

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE AND DE NOVO

Appeal Number: A-5-PVE-17-0069

Applicant: Miriam Rainville, Rainville Design Studio

Agent: Stanley Lamport

Local Government: City of Palos Verdes Estates

Local Decision: Approval with Conditions

Appellants: Scott and Sue Kidman

Project Location: 2801 Via Segovia, Palos Verdes Estates, Los Angeles County

Project Description: Appeal of City of Palos Verdes Estates Local Coastal Development Permit No. CDP-107-17 granted for installation of a 6.5-foot high wrought iron fence and hedge landscaping on a bluff top lot developed with a single-family residence.

Staff Recommendation: Substantial Issue and Approval with Special Conditions

IMPORTANT NOTE: The Commission will not take testimony on this “substantial issue” recommendation unless at least three commissioners request it. The Commission may ask questions of the applicant, any aggrieved person, the Attorney General, or the executive director prior to determining whether or not to take testimony regarding whether the appeal raises a substantial issue. If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally and at the discretion of the Chair limited to 3 minutes total per side. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, the de novo hearing will occur following the substantial issue vote or at a future Commission meeting, during which time the Commission will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

The staff recommends that the Commission determine that a **substantial issue** exists with respect to the grounds on which the appeal has been filed because the project, as approved by the City of Palos Verdes Estates, is not consistent with the policies and standards set forth in the City's certified Local Coastal Program (LCP).

On November 28, 2017, the City approved Local Coastal Development Permit Application No. 107-17 with conditions for the installation of a 6.5-foot high wrought iron fence and landscape hedge at a single-family residence along the north-facing property line and a portion of the 20-foot setback line from the north-east facing property line. The appellants contend that the project is inconsistent with the certified LCP because the development would obstruct public views of the coastline and ocean from Paseo Del Mar and the adjacent public parklands; because the proposed fence and hedge is not located on the least visible part of the property; and because the City waived the requirement for submittal of a geologic report in conjunction with the Coastal Development Permit (CDP) application.

The subject site is adjacent to public parkland and other single family residences and is located between the first public road and the sea and within 300 feet of the beach on a coastal bluff top above Honeymoon Cove on the Palos Verdes Peninsula. Coastal Commission staff visited the subject site and determined that the City-approved fencing and landscaping would restrict scenic coastal views from the public road and the public park and would, therefore, be inconsistent with the visual resource policies of the certified LCP. In addition, the City waived the LCP requirement for a geologic report and failed to make findings through its CDP approval of a structure within 50 feet of a bluff edge. Therefore, staff recommends that the Commission determine that a **substantial issue** exists for the reasons summarized above, and described in greater detail in the body of this report.

Following discussions with staff, the applicant agreed that the project could be modified to minimize adverse impacts to public views of the coast and ocean by restricting the height of landscaping. In staff's opinion, limiting landscape height north and seaward of the residential structure to a maximum of two feet and six inches would preserve blue water views. The fence location and design would be consistent with the City-approved project.

Therefore, staff recommends that the Commission **approve** Coastal Development Permit No. A-5-PVE-17-0069 with special conditions requiring the applicant to: **1)** locate the 6.5-foot high wrought-iron fence along the north-facing property line and a portion of the northeast-facing twenty foot setback line with a design that minimizes view impacts and geologic instability; **2)** use all noninvasive, low water use landscaping which shall have the potential to grow no more than two feet and six inches tall north and seaward of the residential structure to minimize encroachment into blue water views; and **3)** submit a geologic report to the Executive Director to ensure that the proposed fence can be supported by the bluff and will not increase any existing geologic hazards.

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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

- Exhibit 1 – Project Site
- Exhibit 2 – Appeal
- Exhibit 3 – Applicant’s Response to Local Appeal
- Exhibit 4 – Resolution No. R17-41
- Exhibit 5 – Site Plans
- Exhibit 6 – View Impact Area
- Exhibit 7 – Pre-hearing Correspondence & Ex-parte Communication (March)

I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

Motion:

*I move that the Commission determine that Appeal No. A-5-PVE-17-0069 raises **No Substantial Issue** with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

Staff recommends a **NO** vote on the motion. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the Commissioners present.

Resolution:

*The Commission hereby finds that Appeal No. A-5-PVE-17-0069 presents **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the City of Palos Verdes Estates' certified Local Coastal Program and/or the public access policies of the Coastal Act.*

II. APPELLANTS' CONTENTIONS

On December 12, 2017, Sue and Scott Kidman, residents at 2808 Paseo Del Mar, filed an appeal of City of Palos Verdes Estates Local Coastal Development Permit No. CDP-107-17 granted for the installation of a 6.5-foot high wrought iron fence and hedge. The appellants contend that the development is inconsistent with the City's certified LCP because the development would obstruct public views of the coastline and ocean from Paseo Del Mar and adjacent public parklands and is not located on the least visible part of the property, and because the City did not require a geologic report be submitted in conjunction with the applicant's Coastal Development Permit application ([Exhibit 2](#)).

III. LOCAL GOVERNMENT ACTIONS

On July 11 & 14, 2017, Coastal Development Permit and Miscellaneous applications were submitted to the City by Rainville Design Studio for the installation of a new fence and landscaping at a single-family residence. The Palos Verdes Estates Planning Commission held a public hearing on October 17, 2017. The Planning Commission raised concerns with regard to view impacts and denied the Miscellaneous application finding that the fence and hedge, as originally proposed, would exceed allowed fence heights adjacent to the street and adversely impact neighbors' views. Deliberation ensued regarding the CDP application and the Planning Commission proposed the fence and hedge be relocated outside the twenty-foot setback area from the property line adjacent to the street as required by City standards ([Exhibit 5](#)). Resolution No. PCR-2017-1038 was adopted unanimously by the Planning Commission approving CDP 107-17 with conditions including relocation of the fence and hedge to the twenty-foot setback line for the portion adjacent to the street.

On November 1, 2017, Sue and Scott Kidman filed a timely appeal contesting the Planning Commission's findings regarding the allowed 6.5-foot fence and hedge height and permit

requirements, including, their finding that the fence and hedge would not be visually intrusive. The appellants also raised concerns relating to due process. The applicant responded to the appeal on November 21, 2017 agreeing with the City that the project would not be visually intrusive ([Exhibit 3](#)). On November 28, 2017, the Palos Verdes Estates City Council held a public hearing for the appeal where they considered written and oral testimony, determined the project to be exempt from CEQA requirements, and found that, as conditioned, the proposed development was not unreasonable, view impacts were not of substantial issue, and the conditions imposed by the City were appropriate. Therefore, the City Council upheld the Planning Commission's action and adopted Resolution No. R17-41 approving the CDP on November 28, 2017 ([Exhibit 4](#)).

IV. APPEAL PROCEDURES

After certification of an LCP, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Development approved by cities or counties may be appealed if they are located within certain geographic appealable areas, such as, those located between the sea and the first public road paralleling the sea or within 100 feet of any wetland, estuary, or stream, or within 300 feet of the mean high tide line of beach or top of the seaward face of a coastal bluff. Furthermore, developments approved by counties may be appealed if they are not a designated "principal permitted use" under the certified LCP. Finally, any local government action on a proposed development that would constitute a major public work or a major energy facility may be appealed, whether approved or denied by the city or county [Coastal Act section 30603(a)].

Section 30603 of the Coastal Act states:

(a) After certification of its Local Coastal Program, an action taken by a local government on a Coastal Development Permit application may be appealed to the Commission for only the following types of developments:

- (1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.*
- (2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.*

Section 30603(a)(1) of the Coastal Act establishes the project site as being in an appealable area because it is located in Palos Verdes Estates, a City with a certified LCP, between the sea and the first public road paralleling the sea, and within 300 feet of the inland extent of the beach. The project site would also qualify as an appealable area based on Section 30603(a)(2) because of its location on the bluff. The issues raised in the subject appeal, on which the Commission finds there is a substantial issue as described further below, apply to proposed development located in the appealable area.

Grounds for Appeal

The grounds for appeal of an approved local CDP in the appealable area are stated in section 30603(b)(1), which states:

(b)(1) The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in this division.

Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds for appeal. If Commission staff recommends a finding of substantial issue, and there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered moot, and the Commission will proceed to the de novo public hearing on the merits of the project. A de novo public hearing on the merits of the project uses the certified LCP as the standard of review. In addition, for projects located between the first public road and the sea, findings must be made that any approved project is consistent with the public access and recreation policies of the Coastal Act. Sections 13110-13120 of the California Code of Regulations further explain the appeal hearing process.

The grounds for the subject appeal include contentions that the approved development does not conform to the policies set forth in the certified LCP regarding the protection of visual resources and geologic study requirements for projects near the bluff edge.

Qualifications to Testify before the Commission

If the Commission decides to hear arguments and vote on the substantial issue question, those who are qualified to testify at the hearing, as provided by Section 13117 of Title 14 of the California Code of Regulations, will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicants, persons who opposed the application before the local government (or their representatives), or those who, for good cause, were unable to oppose the application before the local government, and the local government. Testimony from other persons must be submitted in writing.

Upon the close of the public hearing, the Commission will vote on the substantial issue matter. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the subject project. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will occur following the substantial issue vote or at a future Commission meeting, during which the Commission will take public testimony.

V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE

A. PROJECT LOCATION & DESCRIPTION

The site is located on top of a coastal bluff above Honeymoon Cove between the first public road and the sea, on the corner of Via Segovia and Paseo Del Mar in the City of Palos Verdes Estates ([Exhibit 1](#)). Paseo Del Mar, the first public road paralleling the sea, is a scenic coastal road

which provides coastal access parking and is popular with walkers and joggers. The approximately 22,405 sq. ft. subject lot, developed with a one-story single-family residence, abuts the bluff edge to the west and public parkland to the north. The public park contains a bluff top trail, coastal views, and a beach access trail. As the first structure to the south of the park, the subject site is visible from the public parkland and Paseo Del Mar. The subject site and parcels to the south are designated single family residential (R-1) per the City's certified LCP and developed with single-family homes featuring large front, side, and rear yards.

Palos Verdes Estates' Resolution No. PCR-2017-1038 approves Local Coastal Development Permit No. CDP 107-17, the subject of this appeal, which allows, per the applicant's request, the installation of a 6.5-foot high wrought iron fence and immediately adjacent 6.5-foot high hedge at the subject site in the side and rear yard areas abutting the parkland and paralleling Paseo Del Mar.

B. LOCAL COASTAL PROGRAM CERTIFICATION

Palos Verdes Estates is a coastal city on the Palos Verdes Peninsula in southern Los Angeles County. In 1991, the Coastal Commission certified the City's LCP. The City's LCP is comprised of a Land Use Plan (LUP) and an Implementation Plan (IP) and includes the City's General Plan, Zoning Ordinance (Chapters 17-19 of the City's Municipal Code), Shoreline Preserve Master Plan, and Tidelands Grant. The City has updated its zoning code since it was certified by the Commission in 1991 and amended in 1996, but has not submitted new code sections to the Commission for a LCP Amendment; thus, the zoning code as certified in 1991 and amended in 1996 remains the standard of review.

C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS

Section 30625(b)(2) of the Coastal Act states that the Commission shall hear an appeal of a local government action carried out pursuant to a certified LCP unless it finds that no substantial issue exists with respect to the grounds on which the appeal was filed. The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission's regulations simply indicates that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." In previous decisions on appeals, the Commission had been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the relevant provisions of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and,
5. Whether the appeal raises local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government’s coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

Staff is recommending that the Commission find that a **substantial issue exists** with respect to whether the local government action conforms to the policies of the certified LCP and the public access policies of the Coastal Act for the reasons set forth below.

D. SUBSTANTIAL ISSUE ANALYSIS

As provided below, the City of Palos Verdes Estates’ certified LCP contains policies that protect natural resources and require provision of public access within the coastal zone. These policies emphasize the preservation of coastal views as presented below. Additionally, Chapter 3 of the Coastal Act includes policies requiring that maximum public access be provided.

Relevant LCP Policies

Land Use Plan – Objectives and Goals, Community Appearance:

To emphasize the natural beauty of the hills, canyons, and seashore and diminish the impact of man-made things on the natural landscape

Land Use Plan – Land Use Element:

To quote from a summary of the Protective Restrictions: ‘The restrictions have been most carefully worked out for every part of Palos Verdes Estates, to accomplish the following results:

First: To preserve the fine views of ocean, mountains and park...’

The above quote more than anything else, sums up the objectives and development goals of the community to the present and into the future.

Land Use Plan – Conservation Element, Standards:

Development of private property along the bluffs requires geologic studies, positive drainage control and landscaping plans which will prevent deterioration of the adjacent parkland.

Land Use Plan – Housing Element, Environmental Considerations:

Probably the greatest benefit that the City of Palos Verdes Estates can provide in the Regional Plan is to make available the beautiful scenery and unrestricted views available to the entire region.

Land Use Plan – Scenic Highways Element, Highway Beautification:

Palos Verdes Estates has committed itself to maintaining the existing scenic corridors on all of its streets.

Land Use Plan – Scenic Highways Element, Shoreline Preserve:

This [Shoreline] preserve has thereby created a very pleasing area and the view of this area from the surrounding streets is a definite asset.

Land Use Plan – Implementation of [Scenic Highways] Element, General Comments:

The City of Palos Verdes Estates has, since its inception, maintained the highest degree of scenic corridors on all of its streets, parkways, and parklands. The Homes Association in turn has maintained the same degree of control on development of private property throughout the City. This policy of development and maintenance will undoubtedly be continued in the years to come.

The generally hilly terrain of the area does not lend itself to extensive widening of scenic corridors without adverse effects on private properties, parkways and parklands.

Land Use Plan – Safety Element, Geologic Hazards:

All of the bluff areas are subject to this hazard [ocean bluff erosion and rock falls] and therefore prior to development in this area detailed geologic studies are required.

Land Use Plan – Shoreline Preserve Master Plan, Recreation Recommendation 2:

Designate and Improve View Sites and Associated Parking – View sites permit viewing of scenic values of the tidelands. Such viewing of tidelands is a purpose in which there is local and statewide interest...

Implementation Plan – Section 18.04.160 (also Section 18.16.050 and part of 19.02.020, Permitted use), Coastal zone limitations on development in bluffs:

Structures, additions to structures, grading, stairways, pools, tennis courts, spa, and/or solid fences may be constructed on private property on, or within fifty feet of, the bluff edge only after preparation of a geologic report and findings by the city that the proposed structure, addition, grading, stairway, pool, tennis court, spa, and/or solid fence:

A. Poses no threat to the health, safety, and general welfare of persons in the area by reason of identified geologic conditions which cannot be mitigated; and

B. The proposed structure, addition, grading, stairway, pool, tennis court, spa, and/or solid fence will minimize alteration of natural landforms and shall not be visually intrusive from public viewpoints in the coastal zone. Permitted development shall not be considered visually intrusive if it incorporates the following to the maximum extent feasible:

- 1. The development is sited on the least visible portion of the site as seen from public view points;*
- 2. The development conforms to the scale of surrounding development;*
- 3. The development incorporates landscaping to soften and screen structures; and*
- 4. The development incorporates materials, colors, and/or designs which are more compatible with natural surroundings.*

Implementation Plan – Section 18.36.010, Purpose and intent:

The purpose of this chapter is to preserve the natural scenic character of the city by establishing minimum standards related to the siting and massing of either a new structure or a remodeled structure in an existing neighborhood to assure to the greatest extent practicable that the resulting structures are compatible with the neighborhood within which they are located. The intent of this chapter is to regulate the development or redevelopment of each building site with respect to adjacent land, public or private, and existing structures so as to maximize visually pleasant relationships, assure a bright, open neighborhood with a maximum of light and air, and avoid the unpleasant appearance of crowding one structure against another, or of one structure towering over another, insofar as is reasonable and practical. It is not the intent to unreasonably restrict or regulate the right of an individual property owner to determine the type of structure or addition he may wish to place or modify on his property. The applicant has the obligation to take into consideration the impacts of the affected property owners when modifying the structure or proposing a new structure and take reasonable steps to mitigate such impacts...

Implementation Plan – Section 19.01.145, Public view point:

“Public view point” means any publicly owned beach, park, bluff area or other location in the coastal zone to which the public has access and from which it can view development in the coastal zone.

Implementation Plan – Section 19.02.030, Applicant for a coastal development permit:

...Each application shall include the following information...

C. Engineering and geology reports which consider, describe, and analyze the following...

E. If the city so requires, in the city’s sole discretion, a waiver of and a hold harmless from the applicant, including both the developer and the property owner and their successors and assigns, for any and all claims against the city, the county, the state and other public agencies involved in the development, for future liability or damage resulting from the CDP and the development when completed. All such waivers and hold harmless clauses shall be recorded with the office of the county recorder for the county of Los Angeles;

F. Other information and requirements as the director of planning and the city engineer, in their sole discretion, may deem necessary to processing the application.

Implementation Plan – Section 19.02.040, Findings for approval:

A. A coastal development permit shall be approved by the issuing body only upon affirmative findings that:

1. *The plans for the proposed development and the coastal development permit comply with all of the requirements of this chapter and other relevant city ordinances and development standards; and*
2. *The proposed use is consistent with the certified local coastal program, the general plan, any applicable specific plan, and the applicable zoning ordinance or ordinances; and*
3. *The proposed use will not be visually intrusive from public view points; and*
4. *The required reports and plans demonstrate to the satisfaction of the city, in its sole discretion, that the proposed use can be supported by the bluff and the proponent has demonstrated that the proposed use will not increase any existing geologic hazards; and*
5. *The proposed development, when located between the sea and the first public road inland from the sea, is in conformance with the public access and recreation policies of the California Coastal Act as contained in Chapter 3, Cal. Pub. Res. Code §§ 30200 through 30224, the applicable sections of the California Code of Regulations, and the local coastal program.*

B. Approval may be recommended and/or granted upon conditions that are necessary and reasonable to ensure that the proposed use will be designed, located, developed and maintained in accordance with the findings required by this section, the local coastal program, the general plan, any applicable specific plan, and the applicable zoning ordinance or ordinances.

The City's Zoning Code provides specific height and setback requirements for fences in scenic areas. Section 18.32.010, R-1 and R-M for walls, fences and accessory structures has been modified by the City since the Commission certified the Implementation Plan in 1991 and minor IP amendment in 1996. Thus the specific heights and setback requirements are not the standard of review but can be used as guidance.

The section certified by the Commission in 1991 states:

No fence or wall in the R-1 or R-M zones shall exceed a height of six feet six inches measured from adjacent natural or existing elevation unless a special permit for such wall or fence is applied for and received.

As modified by the City, Section 18.32.010, R-1 and R-M walls, fences and accessory structures provides:

- A. *Maximum Height. No fence, wall or accessory structure in the R-1 or R-M zone shall exceed the following heights:*
 1. *Any fence, wall or accessory structure in the minimum required setback adjacent to a public street shall not exceed three feet, six inches in height. However, if a fence, wall, or accessory structure is located on a downhill slope from the street it shall not exceed three feet, six inches in height on the*

side facing the street and not exceed six feet, six inches in height on the downhill side of a slope. Setbacks from an alley adjacent to the rear or side of a lot are not included in this requirement.

2. *All other fences, walls or accessory structures shall not exceed six feet, six inches in height.*

Relevant Coastal Act Policies

Because the proposed development is between the first public road and the sea, the public access policies of the Coastal Act are also the standard of review.

Section 30210 of the Coastal Act states, in part:

...maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, and rights of private property owners, and natural resource areas from overuse.

Section 30211 of the Coastal Act states, in part:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization...

Application to Appeal

The appellants and supporting parties contend that the development is inconsistent with the City's certified LCP because the 6.5-foot tall fence and proposed landscaped hedge are not located on the least visible part of the property and would obstruct public views of the coastline and ocean from Paseo Del Mar and the adjacent parklands, and because the City did not require a geologic study be submitted with the applicant's Coastal Development Permit application.

The City-approved development would be located within 300 feet of the beach on private bluff top property and would extend to the bluff edge. The 6.5-foot high fence constitutes a "structure" under the certified LCP definition (Implementation Plan 17.08.400):

Anything constructed or erected and the use of which requires more or less permanent location on the ground or attachment to something having a permanent location on the ground, but not including walls and fences...less than six (6) feet in height when located in side or rear yards, nor other improvements of minor character.

In addition, City staff treated the proposed 6.5-foot high fence and *Pittosporum crassifolium* hedge as a solid fence. As such, the project is subject to coastal zone limitations for development located on coastal bluffs (see Implementation Plan – Section 18.04.160, above).

The certified LCP states that all bluff areas are subject to hazards and requires the preparation of a geologic report and findings prior to CDP approval for new structures, including fences six feet or taller and solid fences, within 50 feet of the bluff edge. The fencing and landscaping, as approved by the City, would extend to the bluff edge. The appellants contend that no such report was produced and filed with the application. In this case, the City Geologist conducted a site survey and determined a geologic report could be waived given the nature of the project. While the City has discretion to determine the capability of the bluff to support the development, this

discretion is dependent on the required reports and plans. The City’s waiver of the geologic reporting requirement is inconsistent with Palos Verdes Estate’s certified LCP.

The certified LCP also requires developments in the coastal zone to not be visually intrusive from public view points within the coastal zone. For developments within 50 feet of the bluff edge, this means: the project must be sited on the least visible portion of the site as seen from public view points, must conform to the scale of the surrounding development, must incorporate landscaping to soften and screen structures, and must use designs compatible with natural surroundings. The City found that the project, as conditioned in the Local CDP 107-17, would not be visually intrusive from public view points because there are expansive views from the parkland. During the Planning Commission’s October 17, 2017 hearing, the City found the proposed fencing exceeded the maximum height allowed within the setback area by three feet. As approved and conditioned by the City, a portion of the fence would be setback 20 feet from the northeast property line and would, therefore, not be subject to the 3.5-foot height standard ([Exhibit 4](#)). The City also determined the fence and hedge would be located on the least visible portion of the site with the 20-foot setback and the hedge, maintained at 6.5 feet, would soften the appearance of the wrought iron fence and single-family home. During the City Council meeting, City staff explained that the subject development would not be inconsistent with other similar fences or hedges in the City.

The certified definition of a “public view point” includes publicly owned parks and other locations with views of the coastal zone that are accessible by the public which would include Paseo Del Mar. Coastal Commission staff visited the subject area and determined that, as approved by the City, the 6.5-foot high fencing and 6.5-foot high hedge along the north property line would obstruct blue water views from portions of Paseo Del Mar and the public parkland and would, thus, be visually intrusive from public view points ([Exhibit 6](#)). The size of the private property and the contours of the site would enable alternative fence and landscape designs which could be both located on a less visible portion of the site and designed to be more compatible with the natural surroundings and views. These alternatives could include the elimination of the hedge and shortening of the fence to 3.5 feet which would minimize encroachments into blue water views.

In terms of public access, the proposed fencing and landscaping is on private property with no significant public access. Therefore, the proposed fence and hedge would not have an impact on the public’s ability to access the public trails or the beach and does not conflict with the public access policies of the Coastal Act. However, for the reasons described above, the subject project, as approved with conditions by the City of Palos Verdes Estates, is not consistent with the visual resources and geologic stability policies of the certified LCP. Therefore, the Commission finds that a substantial issue exists with respect to the City-approved project’s conformance with these LCP policies.

Applying the five factors listed in the prior section clarifies that the appeal raises a “substantial issue” with respect to the policies of the certified LCP, and therefore, meets the substantiality standard of Section 30265(b)(2).

The first factor is the degree of factual and legal support for the local government’s decision that the developments are consistent or inconsistent with the relevant provisions of the certified LCP. Approval of a CDP in Palos Verdes Estates hinges on the City making the following five findings:

1. *The plans for the proposed development and the coastal development permit comply with all of the requirements of this chapter and other relevant city ordinances and development standards; and*
2. *The proposed use is consistent with the certified local coastal program, the general plan, any applicable specific plan, and the applicable zoning ordinance or ordinances; and*
3. *The proposed use will not be visually intrusive from public view points; and*
4. *The required reports and plans demonstrate to the satisfaction of the city, in its sole discretion, that the proposed use can be supported by the bluff and the proponent has demonstrated that the proposed use will not increase any existing geologic hazards; and*
5. *The proposed development, when located between the sea and the first public road inland from the sea, is in conformance with the public access and recreation policies of the California Coastal Act as contained in Chapter 3, Cal. Pub. Res. Code §§ 30200 through 30224, the applicable sections of the California Code of Regulations, and the local coastal program.*

With regards to the first finding, the City’s approval of the CDP does not comply with the City’s certified requirements for developments located within 50 feet of a coastal bluff edge (section 18.04.160) which protect visual resources and property from geologic hazards and raises questions about the City’s compliance with relevant city ordinances for fences in scenic areas (section 18.32.010). The certified LCP requires proposed uses to be consistent with all applicable zoning ordinances. This includes the City’s uncertified R-1 wall and fence height zoning code which requires fences on a downhill slope facing the street to be no taller than 3.5 feet. The City, however, interprets this policy to apply only to fences adjacent to the street which, in the City’s opinion, would exclude the angled portion of the fence facing Paseo Del Mar that follows the downhill slope of the north property line from the 3.5-foot height requirement.

Maintaining and enhancing public views of the coast within the coastal zone is a major theme of the certified LCP which includes policies that explicitly state that development “shall not be visually intrusive from public view points” (section 18.04.160). Commission staff observed the project site and proposed location for the 6.5-foot fence and 6.5-foot hedge and verified that the structure would obstruct blue water coastal views and could be located or designed in such a way as to prevent such obstructions and be more compatible with the natural surroundings and views. Thus, the City’s second finding that the project is consistent with the certified LCP lacks sufficient factual or legal support. For the same reasons, the City’s third finding that the project will not be visually intrusive from public view points also lacks factual and legal support.

With regard to the fourth finding, the City used its discretion to waive the LCP requirement for a geologic report and findings. However, section 19.02.040 of the certified Zoning Ordinance (part of the IP) does not give the City discretion to waive the requirement for a geologic report; it only provides the City with the discretion to determine that the required reports and plans

demonstrate that a proposed use will not increase any existing hazard. In addition, IP section 18.04.160 explicitly provides that fences and other structures may be constructed on property within fifty feet of the bluff edge “only after preparation of a geologic report and findings by the city that the proposed structure” pose no geologic hazard and are not visually intrusive. The City did not make written findings regarding geologic hazards and did not base the decision regarding geologic hazards on a geologic report, as explicitly required by section 18.05.160 of the certified IP. The City, therefore, did not adequately justify its decision to dispense with the requirement of a geologic report.

As to the City’s last finding, the City’s conclusion that the proposed development is in conformance with the public access and recreation policies of the Coastal Act is adequately supported.

In conclusion, the City’s finding that the proposed project complies with the certified LCP is not supported legally or factually.

The second factor is the extent and scope of the development as approved or denied by the local government. The extent and scope of the approved development is clearly described as a 6.5-foot high fence with a 6.5-foot high landscaping hedge in a specific location on the lot. However, as previously described, the 6.5-foot high fencing and landscaping is not consistent with the City’s certified LCP policies, which require new structures to preserve public views. As approved, the extent and scope of the fence and hedge are too massive and would not preserve public views.

The third factor is the significance of the coastal resources affected by the decision. One of the main objectives of the certified LCP is to “preserve the fine views of the ocean” which are described as a “definite asset”. The certified LCP also states that “[t]he City of Palos Verdes Estates has, since its inception, maintained the highest degree of scenic corridors on all of its streets, parkways, and parklands...This policy of development and maintenance will undoubtedly be continued in the years to come.” The impacts of the fencing and landscaping, as approved by the City, would eliminate scenic views from multiple public view points. Therefore, the City-approved project, would significantly and adversely affect coastal resources.

The fourth factor is the precedential value of the local government’s decision for future interpretations of its LCP. The City’s action on this project would prejudice future interpretations of its certified LCP including interpretations relating to visually intrusive developments and geologic reporting requirements in the coastal zone. The City’s failure to identify and require an alternative fence and landscape design which would preserve public views could set an adverse precedent for future projects and the cumulative effect of other tall structures blocking public views would adversely affect coastal resources.

The final factor is whether the appeal raises local issues, or those of regional or statewide significance. The City’s certified LCP states: “Probably the greatest benefit that the City of Palos Verdes Estates can provide...is to make available the beautiful scenery and unrestricted views available to the entire region.” In addition, this sentiment is reflected in the certified Shoreline Preserve Master Plan which states that viewing tidelands is of local and statewide interest. While the City-approved development does not impact views of tidelands, it does impact views of the

ocean from public view points. Therefore, the appeal raises issues of definite regional, if not, statewide significance, as embodied in the City’s LCP.

In conclusion, the Commission finds that the appeal raises a substantial issue as to conformity with the City’s certified LCP and, therefore, meets the substantiality standard of Section 30625(b)(2).

VI. MOTION AND RESOLUTION – DE NOVO

Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. A-5-PVE-17-0069 pursuant to the staff recommendation.*

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

VII. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.

4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

VIII. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. Fence Location and Design.

- A. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the Executive Director's review and approval, two (2) full size sets of plans that shall show the approved location and visually-permeable design of the wrought-iron fence as described herein and include footings, reviewed and approved by a licensed geologist, or civil or geotechnical engineer, used to secure the fence as required by **Special Condition 3** below.

The wrought iron fence shall be located along the northeast twenty (20) foot setback line and north property line and shall extend from the northern corner of the trash yard wall to the bluff edge as depicted in [Exhibit 5, page 9](#). The fence shall be no taller than six feet and six inches and shall abide by the design plan shown in [Exhibit 5, Figure 1, page 4](#).

- B. The applicant shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

2. Landscaping. Any landscaping of the site shall be consistent with the following:

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the Executive Director's review and approval, two (2) full size sets of landscaping plans. All new landscape materials north and seaward of the existing residential structure shall be species with growth potential not to exceed two feet and six inches at maturity as measured from the existing ground elevation. For the purpose of this condition, the residential structure does not include the deck.
- B. No changes to the existing landscaping on the existing deck are proposed or approved as part of this Coastal Development Permit. No changes to the existing landscaping shall occur without a Coastal Development Permit.
- C. Vegetated landscaped areas shall consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be

utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>).

- D. Use of reclaimed water for irrigation is encouraged. If using potable water for irrigation, only drip or microspray irrigation systems may be used. Other water conservation measures shall be considered, such as weather based irrigation controllers.
- E. The applicant shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this Coastal Development Permit unless the Executive Director determines that no amendment is legally required.

- 3. **Geologic Report.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a geologic report, prepared by a licensed geologist, or civil or geotechnical engineer, for the review and written approval of the Executive Director, which demonstrates that the proposed bluff top fence, including footings, can be supported by the bluff and will not increase any existing geologic hazards.

IX. FINDINGS AND DECLARATIONS – DE NOVO

A. PROJECT LOCATION & DESCRIPTION

The findings included in Section V, Subsection A are hereby incorporated by reference.

The substantial issue recommendation was scheduled to go in front of the Commission at the March 2018 meeting; however, due to insufficient noticing, the substantial issue vote was postponed. Before the postponement, staff received nine written comments and one commissioner submitted an ex-parte communication disclosure ([Exhibit 7](#)).

If the Commission finds that a substantial issue exists with respect to the conformity of the action of the local government with the Chapter 3 policies of the Coastal Act, the local coastal development permit is voided and the Commission may consider alternative project designs or mitigation measures in its de novo review.

B. PUBLIC ACCESS & RECREATION

As a de novo matter, the standard of review for the proposed development is the City of Palos Verdes Estates certified LCP. Since the proposed project is located between the first public road and the sea, Coastal Act Section 30604(c) applies and any development approved by the Commission must also conform with the public access and recreation policies of Chapter 3 of the Coastal Act.

Policies of the certified Local Coastal Program and the public access policies of the Coastal Act are hereby incorporated from Section V, Subsection D above.

The proposed fencing is on private property and would not impact public access to the coast or beach or recreational opportunities along the coast.

C. VISUAL IMPACTS

The City of Palos Verdes Estates' certified LCP mentions several times the importance of protecting ocean and coastal views throughout the coastal zone. For example, the land use element of the certified LUP states that the development goals of the LCP are “[f]irst: to preserve the fine views of the ocean.” In addition, the scenic highways element of the LUP states that “palos Verdes Estates has committed itself to maintaining the existing scenic corridors on all of its streets.” In fact, a coastal development permit can only be approved upon finding that “the proposed use will not be visually intrusive from public view points” (IP section 19.02.040).

The original project, as approved by the City, included a 6.5-foot high hedge that would have restricted public views of the ocean. The de novo project, however, as conditioned, will impacts to ocean and coastal views from public view points by restricting the landscaping to a maximum height of two feet and six inches while not unreasonably restricting the rights of the private property owners. Alternatives for fence heights below the maximum allowable height of 6.5 feet were considered; however, given the applicant's security concerns and the topography of the site and neighboring parkland, the 6.5-foot high fence was determined to be necessary to protect the property. While the proposed 6.5-foot wrought-iron fence intrudes into the public viewshed, it would not be a solid barrier to public views.

Alternative locations for the fence were also considered; however, section 18.36.010 of the City's certified Implementation Plan states that the intent of the policies of the LCP is not to unreasonably restrict private property rights. Construction of a fence within the property line would restrict the homeowners' use of the full property. Therefore, **Special Condition 1** requires the wrought-iron fence to be located along the northeast 20-foot setback line and north property line and designed no taller than 6.5 feet with 2 square inch posts placed 6 feet apart and 0.5 square inch pickets placed 6 inches apart as depicted in [Exhibit 5, Figure 1, page 4](#). The applicant did not submit plans showing the footings that are proposed to attach the structure to the bluff top. Considering approximately half of the structure is within fifty feet of the bluff edge, **Special Condition 1** also requires revised plans, reviewed by a licensed geotechnical expert, to be submitted to the Executive Director for written approval to ensure that the proposed fence can be supported by the bluff and will not increase any existing geologic hazards as required per the City's certified LCP. As conditioned, the fence will be visually permeable, will not significantly impact coastal views, and will be consistent with the policies of the certified LCP.

Staff had a meeting with the applicant and representatives to discuss the de novo project during which the applicant mentioned wanting tall landscaping for privacy; however, no landscaping for the de novo project has been proposed in writing. To ensure that the proposed project remains compatible with the scenic resources of the area, **Special Condition 2** requires all new landscaping north and seaward of the residential structure to have a maximum growth potential

of two feet and six inches from the ground elevation. Given the topography of the site and the adjacent parkland, limiting the height of the landscaping would minimize the potential for encroachment into blue water views as seen from locations within the parkland and from Paseo Del Mar. For the purpose of this condition, the existing deck is not considered part of the residential structure because the existing deck and planter boxes obstruct blue water views. In addition, given that the existing deck and residence are within fifty feet of the bluff edge, pursuant to section 13250(b)(1) of the Commission's regulations (incorporated via section 19.01.080[A]), any future improvements to the landscaping would not be exempt from Coastal Development Permit requirements. Therefore, as conditioned, no new planting on the deck would be allowed without a CDP from the City. Any such planting must be protective of blue water views. **Special Condition 2** also requires any landscaping to be non-invasive and drought tolerant minimizing water use and potential adverse impacts on native vegetation in the area. In addition, drip or microspray irrigation systems are encouraged through **Special Condition 2** to minimize erosion.

The proposed fence (largely within 50 feet of the bluff edge) is not below six feet tall and is, therefore, considered a structure under the definition in the certified LCP and, pursuant to IP section 18.04.060, requires a geologic report. Thus, **Special Condition 3** is imposed which requires an appropriate geologic professional to evaluate the proposed fence and submit a geologic report to the Executive Director prior to issuance of the permit which demonstrates that the proposed fence can be supported by the bluff and will not increase any existing geologic hazards.

As conditioned, the proposed development would not be visually intrusive and would protect views of the ocean and coast consistent with the certified LCP.

D. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of the California Code of Regulations requires Commission approval of a coastal development permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Palos Verdes Estates Planning Department is the lead agency for the purposes of CEQA review. On November 28, 2017, the City determined that the project is categorically exempt from CEQA review under Section 15301 (Class 1, Existing Facilities).

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, in the form of special conditions, require the applicant to install a visually permeable fence with a design and landscaping that does not significantly impact coastal views from public view points at the north property line and a portion of the twenty-foot setback line from the northeast property line.

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and complies with the applicable requirements of the Coastal Act to conform to CEQA.

Appendix A – Substantive File Documents

Palos Verdes Estates Local Coastal Program