

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: SI & DE NOVO & REGULAR CALENDAR

Application Numbers: A-5-SNP-19-0136 & 5-20-0153

Applicant: Raman & Vani Poola

Agent: Steeno Design Studio, Inc.

Local Government: City of Los Angeles

Local Decision: Approval with Conditions

Appellants: Noel Gould, Penelope McKenzie, Wayne Widner, Monica Hall, Neil Boissonnault, Lorna Wallace, Mark Severino, George Wallace, Jennifer Grasso, Elaine Clark

Project Location: 1305 West Paseo del Mar, San Pedro, City of Los Angeles, Los Angeles County (APN: 7470031006)

Project Description (On Appeal): Appeal of City of Los Angeles Local Coastal Development Permit No. ZA-2013-3632-CDP-MEL-A1, approved with conditions for the construction of a new 2-story, 26 ft. high, 3,695 sq. ft. single-family residence with a 921 sq. ft. detached garage, 1,154 sq. ft. roof deck, and rear yard deck and spa on a vacant blufftop lot.

Project Description (De Novo & Dual): Construction of a new 2-story, 26 ft. high, 3,695 sq. ft. single-family residence with a 921 sq. ft. detached

garage, 1,154 sq. ft. roof deck, and rear yard deck and spa.

Staff Recommendation: Substantial Issue On Appeal, and Approval With Conditions on De Novo and Dual Permit Application.

SUMMARY OF STAFF RECOMMENDATION

On March 19, 2019, the City of Los Angeles Harbor Area Planning Commission approved a coastal development permit (ZA-2013-3632-CDP-MEL-A1) for the construction of a new 2-story, 26 ft. high, 3,695 sq. ft. single-family residence with a 921 sq. ft. detached garage, 1,154 sq. ft. roof deck, and rear yard deck and spa on a vacant blufftop lot. As approved, the project includes installation of three 4.5 ft. diameter, 70 ft. deep soldier piles connected by a 4 ft. wide, 36 ft. long steel grade beam at the seaward footprint of the residence, which are set back approximately 50 ft. from the bluff edge. The local approval was appealed to the Coastal Commission on July 9, 2019.

The appellants raise that the City-approved project is inconsistent with community character of the neighborhood since the project is out of conformance with the community character, mass and scale. Commission staff notes that, although the Coastal Act and the certified LUP provide for the protection of community character in San Pedro neighborhood, neither of which limit the size, mass, or scale of new development in the area. The City's approval letter also found that the project is consistent with the mass and scale of the surrounding neighborhood. The appellants also raised that the project is inconsistent with visual resource protection policies of the Coastal Act as public views are walled off by this project. However, based on the submitted streetscape views taken from W Paseo del Mar looking seaward by the appellants ([Exhibit 3](#), Pages 9-81) and the applicants ([Exhibit 6](#)), the public view to the shoreline through the subject site and the neighboring properties along W Paseo del Mar is already entirely walled off by the existing homes, fences, vegetation, and walls. Thus, although the proposal will not result in an improvement to public views of the coast, it also won't adversely impact any existing public views. Therefore, the Commission staff recommends that the Commission find that the appeal does not raise a substantial issue with respect to the project's consistency with the Coastal Act and LUP policies related to community character and visual resources.

The appellants argue that the proposal is inconsistent with the minimization of geologic hazards policies of the Coastal Act, as the development relies on the installation of soldier piles to achieve the required 1.5 factor of safety on the site. The appellants continue to argue that, because soldier piles usually become exposed over time, new development should not rely on them to assure structural stability or to determine a safe bluff setback. Instead, the structure must be set back far enough from the bluff edge to ensure safety over its projected lifespan. In addition, the appellants contend that the project includes no removal plan in the event the home is threatened by bluff instability, which may happen during its design life. Commission staff notes that the City's approval did not consider the potential for the proposed soldier piles to be exposed over time and function as a bluff protective device and did not consider requiring removal of the piles in

the event they are exposed. Also, the City's approval did not adequately analyze whether new development should rely on the soldier piles to assure structural stability or to determine a safe bluff setback. The appellants also argue that the proposal is inconsistent with Section 30240 of the Coastal Act protecting environmentally sensitive habitat areas, as the existing stairways on the bluff face at the project site are unpermitted development, and the stairways should be removed as part of this project. However, while there are no stairways existing on the project site, there is unpermitted concrete paver adjacent to the bluff edge. The Commission staff recommends that the Commission find that the City-approved project does not consider the presence of the unpermitted development near the bluff edge, and therefore the City does not provide sufficient evidence that the proposed development would ensure no adverse impact on environmentally sensitive habitat areas. Therefore, the Commission staff recommends that the Commission find that the appeal does raise a substantial issue with respect to the project's consistency with the Coastal Act and the LUP policies related to geologic hazards and environmentally sensitive habitat areas.

Therefore, on balance, staff recommends that the Commission determine that a **substantial issue exists** with respect to the grounds on which the appeal has been filed for the following reason: the project, as approved by the City of Los Angeles, is inconsistent with Chapter 3 policies of the Coastal Act, which provides for minimization of coastal hazards and protection of environmentally sensitive habitat area.

The primary Coastal Act issue raised by the project is its consistency with policies related to coastal hazards, environmentally sensitive habitat area, and community character.

The Coastal Act and the certified LUP require that new coastal bluff top development be sited and designed to minimize hazards and assure stability, without requiring protective devices, over the full economic or design life of the development, in this case 75 -100 years.¹ To meet these requirements, it is necessary to evaluate risks to the proposed development over the next 100 years from bluff instability, erosion and retreat, and to estimate a total bluff top setback by combining (1) the setback needed, under present conditions, to assure the stability of the proposed development against landslides and bluff failures, and/or a major short-term episodic erosion event; and (2) the expected long-term bluff retreat at the site over the project life, including consideration of future sea level rise.

Although there was some dispute between City geotechnical staff and the applicants' consultant regarding the appropriate methods for evaluating bluff stability at the site, the City ultimately based its review of the project on a more conservative approach to determining the material strength (i.e., the resistance to failure) of the bluff and of the

¹ Though some LCPs specify design lives for certain types of development, the San Pedro LUP does not. In this case, to determine an appropriate design life for purposes of evaluating hazards, staff has assessed the ages of existing residential structures in the project vicinity. Many residences in the neighborhood of the project are more than 75 years old, and some are over 100 years old, indicating that a 75-100 year design life is reasonable for the proposed development.

clay beds in particular. The Commission's staff geologist has reviewed the available geotechnical reports and City review letters and agrees that the City's required approach provides a precautionary basis for evaluating slope stability at a site with an existing landslide. (A more detailed summary of the issues related to the slope stability analysis is provided in [Exhibit 10](#)).

The applicants' analysis indicates that the intact portion of the bluff on which the proposed residence would be located has minimum static factors of safety² against a new slope failure in the range of 1.2 – 1.3, for modeled landslides occurring up to 25 feet inland of the bluff edge. The portion of the bluff underlying the proposed development (> 50 ft inland of the bluff edge) has static factors of safety in the range of 1.3 – 1.4. Although these factors of safety fall short of the Commission's typical standard of 1.5 (static) for ensuring the stability of new development, they are nonetheless indicative of a relatively low risk of landsliding at the project sites.

The City's approval required the project to include the installation of three 4.5' diameter, 70' deep soldier piles at the seaward footprint of the residence, which would be set back at least 50 ft. from the bluff edge. The soldier piles would be deeply embedded into the bluff bedrock and based on the applicant's analysis would provide sufficient lateral stabilization to achieve a 1.5 factor of safety beneath the proposed residence. None of the applicant's stability analyses evaluated the position of the 1.5 factor of safety line absent stabilization devices; however, it can be inferred from the available analyses that the 1.5 factor of safety line would be on the bluff top more than 150 ft. landward of the bluff edge, beyond the proposed garages and possibly beyond the inland property lines ([Exhibit 9](#)). There is little to no space on either property to site new development that would achieve a 1.5 factor of safety (back-calculated shear strengths) without the proposed soldier pile stabilization.

In addition to the potential for bluff instability, the bluff is also subject to erosion and retreat over time. The bluff retreat evaluations provided by the applicant included analysis of historical bluff edge retreat rates based on aerial photographs. Over the 92-year period (1927 – 2019) assessed, the bluff edge at the site retreated 10 – 30 ft., or at annualized rates of 0.11 – 0.33 ft/yr. The observed bluff retreat was attributed largely to subaerial erosion processes, and in particular to uncontrolled runoff from the bluff top. Due to the relatively gentle bluff slope (<30 degrees) and the presence of the old landslide debris, which separates the intact portion of the bluff and the bluff edge from the shoreline, marine processes were deemed to have had little influence on the observed erosion. For these reasons, the applicant's analysis also concluded that sea level rise, despite increasing erosion rates at the bluff toe, would not result in higher

² The factor of safety is an indicator of slope stability, where a value of 1.5 for static analysis and 1.1 for pseudostatic ("seismic") analysis are the typical industry, building code and Coastal Commission standards for geologic stability of new development. In theory, failure should occur when the factor of safety drops below 1.0. Therefore, the factor of safety at increasing values above 1.0 lends increasing confidence in the stability of the slope. To establish a safe setback for slope stability, the geotechnical analysis needs to establish the distance from the edge of a coastal bluff at which the factor of safety is equal to 1.5 (static) and 1.1 (seismic). Most of the applicant's geotechnical reports provided only static slope stability analysis, so only static factors of safety are given in this report.

retreat rates at the bluff edge. The applicant's analysis projected that the bluff edge could retreat up to 25 ft. in the next 75 years (33 ft. if extended out to 100 years).

The Commission's Staff Geologist, Dr. Joseph Street, has reviewed the applicant's bluff retreat evaluations and largely concurs with their conclusions. In order to better understand the rate of erosion occurring at the bluff toe, which was not addressed by the applicant, Dr. Street, estimated historical bluff toe retreat rates using aerial photographs spanning 1927 – 2020, and then used data from the USGS CoSMoS Cliff Retreat model to project how bluff toe erosion at the site could change with various amounts of sea level rise. Based on this analysis, Dr. Street found that the bluff toe could retreat 40 - 45 ft. over 100 years under a high sea level rise scenario (6.6 ft. by 2100) but concluded that this erosion would occur entirely within the ~150 horizontal ft. of landslide debris that mantles the bluff face, and was unlikely to translate into accelerated erosion at the bluff edge.

Based on both the applicant's and Dr. Street's analysis, bluff erosion over the next 75 – 100 years is very unlikely to result in enough bluff edge retreat to expose the proposed soldier pile stabilization system or pose a threat to the proposed residence, which is set back at least 50 ft. from the bluff edge ([Exhibit 9](#)). As noted above, the bluff edge is conservatively projected to retreat on the order of 25 – 33 ft. over the project life which would still leave a large "buffer" between the bluff edge and the soldier piles. Moreover, the applicant's slope stability analyses, which Dr. Street has confirmed are very precautionary, found that the factor of safety against slope failure at the position of the soldier piles was approximately 1.3, which, while not ideal, is still indicative of low risk of landsliding. In other words, the soldier piles would not be preventing a slope failure that would otherwise be likely to occur and would not act as a bluff retention or protective device.

As described above, the soldier pile foundations are not expected to be exposed over the 75 – 100 year life of the proposed development. However, in the unlikely event that the soldier piles do become exposed at some point in the future, resource impacts arising from that exposure must be addressed. Such impacts would include impacts to public views. Currently the bluff slope at the site is visible from the beach. At a minimum, any impacts to public views would need to be addressed. However, exposure of the soldier piles may raise other resource impact issues, not currently anticipated. In addition, construction and demolition work on eroding and potentially unstable bluffs can present significant safety and logistical challenges. It is important that any soldier pile removal work occur before the soldier piles are exposed on the bluff face, when there is still adequate bluff stability and enough space between the house and the bluff edge to allow the work to proceed. Therefore, in order to assure that the proposed development remains consistent with the Chapter 3 policies of the Coastal Act, and with the policies of the City's certified LUP, staff recommends **Special Condition 1** which requires the applicants to submit plans to the Executive Director, for review and concurrence, that provide for the removal of all or portions of the soldier piles and/or grade beams to prevent exposure, when any portion of the blufftop width is at or less than the width identified in the approved removal plan as needed to conduct the required removal. The

Executive Director shall determine whether the proposed work will require an amendment to this coastal development permit, a new coastal development permit, or whether no amendment or new permit is legally required. Only as conditioned can the proposed development be found consistent with the Coastal Act and the City's certified LUP. **Special Condition 9** is recommended for the applicants to waive any rights to future bluff protective devices, thereby preventing the soldier pile system from being converted into a bluff protective device, for example through the addition of lagging or other continuous facing that would prevent natural erosional processes from occurring.

The proposed single family residence and associated accessory development would be located within close proximity to the bluff slope. Based on the submitted photos by the applicants, the bluff slope within the property is currently vegetated with Southern Coastal Bluff Scrub ([Exhibit 4](#)). Southern Coastal Bluff Scrub is a type of Coastal Sage Scrub recognized as rare plant community. This plant community is often found along coastal bluff faces and coastal and canyon bluff tops and performs an important function by serving as habitat for special status species. This vegetation community is easily disturbed. Therefore, Coastal Bluff Scrub meets the definition of ESHA pursuant to the Coastal Act. Consequently, the home, accessory development, and landscaping must be sited and designed to prevent impacts to, and be compatible with, the continuance of those habitats. The residential development is naturally separated from the SCBS by the steep coastal bluff that supports the rare native vegetation. This provides a disturbance buffer to both the native vegetation and the wildlife foraging and residing in the habitat. Because of this natural separation the Commission ecologist finds that a minimum 25 ft. setback from the bluff edge is a sufficient buffer distance. As a result, staff recommends **Special Condition 2** for the applicants to submit a final landscaping plan that includes habitat buffers, consistent with the recommendations of the Commission Ecologist.

Regarding community character, although the policies cited above provide for the protection of community character in San Pedro neighborhood, none of the policies limit the size, mass, or scale of new development in the area. The City's approval letter also states that the project is consistent with mass and scale of the surrounding neighborhood as there are other homes of similar size to the subject home. Furthermore, the home as viewed from W Paseo del Mar includes 7 ft. sideyard setbacks and variable slanted roof design, which will contribute to the varied and unique characteristics of the surrounding residential neighborhood. Although the subject home and the locally approved home on the adjacent site share a similar design, staff recommends that the Commission find that the sole similarity of the homes does not raise a substantial issue with regard to the preservation of community character.

In addition, consistent with the LUP policies cited above, the proposed home will remain a single-family residence. Further, the applicants have provided a separate community character analysis of the homes on the seaward side of W Paseo del Mar, as well as homes beyond the immediate neighborhood, and found that the area is characterized by a mix of one- and two-story homes that have a variety of home sizes and architectural styles ([Exhibit 6](#)). Therefore, the Commission staff notes that the project, as proposed, is consistent with Section 30251 and 30253(e) of the Coastal Act, and the LUP policies requiring preservation of community character of San Pedro.

The San Pedro LUP also acknowledges that there is “a multitude of archeological (Indian) and paleontological (fossil) sites” in San Pedro that are protected under Section 30244 of the Coastal Act. Through ethnographic evidence provided to Commission staff, such resources could be present on the subject site located along the coastal bluff. The certified LUP includes objectives and policies that require proper scientific and historical surveys and studies be conducted on sites prior to their modification and all new development avoid disturbance of historical, archeological, and paleontological sites. Therefore, staff recommends the Commission impose **Special Condition 6** to require an archeological and paleontological survey to identify the potential for such resources to occur onsite and provide a monitoring plan if there is a potential. The condition does not authorize any development that would adversely impact archeological or tribal cultural resources, and, if resources are found during grading, the applicant must cease and immediately apply for an amendment to this CDP in order to implement design changes, treatment methods, and/or mitigation. As conditioned, the survey would be prepared and submitted to the Executive Director for review and approval, and, only as conditioned, the development would be consistent with Section 30244 of the Coastal Act.

Staff recommends the Commission **approve the de novo and dual permit** as revised with 11 special conditions. The conditions include: 1) Soldier Pile, Grade Beam, and Home Removal Plan; 2) Landscaping; 3) Nesting Bird Survey; 4) Bird Strike Prevention; 5) Lighting Plan; 6) Archeological Survey; 7) Construction BMPs; 8) Assumption of Risk; 9) No Future Shoreline Protective Device; 10) Spa Leak Prevention/Detection Plan and 11) Deed Restriction.

The motion and resolution to adopt staff’s recommendations are on Pages 10, 23 and 24.

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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

[Exhibit 1 – Project Location](#)

[Exhibit 2 – Project Plans](#)

[Exhibit 3 – Appeal](#)

[Exhibit 4 – Unpermitted Development near Bluff Edge](#)

[Exhibit 5 – Aerial Photo from California Coastal Records Project](#)

[Exhibit 6 – Applicants' Community Character Analysis](#)

[Exhibit 7 – Staff's Community Survey](#)

[Exhibit 8 – San Pedro LUP Appendix F](#)

[Exhibit 9 – Geologic Setback Line](#)

[Exhibit 10 – Geotechnical Review Memorandum by Commission Staff Geologist](#)

I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

Motion: I move that the Commission determine that Appeal No. A-5-SNP-19-0136 raises NO Substantial Issue with respect to the grounds on which the appeal has been filed under § 30602 of the Coastal Act.

Staff recommends a **NO** vote. Following the staff recommendation on this motion will result in the Commission proceeding to conduct a de novo review of the application, and adoption of the following resolution and findings. Conversely, passage of this motion would result in a finding of No Substantial Issue and the local action would become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Resolution: The Commission hereby finds that Appeal No. **A-5-SNP-19-0136** presents a **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under Section 30602 of the Coastal Act regarding consistency with Chapter 3 policies of the Coastal Act.

II. APPELLANTS' CONTENTIONS

On July 9, 2019, Noel Gould, et al, filed an appeal of the City-issued CDP for the construction of a new 2-story, 26 ft. high, 3,695 sq. ft. single-family residence with a 921 sq. ft. garage, 1,154 sq. ft. roof deck, and rear yard deck and spa on a vacant bluff top lot in the community of San Pedro within the City of Los Angeles. The appellants raise the following concerns with the City-approved project:

- 1) The proposal is inconsistent with the community character of the neighborhood; The project, along with its companion project at 1307 W Paseo del Mar, San Pedro, presents a look of a massive compound. Each individual project is also out of conformance with the community character, mass, and scale. The size and style of the houses should be greatly reduced and varied in order to make them not appear as a compound and be consistent with the Coastal Act and the certified San Pedro LUP.
- 2) The proposal is inconsistent with visual resource protection policies of the Coastal Act; Public views are walled off by this project. View corridors should be created on the east and west side yards, with fencing and gates to have at least 75% of their surface areas open to light.
- 3) The proposal is inconsistent with the geologic hazards minimization policies of the Coastal Act; The development relies on installation of soldier piles to achieve the required 1.5 factor of safety. Because soldier piles usually become exposed over time, new development cannot rely on them to assure structural stability or to determine a safe bluff setback. Instead, the structure must be set back far enough from the bluff edge to be safe over its projected lifespan. Also, the project includes no removal plan in the event the home is threatened by bluff instability during its design life. In addition, the 5 ft. storm drain easement on the eastern border of 1305 W Paseo del Mar has not been considered by the local government decision.

- 4) The proposal is inconsistent with Coastal Act policies protecting environmentally sensitive habitat areas; A peregrine falcon was spotted at 1311 W Paseo del Mar. Section 30240 of Coastal Act should apply because the sites are within 500 feet of a fully protected raptor nesting site. Mitigation measures must be incorporated into any construction plans. In addition, the existing stairways on the bluff face at the project site are likely unpermitted development and should be removed as part of this project.

III. LOCAL GOVERNMENT ACTION

The City held public hearings for the local CDP on February 2, 2017 and May 3, 2018. On February 2, 2017 local hearing, the following community members provided comments: Tom Steeno (support), Mary Fink (opposed), Noel Gould (opposed), Elaine Clark (opposed), Wayne Widner (opposed), Mark Severino (opposed), Claudia Kreis (opposed), Mary Andersen (opposed), Gina La Fougé (opposed), Jennifer McMullen (opposed), Desiree Atkins (opposed), Lorna Wallace (opposed), Mike Allison (opposed), Kenny Atkins (opposed), Kathleen Martin (opposed), and a Council District 15 Representative (neutral). On May 3, 2018 local hearing, the following community members provided comments: Tom Steeno (support), Susan Holwerda (opposed), Betty Ciuchta (opposed), Noel Gould (opposed), Mark Severino (opposed), Mike Allison (opposed), Neil Boissonwault (opposed), Penelope McKenzie (opposed), Al Steele (opposed), Stephen Peter (support), and Nathan Holmes (neutral). On June 18, 2018, the Coastal San Pedro Neighborhood Council approved a resolution opposing the project and urged the Zoning Administrator to deny the project.

On September 19, 2018, the City of Los Angeles Zoning Administrator approved the project under Case No. ZA-2013-3632-CDP-MEL. The local CDP approved the construction of a new two-story, 26 ft. tall, 4,477 sq. ft. single-family dwelling, with a detached 921 sq. ft. garage on the vacant lot.

The Zoning Administrator's approval was subsequently appealed to the Harbor Area Planning Commission by Noel Gould, et al. On March 19, 2019, the Harbor Area Planning Commission held a public hearing on appeal for Local CDP ZA-2013-3632-CDP-MEL-1A for the project, which proposed demolition of the existing single-family dwelling and the construction of a new two-story, 26 ft. high, 3,695 sq. ft. single-family dwelling with a 921 sq. ft. detached garage, roof deck, balconies, and mechanical spaces. On May 22, 2019, the Harbor Area Planning Commission issued a determination letter approving the project. The City's Notice of Final Local Action for the local CDP was received in the Commission's Long Beach Office on June 10, 2019, and the Coastal Commission's required twenty working-day appeal period was established. On July 9, 2019, one appeal was received from Noel Gould, et al ([Exhibit 3](#)). No other appeals were received prior to the end of the appeal period on July 9, 2019.

IV. APPEAL PROCEDURES

Section 30600(b) of the Coastal Act provides that prior to certification of its Local Coastal Program (LCP), a local jurisdiction may, with respect to development within its area of jurisdiction in the coastal zone and consistent with the provisions of Sections 30604, 30620 and 30620.5, establish procedures for the filing, processing, review, modification, approval or denial of a coastal development permit. Pursuant to this provision, the City of Los Angeles developed a permit program in 1978 to exercise its option to issue local CDPs. Sections 13301-13325 of Title 14 of the California Code of Regulations provide procedures for issuance and appeals of locally issued CDPs. Section 30602 of the Coastal Act allows any action by a local government on a CDP application evaluated under Section 30600(b) to be appealed to the Commission. The standard of review for such an appeal is the Chapter 3 policies of the Coastal Act. [Cal. Pub. Res. Code §§ 30200 and 30604.] After a final local action on a City CDP application, the Coastal Commission must be noticed within five days of the decision. After receipt of such a notice which contains all the required information, a twenty working-day appeal period begins during which any person, including the applicants, the Executive Director, or any two members of the Commission, may appeal the City decision to the Coastal Commission. [Cal. Pub. Res. Code § 30602.] As provided under section 13318 of Title 14 of the California Code of Regulations, the appellant must comply with the procedures for filing an appeal as required under section 13111 of Title 14 of the California Code of Regulations, including the specific grounds for appeal and a summary of the significant question raised by the appeal.

The action currently before the Commission is to find whether there is a “substantial issue” or “no substantial issue” raised by the appeal of the local approval of the City-approved project. Sections 30621 and 30625(b)(1) of the Coastal Act, and Section 13321 of the Commission’s regulations, require a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists as to the project’s conformity with Chapter 3 of the Coastal Act.

Commission staff recommends a finding of **substantial issue**. If the Commission decides that the appellants’ contentions raise no substantial issue as to conformity with Chapter 3 of the Coastal Act, the action of the local government becomes final. Alternatively, 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 CDP is voided and the Commission will hear the de novo matter and dual permit application immediately following the substantial issue finding, unless the Commission schedules the de novo portion of the hearing for a future date. [Cal. Pub. Res. Code §§ 30621 and 30625.] Section 13321 of the Coastal Commission regulations specifies that de novo actions will be heard according to the procedures outlined in Sections 13114 and 13057-13096 of the Commission’s regulations.

If there is no motion from the Commission to find no substantial issue, it will be presumed that the appeal raises a substantial issue, and the Commission will hold the de novo phase of the public hearing on the merits of the application, using the Chapter 3 policies of the Coastal Act. The Venice LUP, certified on June 14, 2001, is used as

guidance. Sections 13110-13120 of Title 14 of the California Code of Regulations further explain the appeal hearing process.

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 Regulation, will typically 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, appellants, persons who opposed the application before the local government, and the local government. Testimony from other persons must be submitted in writing. The Commission will then vote on the substantial issue matter. It takes a majority of Commissioners present to find that the grounds for the appeal raise no substantial issue.

V.SINGLE/DUAL PERMIT JURISDICTION AREA

Within the areas specified in Section 30601, which is known in the City of Los Angeles permit program as the Dual Permit Jurisdiction area, the Coastal Act requires that any development which receives a local CDP also obtain a second (or “dual”) CDP from the Coastal Commission. For projects located inland of the areas identified in Section 30601 (i.e, projects in the Single Permit Jurisdiction), the City of Los Angeles local coastal development permit is the only CDP required. The subject project site on appeal herein is located within the Dual Permit Jurisdiction Area. Therefore, the applicant is required to obtain a second, or “dual”, CDP from the Commission for the City-approved development.

VI.FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE

A. Project Description and Location

The project site is an approximately 19,293 sq. ft. blufftop lot in San Pedro located between the first public road and the sea in a dual permit jurisdiction area of the City of Los Angeles ([Exhibit 1](#)). The lot has a land use designation of Low Residential and is zoned R1-1XL by the City of Los Angeles. The top of the lot is relatively level extending from W Paseo del Mar seaward to the bluff edge approximately 130 ft. seaward of the streetside (north) property line. From the bluff edge, the lot descends approximately 260 ft. down a 115-ft. high bluff at various angles ranging, on average, from approximately 20 degrees to 40 degrees to the Pacific Ocean and includes a narrow public rocky beach at the toe of the bluff. The property is located in a largely single-family residential neighborhood approximately 2,000 ft. upcoast of Wilders Addition Park.

The locally approved project includes construction of a new 2-story, 26 ft. high, 3,695 sq. ft. single-family residence with a 921 sq. ft. detached garage, 1,154 sq. ft. roof deck, and rear yard deck and spa on a blufftop lot ([Exhibit 2](#)). The project also includes 270 cubic yards of grading, and installation of three 4.5 ft. diameter, 70 ft. deep soldier piles and 4 ft. wide, 36 ft. long grade beam at the seaward footprint of the residence, which will be

set back at approximately 50 ft. from the bluff edge. The rear yard deck will be at grade without any foundation and will be set back at least 27 ft. from the bluff edge.

B. Factors to be Considered in Substantial Issue Analysis

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 on which the appeal has been filed pursuant to Section 30603(a) of the Coastal Act. The term “substantial issue” is not defined in the Coastal Act or its implementing regulations. Section 13115(c) of the Commission regulations provides that the Commission may consider the following five factors when determining if a local action raises a significant issue:

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.

The Commission may, but need not, assign a particular weight to a factor.

Staff recommends that the Commission find that **a substantial issue exists** with respect to whether the local government action conforms to the provisions of Chapter 3 of the Coastal Act for the reasons set forth below.

C. Substantial Issue Analysis

As stated in Section IV of this report, the grounds for an appeal of a CDP issued by the local government prior to certification of its LCP are the project’s conformity with Chapter 3 policies of the Coastal Act. Any local government CDP issued or denied prior to certification of its LCP may be appealed to the Commission. The Commission shall hear an appeal unless it determines that no substantial issue exists as to conformity with Chapter 3 policies of the Coastal Act.

Appellants’ Argument No. 1: Impact on Community Character

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the

character of the surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Coastal Act Section 30253(e) states:

New development shall: (e) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

Certified San Pedro LUP Page 4, Objective 4 states:

To encourage the preservation and enhancement of the varied and distinctive residential neighborhoods and character of San Pedro.

Certified San Pedro LUP Page 4, under Land Use/Housing states, in relevant part:

The Plan seeks to maintain neighborhood character by preserving stable single-family areas since neighborhoods have been, and continue to be, the building blocks of San Pedro. They add stability to the community and provide a foundation for the often described "uniqueness" rather than turn San Pedro into another "bedroom suburb" where people live and enjoy the coastal amenities without having a direct involvement or interest in the Community.

Certified San Pedro LUP Page 5, Objectives 1 and 2 state:

1. To preserve and protect stable single-family residential areas from encroachment by other types of uses, including higher density residential development.
2. To identify and maintain the varied and distinct neighborhood units which make up the Community of San Pedro.

The appellants argue that the project, along with its companion project at 1307 W Paseo del Mar, San Pedro³, presents a look of a massive compound, and that each individual project is also out of conformance with the community character, mass, and scale of the surrounding neighborhood. The appellants claim that the size and style of the houses should be greatly reduced and varied in order to make them not appear as a compound

³ Application A-5-SNP-19-0154/5-20-0152 for demolition of an existing single family home and construction of a new single family home on the neighboring parcel at 1307 W Paseo del Mar is scheduled for the same hearing date as the subject application.

and be consistent with sections of the Coastal Act and the intents and objectives of the certified LUP cited above.

To substantiate this claim, the appellants have provided a table detailing the mass and scale of all the existing blufftop homes located seaward of W Paseo del Mar between house numbers 1151 and 1481 ([Exhibit 3](#) Page 8). The table shows the square footage of the existing houses, square footage of the garages, and the visible square footage from street-view taken at W Paseo del Mar. The table identified that the average square footage of all the homes is 1,600 sq. ft., the average of the garages is 315 sq. ft., and the average square footage of the visible structures is 1,279 sq. ft. The table also showed that homes along W Paseo del Mar range in size from 378 sq. ft. to 3,410 sq. ft. However, the Commission staff's own analysis based on data available from LandVision found that the average square footage of all the homes analyzed by the appellants was 2,172.50 sq. ft. ([Exhibit 7](#)). In addition, the applicants have provided a separate community character analysis of the homes on the seaward side of W Paseo del Mar, as well as homes beyond the immediate neighborhood, and found that the area is characterized by a mix of one- and two-story homes that have a variety of home sizes and architectural styles ([Exhibit 6](#)).

The appellants argue that a 5% increase in the baseline is the maximum that would not cause a material increase in the baseline square footage of homes along W Paseo del Mar, and consequently, that capping the project at 2,300 sq. ft. with a 400 sq. ft. garage is the only way to assure the scale and character of the blufftop neighborhood is protected from adverse cumulative impacts, consistent with the Coastal Act and the certified LUP. The appellants further argue that, as proposed, the effect of the home on the average square footage of the neighborhood is too large and would dramatically and materially change the average square footage of the bluff top area, thus causing a significant adverse cumulative impact in a very short period of time, and further prejudicing the City's ability to prepare a Local Coastal Program that is in conformity with the Chapter 3 policies of the Coastal Act.

The Commission finds that, although the policies cited above provide for the protection of community character in San Pedro neighborhood, none of them limits the size, mass, or scale of new development in the area. The Harbor Area Planning Commission's letter of determination also found the project is consistent with the mass and scale of the surrounding neighborhood, and states in part:

The project is sensitive to the neighborhood, and it is relative in size and height to the surrounding properties. According to the Los Angeles County Assessor data, the property to the north is a single-family dwelling measuring 4,405 square feet; the property next door to the west is also a single-family dwelling measuring 3,448 square feet, and the property to the east at 1305 West Paseo Del Mar is vacant and there is a proposal for a 3,695 square-foot development under ZA-2013-3632-CDP-MEL-1A. The surrounding properties range from one – two stories, and reflect a range of architecture characteristics. Thus, the size, style and height of the proposed 3,548 square-foot residential project falls within the range of the surrounding residential properties.

As described in the City's approval, there are other homes of similar size to the subject home in the surrounding neighborhood. Furthermore, the home as viewed from W Paseo del Mar includes 7 ft. sideyard setbacks and variable slanted roof design, which will contribute to the varied and unique characteristics of the surrounding residential neighborhood. Although the subject home and the locally approved home on the adjacent site share a similar design, the Commission finds that the sole similarity of the homes does not raise a substantial issue with regard to the preservation of community character. In addition, consistent with the LUP policies cited above, the home will remain a single-family residence. Therefore, the Commission finds that the appeal does not raise a substantial issue with respect to the project's consistency with the referenced Coastal Act and LUP policies related to community character.

Appellants' Argument No. 2: Impact on Visual Resource

Certified San Pedro LUP Page 21, Policy 2 states:

The scenic and visual qualities of San Pedro be protected as a resource of Community as well as regional importance, with permitted development sited and designed to: protect views to and along the ocean, harbor, and scenic coastal areas; minimize the alteration of natural landforms; be visually compatible with the character of the surrounding area; and prevent the blockage of existing views from designated public scenic view areas and Scenic Highways.

The appellants argue that the proposal is inconsistent with Section 30251 of the Coastal Act, as existing public views are walled off by this project. The appellants further argue that view corridors should be created on the east and west side yards, with fencing and gates to have at least 75% of their surface areas open to light.

The approved home includes a 6 ft. high solid wall along the entire street fronting portion of the property that will prevent any views of the ocean from the public on W Paseo del Mar. However, the Harbor Area Planning Commission's letter of determination found that the project's location results in no impact on scenic or visual qualities of coastal areas or prominent natural landforms; that according to the San Pedro Specific Plan, the site is not located within a dedicated visual corridor or a scenic view site; and that the residential structure will be at the inland portion of the site and will not be observed from the toe of bluff. In addition, the Commission finds that, based on the submitted streetscape views taken from W Paseo del Mar looking seaward by the appellants ([Exhibit 3](#), Pages 9-81) and the applicants ([Exhibit 6](#)), the public view to the shoreline through the subject site and the neighboring properties along W Paseo del Mar is already entirely walled off by the existing homes, fences, vegetation, and walls. Thus, although the proposal will not result in an improvement to public views of the coast, it also won't adversely impact any existing public views. The subject site is part of a 0.37 mile long stretch of homes where views to the coast are for the most part entirely blocked by private development. However, the project site is located in a unique neighborhood bordered by public parks at either end of it with public views and recreational opportunities to enjoy the ocean view. White Point Beach and Grassland

Loop Trail are located approximately 1,600 ft. upcoast of the site and provides uninterrupted public coastal views and Wilders Addition Park is located approximately 2,000 ft. downcoast of the site and provides uninterrupted public coastal views. Thus, the provision of side yard view corridors at the subject site is not required to ensure the development is consistent with the existing community character and would also not significantly affect the public coastal view opportunities in the area.

Therefore, the Commission finds that the appeal does not raise a substantial issue with respect to the project's consistency with Section 30251 of the Coastal Act related to scenic and visual qualities of coastal areas or with the visual resource protection policies of the LUP.

Appellants' Argument No. 3: Geologic Hazard

Coastal Act Section 30253 states, in relevant parts:

New development shall:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Certified San Pedro LUP Page 16, Policy 2 states:

[It is the City's policy that] The grading of natural terrain to permit development in hillside areas be minimized commensurate with densities designated by this Plan, the geological stability of the area, and compatibility with adjoining land uses, the preservation of natural landforms and to ensure that the potential negative effects of runoff and erosion on environmentally sensitive marine resources are minimized.

Certified San Pedro LUP Page 16, Policy 4 states:

[It is the City's policy that] Development be restricted on areas of known geologic hazard, unstable soil conditions or landslides.

Certified San Pedro LUP Page 18, Policy 6 states:

The following requirements shall apply to all new development proposed in the hazardous areas designated on Appendix D - Geologically Hazardous Areas map: Prior to the approval of any coastal permit, it shall be determined that the proposed development will neither create nor contribute significantly to erosion, geologic instability or destructions of the site or surrounding properties and that risk to life and property has been considered and adequately mitigated. The applicant shall submit a geologic and/or soils report prepared by a qualified registered geologist and/or

soils engineer which describes the conditions on the site, analyzes the proposed development's impacts, and recommends how risks shall be minimized. No coastal permit shall be approved unless the Department of Building and Safety has approved the geologic report and verified that the recommendations in the report have been incorporated into the development. No coastal development permit shall issue for any development until the owner executes and records a document with the Los Angeles County Recorder approved as the form and content by the Los Angeles City Department of Building and Safety, setting forth in language understandable to the general public, any geologic hazards identified in a report as referred to above and particularly identifying said report. The document shall be recorded as part of the deed of the subject property and shall indicate that the owner has had the nature of the geologic hazard fully explained, clearly understands the hazard, and accepts full responsibility for damage to his or to adjacent property which may be caused by proceeding under the terms thereof.

Certified San Pedro LUP Page 19, Policy 7 states:

New development, including additions to and remodels of existing structures, along coastal bluffs shall not be approved unless it minimizes risk to life and property, assures structural stability and integrity for the economic lifetime of the development, and neither creates nor contributes significantly to erosion, geologic instability, or destruction of the site or surrounding areas or any way requires the construction of protective devices that would substantially alter natural landforms.

Certified San Pedro LUP Page 19, Policy 8 states:

New development at the base of coastal bluffs or in an area subject to wave action shall be located and designed so that it is not subject to wave inundation or hazards and so that its structural integrity or usefulness is not dependent on the installation of shoreline protective structures

Certified San Pedro LUP Page 19, Policy 9 states:

Approval of shoreline protection structures shall be limited to those which are necessary to protect existing residences, commercial structures, public works, public beaches, or coastal-dependent uses. Shoreline protection structures shall be permitted only if non-structural measures (e.g. building relocation or change in design) have been considered and found to be infeasible from an engineering standpoint or not economically viable. Shoreline protection structures shall be designed to avoid adverse impacts on public access, shoreline processes and sand supply, impacts on adjacent properties, habitats, and sand supply. A geotechnical report prepared by a licensed engineer with experience in coastal engineering shall accompany an application for a shoreline protection structure.

Certified San Pedro LUP Page 19, Policy 10 states:

New development shall be reviewed for safety and structural integrity in terms of potential seismic activity and be designed to compensate for seismic hazards, and to meet requirements based on risk, type of occupancy, and location.

The appellants argue that the proposal is inconsistent with the minimization of geologic hazards policies of the Coastal Act, as the development relies on the installation of soldier piles to achieve the required 1.5 factor of safety on the site. The appellants claim that, because soldier piles usually become exposed over time, new development should not rely on them to assure structural stability or to determine a safe bluff setback. Instead, the structure must be set back far enough from the bluff edge to ensure safety over its projected lifespan. In addition, the appellants contend that the project includes no removal plan in the event the home is threatened by bluff instability, which may happen during its design life, and that the bluff erosion impact of the 5 ft. storm drain easement on the eastern border of 1305 W Paseo del Mar has not been considered by the local government decision.

Coastal Act Section 30253 prohibits development that would "...in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs." The Coastal Act generally limits construction of bluff protective devices because they tend to have a variety of negative impacts on coastal resources including adverse effects on shoreline sand supply, public access, scenic views, and natural landforms. The City's certified Land Use Plan (LUP) also includes similar policies that require landform alteration be minimized, and development be restricted on areas of known geologic hazard.

The Commission finds that the City's approval did not consider the potential for the proposed soldier piles to be exposed over time and function as bluff protective devices and did not consider requiring removal of the piles in the event they are exposed. Also, the City's approval did not adequately analyze whether new development should rely on the soldier piles to assure structural stability or to determine a safe bluff setback, nor did it consider the potential bluff erosion impact of the 5 ft. storm drain easement on the eastern border of the project site. Therefore, the Commission finds that the appeal does raise a substantial issue with respect to the project's consistency with Section 30253 of the Coastal Act and the LUP policies related to geologic hazards.

Appellants' Argument No. 4: Impact on Environmentally Sensitive Habitat Area

Coastal Act Section 30240 states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.
- (b) 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.

Certified San Pedro LUP Page 16, Policy 2 states:

The grading of natural terrain to permit development in hillside areas be minimized commensurate with densities designated by this Plan, the geological stability of the area, and compatibility with adjoining land uses, the preservation of natural landforms and to ensure that the potential negative effects of runoff and erosion on environmentally sensitive marine resources are minimized.

The appellants argue that the proposal is inconsistent with Section 30240 of the Coastal Act protecting environmentally sensitive habitat areas. The appellants state that two peregrine falcons, a fully protected species in California Fish and Game Code Section 3511, were spotted to the west of the project site at 1311 W Paseo del Mar. The appellants claim that, because the project is within 500 ft. of a nesting site, Section 30240 of the Coastal Act must be considered, and mitigation measures must be incorporated into the project. However, the appellants have not provided evidence that there is a peregrine falcon nesting site within 500 ft. of the property, only that falcons were seen at 1311 W Paseo del Mar. In addition, the simple presence of peregrine falcons and their nesting site in the project vicinity would not render the project vicinity to be ESHA, as peregrine falcons are accustomed to nest and forage in city environment.

The appellants further argue that the existing stairways on the bluff face at the project site are unpermitted development and should be removed as part of this project. However, while there are no stairways existing on the project site, there is unpermitted concrete paver adjacent to the bluff edge. The Harbor Area Planning Commission letter of determination states, in relevant part:

[t]he proposed two-story single family is approximately 210 feet away from the coastline. It [seaward most portion of the deck] is set back 25 feet from the edge of the coastal bluff-top. The bluff is approximately 115 feet high and at the base is a narrow rocky beach. The proposed structures will not be built on or extend over environmentally sensitive habitats. Proposed structures are to be built on the flat portion of the land, adjacent to the street. This will assure that there is no identifiable effect on environmentally sensitive habitat areas.

The Commission finds the City-approved project does not consider the presence of the unpermitted concrete paver adjacent to the bluff edge. Therefore, the City does not provide sufficient evidence that the proposed development would ensure no adverse impact on environmentally sensitive habitat areas. The Commission finds that the appeal does raise a substantial issue with respect to the project's consistency with Section 30240 of the Coastal Act and the LUP policies related to environmentally sensitive habitat areas.

Substantial Issue Factors:

As stated previously, the Commission typically applies five factors in making a determination whether an appeal raises a substantial issue pursuant to Section 30625(b)(1).

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.

While the City found that the project would be consistent with Section 30253 and 30240 of the Coastal Act, the City’s analysis did not have adequate support for such a determination. The City’s analysis did not consider the potential for the proposed soldier piles to be exposed over time and function as bluff protective device, the potential bluff erosion impact of the 5 ft. storm drain easement on the eastern border of the subject site, and whether the new development’s reliance on the soldier piles to assure its structural stability is consistent with the Coastal Act and LUP hazards policies. The City also did not consider the presence of unpermitted concrete paver on the bluff face which may have a potential to impact environmentally sensitive habitat areas. Therefore, this factor supports a finding of substantial issue.

2. The extent and scope of the development as approved or denied by the local government.

The City-approved development includes the demolition of an existing 1,302 sq. ft. single-family residence and construction of a new 2-story, 26 ft. high, 3,548 sq. ft. single-family residence with a 665 sq. ft. detached garage, 1,124 sq. ft. roof deck, and rear yard deck in an already developed area. The scope is consistent with that of the surrounding development, which is comprised primarily of one-story and two-story single-family residences. Therefore, the Commission finds that the extent and scope of the City-approved development is consistent with the Chapter 3 policies of the Coastal Act. This factor does not support a finding of substantial issue.

3. The significance of the coastal resources affected by the decision.

The City-approved project would authorize the installation of three soldier piles at the seaward edge of the proposed structure. The City’s determination did not consider the potential for the proposed soldier piles to be exposed over time due to soil erosion or activation of the existing landslide, nor did it address the contingency of when the piles do get exposed. If the soldier piles are exposed in the future, it may be necessary to cover the exposed piles with shotcrete or otherwise convert the system into a more traditional wall to preserve its functions, which would have adverse impacts on visual resources and shoreline sand supply.

In addition, the City did not adequately analyze the project’s potential impact on environmentally sensitive habitat area, as it did not consider the unpermitted concrete paver near the bluff edge which may be located within sensitive habitat. Therefore, the Commission finds that the City-approved development has a potential to impact significant coastal resources. This factor supports a finding of substantial issue.

4. The precedential value of the local government’s decision for future interpretations of its LCP.

The City does not currently have a certified LCP, but it does have a certified LUP. The Commission relies on the certified LUP for San Pedro as guidance when reviewing appeals and approving projects because the LUP was certified by the Commission as consistent with Chapter 3 of the Coastal Act. The City-approved development is inconsistent with the policies of the Coastal Act and the LUP, which provides for

minimization of geologic hazards and protection of environmentally sensitive habitat area. Therefore, the Commission finds that the City-approved development will have a significant adverse impact on future interpretations of its LUP, and this factor supports a finding of substantial issue.

5. Whether the appeal raises local issues, or those of regional or statewide significance.

Although this appeal raises local issues with regard to the specific hazards associated with this bluff top development and the specific bluff habitat areas affected by the development, allowing development like this without a thorough analysis of the potential hazards and habitat resource impacts could set a negative precedent city-wide or statewide. Applicants across the state regularly apply for bluff top development, and it is important that the Commission and local jurisdictions consistently carry out the Coastal Act’s requirement to protect life and property, as well as preserve sensitive bluff habitats and natural landforms. Allowing the City to permit bluff top development that has not been comprehensively considered would set a bad statewide and regional precedent. Therefore, this factor supports a finding of substantial issue.

Conclusion

Applying the five factors listed above clarifies that, on balance, the appeal raises a “substantial issue” with respect to the project’s consistency with Chapter 3 of the Coastal Act and the certified San Pedro LUP with respect to minimization of development’s geologic hazards and protection of environmentally sensitive habitat areas. The decision is likely to set an adverse precedent for future interpretations of the San Pedro LUP and prejudice the City’s ability to prepare an LCP in the future. Therefore, staff recommends that the Commission find that the appeal raises a substantial issue as to the project’s conformity with the Chapter 3 policies of the Coastal Act.

VII.MOTION AND RESOLUTION – DE NOVO

Motion:

I move that the Commission **approve** Coastal Development Permit Application No. A-5-SNP-19-0136 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 Coastal Development Permit Application No. A-5-SNP-19-0136 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 will substantially lessen any significant adverse impacts of the development on the environment.

VIII. MOTION AND RESOLUTION – DUAL PERMIT

Motion:

I move that the Commission **approve** Coastal Development Permit Application No. 5-20-0153 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 Coastal Development Permit Application No. 5-20-0153 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.

IX. 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.

X. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. Soldier Pile, Grade Beam, and Home Removal Plan.

- A. BY ACCEPTANCE OF THIS PERMIT, the permittees further agree, on behalf of themselves and all successors and assigns, that they are required to remove all or a portion of the development authorized by the permit as necessary to prevent exposure of the soldier piles or grade beam, including:
 - i. Soldier piles
 - ii. Grade beam;
 - iii. Any portions of the home that are dependent on the soldier piles and grade beam for engineering stability;
 - iv. Any portions of the home that must be removed to effectuate removal of the portions of the development identified in subsections A.i-iii of Special Condition 1.
- B. PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT the permittees shall submit two copies of a Soldier Pile, Grade Beam, and Home Removal Plan (RP) to the Executive Director for review and written approval.
- C. The RP shall identify the width of the blufftop area needed to conduct the soldier pile and grade beam removal required by Subsection A. of Special Condition 1 (i.e., the area necessary to place and/or operate construction equipment between the bluff edge and development, including providing clear documentation and evidence supporting identification of that width (e.g., identification of construction methods and equipment, expected removal structures and areas, construction timeframes, etc.)).
- D. The required removal shall take place when any portion of the blufftop width is at or less than the width identified in the approved RP as needed to conduct the required removal.
- E. The RP shall ensure that protection of coastal resources is maximized and that coastal hazards are not exacerbated.

- F. The permittees shall obtain a coastal development permit for the required removal unless the City of Los Angeles and/or Coastal Commission Executive Director, as applicable based on permitting authority, provides a written determination that no coastal development permit is legally required.

The permittees shall undertake removal in accordance with the approved plan. Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the plan shall occur without a Coastal Commission approved amendment to this coastal development permit amendment unless the Executive Director determines that no amendment is legally required.

2. Landscaping.

- A. 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: <https://ucanr.edu/sites/WUCOLS/files/183488.pdf>).
- B. The rear yard facing the bluff shall be planted with drought-tolerant native coastal scrub and/or coastal prairie species native to southern California to provide buffer to the bluff slope ESHA.

3. Nesting Bird Survey. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit, in a form and content acceptable to the Executive Director, a plan for a Breeding/Nesting Bird Survey, if construction is proposed during the bird nesting season (January 15 – August 31), conducted by a qualified biologist immediately prior to and during construction of the proposed improvements, which shall substantially conform to the following requirements:

- A. A qualified biologist, with experience in conducting nesting bird surveys, shall conduct nesting bird surveys 30 days prior to construction to detect any nesting birds in the habitat to be disturbed and any other such habitat within 300 feet (for song birds) or 500 feet (for raptors) of the construction area. The last survey should be conducted 3 days prior to the initiation of clearance/construction.
- B. If a nesting bird is found during the survey, the applicant shall delay all clearance/construction disturbance within 300/500 feet (see above) of the occupied nest until the nest is vacated/juveniles have fledged and there is no evidence of further nesting or implement measures to reduce disturbance (no go buffers – see below) and sound levels (equipment muffling, sound blankets, etc.) such that disturbance is minimized to the maximum extent (bird behavior is not impacted) and sound levels do not exceed 65 dB at the nest site. Work limits

to avoid an active nest shall be established with flagging and stakes or construction fencing. Construction personnel shall be instructed on the sensitivity of the area. The project biologist shall record the results of the recommended protective measures described above to document compliance with applicable State and Federal laws pertaining to protection of native birds.

The applicants shall undertake development in accordance with the approved final plans. Any proposed changes to the approved 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 required.

- 4. Bird Strike Prevention.** Bluff-front deck railing systems, fences, screen walls, windows and gates authorized by this permit shall use materials designed to minimize bird-strikes with the deck railing, wall, fence, window or gate. Such materials may consist, all or in part, of wood; wrought iron; frosted or partially-frosted glass, Plexiglas or other visually permeable barriers that are designed to prevent creation of a bird strike hazard. Clear glass or Plexiglas shall not be installed unless they contain UV-reflective glazing that is visible to birds or use appliqués (e.g. stickers/decals) designed to reduce bird-strikes by reducing reflectivity and transparency. Any appliqués used shall be installed to provide coverage consistent with manufacturer specifications (e.g. one appliqué for every 3 foot by 3 foot area). Use of opaque or partially opaque materials is preferred to clean glass or Plexiglas and appliqués. All materials and appliqués shall be maintained throughout the life of the development to ensure continued effectiveness at addressing bird strikes and shall be maintained at a minimum in accordance with manufacturer specifications.
- 5. Submittal of Lighting Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a lighting plan that protects the bluff slope habitat from light generated by the project. The lighting plan to be submitted to the Executive Director shall be accompanied by an analysis of the lighting plan prepared by a qualified biologist, which documents that the lighting plan is effective at preventing lighting impacts upon adjacent habitat. All lighting within any future development shall be directed and shielded so that light is directed away from the bluff. Furthermore, no skyward-casting lighting shall be used. The lowest intensity lighting shall be used that is appropriate to the intended use of the lighting.
- 6. Archeological Survey.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for the review and approval of the Executive Director the results of an archeological survey prepared by a qualified professional that better characterizes the potential for archeological, tribal cultural, and paleontological resources on the site. This coastal development permit authorizes the survey and an initial investigation with monitoring, if approved by the Executive Director, but does not authorize excavation or data recovery or any significance testing.

If the survey finds there to be potential for archeological, tribal cultural, or paleontological resources onsite based on a California Historic Resources Information System records search conducted within a minimum one-mile radius of the site and/or a non-invasive site survey conducted by a qualified professional, this condition requires submittal of a monitoring plan with a professional archeologist monitor and a Native American monitor present during all grading operations. This permit does not authorize any one treatment method, does not authorize data recovery, and does not authorize significance testing, and if any resources are found during grading and/or the survey, the applicant must apply for an amendment prior to implementing changes to the project or conducting any further archeological investigations, grading or treatment methods. Regardless of the findings of the survey, if any resources are found during grading, all grading must immediately cease within 50 feet of the discovery and no further grading shall occur until the applicant contacts the Native American MLD and applies for an amendment to this permit. Any proposed changes to the approved survey or monitoring plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission approved amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

7. Storage of Construction Materials, Mechanized Equipment, and Removal of Construction Debris. The permittee shall comply with the following construction-related requirements:

- A. No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion;
- B. No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers;
- C. Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project;
- D. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters;
- E. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
- F. The applicants shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
- G. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the Coastal Zone, a coastal development

permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required;

- H. All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;
- I. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems;
- J. The discharge of any hazardous materials into any receiving waters shall be prohibited;
- K. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible;
- L. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity; and
- M. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

- 8. Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards, including but not limited to waves, storms, flooding, erosion, and earth movement, many of which will worsen with future sea level rise; (ii) to assume the risks to the permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards; (v) that sea level rise could render it difficult or impossible to provide services to the site (e.g., maintenance of roadways, utilities, sewage or water systems), thereby constraining allowed uses of the site or rendering it uninhabitable; (vi) that the boundary between public land (tidelands) and private land may shift with rising seas, the structure may

eventually be located on public trust lands, and the development approval does not permit encroachment onto public trust land; (vii) any future encroachment must be removed unless the Coastal Commission determines that the encroachment is legally permissible pursuant to the Coastal Act and authorizes it to remain, and any future encroachment would also be subject to the State Lands Commission's (or other trustee agency's) leasing approval; and (viii) that the structure may be required to be removed or relocated and the site restored if it becomes unsafe or if removal is required pursuant to the Coastal Act.

9. No Future Shoreline Protective Device.

- A. By acceptance of this permit, the permittee(s) agrees, on behalf of itself and all other successors and assigns, that the project is new development for which there is no right to shoreline protection and hereby waives on behalf of itself, and all other successors and assigns, any rights that may exist under applicable law to construct a shoreline protective device to protect the development approved pursuant to Coastal Development Permit Nos. A-5-SNP-19-0154/5-20-0152, and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, flooding, sea level rise, or other natural hazards in the future.
- B. By acceptance of this permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the landowner(s) is required to remove the development authorized by this permit, including the residence, detached garage, roof deck, and rear yard improvements if any other government agency with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for occupancy or use due to coastal hazards and that there are no measures that could make the structures suitable for habitation or use without the use of bluff or shoreline protective devices.
- C. In the event that portions of the development fall to the bluff and/or water before they are removed, the landowner(s) shall remove all recoverable debris associated with the development from the bluff and/or water and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit. Prior to removal, the permittee shall submit two copies of a Removal Plan to the Executive Director for review and written approval. The Removal Plan shall clearly describe the manner in which such development is to be removed and the affected area restored so as to best protect coastal resources.

10. Spa Leak Prevention/Detection Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittees shall submit for the review and approval of the Executive Director, two (2) full size sets of spa leak prevention/detection plans, which demonstrates that water overflow onto the bluff will be prevented.

11. Deed Restriction. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval

documentation demonstrating that the landowner has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

XI.FINDINGS AND DECLARATIONS – DE NOVO & DUAL PERMIT

A. Project Description and Location

The project site is an approximately 19,293 sq. ft. blufftop lot in San Pedro located between the first public road and the sea in a dual permit jurisdiction area of the City of Los Angeles ([Exhibit 1](#)). The lot has a land use designation of Low Residential and is zoned R1-1XL by the City of Los Angeles. The top of the lot is relatively level extending from W Paseo del Mar seaward to the bluff edge approximately 130 ft. seaward of the streetside (north) property line. From the bluff edge, the lot descends approximately 260 ft. down a 115-ft. high bluff at various angles ranging, on average, from approximately 20 degrees to 40 degrees to the Pacific Ocean and includes a narrow public rocky beach at the toe of the bluff. The property is located in a largely single-family residential neighborhood approximately 2,000 ft. upcoast of Wilders Addition Park.

The locally approved project includes construction of a new 2-story, 26 ft. high, 3,695 sq. ft. single-family residence with a 921 sq. ft. detached garage, 1,154 sq. ft. roof deck, and rear yard deck and spa on a blufftop lot ([Exhibit 2](#)). The project also includes 270 cubic yards of grading, and installation of three 4.5 ft. diameter, 70 ft. deep soldier piles and 4 ft. wide, 36 ft. long grade beam at the seaward footprint of the residence, which will be set back at approximately 50 ft. from the bluff edge. The rear yard deck will be at grade without any foundation and will be set back at least 27 ft. from the bluff edge.

The property is currently developed with unpermitted concrete paver near the bluff edge, which will be further discussed in the Coastal Act Violation section of this report. The concrete paver is proposed to be removed as part of the proposal.

Standard of Review/Dual Permit Jurisdiction Area

Within the areas specified in Section 30601 of the Coastal Act, which is known in the City of Los Angeles permit program as the Dual Permit Jurisdiction area, the Coastal Act requires that any development which receives a local coastal development permit also obtain a second (or “dual”) coastal development permit from the Coastal Commission.

The Commission's standard of review for development in the Dual Permit Jurisdiction area is the Chapter 3 policies of the Coastal Act. For projects located inland of the areas identified in Section 30601 (i.e., projects in the Single Permit Jurisdiction area), the City of Los Angeles local coastal development permit is the only coastal development permit required.

The subject project is within the Dual Permit Jurisdiction area. On March 5, 2020, the applicant submitted a dual CDP application for the proposed development. Thus, the Commission's standard of review is the Chapter 3 policies of the Coastal Act. The certified San Pedro LUP is advisory in nature and provides guidance. The findings set forth in the Substantial Issue discussion above are incorporated herein.

B. Coastal Hazards

Relevant Coastal Act and certified San Pedro LUP policies are hereby incorporated from Section VI.C of the Substantial Issue portion of this staff report on pages 18 through 20.

Section 30253(a) requires new development to minimize risk in areas of high geologic hazard and assure stability and structural integrity, without the need to construct shoreline protective devices that “substantially alter natural landforms along bluffs and cliffs.” Safe siting of development, taking into consideration coastal hazards, including those exacerbated as a result of climate change and sea level rise, is critical not only for the occupants of the development, but also to prevent permanent impacts to coastal resources. Section 30235, which is reflected in San Pedro LUP Page 19, Policies 8 and 9, only allows shoreline protective devices when necessary to protect existing (pre-Coastal) development in danger from erosion, and when impacts to shoreline sand supply are avoided or mitigated. Past Commission action has acknowledged that seawalls, revetments, cliff retaining walls, groins, caissons, soldier piles and other such structural or “hard” methods designed to forestall erosion, alter natural landforms and natural shoreline processes, resulting in a variety of negative impacts on coastal resources, including adverse effects on sand supply, public access and recreation, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, including ultimately the loss of the beach. Thus, the Commission has often found such bluff protective devices to be inconsistent with numerous Coastal Act policies.

Furthermore, the coastal bluffs in San Pedro are subject to a variety of erosive forces and conditions (e.g., wave action, block failures, and landslides). As a result, the bluffs and blufftop lots in the San Pedro area are considered a hazardous area and designated as such in the certified San Pedro LUP ([Exhibit 8](#)). As cited above, the LUP contains policies that acknowledge the importance of limiting development in hazardous areas (LUP Page 16, Policy 4) and are designed to reduce or avoid risk to new development. LUP Page 19, Policy 7 of the certified LUP prevents the approval of new development, including remodels and additions to existing structures, that will represent a hazard to its occupants, and which may require structural measures to prevent destructive erosion or collapse during the economic lifetime of the development.

Therefore, the Coastal Act and the certified LUP require that new coastal bluff top development be sited and designed to minimize hazards and assure stability, without

requiring protective devices, over the full economic or design life of the development, in this case 75 -100 years.⁴ To meet these requirements, it is necessary to evaluate risks to the proposed development over the next 100 years from bluff instability, erosion and retreat, and to estimate a total bluff top setback by combining (1) the setback needed, under present conditions, to assure the stability of the proposed development against landslides and bluff failures, and/or a major short-term episodic erosion event; and (2) the expected long-term bluff retreat at the site over the project life, including consideration of future sea level rise.

Bluff Stability

The key geologic feature at the site is a large landslide occurring on the seaward face of the bluff and spanning portions of six lots, including the subject property. As discussed in the applicants' geotechnical report⁵, the landslide is thought to have occurred along one or more seaward-dipping, bentonite clay beds which occur in the bedrock formation (Altamire Shale) that forms the coastal bluff in the San Pedro area. As part of the City's geotechnical review, the applicants' geotechnical consultant (Peter & Associates) performed multiple slope stability analyses in an effort to characterize the stability of the existing landslide and of the intact bluff underlying the project sites.

Although there was some dispute between City geotechnical staff and the applicants' consultant regarding the appropriate methods for evaluating bluff stability at the site, the City ultimately based its review of the project on a more conservative approach to determining the material strength (i.e., the resistance to failure) of the bluff and of the clay beds in particular. The Commission's staff geologist has reviewed the available geotechnical reports and City review letters and agrees that the City's required approach provides a precautionary basis for evaluating slope stability at a site with an existing landslide. (A more detailed summary of the issues related to the slope stability analysis is provided in [Exhibit 10](#)).

The applicants' analysis indicates that the intact portion of the bluff on which the proposed residence would be located has minimum static factors of safety⁶ against a

⁴ Though some LCPs specify design lives for certain types of development, the San Pedro LUP does not. In this case, to determine an appropriate design life for purposes of evaluating hazards, staff has assessed the ages of existing residential structures in the project vicinity. Many residences in the neighborhood of the project are more than 75 years old, and some are over 100 years old, indicating that a 75-100 year design life is reasonable for the proposed development.

⁵ Peter & Associates, 2016a, "Supplemental Preliminary Geotechnical Investigation / Response to LADBS Correction Letter Dated May 29, 2015 – Proposed Residential Construction (Two Houses) at 1305 & 1307 W. Paseo Del Mar, San Pedro, City of Los Angeles, CA 90731 [Lots 26 and 25, Tract 7117; M.B. 78-98]", signed by L. N. Pham (RGE 686), W. R. Munson (CEG 866), and S. B. Peter (RCE 38623), April 14, 2016.

⁶ The factor of safety is an indicator of slope stability, where a value of 1.5 for static analysis and 1.1 for pseudostatic ("seismic") analysis are the typical industry, building code and Coastal Commission standards for geologic stability of new development. In theory, failure should occur when the factor of safety drops below 1.0. Therefore, the factor of safety at increasing values above 1.0 lends increasing confidence in the stability of the slope. To establish a safe setback for slope stability, the geotechnical analysis needs to establish the distance from the edge of a coastal bluff at

new slope failure in the range of 1.2 – 1.3, for modeled landslides occurring up to 25 feet inland of the bluff edge. The portion of the bluff underlying the proposed development (> 50 ft inland of the bluff edge) has static factors of safety in the range of 1.3 – 1.4. Although these factors of safety fall short of the Commission’s typical standard of 1.5 (static) for ensuring the stability of new development, they are nonetheless indicative of a relatively low risk of landsliding at the project sites.

The City’s approval required the project to include the installation of three 4.5’ diameter, 70’ deep soldier piles at the seaward footprint of the residence, which would be set back at least 50 ft. from the bluff edge. The soldier piles would be deeply embedded into the bluff bedrock and based on the applicant’s analysis would provide sufficient lateral stabilization to achieve a 1.5 factor of safety beneath the proposed residence. None of the applicant’s stability analyses evaluated the position of the 1.5 factor of safety line absent stabilization devices; however, it can be inferred from the available analyses that the 1.5 factor of safety line would be on the bluff top more than 150 ft. landward of the bluff edge, beyond the proposed garages and possibly beyond the inland property lines ([Exhibit 9](#)). There is little to no space on either property to site new development that would achieve a 1.5 factor of safety (back-calculated shear strengths) without the proposed soldier pile stabilization.

Future Bluff Erosion & Retreat

In addition to the potential for bluff instability, the bluff is also subject to erosion and retreat over time. In general, bluff retreat can occur both gradually, through small slope failures and erosion driven by wind, rain and runoff, and episodically the larger slope failures discussed above. Although the proposed deep soldier pile stabilization system would achieve a factor of safety of 1.5 (static) under present day conditions, there is still a need to evaluate the potential for bluff erosion and retreat at the site over the development life, which if severe enough could expose or undermine the soldier piles and pose a threat to the proposed residence.

Additionally, global sea level is expected to rise substantially over the next 75 – 100 years. The Commission’s 2018 *Sea-Level Rise Policy Guidance* recognizes the *State of California Sea-Level Rise Guidance* (“State Guidance”, OPC 2018) and its associated science report (Griggs et al. 2017) as the best-available science on sea level rise specific to the California coast. Projections contained in the State Guidance indicate that, under a high emissions scenario, southern Los Angeles County could experience 2.2 ft. (median projection) to 6.7 ft. (>99th percentile projection) of sea level rise by 2100. The potential effects of SLR include the narrowing or loss of beaches where they are backed by less-erosive bluffs or artificial barriers to inland migration, and increased rates of coastal bluff erosion where the bluff toe is subjected to more frequent and/or more powerful wave attack. Thus, sea level rise needs to be considered when evaluating future bluff retreat at the project site.

which the factor of safety is equal to 1.5 (static) and 1.1 (seismic). Most of the applicant’s geotechnical reports provided only static slope stability analysis, so only static factors of safety are given in this report.

The bluff retreat evaluations provided by the applicant included analysis of historical bluff edge retreat rates based on aerial photographs. Over the 92-year period (1927 – 2019) assessed, the bluff edge at the site retreated 10 – 30 ft., or at annualized rates of 0.11 – 0.33 ft/yr. The observed bluff retreat was attributed largely to subaerial erosion processes, and in particular to uncontrolled runoff from the bluff top. Due to the relatively gentle bluff slope (<30 degrees) and the presence of the old landslide debris, which separates the intact portion of the bluff and the bluff edge from the shoreline, marine processes were deemed to have had little influence on the observed erosion. For these reasons, the applicant's analysis also concluded that sea level rise, despite increasing erosion rates at the bluff toe, would not result in higher retreat rates at the bluff edge. The applicant's analysis projected that the bluff edge could retreat up to 25 ft. in the next 75 years (33 ft. if extended out to 100 years).

The Commission's Staff Geologist, Dr. Joseph Street, has reviewed the applicant's bluff retreat evaluations and largely concurs with their conclusions. In order to better understand the rate of erosion occurring at the bluff toe, which was not addressed by the applicant, Dr. Street, estimated historical bluff toe retreat rates using aerial photographs spanning 1927 – 2020, and then used data from the USGS CoSMoS Cliff Retreat model to project how bluff toe erosion at the site could change with various amounts of sea level rise. Based on this analysis, Dr. Street found that the bluff toe could retreat 40 - 45 ft. over 100 years under a high sea level rise scenario (6.6 ft. by 2100) but concluded that this erosion would occur entirely within the ~150 horizontal ft. of landslide debris that mantles the bluff face, and was unlikely to translate into accelerated erosion at the bluff edge.

Based on both the applicant's and Dr. Street's analysis, bluff erosion over the next 75 – 100 years is very unlikely to result in enough bluff edge retreat to expose the proposed soldier pile stabilization system or pose a threat to the proposed residence, which is set back at least 50 ft. from the bluff edge ([Exhibit 9](#)). As noted above, the bluff edge is conservatively projected to retreat on the order of 25 – 33 ft. over the project life which would still leave a large "buffer" between the bluff edge and the soldier piles. Moreover, the applicant's slope stability analyses, which Dr. Street has confirmed are very precautionary, found that the factor of safety against slope failure at the position of the soldier piles was approximately 1.3, which, while not ideal, is still indicative of low risk of landsliding. In other words, the soldier piles would not be preventing a slope failure that would otherwise be likely to occur, and would not act as a bluff retention or protective device.

As described above, the soldier pile foundations are not expected to be exposed over the 75 – 100 year life of the proposed development. However, in the unlikely but possible event that the soldier piles do become exposed at some point in the future, resource impacts arising from that exposure could occur and must be addressed. Such impacts would include impacts to public views. Currently the bluff slope at the site is visible from the beach. At a minimum, any impacts to public views would need to be addressed. However, exposure of the soldier piles may raise other resource impact issues, not currently anticipated. For example, if the soldier piles were exposed and were threatened by erosion, there could be impetus to install additional bluff retention or protective

devices, with potential impacts to visual resources, natural landforms, and shoreline sand supply. In addition, construction and demolition work on eroding and potentially unstable bluffs can present significant safety and logistical challenges. It is important that any soldier pile removal work occur before the soldier piles are exposed on the bluff face, when there is still adequate bluff stability and enough space between the house and the bluff edge to allow the work to proceed. Therefore, in order to assure that the proposed development remains consistent with the Chapter 3 policies of the Coastal Act, and with the policies of the City's certified LUP, **Special Condition 1** which requires the applicants to submit plans to the Executive Director, for review and concurrence, that provide for the removal of all or portions of the soldier piles and/or grade beams to prevent exposure, when any portion of the blufftop width is at or less than the width identified in the approved removal plan as needed to conduct the required removal. The Executive Director shall determine whether the proposed work will require an amendment to this coastal development permit, a new coastal development permit, or whether no amendment or new permit is legally required. Only as conditioned can the proposed development be found consistent with the Coastal Act and the City's certified LUP.

Special Condition 9 requires the applicants to waive any rights to future bluff protective devices, thereby preventing the soldier pile system from being converted into a bluff protective device, for example through the addition of lagging or other continuous facing that would prevent natural erosional processes from occurring. To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition 8** requiring the applicant to expressly waive any potential claim of liability against the Commission for any damage or economic harm suffered as a result of the applicant's decision to develop the site as proposed. **Special Condition 11** requires that the property owner record a deed restriction against the property, referencing all of the above Standard and Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, this permit ensures that any prospective future owner will receive notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development, including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

The appellants of this project have raised that a 5 ft. storm drain easement on the eastern border of the property is not considered by the City's local decision. However, the Commission finds that the proposed development will not affect the storm drain easement, as the development observes a 5 ft. sideyard setback from the property line for the detached garage and a 7 ft. sideyard setback from the property line for the residence, which means there will be no development proposed within the 5 ft. storm drain easement. The applicants also clarified that the City's storm drain easement is not active and that the applicants are currently under the process of applying for the vacation of the drainage easement with the City of LA Public Works Department.

Therefore, the project, as proposed to conform with the necessary bluff setbacks, and as conditioned to remove portions of development in the event of exposure, and to restrict

the future construction of bluff protective devices, can be found consistent with the coastal hazards policies of the Coastal Act and the LUP.

C. Visual Resources and Community Character

Relevant Coastal Act and certified San Pedro LUP policies are hereby incorporated from Section VI.C of the Substantial Issue portion of this staff report on pages 14 through 17.

Coastal Act Section 30251, 30253(e) require that visual resources in scenic areas be protected, and that the neighborhood character of San Pedro be preserved and enhanced.

The approved home includes a 6 ft. high solid wall along the entire street fronting portion of the property that will prevent any views of the ocean from the public on W Paseo del Mar. However, the Harbor Area Planning Commission's letter of determination found that the project's location results in no impact on scenic or visual qualities of coastal areas or prominent natural landforms; that according to the San Pedro Specific Plan, the site is not located within a dedicated visual corridor or a scenic view site; and that the residential structure will be at the inland portion of the site and will not be observed from the toe of bluff. In addition, the Commission finds that, based on the submitted streetscape views taken from W Paseo del Mar looking seaward by the appellants ([Exhibit 3](#), Pages 9-81) and the applicants ([Exhibit 6](#)), the public view to the shoreline through the subject site and the neighboring properties along W Paseo del Mar is already entirely walled off by the existing homes, fences, vegetation, and walls. Thus, although the proposal will not result in an improvement to public views of the coast, it also won't adversely impact any existing public views.

The subject site is part of a 0.37 mile long stretch of homes where views to the coast are for the most part entirely blocked by private development. However, the project site is located in a unique neighborhood bordered by public parks at either end of it with public views and recreational opportunities to enjoy the ocean view. White Point Beach and Grassland Loop Trail are located approximately 1,600 ft. upcoast of the site and provides uninterrupted public coastal views and Wilders Addition Park is located approximately 2,000 ft. downcoast of the site and provides uninterrupted public coastal views. Thus, while side yard view corridors would provide some additional public views of the coast in this neighborhood, such view corridors are not necessary to ensure that the proposed development is consistent with the existing community character. The proposed project would also not significantly affect the public coastal view opportunities in the area.

With regard to community character, the Commission finds that, although the policies cited above provide for the protection of community character in San Pedro neighborhood, none of the policies limit the size, mass, or scale of new development in the area. The City's approval letter also found that the project is consistent with mass and scale of the surrounding neighborhood:

The project is sensitive to the neighborhood, and it is relative in size and height to the surrounding properties. According to the Los Angeles County Assessor data, the

property to the north is a single-family dwelling measuring 4,405 square feet; the property next door to the west is also a single-family dwelling measuring 3,448 square feet, and the property to the east at 1305 West Paseo Del Mar is vacant and there is a proposal for a 3,695 square-foot development under ZA-2013-3632-CDP-MEL-1A. The surrounding properties range from one – two stories, and reflect a range of architecture characteristics. Thus, the size, style and height of the proposed 3,548 square-foot residential project falls within the range of the surrounding residential properties.

As described in the City's approval, there are other homes of similar size to the subject home in the surrounding neighborhood. Furthermore, the home as viewed from W Paseo del Mar includes 7 ft. sideyard setbacks and variable slanted roof design, which will contribute to the varied and unique characteristics of the surrounding residential neighborhood. Although the subject home and the locally approved home on the adjacent site share a similar design the Commission finds that the sole similarity of the homes does not raise a substantial issue with regard to the preservation of community character.

In addition, consistent with the LUP policies cited above, the proposed home will remain a single-family residence and the residence will observe the LUP policies on height. The applicants have provided a community character analysis of the homes on the seaward side of W Paseo del Mar, as well as homes beyond the immediate neighborhood, and found that the area is characterized by a mix of one- and two-story homes that have a variety of home sizes and architectural styles ([Exhibit 6](#)). In this case, the proposed development is two stories and is not out of character with the area. The proposed residence is not incompatible with the character of the smaller-sized homes in this neighborhood and in San Pedro. Rather, a mix of home sizes and architectural styles is compatible with San Pedro's eclectic character.

Therefore, the Commission finds that the project, as proposed, based on its own merits and on a cumulative impact basis, is consistent with Section 30251 and 30253(e) of the Coastal Act, and the LUP policies requiring preservation of visual resources and community character of San Pedro.

D. Biological Resources and Water Quality

Coastal Act Section 30230 states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Coastal Act Section 30231 states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Coastal Act Section 30240 states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) 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.

Coastal Act Section 30107.5 states:

"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

The proposed single-family residence and associated accessory development would be located within close proximity to the bluff slope. Based on the submitted photos by the applicants, the Commission ecologist has identified the vegetation on the bluff as Southern Coastal Bluff Scrub (SCBS) ([Exhibit 4](#)). The bluff slope within the property supports native vegetation characteristic of SCBS including lemonade berry (*Rhus integrifolia*), California sunflower (*Encelia californica*), and Coastal sage bush, (*Artemesia californica*). Scattered amongst the native SCBS species are several species of non-native ornamental plants. SCBS habitat is dominated by low shrubs and prostrate herbaceous species found on exposed bluffs above the ocean. SCBS cover may be dense or sparse depending on slope steepness and it typically grows in sandy or sandy loam soils. The species composition is similar to and intergrades with Coastal Sage Scrub but differs in containing species better adapted to the extreme wind, salt spray, and steep slopes of the bluffs. SCBS is one of the rarest and most threatened habitats in California. It is considered critically imperiled by the California Department of Fish and Wildlife with a rarity ranking of G1 S1.1. This ranking means that this habitat is at very high risk of extinction due to extreme rarity (often 5 or fewer populations), very steep declines, or other factors.

SCBS is often found along coastal bluff faces and coastal and canyon bluff tops and performs an important function by serving as habitat for special status species. This

vegetation community is very rare and is easily disturbed by human activities such as grading and landscaping. Therefore, SCBS meets the definition of ESHA pursuant to the Coastal Act.

The proposed single-family residence and associated accessory development would be located within close proximity to the identified ESHA consisting of SCBS on the bluff slope, and therefore is required to be sited and designed to prevent adverse impacts to, and be compatible with, the continuance of this habitat. The residential development is naturally separated from the SCBS by the steep coastal bluff that supports the rare native vegetation. This provides a disturbance buffer to both the native vegetation and the wildlife foraging and residing in the habitat. Because of this natural separation the Commission ecologist finds that a minimum 25 ft. setback from the bluff edge is a sufficient buffer distance. As a result, **Special Condition 2** is required for the applicants to submit a final landscaping plan that includes habitat buffers, consistent with the recommendations of the staff ecologist.

In addition, the proposed development has the potential to impact biological resources through activities that result in runoff from the site to the Pacific Ocean, potential introduction of invasive plant species, and pollution from construction related materials. **Special Condition 2** is imposed to ensure that any landscaping on-site through the life of the development does not include the use of invasive species. In addition, **Special Condition 2** requires the applicant to utilize primarily drought tolerant plant species and water conservative irrigation systems for any new landscaping. To avoid water quality impacts during construction, the Commission imposes **Special Condition 7**, which requires the applicant to follow construction best management practices that prevent construction activities and construction related debris from entering and impacting the canal waters.

In addition, the appellants of this project claim that two peregrine falcons, a fully protected species in California Fish and Game Code Section 3511, were spotted to the west of the project site at 1311 W Paseo del Mar. Commission's staff ecologist clarified that the simple presence of peregrine falcons and their nesting site in the project vicinity does not render the project vicinity to be ESHA. However, there is a concern that the project may impact nesting bird habitat. **Special Condition 3** requires a nesting bird survey prior to the commencement of construction or SCBS restoration in order to ensure that the proposed project will not impact nesting birds present on the site. If a peregrine falcon pair is identified nesting within 500 ft. of the construction zone the applicant will be required to adhere to **Special Condition 3** requiring the bird nesting surveys and nesting bird protection. In addition, there is a concern that the lights generated by the project may impact the nesting bird habitat on the bluff slope. **Special Condition 5** requires the applicants to submit a lighting plan that protects the bluff slope habitat from light generated by the project.

The applicants' proposal also includes the installation of sliding glass doors and windows on the bluff-fronting side of the residence, which has the potential to impact birds that forage in the bluff and fly in the project vicinity. Thus, **Special Condition 4** is imposed to use bird-strike prevention techniques in the design of the glass doors and windows to be maintained through the life of the development.

Therefore, as proposed and conditioned to provide adequate ESHA buffers, conserve water and energy, and minimize impacts to water quality, habitat, and wildlife, the subject development is consistent with the Chapter 3 policies of the Coastal Act and the habitat protection policies of the LUP.

E. Archeological, Tribal Cultural, and Paleontological Resources

Coastal Act Section 30244 states:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

Certified San Pedro LUP, Page 17, Objective 3 states:

To assure that proper scientific and historical surveys are conducted on archeological, historical, paleontological, and geological sites and/or areas prior to their modification when they cannot be preserved wholly or in part.

Certified San Pedro LUP, Page 18, Policy 3 states, in part:

All new development, including City projects avoid disturbance of historical, archaeological and paleontological sites and/or areas.

The project site is currently a vacant lot surrounded by residential development. The City, in its approval of the local CDP, found that no new archeological or paleontological resources are anticipated to be identified with the implementation of the project, however, the City did not provide support for this statement and it does not appear that the City conducted any tribal consultation. In contrast, the certified San Pedro LUP recognizes the potential for tribal resources on the site and states that “a multitude of archeological (Indian) and paleontological (fossil) sites found no where else on earth” (Page 16) exist in San Pedro. The LUP requires an archeological survey be conducted prior to grading, and as such, **Special Condition 6** requires submittal of the survey to the Executive Director prior to issuance of the permit and does not authorize any development that may adversely impacts any discovered archeological, tribal, or paleontological resources. Only as conditioned, would the project be consistent with Section 30244 of the Coastal Act and the policies of the certified LUP.

F. Coastal Act Violation

As previously discussed, the property had been developed with concrete paver near the bluff edge ([Exhibit 4](#)). Based on the aerial photos available from the California Coastal Records Project ([Exhibit 5](#)), the above mentioned structure does not appear to be present in October 1979, which is after the implementation of the Coastal Act (January 1, 1977). Therefore, at some point in time since then, the structure was constructed without the coastal development permit, and constitute an unpermitted development.

As part of the current proposal, the applicants are proposing to remove the unpermitted concrete paver at the edge of the bluff. Therefore, approval of this application pursuant to the staff recommendation, issuance of the permit, and the applicant's subsequent compliance with all terms and conditions of the permit will result in resolution of the violations described above. Although development has taken place prior to submission of this permit application, consideration of the permit application by the Commission has been based solely on consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violations (or any other violations).

G. Local Coastal Program

The Coastal Act requires that the Commission consider the effect on a local coastal program when it approves a project. Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program (LCP) which conforms with Chapter 3 policies of the Coastal Act:

Section 30604 (a) of the Coastal Act states:

Prior to certification of the Local Coastal Program, a Coastal Development Permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

Prior to certification of the Local Coastal Program, a Coastal Development Permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200). The City of Los Angeles does not have a certified Local Coastal Program for the San Pedro area. The Commission's standard of review for the proposed development is the Chapter 3 policies of the Coastal Act. The certified San Pedro LUP is advisory in nature and may provide guidance.

As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Thus, with the conditions imposed on the proposed development, the subject development will not prejudice the ability of the local government to prepare an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

H. 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 Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse effect which the development 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, has no remaining significant environmental effects, and complies with the applicable requirements of the Coastal Act to conform to CEQA.

Appendix A: Substantive File Documents

- Coastal Development Permit Application No. A-5-SNP-19-0136 and associated file documents.
- Coastal Development Permit Application No. 5-20-0153 and associated file documents.
- Local CDP No. ZA-2013-3632-CDP-MEL-1A