

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: APPEAL - SUBSTANTIAL ISSUE & DE NOVO

Appeal Number: A-5-RPV-21-0076 & A-5-RPV-21-0077

Applicant: Flock Safety

Local Government: City of Rancho Palos Verdes

Local Decision: Approval with Conditions

Appellants: Commissioners Effie Turnbull-Sanders and Linda Escalante

Project Location: Palos Verdes Dr. West and Marguerite Drive & Palos Verdes Drive South & Seacove Drive/Barkentine Road/ Clipper Road/ Packet Road, Rancho Palos Verdes, Los Angeles County

Project Description: Installation of six sets of automated license plate reader camera systems, including poles up to 12 feet in height, and signage, within the City's public right-of-way; two sets near Lunada Pointe Homeowners Association near the intersection of Palos Verdes Drive West and Marguerite Drive and four sets near Portuguese Bend Homeowners Association at Palos Verdes Drive South & Seacove Drive/Barkentine Road/ Clipper Road/ Packet Road, Rancho Palos Verdes, Rancho Palos Verdes, Los Angeles County

Staff Recommendation: Substantial Issue – Denial

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

Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will follow, during which it will take public testimony.

PLEASE NOTE THAT THIS WILL BE A VIRTUAL MEETING. As a result of the COVID19 emergency, California Assembly Bill 361, and the Governor’s Executive Orders N-15-21, N-29-20, and N-33-20, this Coastal Commission meeting will occur virtually through video and teleconference. Please see the Coastal Commission’s Virtual Hearing Procedures posted on the Coastal Commission’s webpage at www.coastal.ca.gov for details on the procedures of this hearing. If you would like to receive a paper copy of the Coastal Commission’s Virtual Hearing Procedures, please call 415-904-5202.

SUMMARY OF STAFF RECOMMENDATION

The staff recommends that the Commission determine that **a substantial issue exists** with respect to the grounds on which Appeals A-5-RPV-21-0076 & A-5-RPV-21-0077 have been filed because the locally approved development raises issues of consistency with the City of Rancho Palos Verdes certified Local Coastal Program (LCP) and the public access and recreation policies of Chapter 3 of the Coastal Act. Staff also recommends **denial** of the coastal development permit applications after the de novo hearing.

The City approval authorizes six sets of Flock Safety Automated License Plate Reader (ALPR) Camera Systems up to 12 feet in height within the City’s public right-of-way; two at the entrance of the Lunada Pointe Homeowner’s Association at the intersection of Palos Verdes Drive West and Marguerite Drive, and four at the entrance of the West Portuguese Bend Homeowner’s Association near the intersections of Palos Verdes Drive South and Seacove Drive/Barketine Road/Clipper Road/Packet Road. The Flock Safety ALPR Cameras capture 24-hour video footage day and night, and can capture images of vehicles, their make, model, color, and license plates up to 75 feet away, traveling up to 75 miles per hour. These cameras store information in a private database owned by the company and can be monitored and searched by customers (the homeowners associations in this case).

The proposed ALPR cameras would adversely affect public access because they would give the appearance that the streets are private roads for a private community, even though the streets are public and available for public parking. Some coastal visitors would also not feel comfortable driving or parking along streets where they are under constant surveillance, even if those streets are public. The City’s LCP states: *The shoreline is a public resource which could be denied through the gating or restricting of coastal roads.* The proposed locations for the ALPR cameras are along streets that provide direct access to and public parking for the California Coastal Trail, a popular destination for visitors to the coast. The streets around Portuguese Bend also provide access to the Coastal Trail and public parks. Due to the placement of the ALPRs the access-detering effect of the cameras would be most severe on members of the public seeking respite from their heavily polluted, communities, including San Pedro, Wilmington, Long Beach, and other inland communities, many of which are recognized by SB 535 as disadvantaged communities, and is therefore an environmental justice issue. The Coastal Act states that when acting on a coastal development permit, the issuing agency, or the commission on

appeal, may consider environmental justice, or the equitable distribution of environmental benefits throughout the state.

The Chapter 3 public access polices of the Coastal Act state that maximum access shall be provided for all the people, that development shall not interfere with the public's ability to access the coast. It is fundamentally important to protect public access from intimidating signage that do not serve to support coastal access, especially in areas with limited public parking and a history of restricting access, such as the subject areas.

The proposed development sends a message that the public cannot be trusted in coastal areas where they do not live. The proliferation of additional homeowners associations' operation of surveillance systems on public roads would discourage people who do not live in the area from visiting, and would have a cumulative adverse impact on public access to the coast. Installation of Flock Safety's ALPR Camera Systems on a major public street could result in an increase of use of adjacent coastal resources and alternate access points, which could lead to additional requests for ALPR cameras, delivering intimidation through the pretense of security. These systems can provide undeterred access to visitors' private property (such as vehicles) and persons, which could lead to harassment.

The City's findings for approval of the local CDPs state that the purpose of the cameras is crime deterrence, based on the City's Safety Strategic Plan without any further explanation or evidence of how the cameras would deter crime, what crime the cameras would deter, or what crimes have been committed in recent years that necessitate the need for license-plate reading cameras. The report states that "as part of the City's Safety Strategic Plan, incentives are available for HOAs wishing to install security cameras at the entry/exit points of their neighborhood." However, these automated license plate readers are not just security cameras posted on private property. They are proposed on public streets and include intimidating signage. The system would have the capacity to monitor every vehicle that travels along the public right of way and would deter some visitors from accessing the coast.

Finally, the visual impact of the eight poles up to 12 feet in height, with associated cameras, signs, and power systems has not been adequately analyzed by the local government and as proposed are not consistent with the visual resources policies of the LCP, specifically the Coastal Specific Plan and Urban Appearance Overlay District policies requiring the City to preserve, protect, and enhance the visual character of the City's predominant landforms, protect views from public view corridors, and preserve vegetation as a visual and natural resource. The poles would be higher than most adjacent vegetation and would detract from coastal views from Palos Verdes Drive and Marguerite Drive, which are the first public roads inland of the coast. These impacts to public access and visual resources can be avoided through denial of the requested permits.

TABLE OF CONTENTS

I. MOTIONS AND RESOLUTIONS – SUBSTANTIAL ISSUE	5
II. APPELLANTS’ CONTENTIONS	5
III. LOCAL GOVERNMENT ACTION	6
IV. APPEAL PROCEDURES	6
V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE	8
A. PROJECT LOCATION AND DESCRIPTION	8
B. LCP CERTIFICATION	8
C. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS	8
D. SUBSTANTIAL ISSUE ANALYSIS	9
VI. MOTIONS AND RESOLUTIONS – DE NOVO	12
VII. FINDINGS AND DECLARATIONS – DE NOVO	13
A. PROJECT LOCATION AND DESCRIPTION	13
B. PUBLIC ACCESS AND RECREATION	13
C. VISUAL RESOURCES	16
D. CALIFORNIA ENVIRONMENTAL QUALITY ACT	17

Appendix A – Substantive File Documents

LIST OF EXHIBITS

- [Exhibit 1 – Project Location](#)
- [Exhibit 2 – CalEnviroScreen 4.0 Map](#)
- [Exhibit 3 – System Rendering](#)
- [Exhibit 4 – City Staff Report](#)
- [Exhibit 5 – Appeals](#)

I. MOTIONS AND RESOLUTIONS – SUBSTANTIAL ISSUE

Motion One: I move that the Commission determine that Appeal No. A-5-RPV-21-0076 raises **NO Substantial Issue** with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the Commissioners present.

Resolution One:

The Commission hereby finds that Appeal No. **A-5-RPV-21-0076** presents a **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access policies of the Coastal Act.

Motion Two: I move that the Commission determine that Appeal No. A-5-RPV-21-0077 raises **NO Substantial Issue** with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the Commissioners present.

Resolution Two:

The Commission hereby finds that Appeal No. **A-5-RPV-21-0077** presents a **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access policies of the Coastal Act.

II. APPELLANTS' CONTENTIONS

The appellants contend ([Exhibit 5](#)) that the City-approved development, six sets of automated license plate reader cameras on public roads, would adversely affect public access because they would give the appearance that the roads are for a private community, even though the streets are public and available for public parking. Some coastal visitors would not feel comfortable driving or parking along streets where they are under constant surveillance, even if those streets are public. The appellants argue that the City-approved development is not consistent with the certified public access and visual resources policies of the certified LCP and the public access and recreation policies of Chapter 3 of the Coastal Act.

III. LOCAL GOVERNMENT ACTION

On October 26, 2021, the City of Rancho Palos Verdes Zoning Administrator held a public hearing on the proposed project, the designation of the installation of six sets of automated license plate reader camera systems, including poles up to 12 feet in height, and signage, within the City's public right-of-way; two sets near Lunada Pointe Homeowners Association and four sets near Portuguese Bend Homeowner Association. At the conclusion of the public hearing, the Zoning Administrator approved local CDPs 2021-0002 & 2021-0003.

The Coastal Commission South Coast Office received the Notice of Final Action for the local coastal development permits on November 15, 2021. On November 30, 2021 an appeal was filed by two Coastal Commissioners during the Coastal Commissions ten (10) working day appeal period. No other appeals were received.

IV. APPEAL PROCEDURES

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

Section 30603(a) of the Coastal Act states: "After certification of its Local Coastal Program, an action taken by a local government on a coastal development permit application may be appealed to the Commission for only the following types of developments:

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

Section 30603(a)(1) of the Coastal Act establishes the project site as being in an appealable area because it is located between the sea and the first public road paralleling the sea ([Exhibit 1](#)).

Grounds for Appeal

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

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

Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds for appeal. If Commission staff recommends a finding of substantial issue, and Commissioners do not object, substantial issue is found, and the Commission will proceed to the de novo public hearing on the merits of the project. The de novo hearing will be scheduled at the same hearing or a subsequent Commission hearing. A de novo public hearing on the merits of the project uses the certified LCP as the standard of review. In addition, for projects located between the first public road and the sea, findings must be made that any approved project is consistent with the public access and recreation policies of the Coastal Act. Sections 13110-13120 of the California Code of Regulations further explain the appeal hearing process.

The grounds for the current appeal include contentions that the approved development does not conform to the policies set forth in the certified LCP regarding public access and recreation and visual resources, nor with the public access and recreation policies of Chapter 3 of the Coastal Act.

Qualifications to Testify before the Commission

If the Commission, by a vote of 3 or more Commissioners, decides to hear arguments and vote on the substantial issue question, proponents and opponents will have an opportunity to address whether the appeal raises a substantial issue. The time limit for public testimony will be set by the chair at the time of the hearing. As noted in section 13117 of Title 14 of the California Code of Regulations, the only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicant(s), appellant(s), persons who opposed the application before the local government (or their representatives), and the local government. In this case, there is no indication of opposition in the City's record. 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 no substantial issue is raised by the local approval of the subject project.

This de novo hearing is scheduled at the same hearing. A de novo public hearing on the merits of the project uses the certified LCP as the standard of review. In addition, for projects located between the first public road and the sea, findings must be made that any approved project is consistent with the public access and recreation policies of the Coastal Act. Sections 13110-13120 of the California Code of Regulations further explain the appeal hearing process.

V. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE

A. Project Location and Description

The subject sites are all at intersections along a major public road, Palos Verdes Drive (West/South), where two sets of Flock Safety ALPR Camera Systems are proposed at the intersection of Palos Verdes West and Marguerite Drive, and four sets of ALPR cameras are proposed at the intersection of Palos Verdes Drive South and Seacove Drive/Barkentine Road/ Clipper Road/ Packet Road in the City of Rancho Palos Verdes, Los Angeles County ([Exhibit 1](#)). Immediately west, east, southeast, and southwest of the Palos Verdes West & Marguerite Drive intersection is a developed residential neighborhood; further west is the Pacific Ocean. North of the site is a public road, Palos Verdes Drive West, a median trail, and Rancho Palos Verdes Estates.

The first two sets of cameras (subject to the first appeal) would be located along Marguerite Drive. The intersections are approximately 80 feet wide with a sidewalk on the seaward side. The cameras would be installed to monitor all inbound and outbound traffic on Marguerite Drive from Palos Verdes West. There are single-family residences on each corner of the intersection. Marguerite Drive has a public access point to the Vicente Bluffs trail that leads to other coastal trails where the street terminates in a cul-de-sac. The four sets of cameras (subject to the second appeal) would be located along on a stretch of Palos Verdes Drive South measuring approximately 1,420 feet at the intersections with Seacove Drive/Barkentine Road/Clipper Road/Packet Road. Immediately south and north of Palos Verdes Drive South is a developed residential neighborhood; further south is the Pacific Ocean.

The City-approved CDP authorize the installation of six sets of Automated License Plate Readers on 12-foot high poles, with signage “NOTICE / 24/7 VIDEO RECORDING / FLOCK SAFETY” capturing 24-hour video footage day and night, and can capture images of vehicles, their make, model, color, and license plates up to 75 feet away, traveling up to 75 miles per hour ([Exhibit 3](#)).

B. Local Coastal Program Certification

Rancho Palos Verdes is a shoreline community in southern Los Angeles County that incorporated as a City on September 7, 1973. On April 27, 1983, the Commission certified the City's LCP. The City's LCP is comprised of a 1978 Coastal Specific Plan LCP, which, along with the access policies of the Coastal Act, is applicable document for the subject site and City-approved project.

C. Factors to be Considered in Substantial Issue Analysis

Section 30625(b)(2) of the Coastal Act requires a de novo hearing on an 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. Section 13115(c) of the Commission's 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 LCP and 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.

D. Substantial Issue Analysis

As stated in section IV of this report, a local CDP may be appealed to the Commission on the grounds that the proposed development does not conform to the standards set forth in the certified Local Coastal Program (LCP) or the public access policies of the Coastal Act. Pursuant to Section 30625 of the Coastal Act, the Commission must assess whether the appeal raises a substantial issue as to the project's consistency with the certified LCP or the public access policies of the Coastal Act.

In making that assessment, the Commission considers whether the appellants' contentions regarding the inconsistency of the local government action with the certified LCP or the public access policies raise significant issues in terms of the extent and scope of the approved development, the factual and legal support for the local action, the precedential nature of the local action, whether a significant coastal resource would be affected, and whether the appeal has statewide significance.

As provided below, the City of Rancho Palos Verdes certified LCP contains several policies that protect public access and recreation in the coastal zone, and specifically limits privatization of roads. Additionally, Coastal Act Sections 30210, 30212.5, 30213, and 30604(h) require public access to the coast be maximized for all the public, requires public facilities to be distributed throughout an area to mitigate against impacts of overcrowding or overuse, and provides for the protection of lower cost visitor and recreational facilities and further protects *all* visitors from discrimination, including diverse racial and ethnic communities and with low-income populations. These policies are also provided below.

Relevant LCP Policies

Urban Environmental Element

- Compatibility of the Coastal Region with Adjacent Activity (Page U-2)

1. Strive to eliminate existing conflicts associated with regionally oriented activities
2. Continue to facilitate regional and statewide programs and activities within the coastal region in a manner which will mitigate adverse impacts to the neighboring community and City as a whole.

-Public Recreational Activity Areas (Page U-28)

1. Encourage future residential development to meet the needs of their residents
3. Encourage new development to provide both active and passive recreational facilities within specifically controlled land areas (view corridors, RM districts, etc.).

-Coastal Access (Page U-48)

Whether road networks are held in public or private ownership is of critical concern in the coastal region. The shoreline is a public resource which could be denied through the gating or restricting of coastal roads. In order to ensure the public's right to access via roads, existing and proposed roads should be public unless it is demonstrated to the City's satisfaction that a private road(s) would not impede public access to the shoreline.

-Combined Corridor Network (Page U-67)

10. Require roads to be public unless it is demonstrated to the City's satisfaction that a private road(s) would not impede public access to the shoreline.

Coastal Act Policies

Coastal Act Section 30210: In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Coastal Act Section 30211: Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Coastal Act Section 30213: Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Coastal Act Section 30604(h): When acting on a coastal development permit, the issuing agency, or the commission on appeal, may consider environmental justice, or the equitable distribution of environmental benefits throughout the state.

The City-approved CDP authorize the installation of six sets of Automated License Plate Readers on 12-foot high poles, with signage "NOTICE / 24/7 VIDEO RECORDING / FLOCK SAFETY" capturing 24-hour video footage day and night, and can capture images of vehicles, their make, model, color, and license plates up to 75 feet away, traveling up to 75 miles per hour ([Exhibit 3](#)). These cameras store information in a private database owned by the company and can be monitored and searched by customers. The City justified the action by stating that the locally approved project is consistent with the certified LCP and the Chapter 3 public access and recreation policies of the Coastal Act, yet the City's findings are unsubstantiated. There are no policies in the City's certified LCP that allow the constant surveillance and information gathering of public visitors to the coast by homeowner associations, or the posting of signs warning the public that they are being

surveilled. In fact, the LCP specifically states that “The shoreline is a public resource which could be denied through the gating or restricting of coastal roads.”

The project location falls within Subregion 1 for Lunada Pointe (subject to the first appeal) & Subregion 4 for Portuguese Bend (subject to the second appeal) of the City’s certified LCP. The City’s LCP establishes Subregion 1 as a view and access corridor (Pages C-7 and C-10) and thus the permit issuing authority must analyze visual and access impacts of the project as described on page S1-11: “*require proposed developments on lands affected by view corridors to maintain the resource*”. Marguerite Drive is the northmost part the Vicente Blufftop Trail and provides blufftop trail access at the termination of the road; the ALPR cameras and signage on 12-foot high poles would present a visual impediment when viewed from inland towards the coast, and would be imposing to members of the public looking for a place to park who are unfamiliar with the public nature of the streets. Moreover, the access-detering effect of the cameras could be most severe on members of the public seeking respite from their heavily polluted communities, including San Pedro, Wilmington, Long Beach, and other inland communities, many of which are recognized by SB 535 as disadvantaged communities, and thus raises environmental justice concerns. [Exhibit 2](#) identifies these communities on a map using CalEnviroScreen 4.0 tool as disadvantaged communities. All of the streets in the vicinity of the proposed ALPR cameras provide public parking spaces, although there are some signs indicating preferential parking districts along some of the streets are currently being enforced.

The proposed four sets of cameras placed on Packet, Barkentine, and Clipper Roads all located in Subregion 4, which has no direct public coastal access or blufftop trails due to the demand of residents near Portuguese Bend (LCP Section S4-13 states: “the elimination of path and trails through the area was brought about by local community objection to the route.”) However, all of the streets within Subregion 4 are public, not privately owned by the HOA. Although the proposed four sets of ALPR cameras within this neighborhood are not pointed at the main throughfare of Palos Verdes Drive South, the smaller roads are public and visitors to Abalone Cove Shoreline Park or Terranea Trail coming from southern cities would be subject to the Flock Safety ALPR Camera system registry and could be deterred from coastal access.

Even though the proposed development would only deter public access along a few streets, coastal access is a statewide issue. Visitors come from far distances to access this section of the coast, which is famous for its kelp forests, fishing, and whale watching. Public transportation is limited in Rancho Palos Verdes, especially when traveling from outside of the peninsula region. Personal vehicles may be the only option for some people to access this relatively remote section of the coast.

There is not a strong factual or legal basis for the City’s decision to approve the CDPs. The City’s findings for approval of the local CDPs state that the purpose of the cameras is crime deterrence, based on the City’s Safety Strategic Plan, which is not part of the certified LCP, without any further explanation or evidence of how the cameras would deter crime, what crime the cameras would deter, or what crimes have been committed in recent years that necessitate the need for license-plate reading cameras. The report states that “as part of the City’s Safety Strategic Plan, incentives are available for HOAs wishing to

install security cameras at the entry/exit points of their neighborhood” ([Exhibit 4](#)) However, these automated license plate readers are not just security cameras posted on private property. They are proposed on public streets and include intimidating signage. Additionally, it is not identified in the City’s record how the data gathered from the automated license plate readers will be used, or by whom. The system would have the capacity to monitor every vehicle that travels along the public right of way and would deter some visitors from accessing the coast.

Allowing the City-approved development to proceed would set a precedent for allowing constant monitoring of coastal visitors seaward of the first public road in other popular coastal areas. The precedent that would be set by monitoring public streets in the RPV coastal zone, without a demonstrated public safety need, could cause increased use of adjacent coastal resources and access points, which could lead to additional requests for ALPR cameras, delivering intimidation through pretense of security to other coastal areas.

This appeal raises issues of statewide importance pertaining to safety, privacy, and maximizing public access seaward of the first public road, which provides direct access to vistas, public access trails, the beach, and tide pools below. Such intimidation relating to public access has the potential to deny coastal access opportunities to visitors from inland areas and those who value their privacy. The implication of allowing the City to install ALPR cameras seaward of the first public road could have statewide effects if other Cities follow suit. Accordingly, the appellants’ contentions raise concerns about the future interpretation of LCP and Coastal Act compliance. Therefore, the appeal is both precedential and raises issues of statewide significance.

The Coastal Act sets high standards to protect public access, while the City-approved CDP would discourage access. For that reason and the reasons stated above, the appeal raises a substantial issue of consistency with the public access and recreation and visual resources policies set forth in the certified City of Rancho Palos Verdes LCP and the public access policies of the Coastal Act.

VI. MOTIONS AND RESOLUTIONS – DE NOVO PERMITS

Motion One: I move that the Commission **approve** Coastal Development Permit No. A-5-RPV-21-0076 pursuant to the staff recommendation.

Staff recommends a **NO** 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 One:

The Commission hereby denies a Coastal Development Permit for the proposed development and adopts the findings set forth below on grounds that the development would not be in conformity with the certified Local Coastal Plan and/or the public access and recreation policies of the California Coastal Act.

Motion Two: I move that the Commission **approve** Coastal Development Permit No. A-5-RPV-21-0077 pursuant to the staff recommendation.

Staff recommends a **NO** 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 Two:

The Commission hereby denies a Coastal Development Permit for the proposed development and adopts the findings set forth below on grounds that the development would not be in conformity with the certified Local Coastal Plan and/or the public access and recreation policies of the California Coastal Act.

VII. FINDINGS AND DECLARATIONS – DE NOVO PERMITS

A. PROJECT LOCATION AND DESCRIPTION

The project location and description is hereby incorporated by reference from Section V, Part A of the Substantial Issue portion of this staff report on page 8.

B. PUBLIC ACCESS AND RECREATION

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

Policies of the certified Local Coastal Program and the public access policies of the Coastal Act are hereby incorporated from Section V, Part D of the substantial issue analysis above. The following recreation policies of the Coastal Act also apply:

Coastal Act Policies

Coastal Act Section 30220: Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Coastal Act Section 30221: Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Coastal Act Section 30223: Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Coastal Act Section: 30224: Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in

existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in area dredged from dry land.

Protecting public access to the coast is one of the highest charges of the Coastal Act. Coastal Act Section 30210 states that public access shall be maximized and Section 30211 states that development shall not interfere with the public's right of access to the sea. The locations where the subject development is proposed are public roads in a highly visited coastal area. Recreational activities in this area include fishing, snorkeling, SCUBA diving, kayaking, bicycling, hiking, whale watching, star gazing, meditation, picnicking, bird watching, exercise, etc. The project locations include multiple streets which are significant because they provide direct physical access to coastal dependent recreational opportunities including California Coastal Trail access directly seaward of several of the roads ([Exhibit 1](#)).

The proposed development is installation of six sets of Automated License Plate Readers on 12-foot high poles, with signage "NOTICE / 24/7 VIDEO RECORDING / FLOCK SAFETY" capturing 24-hour video footage day and night, and can capture images of vehicles, their make, model, color, and license plates up to 75 feet away, traveling up to 75 miles per hour. These cameras store information in a private database owned by the company and can be monitored and searched by customers (the homeowner associations in this case). There are no policies in the certified LCP that allow the constant surveillance and information gathering of public visitors to the coast by homeowners associations, or the posting of signs warning the public that they are being surveilled. In fact, the LCP specifically states that "*The shoreline is a public resource which could be denied through the gating or restricting of coastal roads.*" The LCP policies call for the creation of more visitor-serving parking spaces in the area and for the public roads to be maintained, not privatized. The City's action would have the effect of deterring access because the signage and cameras would make the roads would appear private. This appearance would decrease the public utility of the public parking resources seaward of the first public road and therefore restrict the public's right to access coastal trails, the shoreline, and coastal views. This would be inconsistent with Coastal Act Sections 30210 and 30211.

The LCP establishes Subregion 1 as a view and access corridor (Pages C-7 and C-10) and thus the permit issuing authority must analyze visual and access impacts of the project as described on page S1-11: "*require proposed developments on lands affected by view corridors to maintain the resource*". Marguerite Drive is the northmost part the Vicente Blufftop Trail and provides blufftop trail access at the termination of the road; the ALPR cameras and signage on 12-foot high poles would be imposing to members of the public looking for a place to park who are unfamiliar with the public nature of the streets. All of the streets in the vicinity of the proposed ALPR cameras provide public parking spaces, although there are some signs indicating preferential parking districts along some of the streets are currently being enforced.

The LCP background section on Subregion 4 states that when Abalone Cove was opened to the public, visitor parking exceeded expectations. Due to a lack of sufficient visitor

parking, visitors began to park along the public streets in the adjacent residential neighborhood. In response to the hindrance on the residential parking supply, a permit/resident only parking district was established in that neighborhood. The LCP does not identify the year that permit parking was established, but California Coastal Records Project pictures indicate that it was likely after 1972 but before 1978. More research is needed to determine where preferential parking districts exist and if any of them are authorized by the LCP or a coastal development permit. In 2015, two Commissioners appealed the designation of a new preferential parking district in the vicinity of Portuguese Bend, for which the Coastal Commission denied the De Novo coastal development permit on the grounds of loss of access.

The proposed four sets of cameras placed on Packet, Barkentine, and Clipper Roads all located in Subregion 4, which has no direct public coastal access due to the demand of residents near Portuguese Bend (LCP Section S4-13 states: “the elimination of path and trails through the area was brought about by local community objection to the route.”) However, all of the streets within Subregion 4 are public, not privately owned by the HOAs.

Although the proposed four sets of ALPR cameras within this neighborhood are not pointed at the main throughfare of Palos Verdes Drive South, the smaller roads are public and visitors to Abalone Cove Shoreline Park or Terranea Trail coming from southern cities would be subject to the Flock Safety ALPR Camera system registry. Moreover, the access-detering effect of the cameras could be most severe on members of the public seeking respite from their heavily polluted communities, including San Pedro, Wilmington, Long Beach, and other inland communities, many of which are recognized by SB 535 as disadvantaged communities, and thus raises environmental justice concerns. [Exhibit 2](#) identifies these communities on a map using CalEnviroScreen 4.0 tool as disadvantaged communities. The Coastal Act states that when acting on a coastal development permit, the issuing agency, or the commission on appeal, may consider environmental justice, or the equitable distribution of environmental benefits throughout the state. In past actions, the Commission has applied an environmental justice lens to its analysis of projects’ consistency or inconsistency with the Chapter 3 policies, including public access. If a project would have the effect of restricting access for members of the public from certain communities, that is an environmental justice issue.

The Chapter 3 public access polices of the Coastal Act state that maximum access shall be provided for *all* the people, that development shall not interfere with the public’s ability to access the coast. It is fundamentally important to protect public access from intimidating signage that do not serve to support coastal access, especially in areas with limited public parking and a history of restricting access, such as the subject areas. The proposed ALPR cameras would adversely affect public access because they would give the appearance that the street is a private road for a private community, even though the streets are public and available for public parking. Some coastal visitors would also not feel comfortable driving or parking along streets where they are under constant surveillance, even if those streets are public. The City’s LCP states: *The shoreline is a public resource which could be denied through the gating or restricting of coastal roads.*

The proposed development sends a message that the public cannot be trusted in coastal areas where they do not live. The homeowners associations' operation of surveillance systems on public roads would discourage people who do not live in the area from visiting, and if the ALPR cameras were to proliferate, there would be a cumulative adverse impact on public access to the coast. Installation of Flock Safety's ALPR Camera Systems on a major public street could result in an increase of use of adjacent coastal resources and alternate access points, which could lead to additional requests for ALPR cameras, delivering intimidation through the pretense of security. The camera system has the ability to identify and store personally identifiable information of visitors including the type, make, color, and license plate number of all vehicles in the vicinity, which could potentially lead to harassment of visitors. Flock Safety advertises their camera database system as safe and private. On its website, Flock Safety states that access to the data is decided by the neighborhood itself, whether it's an HOA board member, a security committee, etc. Through this Admin Portal, the admin can easily search vehicle attributes based on the day and time, and search by license plate number, vehicle type or color, and more. Additionally, providing this data to law enforcement and non-law enforcement parties may increase profiling of people of color¹; and ALPRs can also misread plates.²

Public access is explicitly called out as a significant resource to be protected under Coastal Act Section 30210 and Coastal Act Section 30223 states that upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible. The proposed development would reduce access and would reduce recreational opportunities in an area that supports access and recreation. Privatization of streets is discouraged by the LCP, which also says public access should be provided. The City approved development is not consistent with the LCP policies encouraging public roads and maximum access.

Moreover, the Coastal Act's environmental justice definition (Coastal Act Section 30013) explicitly protects *all* communities regardless of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability from discriminatory practices in accessing the coast. Applying the Coastal Act's environmental justice policy, reviewing the impacts of the development through the lens of environmental justice, the proposed development is not consistent with the public access and recreation policies of the Coastal Act.

For these reasons, and because there are no special conditions or mitigation measures that could be applied to make the development consistent with the public access and recreation policies of the LCP and the Coastal Act, the proposed development must be denied.

C. VISUAL RESOURCES

¹ Joseph, George. "What Are License-Plate Readers Good For?" Bloomberg.com. August 5, 2016.

<https://www.bloomberg.com/news/articles/2016-08-05/license-plate-readers-catch-few-terrorists-but-lots-of-poor-people-of-color>

² Warzel, Charlie. "When License-Plate Surveillance Goes Horribly Wrong" The New York Times. The New York Times. April 23, 2019. <https://www.nytimes.com/2019/04/23/opinion/when-license-plate-surveillance-goes-horribly-wrong.html>

The certified LCP contains several policies requiring that visual resources be maintained along scenic view corridors, which some of the proposed development would be within.

- Corridors Element (C-16): It is the policy of the City to require development proposals within areas which might impact corridors to analyze the site conditions in order to mitigate impacts and obtain feasible implementation of all corridor guidelines.

-Subregions Element (S1-11): Require proposed developments on lands affected by view corridors to maintain the resource.

The visual impact of the eight poles up to 12 feet in height, with associated cameras, signs, and power systems is not consistent with the visual resources policies of the LCP, specifically the Coastal Specific Plan and Urban Appearance Overlay District policies requiring the City to preserve, protect, and enhance the visual character of the City's predominant landforms, protect views from public view corridors, and preserve vegetation as a visual and natural resource. The poles would be higher than most adjacent vegetation and would detract from coastal views from Palos Verdes Drive and Marguerite Drive, which are the first public road inland of the coast. The poles are not necessary to serve a function which promotes access or other public interest; thus the visual resource policies of the LCP should be interpreted strictly. Even if the impact of the poles would be minimal because there are only six sets of them and they are not as high as a traffic signal, there would be an impact to visual resources and the impact could be avoided. Therefore, the Commission denies the permits because the development is not consistent with the visual resources policies of the LCP.

D. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of the Commission's Code of Regulations requires Commission approval of coastal development permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080(b)(5) of CEQA, as implemented by section 15270 of the CEQA Guidelines, provides that CEQA does not apply to projects which a public agency rejects or disapproves. The Commission finds that denial, for the reasons stated in these findings, is necessary to avoid the significant effects on coastal access and visual resources that would occur if the coastal development permits were approved. Accordingly, the Commission's denial of this project represents an action to which CEQA, and all requirements contained therein that might otherwise apply to regulatory actions by the Commission, do not apply.

Even if CEQA did apply, 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. As discussed above, the proposed project is inconsistent with the certified LCP and the public access and recreation policies of the Coastal Act. The development has not been designed to eliminate adverse effects to public access and recreation or visual resources. The denial of the proposed development would avoid any significant adverse effect that the activity may have on the environment.

A-5-RPV-21-0076 & A-5-RPV-21-0077 (Flock Safety)

Appeal – Substantial Issue & De Novo

Therefore, the Commission finds that the proposed project cannot be found consistent with the requirements of the Coastal Act to conform to CEQA and denies the proposed project.