

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



Th20b

6-16-500 (SZEKERES)

MAY 11, 2017

EX PARTE FORMS

EX PARTE COMMUNICATION DISCLOSURE FORM

RECEIVED
MAY 08 2017

Filed by Commissioner: Ryan Sundberg

- 1) Name or description of project: Jeff Szekers/ 525 San Julio Road/ CDP 6-16-0500
- 2) Date and time of receipt of communication: 5/4/2017 1:15 PM
- 3) Location of communication: Conference Call
(If not in person, include the means of communication, e.g., telephone, e-mail, etc.)
- 4) Identity of person(s) initiating communication: David B. Neish
- 5) Identity of person(s) on whose behalf communication was made: _____
- 6) Identity of persons(s) receiving communication: Commissioner Sundberg
- 7) Identity of all person(s) present during the communication: David B. Neish, David J. Neish, Commissioner Sundberg

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

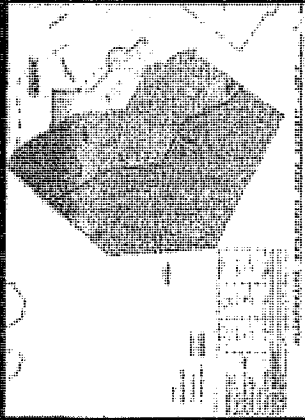
Project representatives reviewed a briefing book provided to Staff. Major points discussed were the vested rights of the approved pad by the CCC in 1988, the approvals of all surrounding neighbors with no setbacks from ESHA, and the staff requirement for a 50 foot ESHA setback and an additional 30-foot setback for fuel modification. The applicant explained the 80-foot setback recommended by Staff would only allow him a small portion to build on his vested lot and only allow for an approximately 2,000 sq. ft. house. The surrounding homes average over 5,000 sq. ft. and have no setback at all to ESHA. The applicant explained that this setback restriction would not be approved by either the City or the HOA and render the lot useless. Given that this lot is the last in the subdivision and the community character has already been established the applicant would like to have a home similar to surrounding homes and is willing plant native vegetation on his property and record an open space deed restriction. Last the applicant stated that the buffers established in the LUP are not binding being that the City doesn't have a certified LCP and therefore the Chapter policies of the Coastal Act take precedent.

MAY 5th 2017
Date

Ryan Sundberg
Signature of Commissioner

TIMING FOR FILING OF DISCLOSURE FORM: File this form with the Executive Director within seven (7) days of the ex parte communication, if the communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication. If the communication occurred within seven (7) days of the hearing, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication. This form may be filed with the Executive Director in addition to the oral disclosure.

Staff's Feasible Home



Loss of Value to Other Homes



Staff's "Feasible" House Would Destroy the Character of this Community and Decrease Home Values

From: David Neish [dbneish@dbnplanning.com]

Sent: Saturday, May 06, 2017 10:06 AM

To: 'Phillip Arnold'; Groom, Carole@Coastal Commission; Turnbull-Sanders, Effie@Coastal Commission; Erik Howell; Mary Luevano; Shallenberger, Mary@Coastal Commission; Celina.luna@longbeach.gov; Mark Vargas; Peskin, Aaron@CDSS-Contacts; Sundberg, Ryan@Coastal; Brownsey, Donne@Coastal; Cox, Greg@Coastal

Cc: jpszekeres@stanfordalumni.org

Subject: CCC Agenda Item TH20b

Commissioner's, earlier this morning I forwarded you a rebuttal letter from Attorney Jon Corn regarding the CDP application No. 06-16-0500 (Szekeres). If after your review you have any questions please do not hesitate to contact me. Thank you very much.

David B. Neish

President

D.B. Neish, Inc.

101 Columbia, Suite 185

Aliso Viejo, Ca 92656

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MAY 08 2017



THE JON CORN LAW FIRM

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www.joncornlaw.com • 760-944-9006

May 5, 2017

Chair Dayna Bochco
Honorable Coastal Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Th20b

Re: **Szekeres Home; CDP No. 06-16-0500**
With Reference to CDP No. 6-88-514 (Vesting Permit)

I represent Jeff and Amy Szekeres who have been struggling with Coastal staff for 18 months to obtain a CDP for a single-family home on a graded, in-fill lot surrounded on all sides by existing development.

The lot is located in the City of Solana Beach, east of I-5 and not proximate to the coast or any watersheds. See Slide 1, attached. All issues have been resolved except one. The singular issue before you concerns the composition of an otherwise agreed upon buffer zone between the proposed home and an isolated swath of non-wetland, non-riparian ESHA plants on a steep slope just beyond Jeff and Amy's lot. Significantly, the home in question will be constructed entirely on a graded pad, vested by a prior Commission approval (CDP No. 6-88-514).¹ See Slides 2, 3 and 4. The home will be set back an average of 57'10 feet from the ESHA plants in question even though the vested building pad comes within 26'3" feet of the ESHA plants.



CDP 06-16-0500 Structure Approved by 1988 CDP 6-88-514



CDP 06-16-0500

House Promised by CDP 6-88-514



CDP 6-88-514 approved a large structure with a swimming pool immediately adjacent to the steep slope now deemed ESHA. The proposed home observes a 57'10" foot buffer from the ESHA.

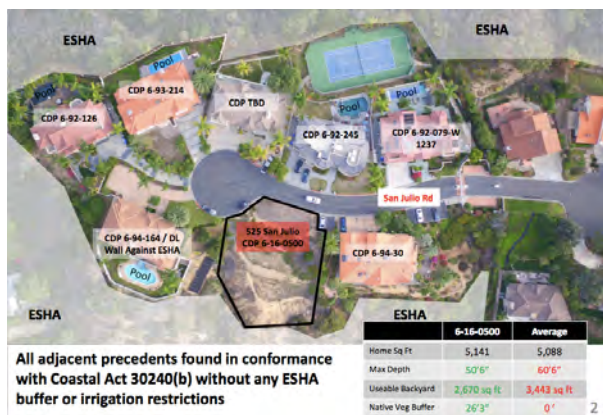
¹ Since CDP 6-88-514 approved a structure on Jeff and Amy's lot this application is made under a reservation of rights that a new CDP is not required. A waiver request was rejected by Coastal staff.

² The first two homes constructed after the Commission approved CDP No. 6-88-514 were granted waivers because the

Notably, in 2008, the Commission’s ecologist conducted a site-specific analysis and found that the plants on this slope were *not* ESHA “as the vegetation is patchy and mostly surrounded by development.” CDP 6-07-112 (Page 9). Subsequently, the City conducted a high-level, aerial survey and mapped the area in question as ESHA. Today, the area in question still contains a patchy mix of southern maritime chaparral already infiltrated by non-native invasive plant species typical for densely developed urban neighborhoods. This ESHA does not involve or support any sensitive animal species, just plants.

None of the surrounding homes, all approved by the Commission, provide any buffer, native vegetation or otherwise, from the same ESHA plants. See Slide 5. And, in the case of the home immediately adjacent and north to Jeff and Amy’s lot, the Commission allowed the property owner to install fill and build a large concrete block wall directly in the ESHA (CDP No. 6-94-164). See Slide 6.

Significantly, in a recent Commission decision involving a home adjacent to San Elijo Lagoon ESHA (i.e. wetland ESHA with nearby rare *ceanothus* plants), the Commission administratively approved a single-family home and landscape plan that included a concrete patio, hardscaping, walls, irrigation, and an outdoor kitchen immediately adjacent to the ESHA in combination with no fuel modification requirements to the ESHA (CDP No. 6-14-0734). See Slides 7, 8, and 9. This administrative approval took place in 2014, after the Commission certified the City’s LUP.



Jeff and Amy’s Lot is the last lot on the Solana Hills Estates subdivision mesa. None of the previously approved homes or the tennis court was required to provide any buffer or irrigation restrictions. The other homes were approved through waivers, administrative permits, or on the consent calendar. The average home size in Solana Hills Estates is 5,088 square feet. See Slide 10.²

The Commission approved the new home at 734 Granados in 2014 after the City’s LUP was certified (CDP 6-14-0734). Substantial hardscaping and irrigation was allowed immediately adjacent to the San Elijo Lagoon ESHA. The home is proximate to the Lagoon, which connects to the Pacific Ocean. By contrast, proposed Special Condition 1 for Jeff and Amy’s home would require them to maintain a 50-foot native vegetation buffer from an isolated patch of non-wetland buffer that is surrounded by development and infiltrated by invasive species.

Despite the vested rights created by the Commission’s past action authorizing their pad and home (CDP No. 6-88-514), the precedent established by the Commission’s actions on homes within the same

² The first two homes constructed after the Commission approved CDP No. 6-88-514 were granted waivers because the homes were “substantially similar” to the structures approved by CDP No. 6-88-514 (See, Staff Report for 6-16-0500, Page 13, Para. 5, Lines 8-10). Since Jeff and Amy’s home is also substantially similar to the structure approved under CDP 6-88-514, the Commission should have granted a waiver for this project, but refused. See Slide 4.

subdivision, and the recent precedent for the home adjacent to Lagoon ESHA (CDP No. 6-14-0734), Jeff and Amy have agreed to create and maintain a 57' 10-foot buffer between their home and the ESHA plants on the hillside below their lot. See Slides 11 and 12.

CDP 06-16-0500

Steep Slopes Adjacent to ESHA



Outline of Existing, Vested Building Pads
Property Line
100% of area outside building pad dedicated to native vegetation buffer

CDP 06-16-0500

3D Home Rendering + Vegetation Buffer



50' Setback from ESHA
~750 sq ft of pervious pavers in ESHA Buffer/fire break
~1250 sq ft of retention basin in ESHA Buffer/fire break
Outline of Existing, Vested Building Pads

Coastal staff concedes that this width is adequate, but they nevertheless insist that the entirety of the buffer, which has been graded and barren for almost 30 years, must now be re-landscaped with native vegetation in order to adequately protect the ESHA plants from the impact of Jeff and Amy's home.

Although not necessary, Jeff and Amy would do this if they could, but they cannot because their lot is simply not deep enough. That said, they have agreed to install and maintain in perpetuity a 100% native vegetation in the first 26 feet of the 57-foot buffer. However, because the Fire Marshall does not allow combustible materials within 30 feet of the structure, the balance of the buffer would include a state-mandated bio-retention basin and pervious pavers, which are non-combustible. The firebreak area will also serve as their kids' backyard play area.

Nevertheless, Coastal staff insists that at least 50 feet of the buffer area must be planted with 100% native vegetation, and that Jeff and Amy must shrink their home by 30 feet to accommodate both the 50-foot native vegetation buffer and a 30-foot firebreak for a total separation between the home and ESHA of 80 feet. See Slide 13. This recommended requirement is neither necessary, legally required, nor feasible. Moreover, it would result in a regulatory taking.

The 13,852 square foot, polygonal-shaped lot is only 76 to 144 feet deep to begin with. Staff's recommendation, coupled with the City's setback and height restrictions, would allow a home of no more than 1,905 square feet and a 1-car garage, in a completely dysfunctional floor plan. However, even if such a small home could accommodate Jeff and Amy's plans for a family of 6

CDP 06-16-0500

Coastal Staff Recommendation



Restrict development to orange building area (10 - 15% lot)

As proposed by Staff, home would have ~6,300 sq ft native vegetation buffer while 7 other CDP approved homes have 0 sq ft

My proposal as designed would provide 4,300 sq ft native vegetation buffer

Native vegetation buffer plus fire break will take 65-70% of lot

Staff Recommendation Materially Out of Character with Community 19

(including mother-in-law), the HOA will not approve such a small structure for community character and lack of harmony reasons.³

The average home in the subdivision, all approved by the Commission with no ESHA buffers, is 5,088 square feet.

Coastal staff's solution to the complications created by the City's Municipal Code and the HOA's CC&Rs is that the City and HOA should simply be more flexible. They should waive their height, setback, view impairment, parking and community character code requirements and rules to allow room for 50-feet of native vegetation. Per staff, if the City just allowed further setback encroachments (the City already granted a variance to reduce the front yard setback by 8 feet) and also allowed the home to exceed the height limit for this zone, then Jeff and Amy could even build a larger home, with room left to provide a 50-foot native vegetation buffer and the Fire Marshall's 30-foot firebreak.

However, neither the City nor the HOA will agree to such significant departures from their rule sets. Their reasons are obvious and numerous, but clearly include the fact that their independent biologists both concluded that the 26-foot native vegetation zone is more than adequate to protect the newly-designated ESHA plants below Jeff and Amy's home.

Additionally, if the City and the HOA allowed the home to expand into the setbacks and exceed the height limit, the new structure would block substantial private coastal views in violation of the City's robust view protection ordinance, and it would be grossly out of character with the rest of the neighborhood. The affected private property owners would likely sue the City, the HOA, and Jeff and Amy to protect their ocean views and the character of their community, and such suits would have merit.

The law that applies to development adjacent to ESHA is Coastal Act §30240(b). Section 30240(b) does not require an ESHA buffer and it does not speak to the composition of lands adjacent to ESHA. Instead, it merely provides that development adjacent to ESHA must be sited and designed to avoid "significant degradation" of the ESHA.

Coastal staff acknowledges this is the standard yet centers its discussion on the City's LUP (which it wrote). However, since the City does not have a full LCP, the certified LUP is not the legal standard applicable to this case. Nevertheless, Coastal staff urges you to follow the LUP as "guidance," ostensibly because they believe it lends some support to their recommendation, but this request is not legally supported and the LUP is not "evidence" upon which you can rely to support your decision. Neither the Coastal Act nor case law support the idea that a LUP must or even should be used for "guidance," whatever that term may even mean.

To be fair, if the Commission is to consider the City's LUP language for "guidance," it should also look at neighboring jurisdictions that have fully certified LCPs. The certified LCP for Encinitas, the next coastal town to the north, does not have a minimum ESHA buffer standard, but instead allows the City to make site-specific determinations. The next town, Carlsbad, has a 20-foot ESHA buffer requirement in its LCP. Oceanside, like Encinitas, relies on a site-specific analysis solution with no minimum buffer, or any buffer, required. In Jeff and Amy's case, they meet the requirements of Encinitas, Carlsbad, and

³ Pursuant to the applicable CC&Rs, all new homes must be approved by the HOA, which is authorized and duty bound to deny proposals that are out of character and proportion with the community.

Oceanside. Clearly, since the Commission certified these LCPs, it is not possible for the Commission to legally or scientifically determine that a 50-foot native vegetation buffer *must* be required at this inland Solana Beach site in order to comply with Section 30240(b) of the Coastal Act.

LCP	Minimum "ESHA Buffer"	Distance from Szekeres lot
Encinitas	No minimum standard	5.0 mi
Carlsbad	20 ft	14.0 mi
Oceanside	No minimum standard	20.0 mi

Plenty of Local Precedents Allow for 20' Native Vegetation Buffers

Without doubt, the law applicable to this matter is Coastal Act §30240(b), and you must rely on the objective and substantial evidence before you to apply the "significant degradation" standard.⁴ Both the City and the HOA's biologists concluded that the project, as proposed by Jeff and Amy, will not cause "significant degradation" of the ESHA. In fact, both say that the project will bring about an improvement over existing conditions as a result of improving 4,300 square feet of 30 year old barren land into new southern maritime chaparral. These biologists are from San Diego, were not hired by the Szekeres' and have specialized knowledge regarding San Diego's southern maritime chaparral that exists on the hillside below Jeff and Amy's lot.

The below excerpts summarize the key conclusions reached by Helix and Busby:

*The proposed project would not result in direct or indirect impacts to sensitive biological resources or adjacent ESHA. No direct impacts are anticipated, and implementation of mitigation measures listed above would reduce all potential indirect impacts to below a level of significance. Helix Report, November 23, 2015.*⁵

I would strongly discourage any requirements on the applicant to further redesign the proposed project or develop alternative designs because the nominal increases in the setback would not provide any substantial biological protections of the ESHA.... It is my professional opinion that the project, as currently proposed, would provide an adequate buffer from the ESHA and additional setback distances would not be biologically based. Helix Report, August 19, 2016.

To summarize, it is my professional opinion that Helix's methods, results, and associated analysis as presented in the Biological Resources Report and as approved by the City of Solana Beach not only meet the industry standard for this type of residential project but also provide adequate information to determine that,

⁴ However, you can and should also conclude that CDP No. 6-88-514 approved the home and that a new CDP is not required. At a minimum, you must conclude that Jeff and Amy have a vested right to build a house on the graded pad approved and created pursuant to CDP No. 6-88-514.

⁵ The City hired Helix. These statements were made based on a previous design when the home was sited closer to the ESHA than the project now before you.

with the implementation of the mitigation measures included in the report, the impacts to sensitive biological resources associated with this project would be less than significant. As such, I concur that there are no reasons for concern with the current plans. Busby Biological Services Report, October 4, 2016.⁶

The Helix and Busby conclusions are supported by their on-site observations, expert familiarity with San Diego biology, and common sense. Given that development already surrounds the ESHA plants on all sides, and that no other homes provide any buffer, it is impossible to conclude that Jeff and Amy's house, which will be constructed on a 30-year old graded pad and maintain a 57'10" foot separation from the ESHA plants, could cause significant degradation of the plants on the slope below.

As conditioned by Coastal staff's proposed resolution, no reasonable home is possible on the site and would thus lead to an obvious regulatory taking. Coastal staff erroneously believes that the Commission can escape takings liability as long as the special conditions allow *some* use of a property. This overly narrow view is incorrect for several reasons.

One, since HOA will not approve a smaller structure, the Coastal staff recommendation would in fact deprive Jeff and Amy's lot of all value. This is a clear taking. Two, Coastal staff ignores the "investment backed expectations" side of the regulatory takings analysis. "Where a regulation places limitations on land that fall short of eliminating all economically beneficial use, a taking nonetheless may have occurred, depending on a complex of factors including the regulation's economic effect on the landowner, the extent to which the regulation interferes with reasonable investment-backed expectations, and the character of the government action." Palazzolo v. Rhode Island (2001) 533 U.S. 606, 617-618 ("a state may not evade the duty to compensate on the premise that the landowner is left with a token interest").

At Thursday's hearing, it will be clear that Coastal staff's recommendation is not supported by the law, applicable precedents, or any substantial evidence that Jeff and Amy's home will cause significant degradation of the erstwhile ESHA on the steep slope below their home. Importantly, we believe you will also conclude that Coastal staff's recommendation asks you to render an indefensible decision that is entirely inconsistent with past Commission action in this very neighborhood and elsewhere in Solana Beach. See Slide 14.

Moreover, given the physical constraints of this site, coupled with the requirements of the City's municipal code and applicable CC&Rs, Staff's recommendation would allow no more than a dysfunctional, unmarketable, and undesirable 1,905 square foot home.

By contrast, the Commission has expressly approved every other home in this neighborhood at an average size of 5,088 square feet and with no native vegetation buffer requirement whatsoever. The Commission has expressly allowed every other home in this neighborhood to include development up to the ESHA, and even allowed one home to build a large wall in the ESHA. Frankly, it is difficult to square the staff recommendation with the facts as we see them, and we respectfully request that you approve Jeff and Amy's application as submitted.

⁶ Busby was hired by the HOA after Jeff and Amy applied for a waiver (i.e., relaxation of HOA standards) in light of Coastal staff's strong desire to force a smaller home. The HOA denied the waiver application since it could not be established that a smaller home would further protect the ESHA.

Chair D. Bochco &
Hon. Coastal Commissioners
May 5, 2017
Page 7 of 7

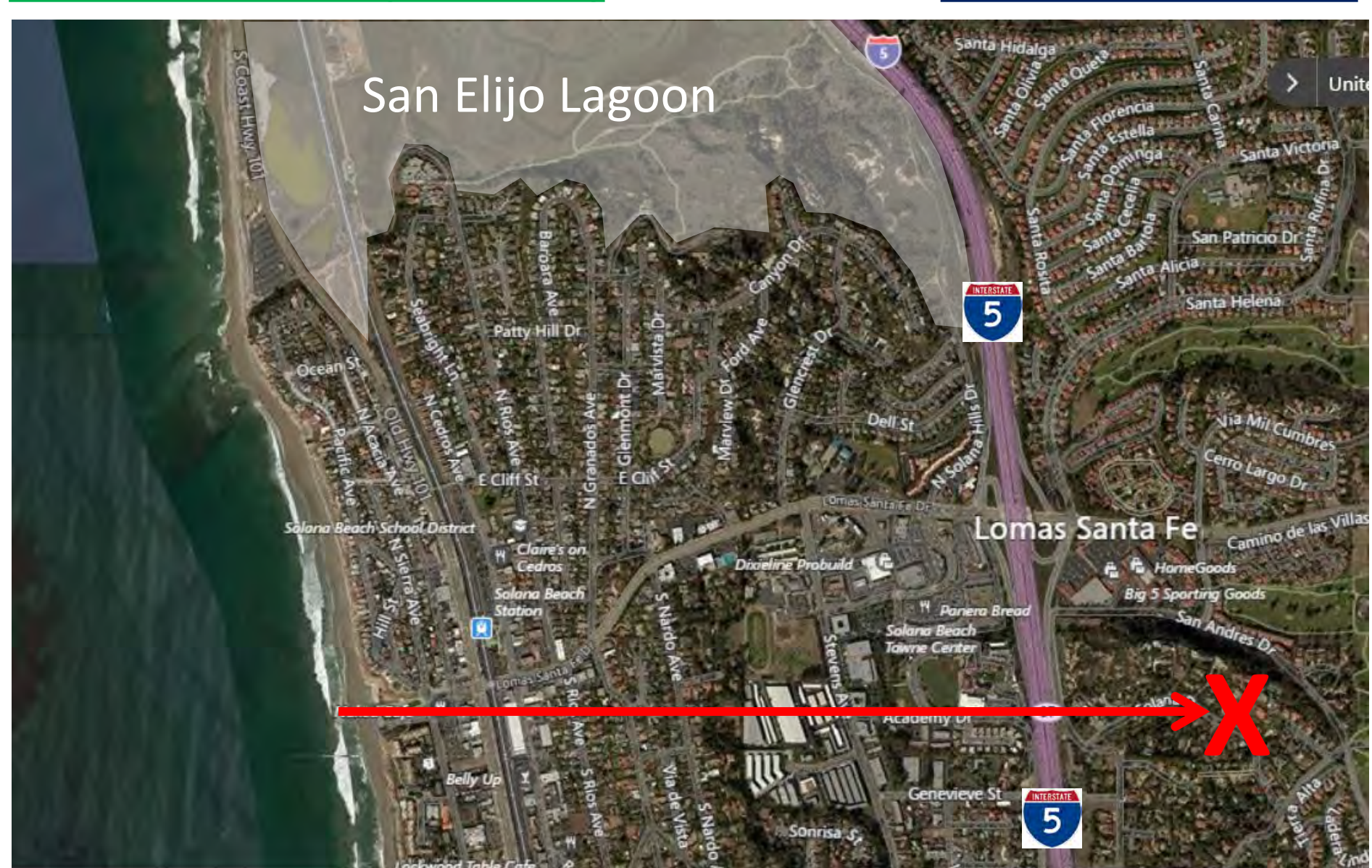
Jeff and Amy are prepared to accept all the recommended special conditions as long as they are amended to require the average 26-foot native vegetation zone instead of the impractical and unnecessary zone urged by Coastal staff. See Slide 15.

Respectfully submitted,



Jon Corn

cc: Coastal staff
Amy Szekeres
Jeff Szekeres



CDP 06-16-0500 is in Solana Beach, San Diego County

1.5 miles from ocean, East of 5, surrounded by urban residential development

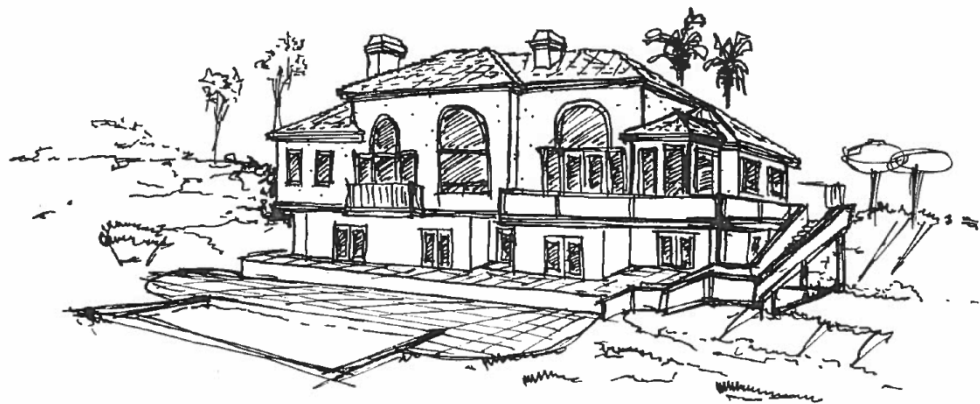


All adjacent precedents found in conformance with Coastal Act 30240(b) without any ESHA buffer or irrigation restrictions

	6-16-0500	Average
Home Sq Ft	5,141	5,088
Max Depth	50'6"	60'6"
Useable Backyard	2,670 sq ft	3,443 sq ft
Native Veg Buffer	26'3"	0'



**Structure
Approved by
CDP 6-88-514**



**1991 Rendering
Based on CDP
Approval**

S I T E # 7

CDP Approved Homes	Native Vegetation Buffer	Distance from Szekeres lot
550 San Julio Rd	0 ft	0.1 mi
522 San Julio Rd	0 ft	0.1 mi
500 San Julio Rd	0 ft	0.1 mi
530 San Julio Rd	0 ft	0.1 mi
510 San Julio Rd	0 ft	0.1 mi
507 San Julio Rd	0 ft	0.1 mi
541 San Julio Rd	0 ft	0.1 mi
734 Granados	0 ft	2.0 mi

LCP	Minimum “ESHA Buffer”	Distance from Szekeres lot
Encinitas	No minimum standard	5.0 mi
Carlsbad	20 ft	14.0 mi
Oceanside	No minimum standard	20.0 mi

"The slope is currently degraded, consisting mainly of bare dirt and invasive exotics"
– CCC Staff Report 6-94-164 Diana Lily

"The proposed residential construction will occur within the previously approved building envelope and graded pad....The project is consistent with the character of the surrounding community, and no impacts to any coastal resources are anticipated to occur"

– CCC Staff Report 9-92-079 Waiver

CDP 9-92-079-W

San Julio Rd

CDP 6-94-30

CDP 6-94-164/DL

ESHA?

CDP 6-07-112 / DL

Solana Dr

The Commission's ecologist has visited the site and determined that the fairly isolated patch of Southern Maritime Chaparral that would be impacted by the proposed development is **not an Environmentally Sensitive Habitat Area (ESHA)**, as the vegetation is patchy and mostly surrounded by development.

- CDP 6-07-112 Staff Report Diana Lily

734 Granados (CDP 6-14-0734)



Development / Fire Break Allowed in ESHA Buffer; No Vegetation Buffer

Landscape Plans Submitted to CCC and CDFW for 734 Granados



CDP 06-16-0500 (Szekeres) 525 San Julio Rd vs 734 Granados

	734 Granados (6-14-0734)	525 San Julio (06-16-0500)
Vested Rights	Building pad (home demolished 2015)	Building pad (CDP 6-88-514)
Adjacent to ESHA	Yes, San Elijo Ecological Reserve	Yes, non-wetland, isolated, circumscribed by homes/streets
Nearby Sensitive Plants Cited in COSB LUP	Wart-stemmed ceanothus Nuttall's scrub oak	Wart-stemmed ceanothus (125' away from lot)
Application submitted post COSB LUP (2013)	Yes	Yes
Off-site Fuel Modification by Fire	No	No
Distance from Home to ESHA	55' (~100% development/irrigation)	57'10" (~50% native vegetation buffer with no irrigation) – (CCC Staff wants 0%)
Native Vegetation Buffer with no Irrigation	0'	26'3" (CCC Staff wants 50')
CCC Biologist/Ecologist or CDFW Visit	No, confirmed by homeowner and architect	Yes
3 rd Party Biology Report Required	No, confirmed by public information requests with CDFW, COSB and CCC	Yes (Helix & Busby)
Precedents (i.e other granted CDP's) Cited in Staff Report	Abutting 742 N Granados, abutting 726 N Granados, 774 N Granados	None. Rely entirely on LUP policies for 50' buffer size
CDFW Point of View	A reduced buffer would not result in adverse impacts to sensitive habitat	50 ft. ESHA buffer needed on site, ESHA buffer should consist entirely of native vegetation, ESHA buffer should not contain built or maintainable structures
Administrative Permit	Yes	No (May 2017 hearing required)

Address	CDP	Approval Type
Entire Subdivision	6-88-514	Consent Calendar
550 San Julio Rd	6-92-079 - S Sarb	Waiver
522 San Julio Rd	Unknown	Waiver
500 San Julio Rd	6-92-126 - L Owens	Administrative
530 San Julio Rd	6-92-245 – P Webb	Administrative
510 San Julio Rd	6-93-214 – L Owens	Administrative
507 San Julio Rd	6-94-164 - D Lily	Administrative (wall in ESHA)
541 San Julio Rd	6-94-30 – L Owens	Regular
1138 Solana Drive	6-99-45 – D Lily	Regular
1128 Solana Drive	6-07-112 – D Lily	Regular – (owner let expire, No ESHA designation in Staff Report)



- Outline of Existing, Vested Building Pads
- Property Line

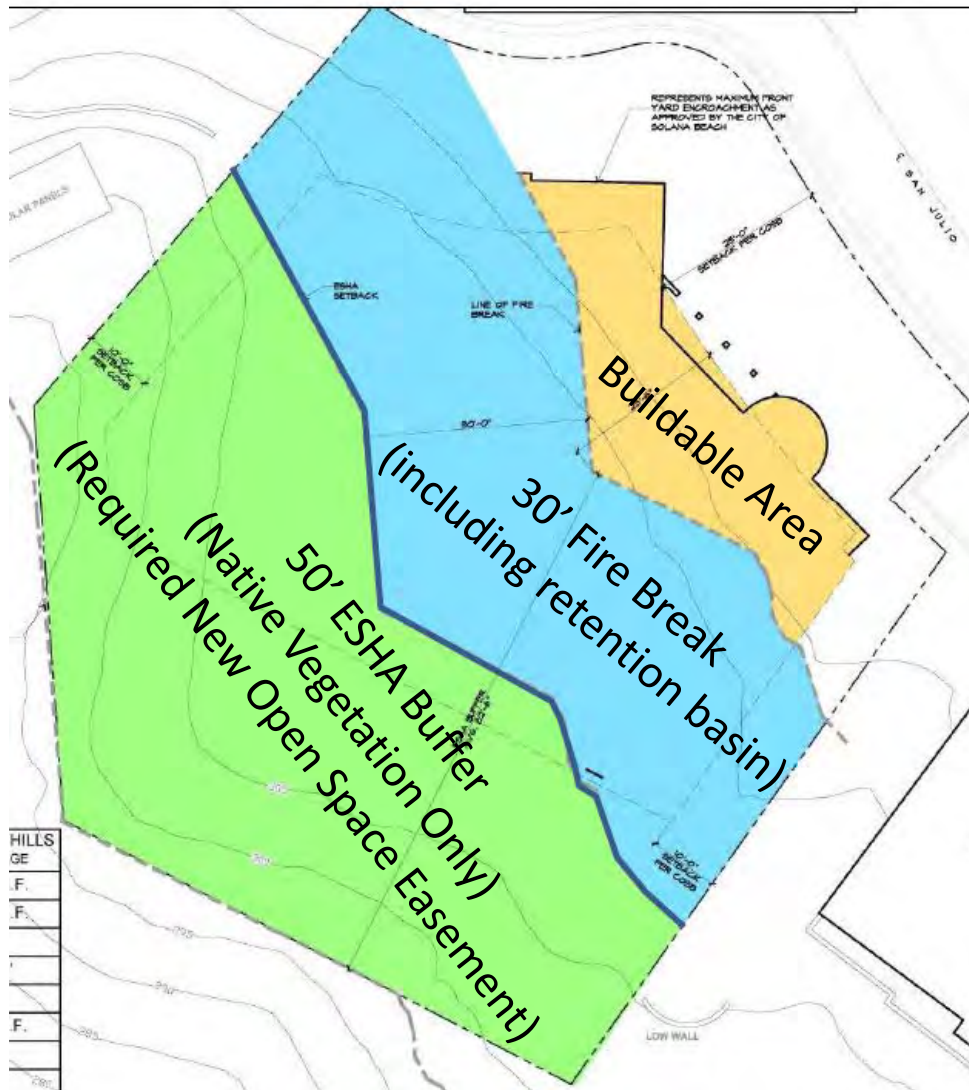


--- 50' Setback from ESHA

 = ~750 sq ft of pervious pavers in ESHA Buffer/fire break

 = ~1250 sq ft of retention basin in ESHA Buffer/fire break

 Outline of Existing, Vested Building Pads



Restrict development to orange building area (10 - 15% lot)

As proposed by Staff, home would have ~6,300 sq ft native vegetation buffer while 7 other CDP approved homes have 0 sq ft

My proposal as designed would provide 4,300 sq ft native vegetation buffer

Native vegetation buffer plus fire break will take 65-70% of lot

- Grading and structure approved by CCC in 1988
- All homes deemed in conformance with 30240 despite NO ESHA buffer
- Slope deemed NOT ESHA by CCC Ecologist's in 2008 CDP 6-07-112
- As designed, Szekeres home provides 57'10" ESHA buffer
- Staff believes ESHA buffer must contain 100% native vegetation
- Section 30240 standard is "significant degradation" only
 - No ESHA buffer minimum
 - No 100% native requirement
- Solana Beach lacks certified LCP; Coastal Act is standard of review
- Two independent biologists (Solana Beach, HOA) indicate my project does not significantly degrade (30240b) the nearby ESHA

- Change Special Condition 1a and 1b from 50 ft to “no less than 20 ft” as in Exhibits from Szekeres CDP Application
 - 100% of lot between the vested pad and SW property line being granted by applicant to native vegetation buffer
- Conform remaining Special Conditions to reflect the modified native vegetation buffer and location of retention basin
- Accept all other Special Conditions

From: Sundberg, Ryan@Coastal [<mailto:ryan.sundberg@coastal.ca.gov>]
Sent: Thursday, May 04, 2017 9:59 AM
To: Hayes, Kathy <KHayes@co.humboldt.ca.us>
Subject: FW: ExParte Deck

Can we make sure this goes to the right place for disclosure. Thanks, RS

From: David Neish [dbneish@dbnplanning.com]
Sent: Wednesday, May 03, 2017 2:40 PM
To: Sundberg, Ryan@Coastal
Subject: FW: ExParte Deck

Ryan, attached is the exhibit booklet for Item.# 22b on Thursday (Szekeres)

From: ipszekeres@stanfordalumni.org [<mailto:ipszekeres@stanfordalumni.org>]
Sent: Tuesday, May 2, 2017 7:49 PM
To: Avina, Victor <Victor.Avina@sdcounty.ca.gov>
Cc: David Neish <dbneish@dbnplanning.com>; David Neish <djneish@dbnplanning.com>
Subject: ExParte Deck

Victor,
Sending the attachment as discussed.

Regards,
Jeff Szekeres

RECEIVED
MAY 04 2017



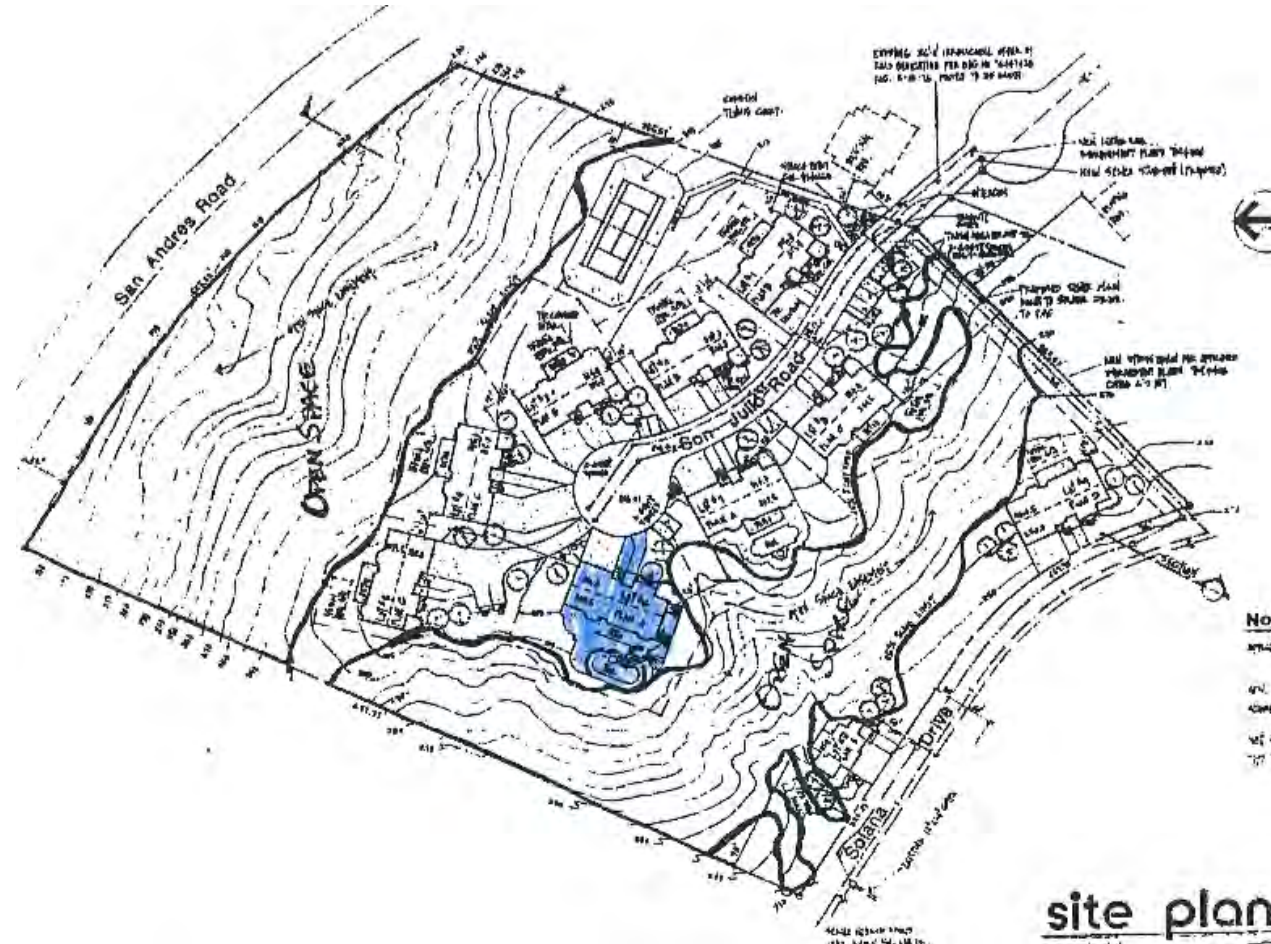
CDP 06-16-0500 is in Solana Beach, San Diego County

3 miles from ocean, East of 5, surrounded by urban residential development



All adjacent precedents found in conformance with Coastal Act 30240(b) without any ESHA buffer or irrigation restrictions

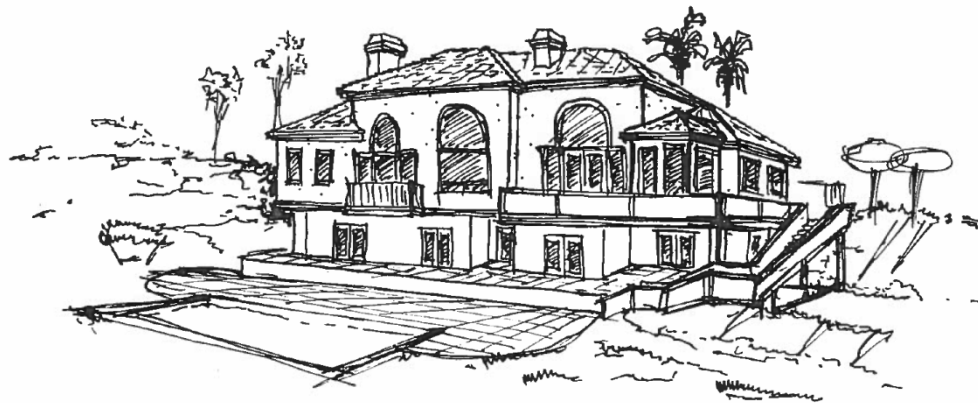
	6-16-0500	Average
Home Sq Ft	5,141	5,088
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Useable Backyard	2,670 sq ft	3,443 sq ft
Native Veg Buffer	26'3"	0'



- CDP approved all grading
- CDP approved 10 structures
- CDP created open space easement substantially similar to today's ESHA
- CDP allowed development up to the open space easement (e.g. pool)
- Average home built = 5,088 sq ft



**Structure
Approved by
CDP 6-88-514**



**1991 Rendering
Based on CDP
Approval**

S I T E # 7

Address	CDP	Approval Type
Entire Subdivision	6-88-514	Consent Calendar
550 San Julio Rd	6-92-079 - S Sarb	Waiver
522 San Julio Rd	Unknown	Waiver
500 San Julio Rd	6-92-126 - L Owens	Administrative
530 San Julio Rd	6-92-245 – P Webb	Administrative
510 San Julio Rd	6-93-214 – L Owens	Administrative
507 San Julio Rd	6-94-164 - D Lily	Administrative (wall in ESHA)
541 San Julio Rd	6-94-30 – L Owens	Regular
1138 Solana Drive	6-99-45 – D Lily	Regular
1128 Solana Drive	6-07-112 – D Lily	Regular – (owner let expire, No ESHA designation in Staff Report)



- Outline of Existing, Vested Building Pads
- Property Line

100% of area outside building pad dedicated to native vegetation buffer



--- 50' Setback from ESHA

 = ~750 sq ft of pervious pavers in ESHA Buffer/fire break

 = ~1250 sq ft of retention basin in ESHA Buffer/fire break

 Outline of Existing, Vested Building Pads

Drone photo – 11/2016

CDP 6-16-0500

Lot 10 CDP 6-07-112

“The slope is currently degraded, consisting mainly of bare dirt and invasive exotics”
– CCC Staff Report 6-94-164 Diana Lily

“The proposed residential construction will occur within the previously approved building envelope and graded pad....The project is consistent with the character of the surrounding community, and no impacts to any coastal resources are anticipated to occur”

– CCC Staff Report 9-92-079 Waiver

CDP 9-92-079-W

San Julio Rd

CDP 6-94-30

CDP 6-94-164/DL

ESHA?

CDP 6-07-112 / DL

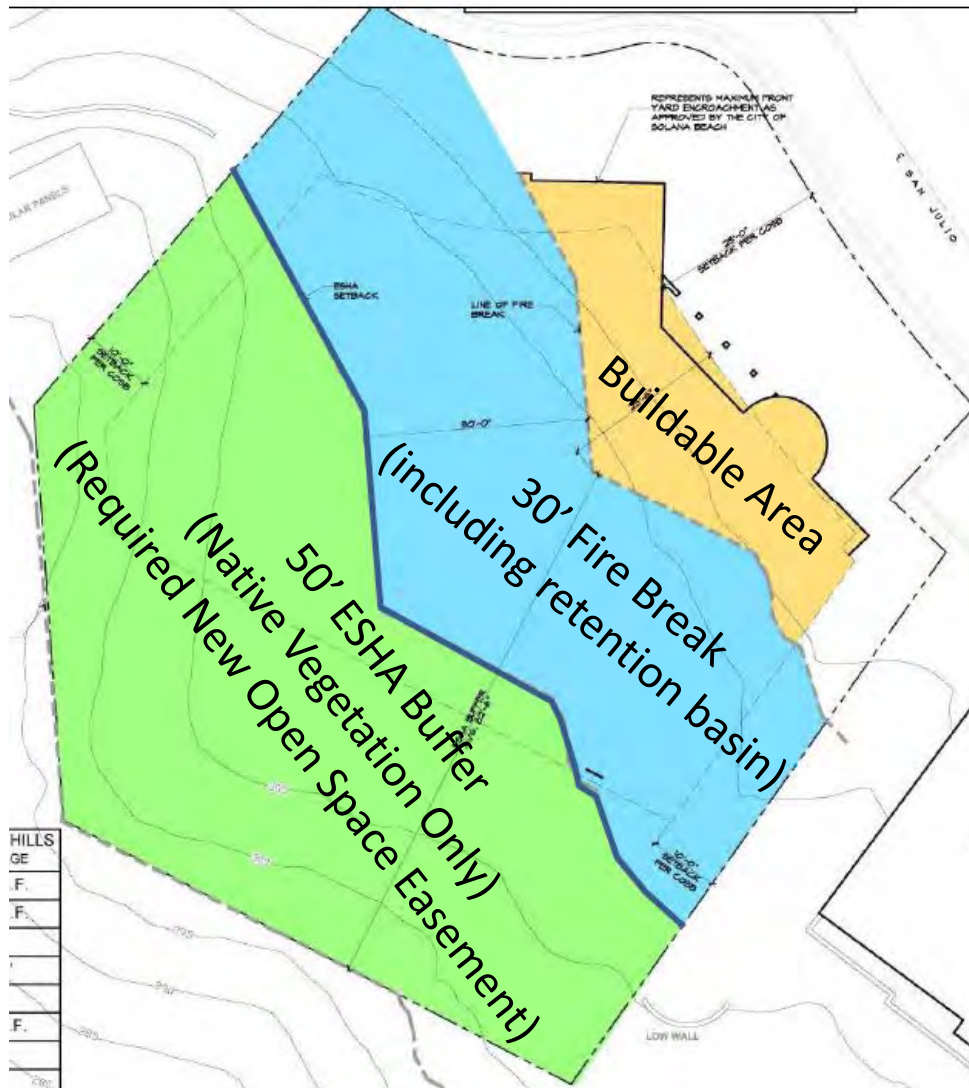
Solana Dr

The Commission’s ecologist has visited the site and determined that the fairly isolated patch of Southern Maritime Chaparral that would be impacted by the proposed development is **not an Environmentally Sensitive Habitat Area (ESHA)**, as the vegetation is patchy and mostly surrounded by development.

- CDP 6-07-112 Staff Report Diana Lily

Granados (CDP 6-14-0734)





Restrict development to orange building area (10 - 15% lot)

As proposed by Staff, home would have ~6,300 sq ft native vegetation buffer while 7 other CDP approved homes have 0 sq ft

My proposal as designed would provide 4,300 sq ft native vegetation buffer

Native vegetation buffer plus fire break will take 65-70% of lot

- Grading and structure approved by CCC in 1988
- All homes deemed in conformance with 30240 despite NO ESHA buffer
- Slope deemed NOT ESHA by CCC Ecologist's in 2008 CDP 6-07-112
- As designed, Szekeres home provides 57'10" ESHA buffer
- Staff believes ESHA buffer must contain 100% native vegetation
- Section 30240 standard is "significant degradation" only
 - No ESHA buffer minimum
 - No 100% native requirement
- Solana Beach lacks certified LCP; Coastal Act is standard of review
- Two independent biologists (Solana Beach, HOA) indicate my project does not significantly degrade (30240b) the nearby ESHA

- Change Special Condition 1a and 1b from 50 ft to “no less than 20 ft” as in Exhibits from Szekeres CDP Application
 - 100% of area between the vested pad and SW property line being granted by the applicant to become native vegetation buffer
- Conform remaining Special Conditions to reflect the modified native vegetation buffer and location of retention basin as in Szekeres CDP Application
- Accept all other Special Conditions

EX PARTE COMMUNICATION DISCLOSURE FORM

Filed by Commissioner: Greg Cox

- 1) Name or description of project: Jeff Szkeres property, 525 San Julio Road, Solana Beach, CA
- 2) Date and time of receipt of communication: Wednesday, March 1, 2017, 2:30 p.m.
- 3) Location of communication: 525 San Julio Road, Solana Beach, CA
- 4) Identity of person(s) initiating communication: David Neish
- 5) Identity of person(s) on whose behalf communication was made: Jeff Szkeres
- 6) Identity of persons(s) receiving communication: Victor Avina
- 7) Identity of all person(s) present during the communication: Victor Avina, David Neish, Sr., David Neish, Jr., Jeff Szkeres

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

On Wednesday, March 1, 2017, my staff member Victor Avina attended a site visit to the Szkeres property on San Julio Road in Solana Beach.

Discussion during the site visit included the following:

- The lot is one of eight in a cul-de-sac that sits three miles from the coast.
- The lot is the only one that has yet to be developed.
- Ten properties, including the subject property, earned a vested right to a building pad. The subject site's CDP is CDP 6-88-514.
- All of the other houses in the cul-de-sac were built between 1992 and 1995.
- Coastal Commission staff's recommendation of a 50' ESHA setback
- Coastal Commission staff's recommendation of a 30' fire break.

The applicant would like for reconsideration of the Coastal Commission staff recommended ESHA setback and fire break. He explained that the required setbacks would encroach on the building pad the property was granted through CDP 6-88-514, and would reduce his home size to 1,900 sq ft, which would not meet Solana Beach zoning standards and would not be permitted by the Home Owner's Association.

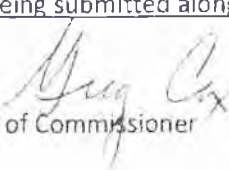
Further, the applicant argues that the seven other homes in the cul-de-sac have substantially less of an ESHA buffer.

The applicant provided Victor Avina with a booklet of information on the project, which is being submitted along with this disclosure.

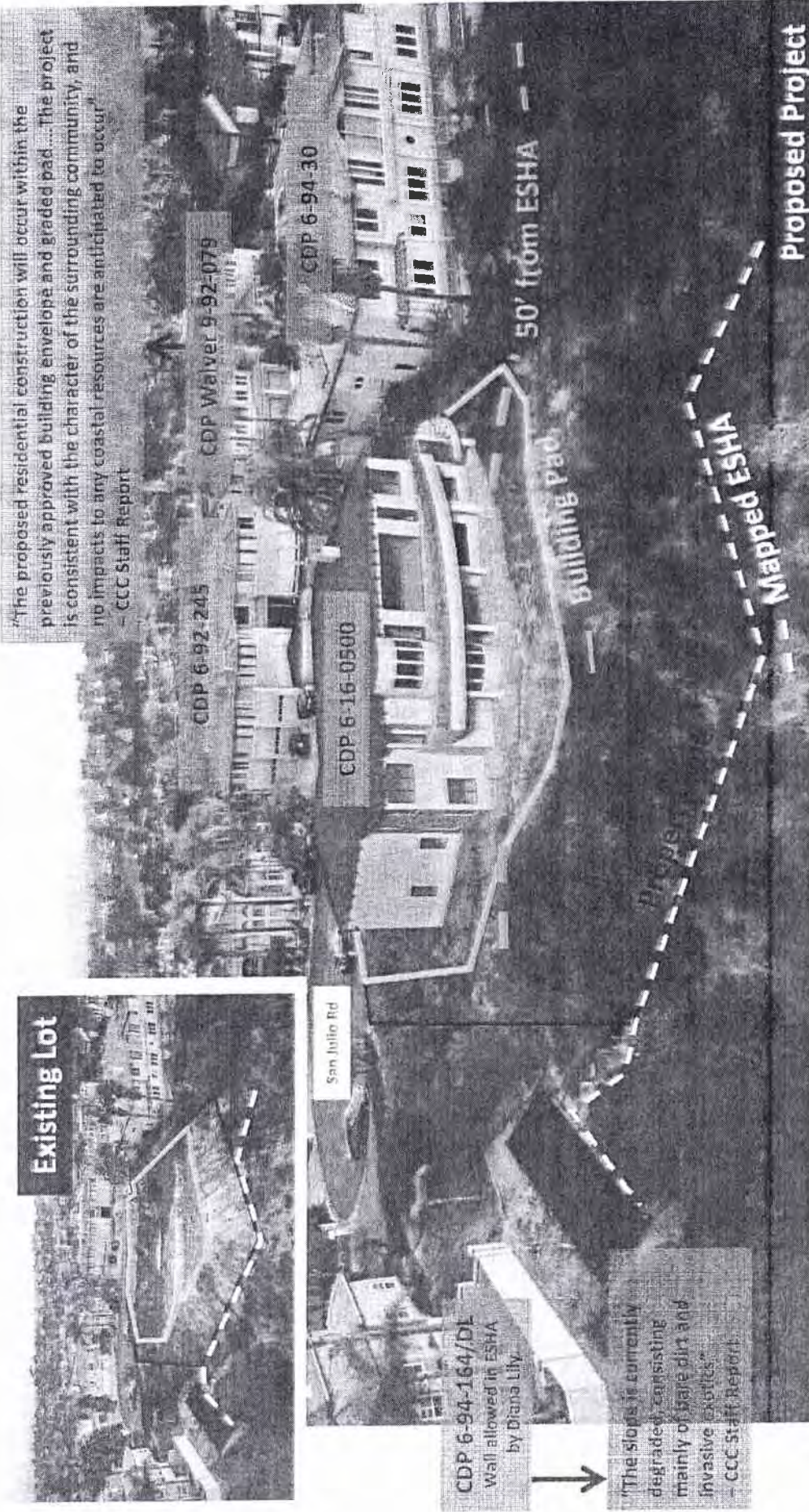
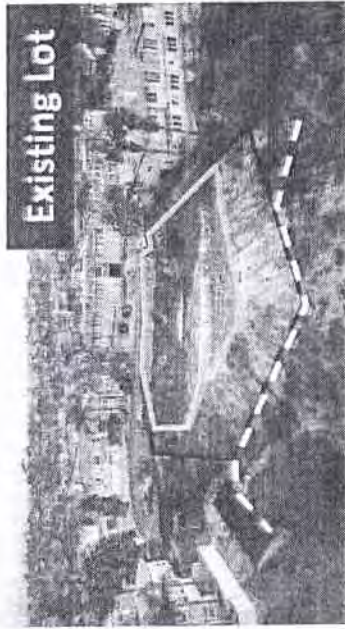
3/4/17

Date

Signature of Commissioner



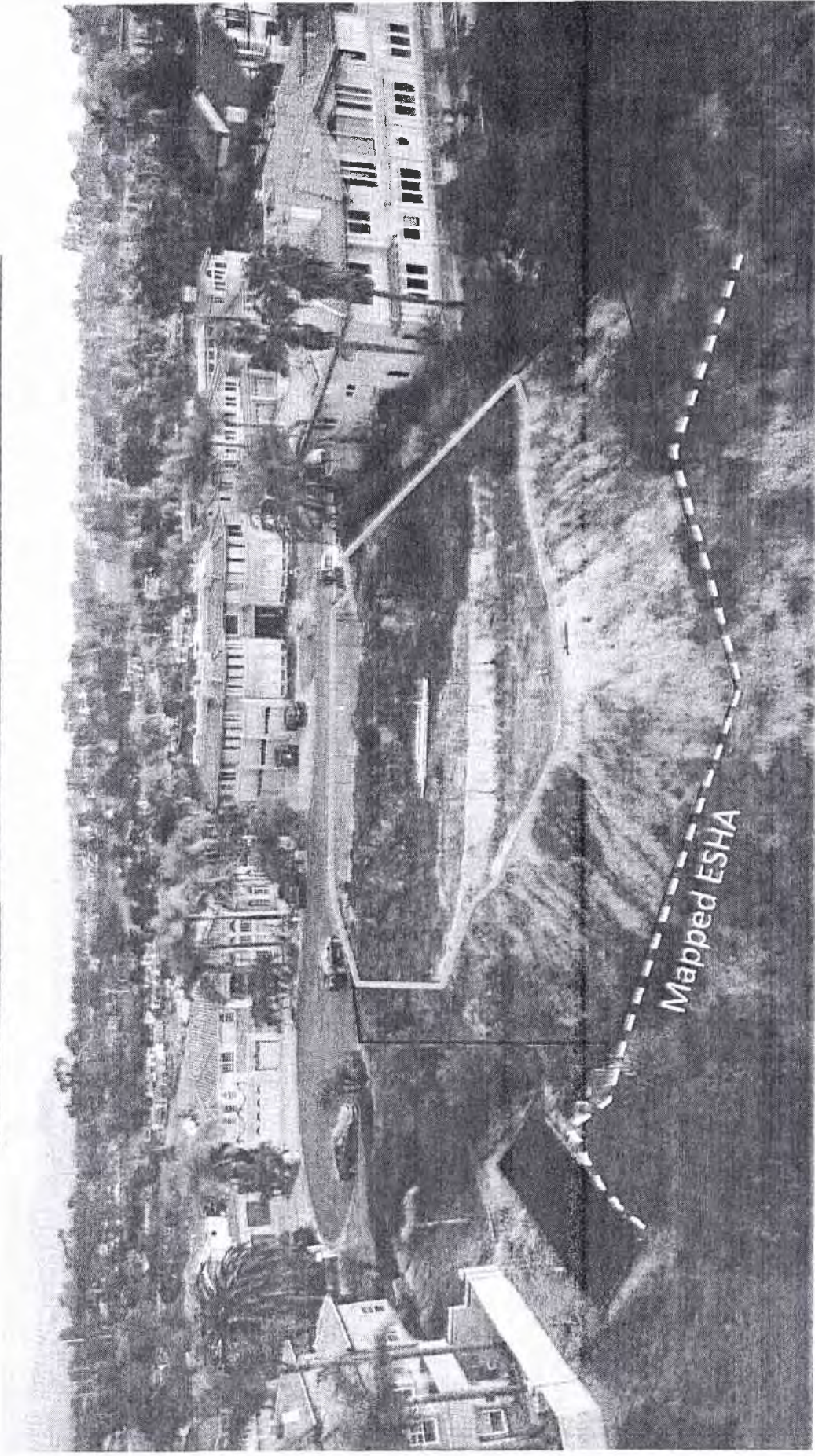
Received at Commission
MAR 08 2017



Key Considerations

1. Lot is 3 miles from Pacific Ocean, abutting an isolated patch of chaparral ESHA, surrounded by residential development on all sides
2. Building pad previously granted via CDP 6-88-514, but Coastal Staff conditions aim to take away owner's rights to develop on pad
3. Applicant's home is 57'10" away from ESHA; 26'3" of native vegetation buffer will be provided; no fuel modification to ESHA
4. 4,300 sq ft native vegetation buffer to be planted where none exists today; two independent biologists (City Solana Beach, HOA) affirm the applicant's project will improve the ESHA (vs. 30240(b)'s "significant degradation" threshold)
5. New home at 734 Granados (CDP 6-14-0734, after COSB LUP certified) approved via consent calendar with 55' distance from ESHA and NO vegetation buffer. Many other LCP's (Encinitas, Carlsbad) and CDP precedents support approval of Applicant's project
6. 7 adjacent homes approved by CCC (i.e. conformance w/ Coastal Act), comparable in size, and offer scant vegetative buffer to ESHA

Existing Lot – 525 San Julio Rd, Solana Beach



Outline of Existing, Vested Building Pads Granted via 1988 CDP 6-88-514
Property Line

**525 San Julio Rd is the last of 8 lots on San Julio Rd
which were legally graded in 1989 after CDP 6-88-514.**

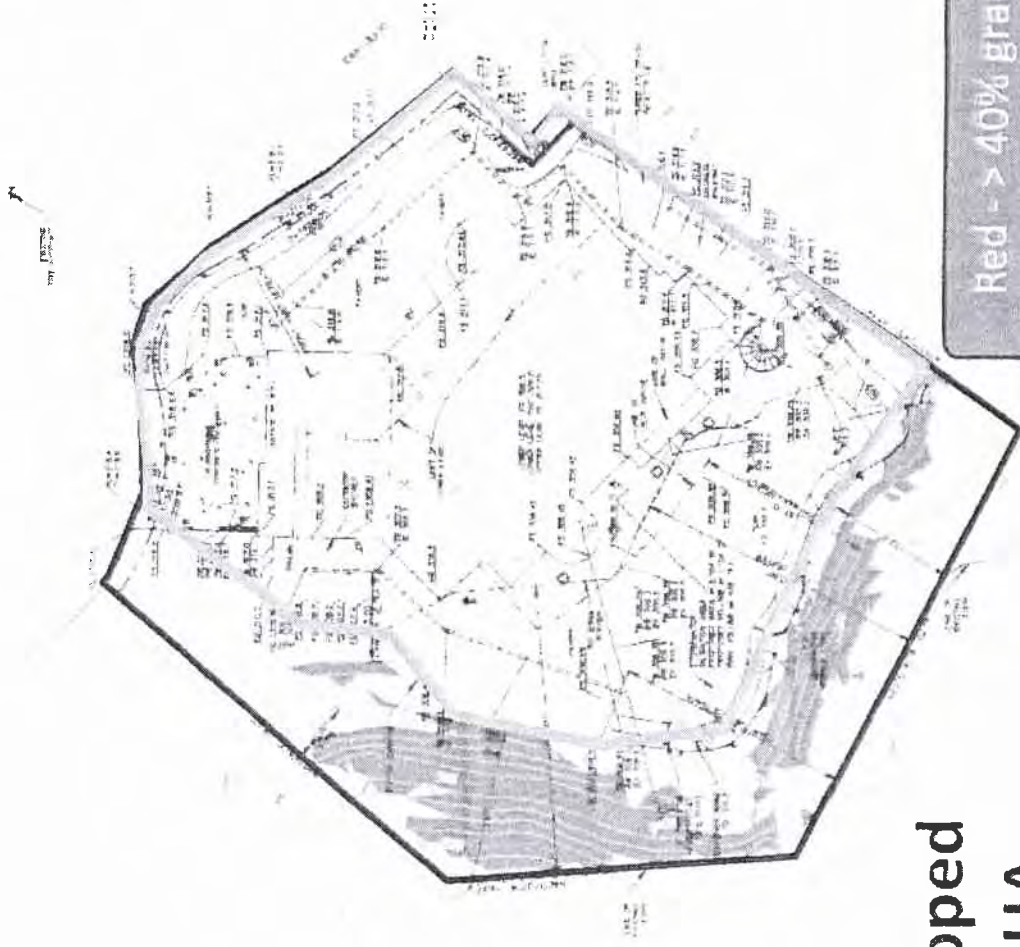
Topography of Slopeside

SLOPE ANALYSIS

Outside of the building pad, the slopeside becomes very steep.

100% of the area between ESHA and building pad will become native vegetation buffer (4,350 sq ft or 26'3")

Mapped
ESHA



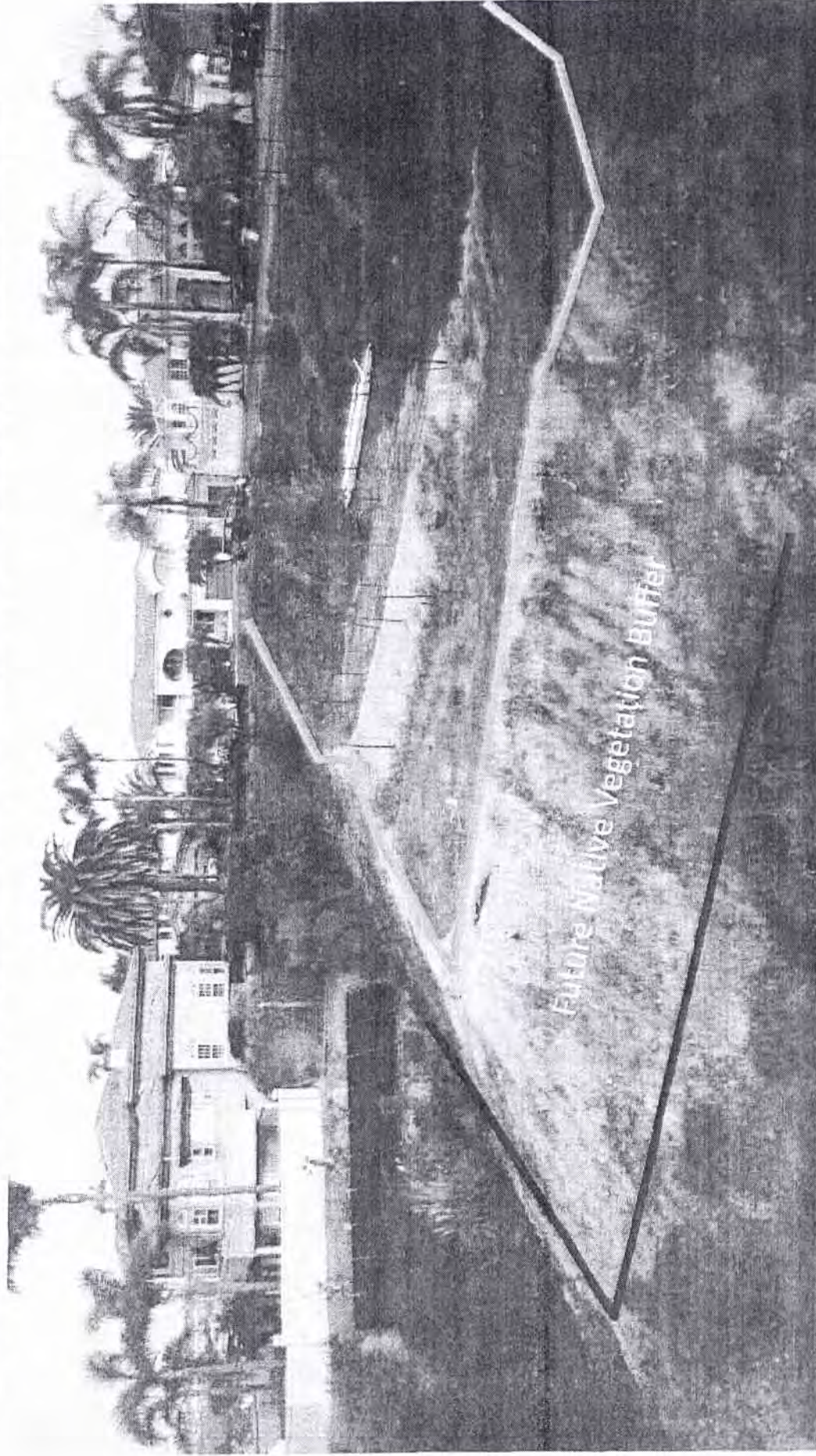
Red - > 40% grade

Yellow > 25% grade

Building Pad

Property Line

Steep Slopes Provide Additional ESHA Protection Allowing Reduced Buffers

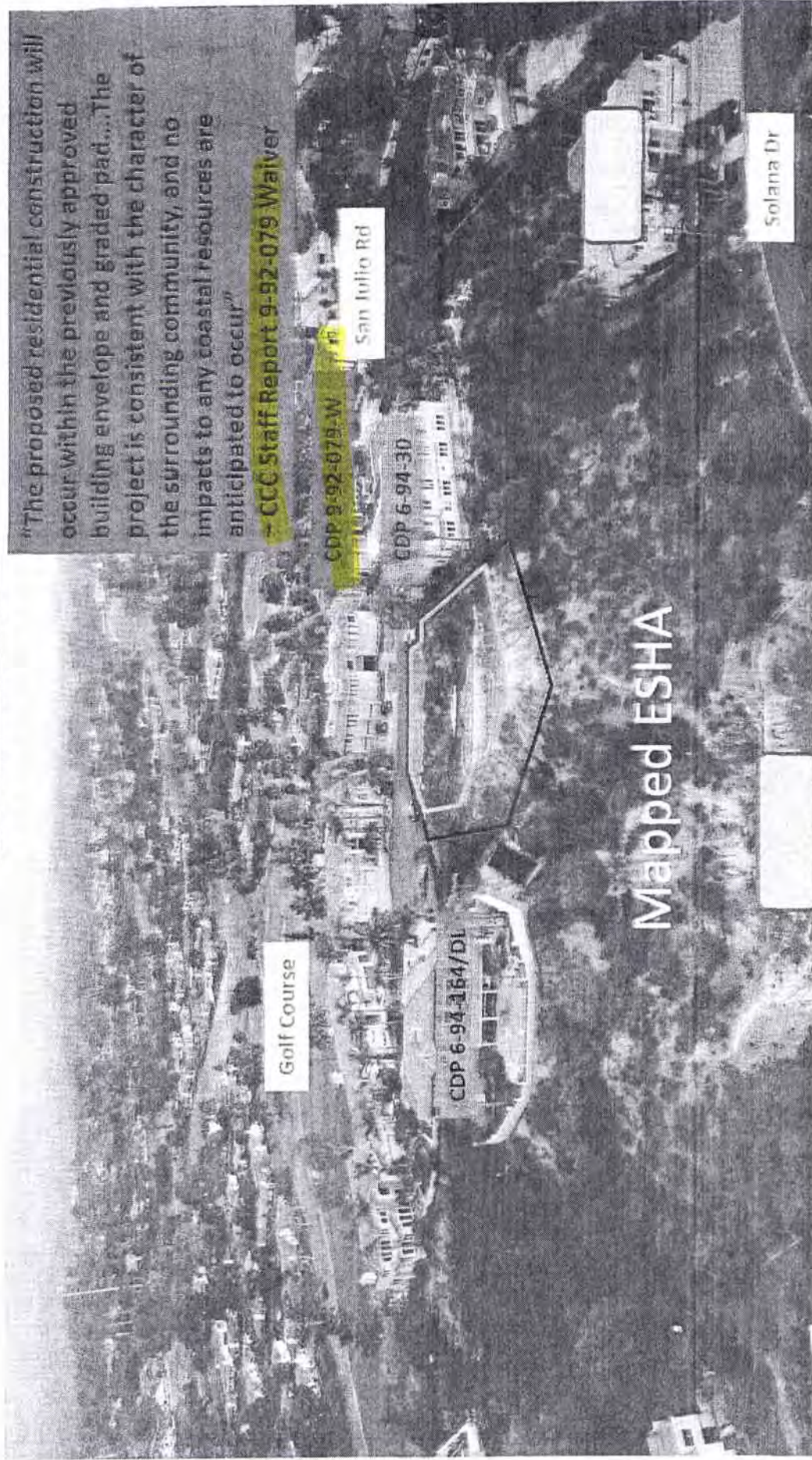


Property Line

Building Pad Boundary

"The required width for buffers varies depending on the type of ESHA and on the type of development, topography of the site, and the sensitivity of the resources to the particular kind of disturbance." CCC Staff Report on Banning Ranch – 5-15-2097 and many other CDPs with slopes next to ESHA

Building Pads

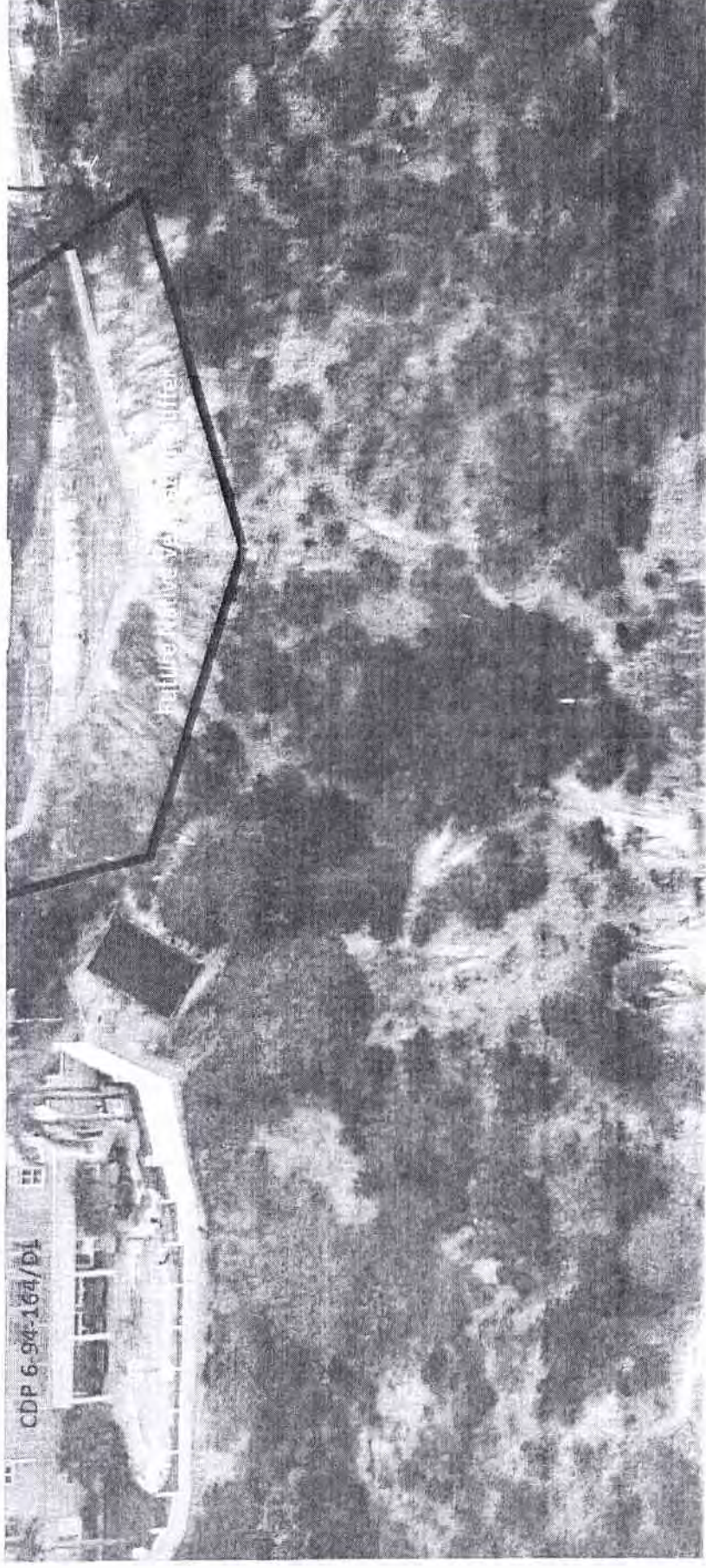


— Property Line

- - - Building Pad Boundary

As in this neighborhood and other CA communities, homes are allowed to develop within their building pads

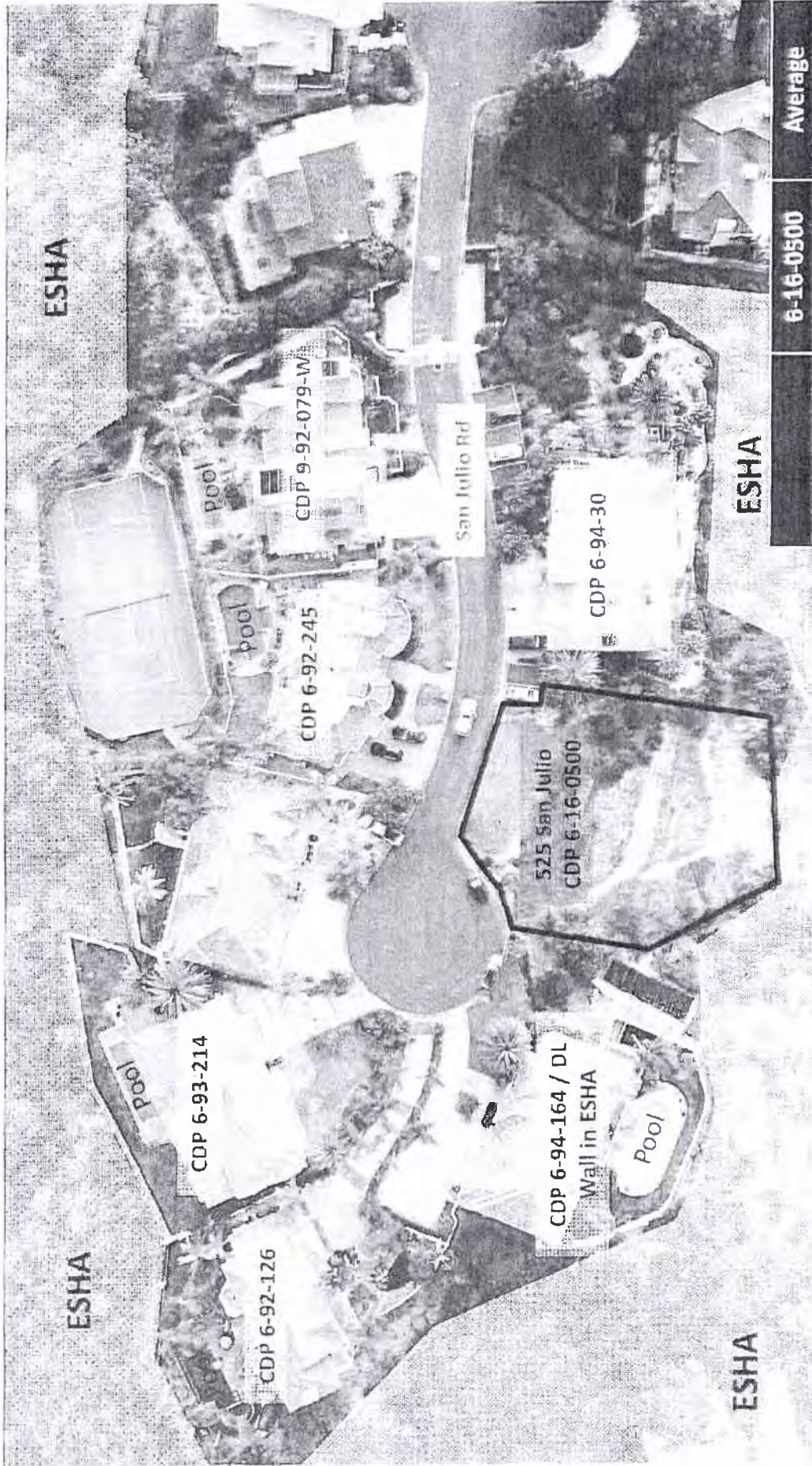
Zoom In of Mapped ESHA Adjacent to Property



Property Line

Building Foot Boundary

The ESHA primarily consists of Southern Maritime Chaparral, invasive exotics and patches of bare dirt on a very steep hillside



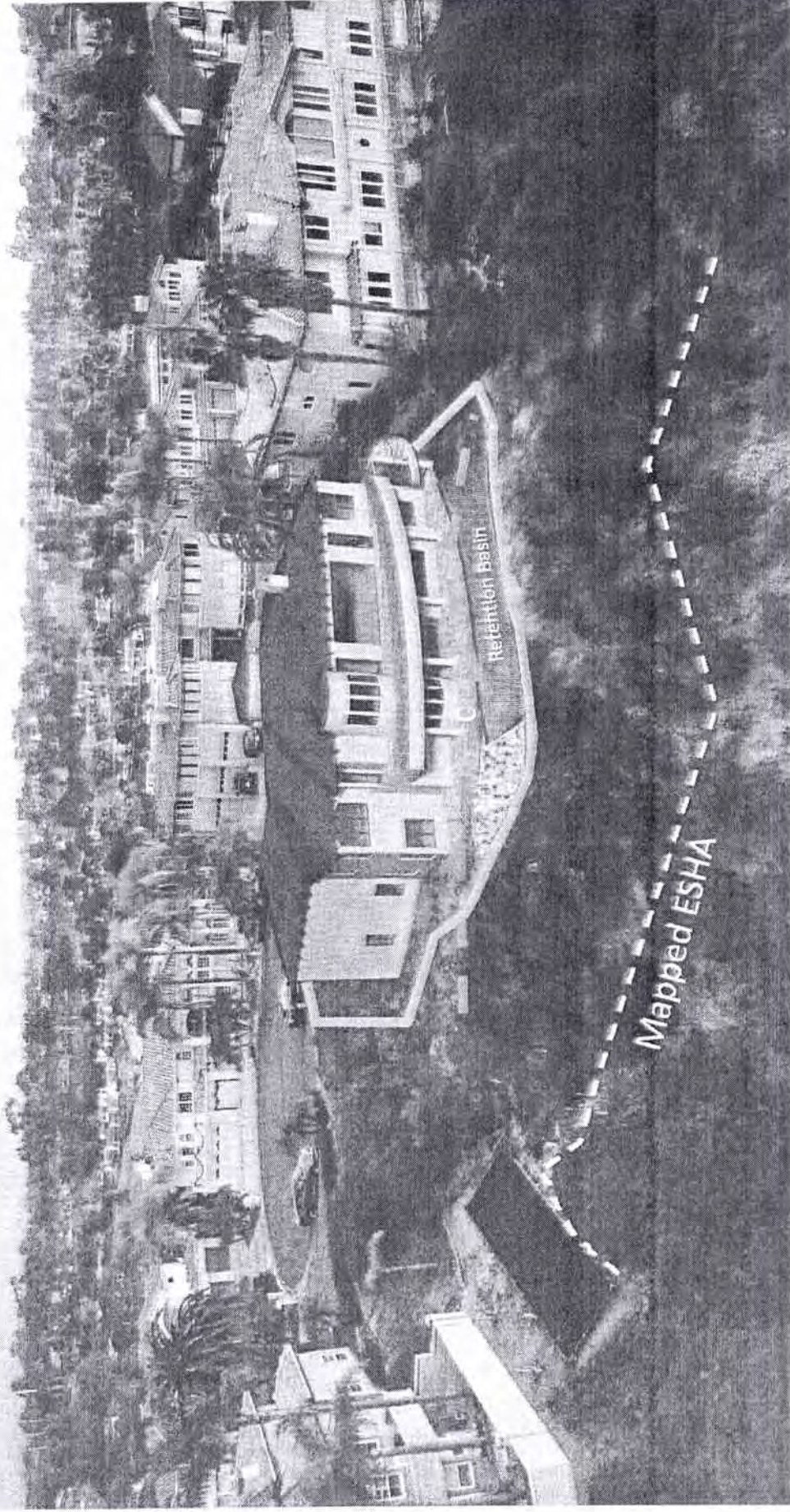
The 7 other homes have substantially less native vegetation buffer adjacent to ESHA. All conformed with Coastal Act

Coastal Act 30240(b) – the key clause regarding ESHA buffers
Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

	6-16-0500	Average
Home Sq Ft	5,141	5,088
Max Depth	50'6"	60'6"
Bedrooms	5	5-7
Useable Backyard	2,670 sq ft	3,443 sq ft
Garage parking	3	3
Native Veg Buffer	26'3"	0 - 10'

3D Rendering + Planned Native Vegetation Buffer

100% Native Vegetation Outside Building Pad



50' Setback from ESHA

Building Pads Boundary

- = ~750 sq ft of pervious pavers inside building pad and 57'10 ESHA buffer
- = ~1250 sq ft of retention basin/turf inside building pad and 57'10" ESHA Buffer
- = ~4,300 sq ft of native vegetation planted outside building pad

1000

$\frac{d}{dt} \left(\frac{\partial L}{\partial \dot{x}} \right) = \frac{\partial L}{\partial x}$

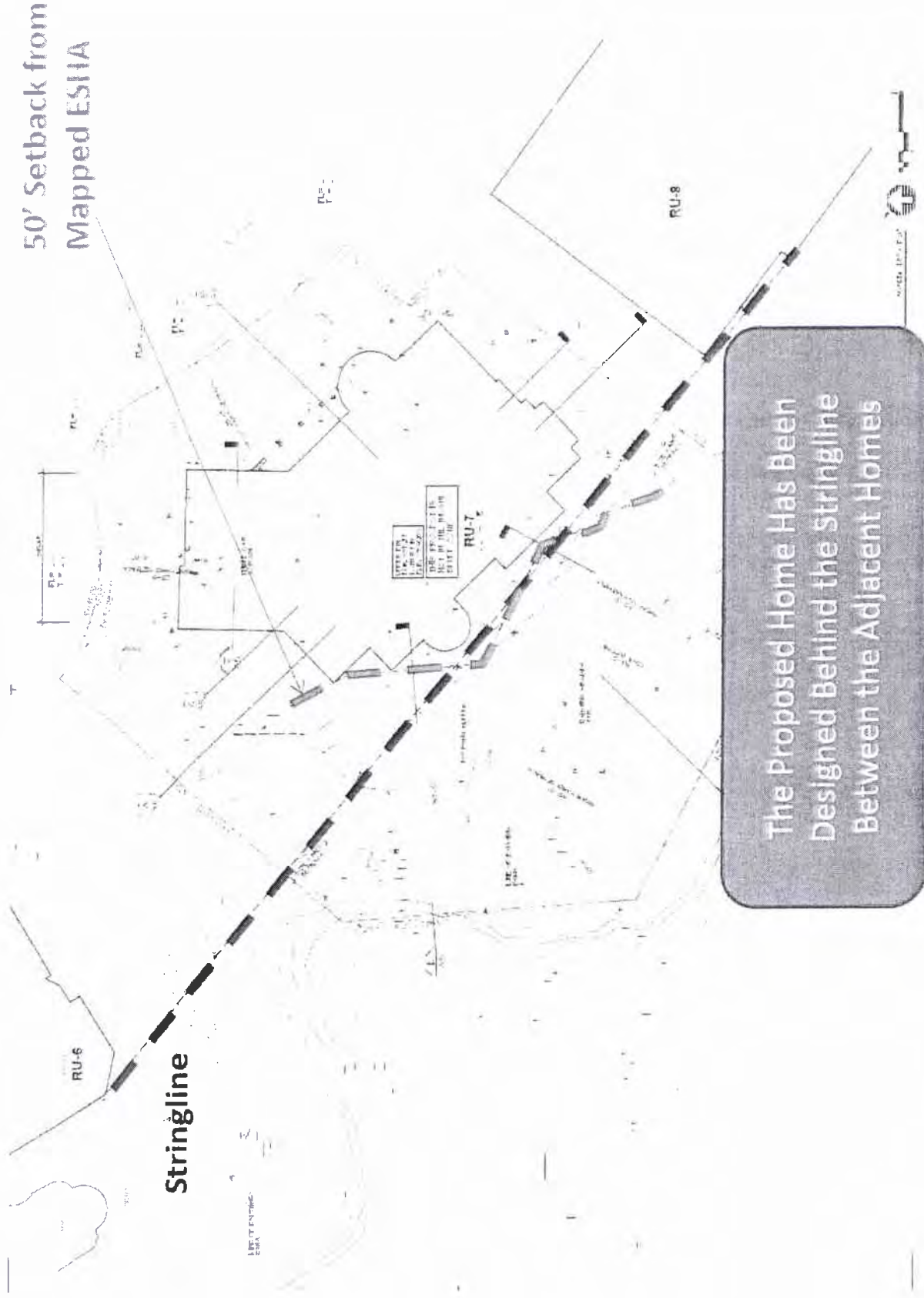
1. *Phragmites australis* (Cav.) Trin. ex Steud.

[illegible]

715

1000

Stringline Exhibit



Helix Biological Resources Report – Nov 23, 2015

Key Findings/Comments:

1. No ESHA occurs on the property
2. Helix Environmental Planning was paid contractor of the City of Solana Beach (COSB), not Szekeres family, as part of their permitting process
3. Helix was also the firm used to develop the ESHA maps in the 2013 Land Use Plan (LUP) of COSB
4. Previously graded and terraced lot, with 0.29 acres of disturbed habitat (i.e. previously graded pads NE slope dominated by iceplant) and 0.05 acres of developed land (i.e. lawn, ornamental plantings)
5. Native vegetation ESHA south of the lot is isolated from other native vegetation by the surrounding moderately dense residential developments, roadways and infrastructure
6. No sensitive plant or animal species were observed within the property boundary; wart-stemmed ceanothus were documented South of property (i.e. this was also known from 2013 LUP maps)
7. No significant direct impacts are anticipated to sensitive biological resources as a result of the proposed construction, so no mitigation measures are needed.
8. Indirect impacts to ESHA and ESHA buffer would be reduced to a level below significance through incorporation of the mitigations in the project plans.
9. The project plans which Helix reviewed was an old version of the plans which were closer to the ESHA (~40-55 ft from ESHA) vs current site plans at an average of 57'10". Applicant re-designed home after comments from Eric Stevens of CCC

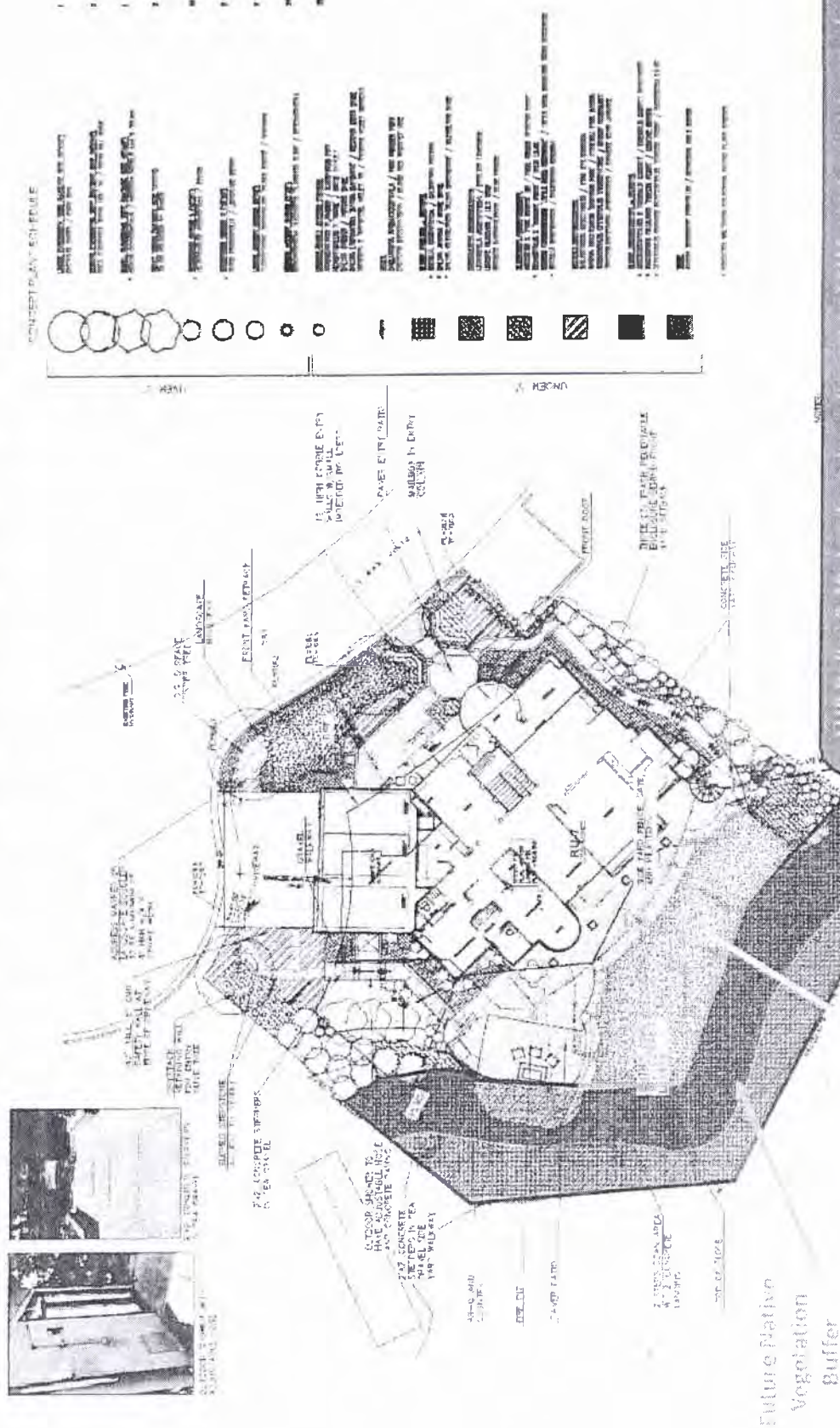
Conclusion Paragraph in Helix Report Below

The proposed project would not result in direct or indirect impacts to sensitive biological resources or adjacent ESHA. No direct impacts are anticipated, and implementation of mitigation measures listed above would reduce all potential indirect impacts to below a level of significance. No native ESHA buffer currently is present on the property. Incorporation of the mitigation measures listed above would result in an improvement to the ESHA buffer between the proposed development and the ESHA through removal of non-native species and planting and seeding with native species. While portions of the ESHA buffer would be less than 50 feet, the buffer that is proposed is considered adequate to ensure the biological integrity and the necessary protections to the existing ESHA consistent with the intent of Policy 3.22.

Home to ESHA Distance
Has Been Increased
Approx 10' Feet Since
Helix Report Was
Published



Landscaping on Current Proposal



ULP policy 3.29: Landscaping adjacent to ESHA must consist entirely of native, non-invasive drought-tolerant, salt-tolerant and fire-resistant species; however, the use of ornamental species may be allowed provided they are fire-resistant, drought-tolerant, and non-invasive as a small component for single-family residences.

Geography

Coastal Staff Recommendation

If following the recommendation of Coastal Staff, 2,000 sq feet of the vested building pad would become restricted from development.

The govt mandated retention basin would not be able to be built in the required spot (i.e. lowest elevation of building pad) on the lot.

Home would have 6,350 sq ft native vegetation buffer while 7 other CDP approved homes have ~ 0 sq ft

THE BUILDABLE AREA ON THE SITE IS INSUFFICIENT TO BUILD A HOUSE THAT COMPLIES WITH THE CITY OF SOLANA BEACH OR HCA DEVELOPMENT STANDARDS



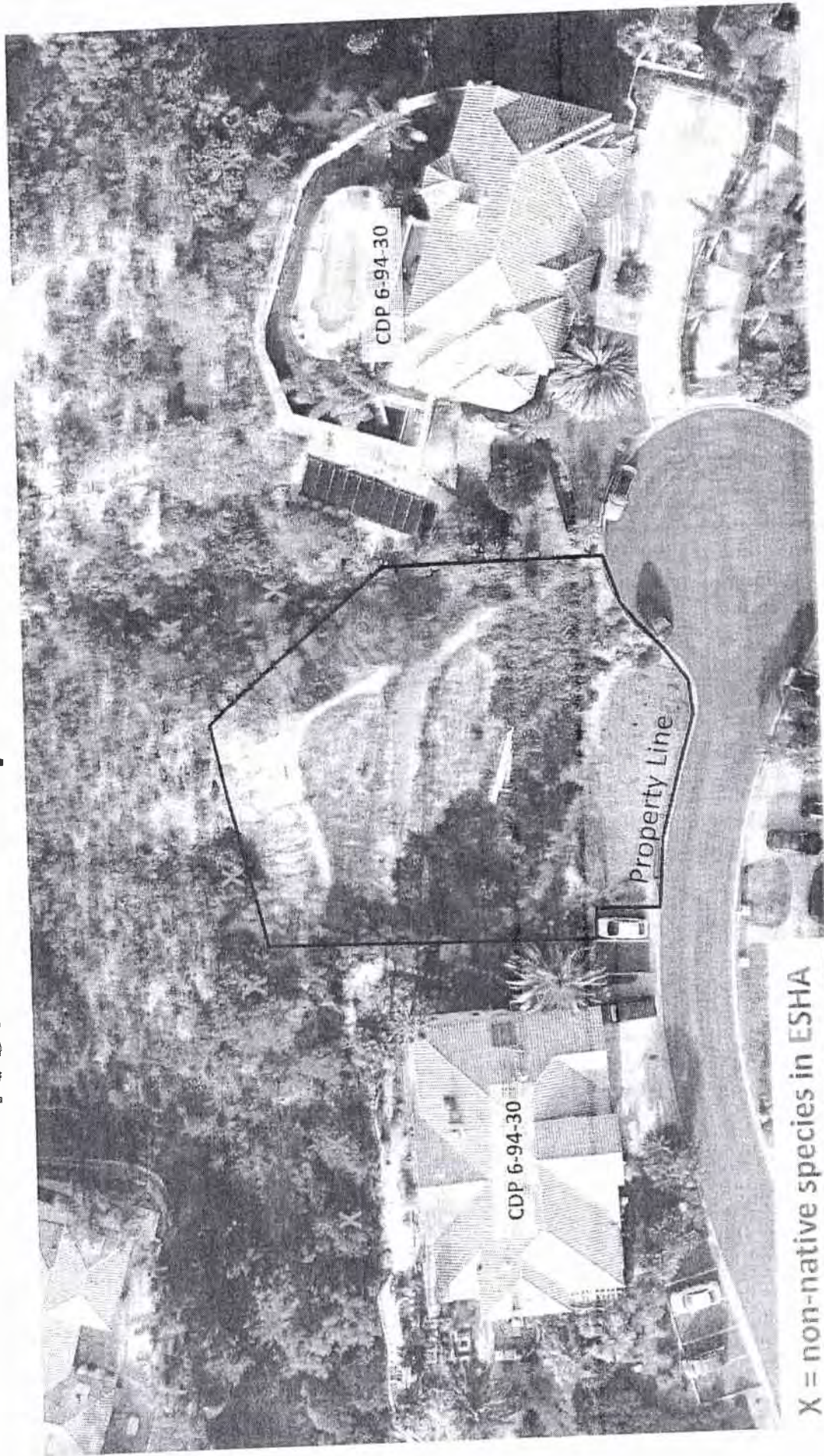
LEGEND

- BUILDABLE AREA
- 30' FIREBREAK
- 50' ESNA SETBACK

	SOS SAN JUAN ALTERNATIVE	ESN SAN JUAN PROPOSED	SOLANA HILLS AVERAGE
BUILDABLE AREA	1,261 S.F.	3,690 S.F.	5,341 S.F.
HOME TO FT	1,905 S.F.	5,141 S.F.	5,069 S.F.
TAR (ACHIEVED, ALLOWED)	158	408	437
MAXIMUM DEPTH	20'-6"	50'-8"	60'-0"
BEDROOMS	3	5	5-7
USEABLE BACKYARD	3,037 S.F.	2,670 S.F.	3,443 S.F.
# GARAGE PARKING SPACES	1	3	3
AVG. ESNA BUFFER	22'-2"	57'-10"	<10'

CCC Staff recommends a 50' native vegetation buffer & non-overlapping 30' fire break, enabling a ~1,900 sq ft, 1 car garage home (i.e. 36% the size of the avg home) and does not meet COSB zoning policies.

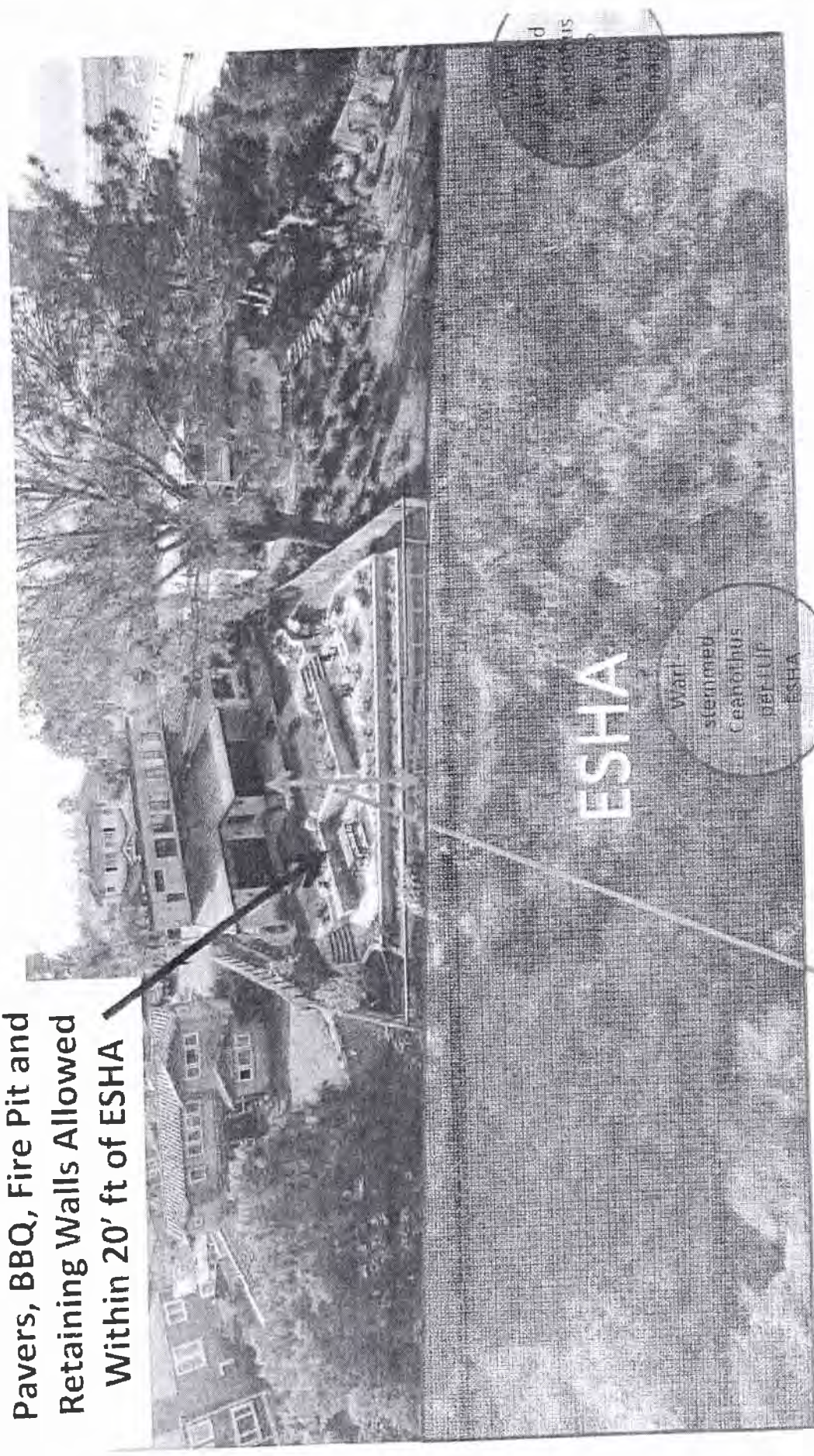
Non-native Species in ESHA



X = non-native species in ESHA

Aerial Photo of 734 Granados (CDP 6-14-0734)

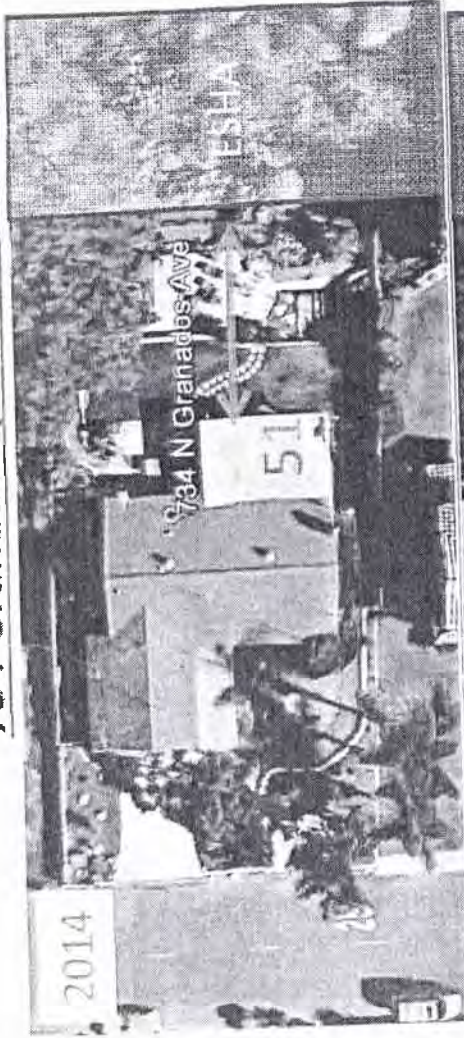
Pavers, BBQ, Fire Pit and
Retaining Walls Allowed
Within 20' ft of ESHA



55' From ESHA to HOME; No native vegetation buffer

734 Granados (CDP 6-14-0734) – ESHA Buffer Before and After

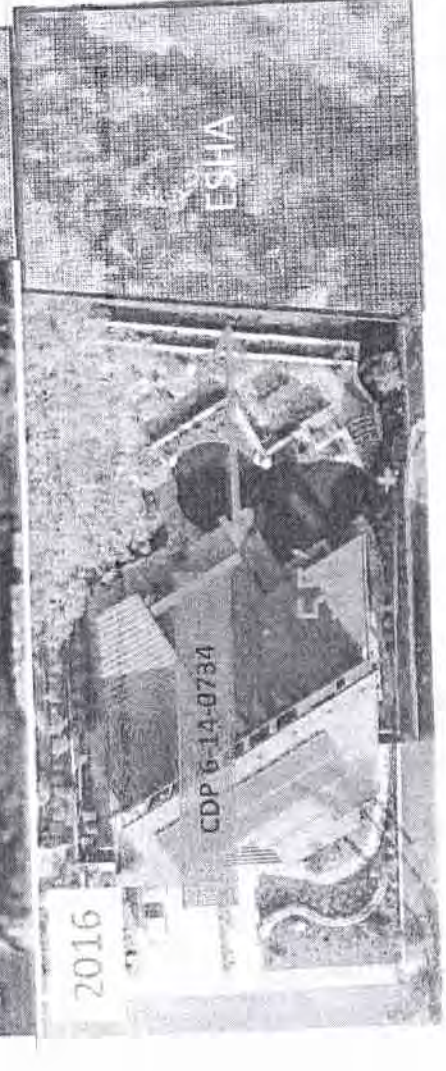
- Aerial Photo – 2014 (Google Earth)
- 51' from ESHA to Home
- “Development” adjacent to ESHA
- No native vegetation buffer exists



- Aerial Photo – 5/2015 (Google Earth)
- Home/landscaping 100% demolished
- CCC permit required
- Acquired CDFW consultation



- Aerial Photo – 11/2016 (Drone)



- 55' from ESHA to Home
- “Development” adjacent to ESHA (pavers, BBQ, fire pit)
- No native vegetation required

EX PARTE COMMUNICATION DISCLOSURE FORM

RECEIVED
OCT 13 2016

Filed by Commissioner: Greg Cox

- 1) Name or description of project: Jeff Szekeres development, Solana Beach
- 2) Date and time of receipt of communication: Friday, October 7, 2016, 4:10 p.m.
- 3) Location of communication: Telephone
- 4) Identity of person(s) initiating communication: Jeff Szekeres
- 5) Identity of person(s) on whose behalf communication was made: Jeff Szekeres
- 6) Identity of persons(s) receiving communication: Victor Avina
- 7) Identity of all person(s) present during the communication: Victor Avina, Jeff Szekeres

Complete, comprehensive description of communication content (attach complete set of any text or graphic material presented):

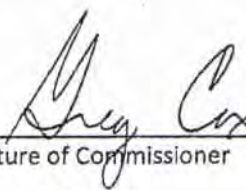
On Friday, October 7, 2016, at approximately 4:10 p.m., my staff member Victor Avina had a telephone conversation with Mr. Szekeres after having received a voicemail from him. Mr. Szekeres was interested in setting up a meeting with Supervisor Cox, as he feared that state legislation would soon preclude him from meeting with Coastal commissioners. My staff member clarified that there was, indeed, proposed legislation to the effect but that it had not garnered enough votes in the State Assembly.

My staff member then began to ask Mr. Szekeres a series of questions about the project. Mr. Szekeres informed Mr. Avina that he had been working with Coastal Commission staff since June 2016 to process a Coastal Development Permit application. He described that he was pursuing the development of a home for his family in Solana Beach. He said that his lot was one of eight and that his was the only one that remained unbuilt. The seven other lots were built on in the 1990s and had an average house size of 5,100 sq. ft. He specified that his lot was currently graded and was 13,500 square feet.

Mr. Szekeres relayed that Coastal Commission staff had asked him for alternative designs that showed a smaller home than the proposed 5,100 square feet and had bigger buffers around the ESHA identified on his lot. He informed Mr. Avina that that size was the average of the other seven homes on the road and that he had documentation that his HOA would not allow for a smaller house design to ensure community character consistency.

My staff indicated that he would reach out to Coastal Commission staff to get a better understanding of the situation.

10/13/16
Date


Signature of Commissioner

TIMING FOR FILING OF DISCLOSURE FORM: File this form with the Executive Director within seven (7) days of the ex parte communication, if the communication occurred seven or more days in advance of the Commission hearing on the Item that was the subject of the communication. If the communication occurred within seven (7) days of the hearing, provide the information orally on the record of the proceeding and