary Public



ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF SAN DIEGO)

On February 7, 2017, before me, Cheryl Ann Moulton, Notary Public, personally appeared Carole B. Hogan, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Cheryl Ann Moulton
Notary Public



ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF SAN DIEGO)

On February 8, 2017, before me, Cheryl Ann Moulton, Notary Public, personally appeared David A. Kingston, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Cheryl Ann Moulton
Notary Public

EXHIBIT "A"

Real property in the County of San Diego, State of California, described as follows:

LOT 316 OF COUNTY OF SAN DIEGO TRACT 5073-7 IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 14557 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MARCH 14, 2002 AND BY CERTIFICATE OF CORRECTION RECORDED MARCH 25, 2005 AS INSTRUMENT NO. 2005-0244942 OF OFFICIAL RECORDS.

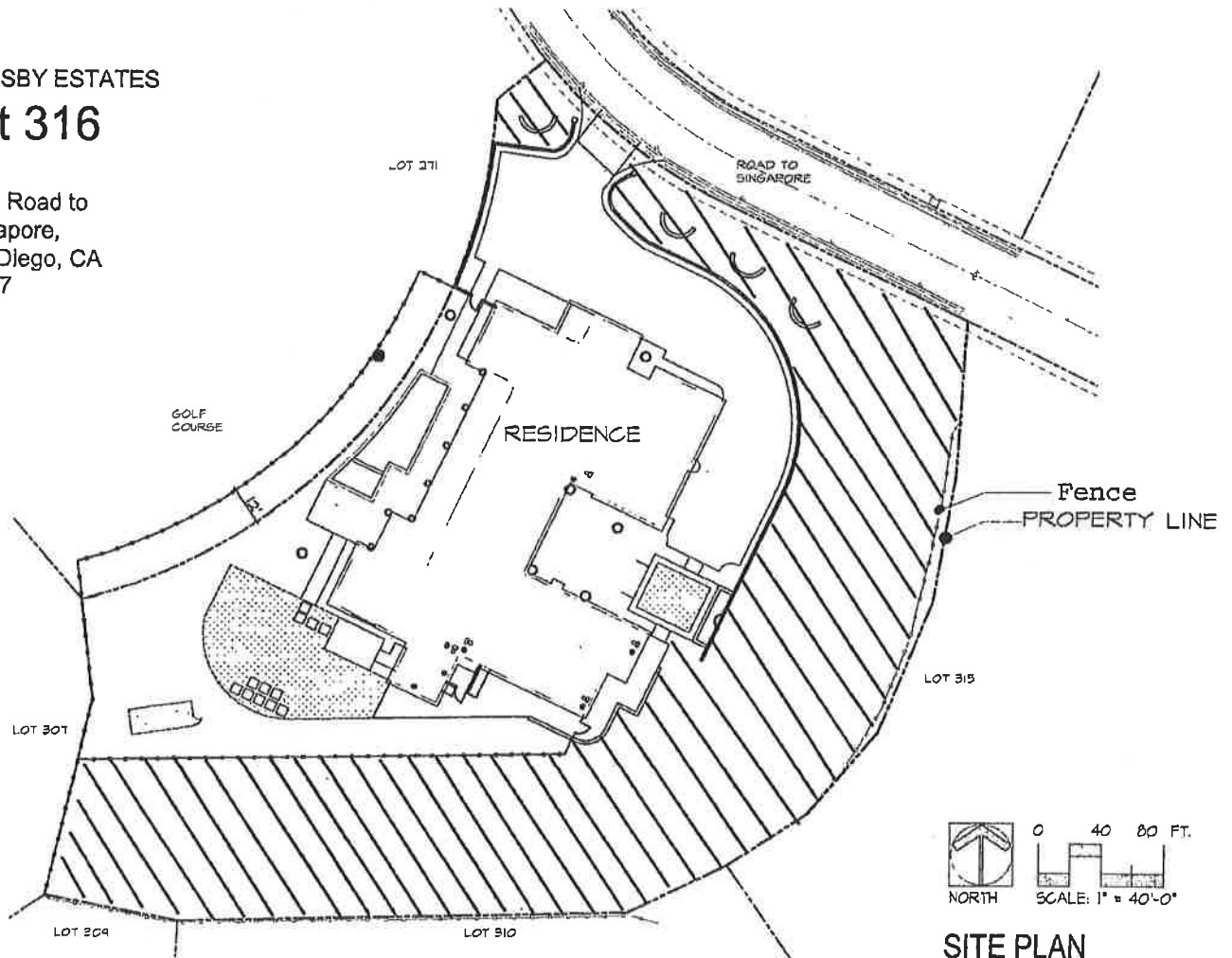
EXCEPTING THEREFROM ANY AND ALL OIL, OIL RIGHTS, MINERALS, MINERAL RIGHTS, NATURAL GAS RIGHTS AND OTHER HYDROCARBONS BY WHOSOEVER NAME KNOWN, GEOTHERMAL STEAM AND OTHER MATERIAL RESOURCES AND ALL PRODUCTS DERIVED FROM ANY OF THE FOREGOING, THAT MAY BE WITHIN OR UNDER THE PROPERTY, TOGETHER WITH THE PERPETUAL RIGHT OF DRILLING, MINING, EXPLORING AND OPERATING THEREFORE AND STORING IN AND REMOVING THE SAME FROM THE PROPERTY OR ANY OTHER LAND, INCLUDING THE RIGHT TO WHIPSTOCK OR DIRECTIONALLY DRILL AND MINE FROM LANDS OTHER THAN THOSE CONVEYED HEREBY, OIL OR GAS WELLS, TUNNELS AND SHAFTS INTO, THROUGH OR ACROSS THE SUBSURFACE OF THE PROPERTY, AND TO BOTTOM SUCH WHIPSTOCKED OR DIRECTIONALLY DRILLED WELLS, TUNNELS AND SHAFTS UNDER AND BENEATH OR BEYOND THE EXTERIOR LIMITS THEREOF, AND TO REDRILL, RETUNNEL, EQUIP, MAINTAIN, REPAIR, DEEPEN AND OPERATE ANY SUCH WELLS OR MINES WITHOUT, HOWEVER THE RIGHT TO DRILL, MINE, STORE, EXPLORE AND OPERATE ON, IN OR THROUGH THE SURFACE OR THE UPPER FIVE HUNDRED (500) FEET OF THE SUBSURFACE OF THE PROPERTY..

Assessor's Parcel No.: 287-210-22-00

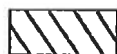
Exhibit B

THE
CROSBY ESTATES
Lot 316

7633 Road to
Singapore,
San Diego, CA
92127



SITE PLAN



Subject Area to be maintained
by Owner

EXHIBIT “B”

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DECLARATION OF BRYAN G. CASTRO

I, Bryan G. Castro, declare:

1. I am a member in good standing of the State Bar of California. My Bar Number is 211619. I have been licensed since November 2000 and have never had any disciplinary issues with the California Bar. I am a graduate of the UCLA School of Law and have been in private practice for 25 years including having my own law practice since 2005.

2. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief and, as to those, I am informed and believe them to be true. I am competent to testify, and if called upon to testify, could and would testify as set forth herein.

3. I make this Declaration in support of Andrea Contrera, Esq's letter dated January 27, 2025 to the Chair Pro Tem Anderson and San Diego County Board of Supervisors prepared in support of Pete Blasi's Appeal of Notice of Exemption for STP-14-016.

4. Mark and Tiffany Henkel sued Peter and Tamara Blasi in or around August 14, 2019, identified as Case No. 37-2019-00043047-CU-OR-NC; I was co-counsel of record for Peter and Tamara Blasi in this litigation (the "Litigation").

5. Pursuant to this litigation, on August 9, 2022, at approximately 11:00 AM PST, the Henkels' backyard including the slope behind their home located on Lot 316 at 7633 Road to Singapore, San Diego, CA 92127 was the subject of inspection per an inspection demand made under California Code of Civil Procedure Section 2031.010 (the "Inspection").

6. I personally attended the Inspection. Also present at the Inspection were the Henkels' legal counsel, Sarah Shekhter, Esq. and Andrea Meyers, Esq.

7. During the Inspection, from 12:30 PM PST – 12:42 PM PST, I personally counted the cape honeysuckle bushes (*Tecomaria capensis*) ("Honeysuckles") located at the top of the slope located behind the Henkels' home. The Honeysuckles were planted at the top of the slope to form a hedge-wall, that sat at the top of the slope that abutted 3 separate lots – lots 309, 310, and 315. (Pete Blasi owns lot 310). To document my counting of the Honeysuckle, I filmed 6 videos using my I-phone that captured video images and audio. I filmed six videos to keep the videos to around 2 minutes and 30 seconds in length, so the videos could easily be emailed. I filmed six videos

1 documenting my count of the Honeysuckles that were the following lengths: (1) 2:11, (2) 1:58, (3)
2 :56; (4) 1:01, (5) 2:34, (6) 1:59. **During this count I counted 125 Honeysuckles at the top of the**
3 **rear slope behind the Henkel's home that made up the hedge-wall.** The plants were easy to
4 identify and count because they had been planted from 15 gallon plastic pots that had been purchased
5 by the Henkels, which caused the base of each planted Honeysuckle to have the rounded shape from
6 the 15 gallon pot. I knew the Honeysuckles came from 15 gallon pots because, (i) I had reviewed
7 invoices in discovery produced by the Henkels showing the purchase of Honeysuckles by the
8 Henkels in 15 gallon pots, (ii) I had reviewed a 2018 site-plan submission from the Henkels to the
9 Crosby Estates at Racho Santa Fe's Design Review Committee dated 11/20/18 that listed in its
10 legend "CV, Tecoma Capensis, 15 gallon", and (iii) while I was performing and filming my count
11 I came across several discarded 15 gallon black plastic pots located near several of the Honeysuckles
12 I had counted.

13 8. The six videos I prepared described in paragraph 6 herein became a part of the official
14 discovery record in the Litigation. Accordingly, shortly after I shot the videos, my co-counsels'
15 (Scott Miller and Devon Franza) office (Dillon Miller Ahuja & Boss, LLP) prepared a Box-link
16 with all six videos and made it available to all counsel including counsel for Mark and Tiffany
17 Henkel.

18 9. Upon request, my office or Andrea Contreras, Esq. can provide the County of San
19 Diego including the Board of Supervisors with a link containing the six videos referenced herein.

20 10. On September 10, 2024, Ashley Smith of Planning & Development Services emailed
21 Pete Blasi the final and approved "Plot Plans" for Minor Deviation STP-14-016M1 labelled as
22 "STP-14-016M1 – Plans (2024-09-10) FINAL Stamped & Signed.pdf" ("Final Plot Plan"), which
23 is currently a part of the record for this appeal. In this Final Plot Plan the Henkels included "76"
24 Honeysuckles located at the top of the slope behind their home adjacent to Lots 309, 310, and 315.
25 Based on my count on August 9, 2022 described herein, the "76" Honeysuckles included in this
26 Final Plot Plan **are not correct.** The actual number of Honeysuckles based on my August 9, 2022
27 count described herein is 125 Honeysuckles meaning the Henkels' Final Plot Plan fails to include
28

1 49 Honeysuckles that were planted in the ground as of August 9, 2022 based on my video-taped
2 count. Meaning, the Henkels' Honeysuckles included in the Final Plot Plan are **under-reported by**
3 **39%**. (125 total Honeysuckles x 39% = 49 Honeysuckles that were not reported). Meaning, the
4 number of Honeysuckles actually planted (125) is actually 65% greater than the number of
5 Honeysuckles (76) reported by the Henkels in the Final Plot Plan (76 reported Honeysuckles x 65%
6 = 49 Honeysuckles i.e. the actual number is 65% greater than was reported).

7 I declare under penalty of perjury under the laws of the State of California that the foregoing
8 is true and correct.

9
10 Executed on January 27, 2025, in San Diego, California.

11 
12 By: _____
13 BRYAN G. CASTRO

EXHIBIT “C”

Pittosporum tenuifolium	NCN	G	F-I
Prunus caroliniana	Carolina Cherry	G	F-P
Punica granatum	Pomegranate	G	F-I-P
Pyracantha	Cotoneaster	G	F-I-P
Rhamnus californica	Coffeeberry	G	F-I-P
Rhaphiolepis indica varieties	Indian Hawthorne	G	F-I-P
Rhus integrifolia	Lemonade Berry	G	P
Ribes species	Current	G	F-I-P
Romneya species	Matilija Poppy	G	F-I-P
Sarcococca ruscifolia	Sarcococca	G	F-I-P
Strelitzia reginae	Bird of Paradise	G	F-I-P
Tagetes species	Mountain Daisy	G	F-I-P
Thevetia species	Yellow Oleander	G	F-I-P
Trachelospermum jasminoides	Star Jasmine	G	F-I
Thymus species & hybrids	Thyme	G	F-I
Tulbaghia violacea	Society Garlic	G	
Verbena species & hybrids	Verbena	G	F-I-P
Viburnum tinus	Viburnum	G	F-I-P
Vinca major	Periwinkle	G	F-I-P
Xylosma congestum	Xylosma	G	F-I-P

Turfgrass

Cynodon dactylon	Bermuda Grass
Festuca	Fescue Grass
Others	

Inconsistent Character

Species indicated as “inconsistent character” may be used as isolated individuals or accents in a manner so as to not present an overall theme of a tropical nature inconsistent with the Crosby Community Landscape Character.

<u>Botanical Name</u>	<u>Common Name</u>
Bamboo species (large)	Bamboo
Brassica sp.	Schefflera
Ferns- various	Ferns
Hibiscus species	Hibiscus
Photinia fradesii	Photinia
Tecomaria	Cape Honeysuckle
Cupressus Species	Italian Cypress

Fire Management

Species indicated as “fire management” may be used as isolated individuals or accents in a manner consistent with The Crosby Community Landscape Character and approved by the Rancho Santa Fe Fire Protection District.

<u>Botanical Name</u>	<u>Common Name</u>
Cedrus deodora	Cedar
Pinus species	Pines
Other RSFFPD prohibited	