

**Matt Bator**

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**From:** blicklawsd@gmail.com  
**Sent:** Monday, September 13, 2021 9:08 AM  
**To:** Matt Bator  
**Cc:** Barry Schultz  
**Subject:** Conflict of Interest - Planning Commission meeting via teleconference - Tuesday, September 14th, at 6:00 pm for Item 1; TVS20-002.

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

**Planning Commission meeting via teleconference - Tuesday, September 14th, at 6:00 pm for Item 1; TVS20-002.**

**Subject: Conflict of Interest of Planning Commissioner Don Countryman**

Matt:

Please distribute to the Planning Commissioners, as a 'Red Dot' and official part of the record, my request to recuse Mr. Don Countryman from participating in the consideration of this item, due to a Conflict of Interest under California law.

While we respect Mr. Countryman and appreciate his expertise, his representation of the applicants, having received and continuing with the expectation of substantial monetary compensation for his work and relationship with the parties, is more than the mere 'appearance' of a conflict, and clearly establishes a legal conflict of interest which disqualifies him from participation in tomorrow's meeting.

**This is a formal request that Mr. Countryman either recuse himself or be recused by order of the Planning Commission Chair or upon advise of the City Attorney, from participating whatsoever in the consideration of this Item 1 TVS20-002.**

I would urge the City Officials, along with Mr. Countryman, to consider reviewing the Political Reform Act of 2021 [California Code of Regulations, Title 2, Division 6 (Sections 18110-18998)] and related law and opinions and consulting with your City Attorney as well as contacting the Fair Political Practices Commission at the following address:

***Commission General Information: (916) 322-5660***

***Advice: 1-866-ASK-FPPC 1-866-275-3772***

***\*1 [Advice@fppc.ca.gov](mailto:Advice@fppc.ca.gov)***

***Commission Mailing Address:***

***Fair Political Practices Commission***

***1102 Q Street,***

***Suite 3000***

***Sacramento, CA 95811***

Since we were advised of your intention to dishonor our request of a declaration of a conflict of interest only today, we will not cite all relevant law in this email message. However, we are prepared to do so, upon invitation of the City Planning Commission, but would request a continuance in the proceedings to allow that process.

Regards, Sam Blick

## Law Offices of C. Samuel Blick

*Land Use Lawyers since 1984*

**C. Samuel Blick, Esq.**

16915 Avenida De Acacias

Post Office Box 9477

Rancho Santa Fe, CA 92067

**(858) 395-1554 Direct Line**

Please visit our website: [www.SamBlickLaw.com](http://www.SamBlickLaw.com)

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**From:** Matt Bator <MBator@delmar.ca.us>  
**Sent:** Monday, September 13, 2021 8:28 AM  
**To:** blicklawsd@gmail.com  
**Subject:** RE: Item 1 TVS20-002 - Conflict of Interest

Hi Sam,

I have spoken to both the City Attorney's office and Planning Commissioner Countryman. It is my understanding that he plans to disclose his involvement with the development of the home, but is not planning to recuse from the item. Would you like your email below distributed as a "red-dot?" It will otherwise just be part of the file record.

Thanks,  
Matt

**Matt Bator, AICP | Principal Planner - Current Planning**

**City of Del Mar | Planning Department**

1050 Camino del Mar

Del Mar, CA 92014

☎ 858.755.9313 ext. 1158 | 📠 858.755.2794 | ✉ [mbator@delmar.ca.us](mailto:mbator@delmar.ca.us)

**Effective July 1, 2021, Planning and Building Services will resume in-person at the City Hall public counter on a limited basis only Monday and Wednesday between 1:00 PM to 5:30 PM. Remote services will continue to be provided during regular City hours. Please check our City website at [www.delmar.ca.us](http://www.delmar.ca.us) for more information.**

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**From:** [blicklawsd@gmail.com](mailto:blicklawsd@gmail.com) <[blicklawsd@gmail.com](mailto:blicklawsd@gmail.com)>  
**Sent:** Friday, September 10, 2021 12:42 PM  
**To:** Matt Bator <[MBator@delmar.ca.us](mailto:MBator@delmar.ca.us)>  
**Subject:** Item 1 TVS20-002 - Conflict of Interest

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Matt:

This may be unnecessary, but I have been advised that Planning Commissioner Don Countryman was the architect who designed the Fried's house and, therefore, will be recusing himself from this Item 1 TVS20-002?

If not, I would like to make that request at this time and by this writing.

Regards, Sam Blick

## **Law Offices of C. Samuel Blick**

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**C. Samuel Blick, Esq.**

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Rancho Santa Fe, CA 92067

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September 12, 2021

Mr. Matt Bator, AICP, Principal Planner  
City of Del Mar Planning Department  
1050 Camino del Mar  
Del Mar, CA 92014

Re: ITEM 1 TVS20-002, Public Hearing Tuesday, September 14 at 6:00 p.m.

Dear Mr. Bator,

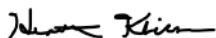
I have lived at 133 9<sup>th</sup> Street on two separate occasions since 2014 and currently reside at this address in a guest house. The privacy the Monterey Cypress trees afford the main property, and specifically the 133 9<sup>th</sup> Street guest house, is significant. Visitors continuously walk and drive on 9<sup>th</sup> Street and I have observed people coming up to the property wall and looking over it into the back yard. The trees are an attractive deterrent. They appear healthy and beautiful. They fit the scale of the buildings. Their habit is such that blue sky can be seen through the branches.

If one Monterey Cypress is removed per the applicants' request, it will take away privacy in my main living quarters. It will break the fenestration that is often desired in a community. It will disrupt what happens in nature when one tree gets old or falls and is replaced by a younger tree.

I have seen many trees taken out in the interest of development in this neighborhood. It is sad to see the canopy diminished from an aesthetic standpoint and an environmental standpoint. I am aghast that residents cannot allow for natural growth of protected species because they believe they have greater rights. The trees were here before the applicants constructed their project in 2016.

I ask with all good intention that the Planning Department and City retain as much of the character of Del Mar as possible by protecting the disputed Monterey Cypress tree at 135 9<sup>th</sup> Street.

Best regards,



Heather Klicman  
858-414-8099

## Jennifer Gavin

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**From:** Beth Oringher <bloringher@gmail.com>  
**Sent:** Saturday, September 11, 2021 4:58 PM  
**To:** Planning Mail Box  
**Subject:** Item # 1 TVS20-002

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I would like this comment to be part of the Permanent record regarding the above mentioned Item #.

We have lived at 147 9th Street since 1997. When we purchased our home, 9th Street was proud to have many Monterey Cypress trees that added beauty to the neighborhood. Sadly, as time went on, most of those trees have died or needed to be removed due to safety, or illness in the tree. As, like most homes we have lost views over the years. This is because trees, plants grow and what was once beautiful oceans views no longer exist, as they once did. We now have a very few Monterey Cypress trees left-We feel that the loss of any MC tree would be a loss to our street. Yes, there are homes that have grander views than others, but at what cost? We strongly encourage the Planning Department to allow what few MC trees there are on 9th Street to remain.

Regards,  
Beth and Harvey Oringher

To City of Del Mar

Re: Juvenile Monterey Cypress on 9th St.

Dear Sir or Madam,

We have heard that there is continued thought of removing the beautiful Juvenile Monterey Cypress in front of 135 9th St. This is a beautiful healthy tree that will over the next few years transform itself into the typical mature appearance. The cypress trees in Del Mar provide the beautiful sunset silhouettes that Del Mar is noted for. It is inconceivable to us that there is even consideration of removing this healthy tree. The benefits of this and other healthy trees should be obvious in this time of climate change, providing shade, absorbing CO2 and cooling the street. The bluffside block of 9th street is very wide and exposed and can benefit from as much shade as possible. I can see no reasonable reason to remove this tree. The one house view that may be improved by its removal already has a panoramic view of the ocean that will only be enhanced when the Cypress develops its elegant mature appearance. In addition the recent clearing of the bluff front property between 9<sup>th</sup> and Shippey lane has already enhanced their view. To my understanding both Torrey Pines and Monterey Cypress' are protected in Del Mar and clearly this tree is not a hazard in any way and doesn't meet the criteria for an exemption for its removal.

Thank you for considering this.

Eric Pinczower, MD  
Gail Pinczower, MD

158 7th St  
156 Little Orphan Alley  
Del Mar

From the Del Mar Tree Ordinance: *What kind of trees are protected?*  
*Protected trees in Del Mar include the Torrey Pine (Pinus torreyana) and the Monterey Cypress (Cupressus macrocarpa), along with all tree species located within the Central Commercial (CC) Zone and the environmentally sensitive Open Space (OS) Overlay Zone, provided they are over a certain size.*



DAVID STERN

12774 VIA GRIMALDI

DEL MAR, CA 92014

619. 890. 8485

DKSTERN27@GMAIL.COM

September 10, 2021

To : City of Del Mar

Re: Juvenile Monterrey Cypress on 9<sup>th</sup> Street

I wrote prior and am concerned this issue continues to be taking up city time and funds, not to mention the funds of private homeowners. The City of Del Mar should not be in the business of removing protected, healthy, beautiful trees that provide benefits to the whole community and our environment. One of the reasons for the charm and desirability of Del Mar is it's trees.

Thanks for taking this under consideration.

David Stern

12774 Via Grimaldi

Del Mar, 92014

## **Matt Bator**

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**From:** Suzanne Bevash <sbevash@pacbell.net>  
**Sent:** Monday, September 13, 2021 11:05 AM  
**To:** Planning Mail Box; Matt Bator  
**Subject:** Item 1: TVS20-002

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear City of Del Mar Planning Department Members,

My family is a neighbor of Adam and Mary Cherry. We own the home at 120 8th Street, which faces the Cherry home across Shippey Lane.

We understand that another neighbor is seeking to have the Cherry's remove or significantly cut a protected Monterey Cypress on their property. I am writing to let you know that we strongly oppose the application for the following reasons:

- 1) The tree is healthy and a beautiful part of the neighborhood. We enjoy seeing it.
- 2) Mature trees are being cut with every new development. At the very least, we need to protect the "protected trees."
- 3) Because of the drought, all of Del Mar's trees are under stress. Significant trimming is likely to weaken the tree and make it more susceptible to pests and disease.
- 4) Also, with summer temperatures continuing to getting hotter, we need to be planting more trees for shade and carbon capture, rather than reducing or eliminating them.

Thank you for considering this opposition, Suzanne Bevash and Family

## Jennifer Gavin

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**From:** Robert Fried <robertsfried@sbcglobal.net>  
**Sent:** Monday, September 13, 2021 7:45 PM  
**To:** Matt Bator; Jennifer Gavin  
**Cc:** Chrissy Fried  
**Subject:** Red Dot for TSVS20-002 for the September 14 Planning Commission Meeting Item #1  
**Attachments:** 2011 Google Maps 135 9th St D.jpg; 2012 Google Map 135 9th St D.jpg; 2014 Google Maps 135 9th St D.jpg; 2015 Google Maps 135 9th St D.jpg; 2017 Google Maps 135 St D.jpg

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(Please add this Red Dot to the file for TSVS20-002 in Support of Item #1)

Dear Planning Commissioners:

The purpose of this Red Dot is to refute some of the Red Dot representations made by Attorney Blick in his letter of August 26 on behalf of the Cherry's.

- Attorney Blick's inclusion of my wife's Instagram photos of Western views from our second-floor deck is irrelevant and misleading! The issue to be considered by the Planning Commissioners is not at all what kind of Western view we have from our second-floor deck, but whether there has been significant and unreasonable blockage of our Scenic Ocean and Sky views from our Primary Living Area (located on the first floor of our home in our kitchen and eating area) since we moved into our home in June of 2016. More than 50% of our total view corridor from this location is to the Southwest. The City Council's Resolution 2020-06 of February 18, 2020 (which approved our Tree Removal Permit TRP19-014) clearly confirmed the City Council's conclusion that unreasonable view obstruction was caused by the subject tree of our current TSVS Application. As you can imagine, the situation has only gotten worse over the past 19 months with the view diminishing even further.

- Mr. Blick suggests that we are trying to "... create new or supplemental view corridors, at the community's expense." This is certainly not the case since lovely Southwestern ocean and sky views existed from the time we purchased the property in 2008. These views have been substantially reduced over time by the rapid and sustained growth of 3 seedling volunteer Monterrey Cypresses which first appeared along the Cherry Northern property line in 2010 and 2011. Their rapid growth has caused us much concern and was the reason we tried very hard over the last 5 years to collaborate with them to find an acceptable compromise solution to prevent a total screen of our Southwestern view corridor. Copies of 2017 and 2018 photos

of the Southwestern view corridor from our new home are attached in a separate Red Dot letter.

- Mr. Blick's comment that the subject tree "... adds to the special character of Del Mar and ... overall quality of life enjoyed by residents, property owners, and visitors in Del Mar" seems slightly disingenuous given the number of Red Dot letters in support of our TSVS application, written by residents and neighboring property owners who are directly impacted by the wall of 6 Monterrey Cypresses along the Cherry Northern property line. Mr. Blick also represents that we are requesting a "new southwestern view", which is patently false! He goes on to say that our "... intent is to carefully and judiciously preserve 'reasonable' views, where none was otherwise present." This absolute nonsense!


For reference purposes, I am also attaching a series of Google Map photos from 2011 through 2017 to document the actual history of the 6 Monterrey Cypresses along the Cherry's Northern property line. Note that the 3 volunteer Cypress Trees are numbers 2, 3, and 5 (starting with Cypress Tree 1 located at the Northeastern corner of the Cherry property). When these pictures are compared with the 2 photos taken on September 13, 2021 from our Primary Living Area, there can be little doubt that the only way to protect our limited remaining Southwestern view corridor is by the approval of the current TSVS20-002 Application.

Thank you for your consideration.

Sincerely,

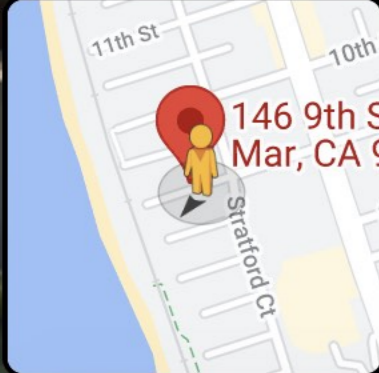
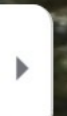
Bob and Chrissy Fried

147 9th St  
Del Mar, California



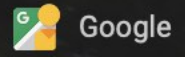
Google

Street View - Mar 2012

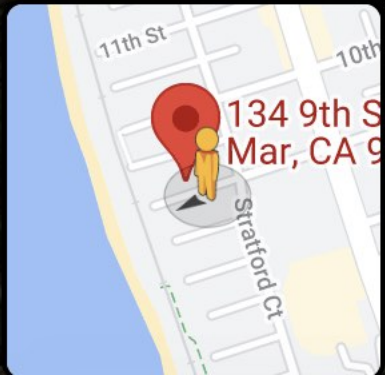


Google

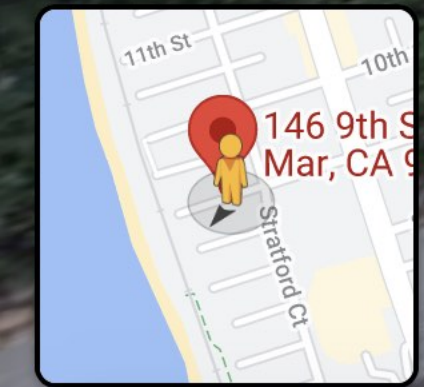
147 9th St  
Del Mar, California



Street View - Nov 2017



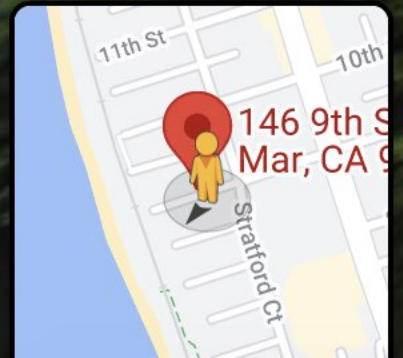
Google



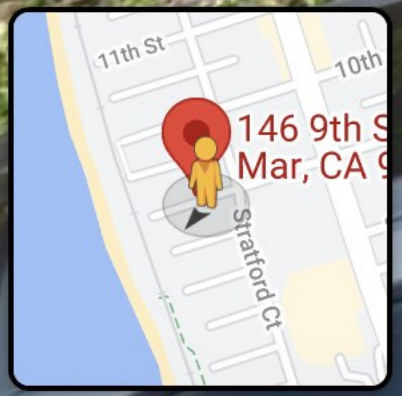
146 9th St  
Del Mar, California

Google

Street View - Jan 2011



Google



## Jennifer Gavin

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**From:** Robert Fried <robertsfried@sbcglobal.net>  
**Sent:** Monday, September 13, 2021 3:49 PM  
**To:** Matt Bator; Jennifer Gavin  
**Cc:** Chrissy Fried  
**Subject:** Fw: Red Dot for September 14 Planning Commission Meeting Item #1  
**Attachments:** view1 2017.jpg; view1 2018.jpeg; view2 2018.jpeg; view1 091321.jpeg; view2 091321jpeg.jpeg; 2012 Google Map 135 9th St D.jpg; 2014 Google Maps 135 9th St D.jpg; Cherry Communication 2016 to 2018.pdf

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(Please add this Red Dot into the TSVS20-002 File)

Dear Planning Commissioners:

Attached are a few things we wanted to bring to your attention:

### **Brief History**

We purchased our property in 2008 with the intention of making it our primary residence. Our new home at 910 Stratford Ct. was completed in June of 2016.

### **Photos from Home**

- The first 3 attached photos document our Southwestern view corridor from our Primary Living Area in our new home in 2017 and 2018. We could not find photos of 2016. (The 2016 view was of course even better as the view corridor continued to decrease in width since the home was completed 12 to 18 months earlier.)
- The next 2 photos were taken on September 13, 2021.

### **Historical Google Map Photos**

The next 2 photos provide a historical perspective of the Southwestern view across the Cherry property in 2012 and 2014. Note that we received our DRB approval for the new home in January of 2014.

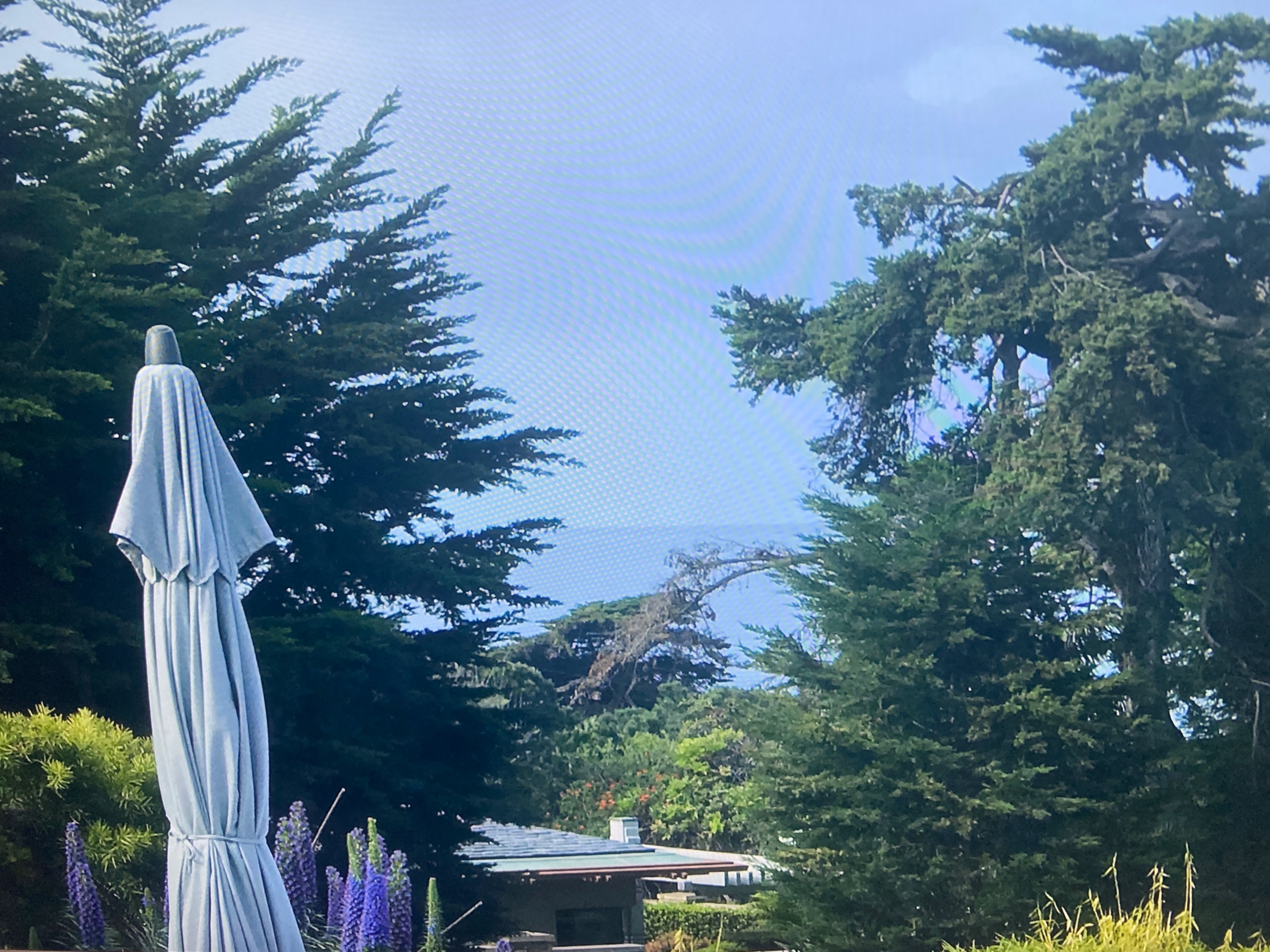
### **Unsuccessful Attempts to Create a Collaboration**

- In our TSVS20-002 Application, we explained the concerted efforts we made over the past 5 years to work amicably with the Cherry's to address the increasing view blockage. Attached are copies of this communication between July 2016 and October 2018.
- These unsuccessful efforts were made in good faith and preceded the formal mediation with the Cherry's which took place on August 19, 2019. The mediation was unfortunately also completely unsuccessful, with no possible collaboration on their part.

Sincerely,  
Robert and Chrissy Fried










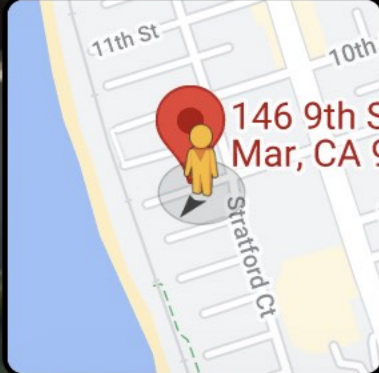
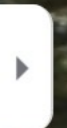


147 9th St  
Del Mar, California

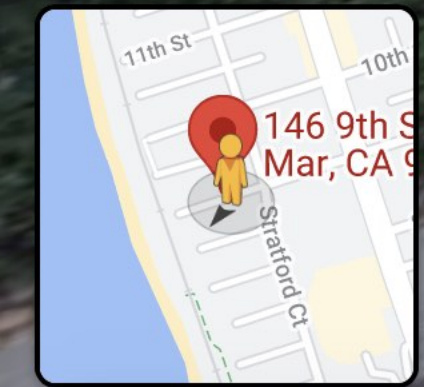


Google

Street View - Mar 2012



Google



Bob & Chrissy Fried  
910 Stratford Court  
Del Mar, CA 92014

July 17, 2016

Adam & Mary Cherry  
135 9<sup>th</sup> Street,  
Del Mar, CA 92014

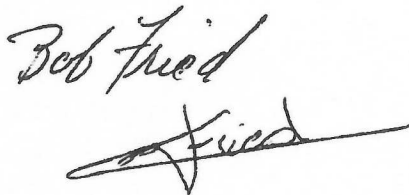
Dear Adam and Mary,

I hope this letter finds you and your family well. We met on 9<sup>th</sup> Street in Del Mar about two years ago, but as a reintroduction, we (Bob and Chrissy Fried) are your new neighbors at 910 Stratford Court, on the corner of 9<sup>th</sup> and Stratford. We just moved in a couple of weeks ago and feel so blessed and excited to live in such an incredible neighborhood. We would love the opportunity to get to know you and your family better when you are in town next. It's been years that during our walks of Old Del Mar, we've admired your beautiful property!

There is one issue that we'd really like to bring to your attention - When we purchased this property in 2008, one of the major selling points was the incredible ocean views, predominately facing southwest, which were nearly unobstructed between the few, staggered Cypress trees. Although we fully understand and support your need and desire for privacy, we've watched additional Cypress trees on the northern side of your property grow very high and fill out rapidly. At this point, we're saddened by the fact that we've lost nearly all of our southwestern ocean views from both our first and second floors. Additionally, the sliver of ocean views that remain between your fully grown trees and the three most recently planted trees will soon be eliminated as well.

We'd really appreciate the opportunity to start a dialogue with you to see if there may be a way to maintain your complete privacy while restoring some of our southwestern ocean views. Perhaps in the coming few weeks we could have you both over for dinner and/or a glass of wine so we that we may discuss this in person and so that you can see from our vantage point. As we do not have your telephone number, would you please give us a call at your earliest convenience? Thanks very much ,

With Best Regards,

A handwritten signature in cursive script that reads "Bob Fried". The signature is written in dark ink and is positioned above a horizontal line that extends to the right.

Bob and Chrissy Fried  
Bob cell: (508) 308-6247  
Chrissy cell: (508) 667-8595

Bob & Chrissy Fried  
910 Stratford Court  
Del Mar, CA 92014

January 17, 2017

Adam & Mary Cherry  
109 Shavano Drive  
Aspen, CO 81611

Dear Adam and Mary,

My wife and I would like to wish to a Happy New Year. As a reminder, we are your neighbors at the corner of Stratford Ct. and 9<sup>th</sup> St. in Del Mar. We wrote to you on July 17, 2016, and were very hopeful that you would contact us. However, it's now been over 6 months, and we are quite disappointed not to have heard from you about our concerns about loosing our southwesterly ocean views because of your rapidly growing Cypress trees along 9<sup>th</sup> St.

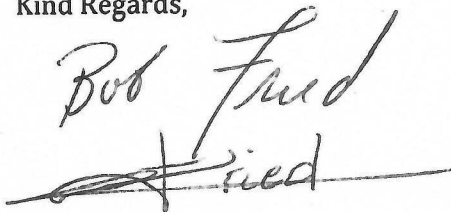
We understand that this is a vacation home for you and that you are hardly there. But please appreciate that this is our home, and we are affected every day by your extremely fast growing, tall, and dense trees, and by the 40 foot wall they create which nearly eliminates our southwesterly view of the ocean and horizon. As we mentioned in our first letter, even though we would appreciate recovering some of our lost view, we are certainly not prepared to have you eliminate it entirely with your additionally planted Cypress trees, one tree in particular.

You have 1 smaller tree, close to your front entrance, which was a seedling at the level of your wall during our rebuilding process during 2015/first half of 2016. Now, it has already reached the level of your roof, and in no time will eliminate most of our remaining southwesterly ocean view. We hope you understand that this is not at all neighborly, and is unacceptable to us.

Del Mar protects its citizens from blocking neighbors' scenic ocean view from their prime living area, which is precisely our case. We would prefer to address this with you amicably, but can only do so if you contact us. We would like to have that smaller tree removed before it becomes a real problem, and of course, would cover any costs associated with its removal.

Please have the consideration of contacting us as soon as possible, and no later than by March 1. Looking forward to hearing from you. Thanks very much in advance.

Kind Regards,

A handwritten signature in black ink that reads "Bob Fried". The signature is written in a cursive style and is positioned above a horizontal line that extends across the width of the signature.

Bob and Chrissy Fried  
Bob cell: 508-308-6247  
Chrissy cell: 508-667-8595

## Fw: Hoping For Your Consideration (Resend with Corrected Date)

From: Robert Fried (robertsfried@sbcglobal.net)  
To: mccherry@mindspring.com  
Cc: cmayfried@aol.com  
Bcc: robertsfried@sbcglobal.net  
Date: Thursday, April 5, 2018, 10:03 PM PDT

On Thursday, April 5, 2018 9:58 PM, Robert Fried <robertsfried@sbcglobal.net> wrote:

April 5, 2018

Dear Mary,

Hope you and your family are well. Since we have never had the opportunity to meet you, we thought that the best way we can share our concerns is to write to you. We need your help and cooperation in addressing the tree issue. We thought that including photographs would be more meaningful than just words, and that it would be easier for you to better appreciate our concerns, and hopefully help us to address them.

When we purchased our property in 2008, we enjoyed incredible ocean views to the Southwest and nearly unobstructed views of La Jolla (see Photo #1). Photo 2 is taken in the same direction from the same location in 2018. You will also note in Photo 1 that the Cypress trees had not even reached the level of your roof, and looking at Photo 2 that the trees had virtually eliminated any view of your roof, the ocean, and a significant portion of the sky.

Photos 3, 4, and 5 are taken in 2018 from inside of our house. Photo 3 is taken from my office, with the trees eliminating any view of the ocean over your property. Photos 4 and 5 are taken from our primary living area, and clearly show the rapidly shrinking ocean that remains. We are convinced that in the next few years, with the very rapid growth of the tree you planted to the West side of you main entrance, the remaining view will be completely obliterated.

In order to preserve the limited view from our primary living area, we are asking your consideration for removing the one smaller Cypress tree to the West of your main entrance. We would certainly be happy to cover the cost.

As you know, Del Mar protects its citizens from blocking neighbor's scenic ocean views from their prime living area, which is precisely our case. However, we would prefer to resolve this amicably. All of your neighbors would be greatly appreciative.

Thanks for your consideration, and for getting back to us as soon as possible. Kind regards,

Bob and Chrissy Fried  
910 Stratford Ct.  
Del Mar, CA 92014  
858-794-4933



2008 View From Our Property.jpeg  
3MB



2018 Current View From Same Spot.jpeg  
2.1MB



2018 View From Office.jpg  
117.3kB



2018 View 1 From Living Room .jpg  
93.1kB

2018 View 2 From Living Room .jpg

## Re: Hoping For Your Consideration (Resend with Corrected Date)

From: Robert Fried (robertsfried@sbcglobal.net)

To: mccherry@mindspring.com

Date: Sunday, April 15, 2018, 6:17 PM PDT

Mary,  
Is it convenient now? Hope to see you shortly. Thanks,  
Bob

Sent from my iPhone

On Apr 15, 2018, at 4:44 PM, Mary <mccherry@mindspring.com> wrote:

Hi Robert  
When would be a good time to meet ?  
Mary

Sent from my iPad

On Apr 14, 2018, at 11:38 AM, Robert Fried <robertsfried@sbcglobal.net> wrote:

Thanks very much, Mary. Much appreciated.  
Bob

On Saturday, April 14, 2018 11:25 AM, Mary Cherry <mccherry@mindspring.com> wrote:

Hi Robert  
I was supposed to meet with Andy today but he is coming tomorrow. He has not told me what time. I am calling him first thing tomorrow morning . I will keep you posted .  
Thanks, Mary

Sent from my iPhone

On Apr 14, 2018, at 9:25 AM, Robert Fried <robertsfried@sbcglobal.net> wrote:

Mary,  
Thanks very much for your note. Chrissy will be busy doing volunteer work until 2 pm today (Saturday). If you were planning to come by today, would you please be so kind to do so after 2 pm. Is there any way you could give us an idea when would be most convenient this weekend so we can make sure we are available.

We are looking forward to meeting you this weekend. Thanks again.  
Bob and Chrissy Fried

508-308-6247 (cell)  
858-794-4933 (home)

On Friday, April 6, 2018 7:12 AM, Mary Cherry <mccherry@mindspring.com> wrote:  
Sent from my iPhone

On Apr 5, 2018, at 11:03 PM, Robert Fried <robertsfried@sbcglobal.net> wrote:

Hi Robert

We are coming in town next weekend and I will come say hello and happy to discuss the trees. We are planning on removing one Monterey Cypress due to crowding in the area. We are waiting until the trees grow close enough to request removal from the city . The trees also need pruning which we will do ASAP. As you know these trees are protected . The city made us plant the large Monterey Cypress 14 years ago.

Thank you and look forward to meeting you next weekend.  
Mary Cherry

On Thursday, April 5, 2018 9:58 PM, Robert Fried <robertsfried@sbcglobal.net> wrote

Bob & Chrissy Fried  
910 Stratford Ct.  
Del Mar, CA 92014

September 2, 2018

Mary and Adam Cherry  
109 Shavano Drive  
Aspen, CO, 81611

Dear Mary,

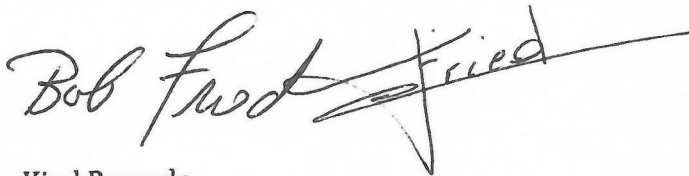
Chrissy and I are in receipt of your recent text in which you stated your refusal to assist us in any further consideration for the Restoration of our "Scenic Views and/or Sunlight that has been unreasonably obstructed by the growth and/or installation of Trees and Vegetation" on your property at 135 9<sup>th</sup> Street in Del Mar, CA, including those you have planted since 2008.

One of the major reasons we moved to Del Mar in 2003, is the City's progressive attitude and respect for "Trees, Scenic Views, and plentiful Sunlight that contribute to the special character of Del Mar and to the overall quality of life enjoyed by residents, property owners, and visitors in Del Mar." This is a direct quote from the "Purpose" and first paragraph of Chapter 23.51 - TREES, SCENIC VIEWS AND SUNLIGHT of the City of Del Mar's Municipal Code. In our particular case, we feel that your Trees and Vegetation are most definitely and unreasonably obstructing our Scenic Views from our Primary Living Area. The City has provided a very clear Process for persons seeking to restore such Views.

As you know, we have tried repeatedly and sent you numerous letters since 2016 in efforts to find a compromise to protect our rapidly disappearing Scenic Views to the Southwest. Please note, at the time we purchased our property in 2008, none of your Monterey Cypresses (or those you planted after that date) had even reached the bottom of your roof. Currently, we have virtually no remaining ocean views to the Southwest. With the incredibly rapid growth of these trees, we expect our remaining southwesterly ocean views to completely disappear in the next 2 to 4 years. Note that with this rapid growth (at least 3 feet per year), we can expect a solid wall of trees 60 to 80 feet high, each one spreading 30 to 40 feet wide, eliminating ocean views, but also substantially reducing light and sky views. This is absolutely unacceptable to us!

It is for this reason that we are writing to you today. We feel that we have made all reasonable efforts to have you help us resolve this critical issue. However, at this point, we would like to make one final attempt to resolve this dispute through Mediation.

While we are still hoping for an amicable and neighborly resolution, please understand that if we don't hear from you before the end of the month, we will have no other choice than to submit an Application to the City for Restoration of our Scenic Views.

A handwritten signature in black ink that reads "Bob Fried". The signature is written in a cursive style and is underlined with a long horizontal line extending to the right.

Kind Regards,  
Bob and Chrissy Fried

Late September  
2018

9:48 AM

9:48 AM



Mary Cherry

**This is not your primary view . Ur  
primary view would be to the  
west. I was in your house and I am  
not removing anymore trees for  
your secondary southern view.**

Dear Mary,

You are going to wipe out our view  
completely to the southwest  
because you have decided that it's  
not our primary view, and you find  
that perfectly acceptable?

It's hard to believe! The photo I  
just send you was taken from my  
eating area (where I spend 90% of  
my time). The view from my  
kitchen is mostly to the  
southwest!

What did we ever do to you? When  
we bought our house, your trees  
were not even touching the roof!  
Is there any chance you may  
reconsider?

Best,  
Chrissy Fried

Sent as Text Message



Oct 5 at 5:34 PM

Robert Fried <[robertsfried@sbcglobal.net](mailto:robertsfried@sbcglobal.net)>

To Mary Cherry

CC Chrissy Fried

Dear Mary,

I am so sorry that you feel that this is harassment. We have actually been residents and homeowners in Del Mar since 2003, and bought the property on 9th and Stratford Ct. at the beginning of 2008. We are just trying to protect what is still left of the view we had when we purchased the property 10 years ago. I so wish you could put yourself in our shoes.

Kind regards,

Bob Fried

Hide original message

On Friday, October 5, 2018 2:41 PM, Mary Cherry <[mccherry@mindspring.com](mailto:mccherry@mindspring.com)> wrote:

Hello Robert

You have been living in the neighborhood for 2 years and have been harassing

Sent from my iPhone

On Sep 3, 2018, at 10:49 PM, Robert Fried <[robertsfried@sbcglobal.net](mailto:robertsfried@sbcglobal.net)> wrote:

Dear Mary,

Hope you and your family are doing well. We were disappointed in our last exchange. Please see the attached letter on this subject. Thank you very much.

Kind regards,

Bob Fried

<Restoration of Scenic Views.pdf>

## Matt Bator

---

**From:** Mike Jensen <mike-d-jensen@outlook.com>  
**Sent:** Monday, September 13, 2021 9:43 PM  
**To:** Matt Bator  
**Cc:** Jennifer Gavin; Caitlin Jensen  
**Subject:** Red Dot for Item #1 for Planning Commission Meeting on 9/14/21 - TVS20-002

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Mr. Bator,

Please add this email to those in support of TSVS20-002 for the September 14 Planning Commission Meeting. I am in full support of the Frieds' application for the removal of the one tree that is substantially on the city right-of-way.

In addition to obstructing the Frieds' scenic view from their primary living area, the Cyprus tree in question also blocks the scenic view from the primary living area of my home located at 905 Stratford Ct. A tree that serves as an obstruction to the views of multiple residents' primary living areas seems to qualify as a clear violation of the Tree, Scenic Views and Sunlight Ordinance (DMMC Chapter 23.51) and should therefore be removed.

I urge the Planning Commission to approve the Frieds' application and take swift action to remove the tree in question.

Thank you,  
Mike and Caitlin Jensen  
Residents of 905 Stratford Ct.

## Matt Bator

---

**From:** Blake Tastad <btastad@gmail.com>  
**Sent:** Tuesday, September 14, 2021 8:59 AM  
**To:** Matt Bator  
**Subject:** item 1 tvs20-002

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To whom it may concern,

We believe that the Monterey Cypress trees located at 135 9<sup>th</sup> Street add to the character of the neighborhood. The Monterey Cypress that used to be located at the very end of 9<sup>th</sup> street was iconic. It would be a shame if there were no more of these beautiful trees. I am optimistic that a compromise can be worked out that preserves these trees and takes into consideration the concerns of neighbors to the east. The other Monterey Cypress trees on this property are beautifully manicured and I'm sure the tree in dispute will eventually be trimmed up.

Sincerely,

Blake Tastad

Patricia Tastad

(131 Shippey Lane, Del Mar, Ca 92014)

## Matt Bator

---

**From:** Joseph.Bevash@lw.com  
**Sent:** Tuesday, September 14, 2021 9:21 AM  
**To:** Planning Mail Box; Matt Bator  
**Cc:** sbevash@pacbell.net; merrycherry@mac.com  
**Subject:** Item 1: TVS20-002

**Importance:** High

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To: City of Del Mar, Planning Department

I own a home at 220 27th Street, and my family also owns a home at 120 8th Street.

Neighbors Adam and Mary Cherry alerted us that a protected Monterey Cypress is being considered for removal, and that they object to such removal on reasonable grounds which I find compelling. I agree with the Cherrys that the tree should be protected and preserved.

The Del Mar Tree Ordinance makes clear that preservation of the “community” or “urban” forest is one of the major goals of the Del Mar Community Plan.

The ordinance mentions in particular that the Torrey Pine and the Monterey Cypress, two of the most unique species in our urban forest, have gained a highly valued and protected status in the City of Del Mar.

I know that this strong guiding principle is observed carefully by the DRB in reviewing new projects that might involve removal of protected trees.

The ordinance addresses the limited number of acceptable reasons to have a protected tree removed. In short, they are the following (please refer to DMMC Chapter 23.50 for more detail):

- The tree is dead, diseased or severely injured.
- The tree is crowding, or is crowded by other (healthier) protected trees.
- The tree is interfering with public or private utilities and the situation cannot be reasonably remedied.
- The tree has been determined to be a safety hazard
- Removal of the tree has been recommended by the Trees, Scenic Views and Sunlight Board.
- The tree qualifies as a fire hazard (in accordance with DMMC 23.50).
- The tree owner is willing to replace the tree, on site, with 1-3 trees (depending on the size of the tree removed).

- The tree would obstruct proposed improvements and no reasonable design solutions can be identified to avoid the need for tree removal.

I understand that none of those circumstances apply to the Cherry's tree.

Moreover, if the tree actually happened to be a legitimate candidate for removal (for example if diseased or presenting a hazard), then I believe that the ordinance would support planting one or more replacement trees on the same site.

Accordingly, I object to the proposed removal.

Thank you for considering this letter.

Sincerely,

Joseph Bevash

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# LAW OFFICES OF C. SAMUEL BLICK

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Facsimile (858) 225-0220  
[blicklawsd@gmail.com](mailto:blicklawsd@gmail.com)

---

Sent Via Electronic Transmission Only  
Matt Bator <MBator@delmar.ca.us>

September 13, 2021

**RED DOT**

City Planning Commission  
City of Del Mar  
City Hall, City Council Chambers  
1050 Camino Del Mar  
Del Mar, CA 92014-2698

**Remote Regular Planning Commission Meeting  
VIA TELECONFERENCE ONLY  
Tuesday, September 14, 2021  
Pursuant to the State of California Executive Order N-25-20**

**Objection to:**

**Item # ITEM 1 TVS20-002 - Objection to an Application to remove a protected, Monterey Cypress Tree, pursuant to Scenic Views, and Sunlight Ordinance Applications (TSVS)**

**Clerk's File No. 306-1, 1403-7**

**Offer of Settlement:**

**Proposal to trim and prune the Protected Tree, to the satisfaction of the Planning Commission Subcommittee, Staff and Arborist**

Dear Members of the Planning Commission:

I write on behalf of **Mr. and Mrs. Adam and Mary Cherry**, the owners of a home on property at 135 9<sup>th</sup> Street, Del Mar, CA, who seek to preserve and maintain a protected Monterey Cypress tree, which they own as tenants in common with the City and that is located on the property line of their home and the City right-of-way.

City Planning Commission - TSVS Application  
Monterey Cypress tree at 135 9<sup>th</sup> Street

**Protected Tree should not be removed and destroyed, except as a last resort and then, only under limited, specified circumstances.**

The City's Ordinances, General Plan and Climate Action Plan all seek to preserve certain important trees ["protected trees"] in the City, including specifically Monterey Cypress trees.

Although the TSVS Ordinance allows the trimming or pruning of protected trees, no provision permits the destruction or removal of said trees, unless several criteria are met. These findings that must be met are not present in this case and, therefore, there is no justification for the demolition of this tree.

As we stated in our earlier correspondence of August 26, 2021, the City's Director of Planning has already once denied the applicant's request for this tree's removal. Within that letter of denial, the Director reaffirmed the following Standards for a Tree Removal Permit and detailed the applicant's failure to meet them:<sup>1</sup>

1. This protected tree is healthy;
2. This protected tree has adequate room to grow;
3. This protected tree is not interfering with any infrastructure or structures;
4. This protected tree has not caused substantial damage to any structure;
5. This protected tree does not interfere with existing improvements;
6. This protected tree does not exhibit any safety issues;

The Director concluded her denial of the applicant's Tree Removal Permit by addressing the provisions of the TSVS Ordinance, and stated the following:

*"Your property does not qualify for Trees, Scenic Views and Sunlight protection as it was just recently constructed."*<sup>2</sup>[*Emphasis Added*]

**Transplantation of the Protected Tree will likely result in the tree's untimely death**

Although the transplantation of a Monterey Cypress of the age and maturity of this Protected Tree is possible, such a disruption of the tree's root structure and quiet enjoyment of its environment, would likely result in the death of the tree.<sup>3</sup>

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<sup>1</sup> Letter from Director Garcia of October 28, 2019, denying Tree Removal Permit

<sup>2</sup> Recommendation contained within Letter from Director Garcia of October 28, 2019, denying Tree Removal Permit

<sup>3</sup> Arborist's Report - Monterey Cypress Tree - Consulting Arborist Report Wisniewski & Associates File No. 20-106

**Trimming or Pruning of the Protected Tree is the preferred and recommend remedy provided by the TSVS Ordinance**

The TSVS Ordinance specifically recommends Restorative Actions in order of preference, as

1. Lacing,
2. Windowing,
3. Crown reduction/shaping,
4. Heading back and other forms of pruning a trimming.

The actual destruction of a tree, especially one that is protected, is only considered as a last resort, when all other 'restorative actions' have proven ineffective.<sup>4</sup>

**The Arborist Report supports and recommends the implementation of these restorative actions over the tree's destruction or dangerous relocation.**

Without restating the findings referenced in my earlier correspondence, let me note that the Arborist Report found the tree to be healthy and recommended that it be maintained and preserved.

However, the Arborist also suggested the wisdom of periodic pruning and trimming and warned against the elimination of this youthful tree in the aging urban forest.<sup>5</sup>

**The Cherrys have no objection to any of the remedies suggested by the TSVS Ordinance, short of the tree's destruction.**

We have learned that the applicant has suggested that the Cherrys have been inflexible and arbitrary in considering good faith efforts at settlement. This is not true.

The Cherrys are eager to settle the differences the applicant has with the growth of all the Monterey Cypress growing on the Cherry's property but, of course, remain unwilling to participate in the annihilation of these beautiful, Monterey Cypress trees.

Therefore, this letter is to inform the members of the Planning Commission that the Cherrys have retained an arborist, Mr. Mark Wisniewski, to devise a process and strategy for resolving the view concerns of the applicant, while still preserving the beautiful Monterey Cypress trees that nature allows to flourish on 9<sup>th</sup> Street.

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<sup>4</sup> See TSVS Ordinance, Section 23.50.080 (C) DMMC Trees, Scenic Views and Sunlight

<sup>5</sup> Arborist's Report - Monterey Cypress Tree - Consulting Arborist Report Wisniewski & Associates File No. 20-106.

C. Samuel Blick  
Attorney at Law

**Summary:**

*We urge the Planning Commission to determine that the necessary findings cannot be made pursuant to DMMC 23.51.050, and that no further action should be taken.*

In the event that the Planning Commission decides to proceed with the application, then we ask the Commissioners to undertake the staff recommendation to "...employ a subcommittee of the Commission to make a recommendation for action at a future public hearing."

In order to assist in this effort, the Cherrys would agree to authorize their Arborist, Mark Wisniewski, to work with the Planning Commission subcommittee to assist in devising a settlement plan to implement 'Restorative Actions,' while still preserving the protected, Monterey Cypress tree.

Respectfully submitted,

/s/ C. Samuel Blick

C. Samuel Blick  
Attorney at Law

cc: Mr. and Mrs. Adam and Mary Cherry  
Mr. Mark Wisniewski, Arborist

## Matt Bator

---

**From:** Adralyn Blue <adralyn@nickblue.com>  
**Sent:** Monday, September 13, 2021 9:23 PM  
**To:** Matt Bator  
**Subject:** ITEM 1 TVS20-002

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To Whom It Concerns:

My husband, Nick Blue, and I are homeowners at 154 9th St. in Del Mar. We were recently notified that there is some sort of dispute going on in regards to the trees across the street from us at 135 9th St.

Overall, our hope and opinion is that any existing foliage should remain in place whenever possible to retain the character and beauty of the neighborhood we all know and love. The varying tree species and plants around Del Mar is one of the unique characteristics of the area.

We were also informed that these are possibly a protected native species, the Monterey Cypress. A quick google search found this on the Del Mar website tree ordinance: Protected trees in Del Mar include the Torrey Pine (*Pinus torreyana*) and the Monterey Cypress (*Cupressus macrocarpa*), along with all tree species located within the Central Commercial (CC) Zone and the environmentally sensitive Open Space (OS) Overlay Zone, provided they are over a certain size.

The reality is that regardless of whether they were protected or not, we would have voiced our support for keeping these enormous trees. It would be a sad day to bring down a tree of that size and magnitude.

I think it is important to note that our view would greatly improve with the removal of these trees, but attempting to have existing trees cut down on someone else's property would never have crossed our minds.

We are in favor of the Monterey Cypress trees at 135 9th St. remaining in place.

If you have any further questions, please do not hesitate to reach out.

Thanks!

*Adralyn Blue*

[adralyn@nickblue.com](mailto:adralyn@nickblue.com)  
336-287-9923

## Jennifer Gavin

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**From:** Michael Deftos <mdeftos@gmail.com>  
**Sent:** Tuesday, September 14, 2021 9:04 AM  
**To:** Planning Mail Box  
**Subject:** Red dot letter for TSVS20-002

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Del Mar Planning Commission:

We are writing to express our support for Robert and Chrissy Fried's Trees, Scenic View and Sunlight application (TSVS20-002). Our family have been homeowners in Del Mar since 1974. We value and enjoy the beauty of the City of Del Mar, including the views of the ocean and the Urban Forest quality, particularly that provided by Torrey pine trees.

The task at hand is to weigh the interests of the Fried's in having the subject tree removed vs. the interests of Cherry's in keeping the subject tree and allowing it to continue to grow.

The interest of the Fried's is approximately 50% of their previously existent ocean view. The value of an ocean view is great, both aesthetically and financially, so this is a strong interest.

The Cherry's put forth several arguments for why the tree should not be removed: 1. It provides privacy to their bathroom. 2. It contributes to the Urban Forest character of the City of Del Mar. 3. It contributes to the City of Del Mar's Climate Action Plan through carbon sequestration. I believe these are relatively weak arguments.

Bathroom privacy can be easily obtained by other means than employing a 33 foot tree growing at a rate of more than 3 feet per year. Curtains would be the obvious solution. Alternatively, a small tree or hedge of small trees could be planted in the same general area as the subject Monterey Cypress and maintained in a way that provides privacy for the Cherry's bathroom, while at the same time not blocking the Fried's view. The species for this hedge could be selected such that it also contributes to the Urban Forest character of the city and it would also sequester carbon. In specific regards to the argument that the subject tree contributes to the Urban Forest character of the city, it does not contribute substantially to this as it is only one tree and there are many other trees on the street, both large and small. In addition, as clearly pointed out in arborist Mark Wisniewski's letter, Monetary Cypress trees in general do not grow to become particularly healthy trees in this specific area of the City of Del Mar and are therefore not a good investment for an Urban Forest species ("At one time, there were many more Monterey Cypress trees in this neighborhood. Over time, due to age, disease, insect infestation, decline, tree failures and construction projects, many have been removed...several of the remaining mature Monterey Cypress in this neighborhood are also declining and will need to be removed when they die or become hazardous." This is likely because Monterey Cypress are not native to Del Mar. They are not a good species for the desired Urban Forest quality of Del Mar and one wonders why this non-native species is protected.

When the subject tree was thought to be entirely on City of Del Mar property, the City came to the conclusion that the tree's removal was warranted. Implicit in this decision was that the Fried's interest in their view outweighed the interest of the City of Del Mar in preserving the tree, including the city's interest in maintaining the Urban Forest quality of the city and its contribution to Del Mar's Climate Action Plan. The only additional consideration put forth now is whether interests specific to the Cherry's change the balance. The only interest specific to the Cherry's is privacy in their bathroom. Since there are other very reasonable solutions to this, I do not believe the calculus has changed. For these reasons, I believe you should approve Fried's TSVS application.

Michael and Angela Deftos  
225 Torrey Pines Terrace  
Del Mar

To WHOM IT MAY Concern at  
THE CITY OF Del Mar, PLANNING +  
Regulation

RECEIVED  
SEP 14 2021  
City of Del Mar  
Administrative Services Dept.

\* City Council + Matt Bader (?)

ITEM:

~~TVS20-002~~ \*

\* My name is Jack Jaeger  
129-10<sup>th</sup> ST, (619) 884-7566

I am strongly in FAVOR of the applicants  
application and position concerning the  
view blockage created by NEW PLANTINGS  
of Monterey Cypress Trees. It is VERY  
obvious to see which trees were "original"  
(80-100 yrs old and homogeneous to 9<sup>th</sup> ST) and those  
the homeowner added 15 +/- yrs ago!

Tree's \* 2+4, from the WEST particularly  
are obstructions, The City needs to be consistent  
with VIEW blockage enforcement - BEST JS