

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
PHONE: (831) 427-4863  
FAX: (831) 427-4877  
WEB: WWW.COASTAL.CA.GOV



# W14a

Appeal Filed: 10/9/2017  
49th Day: 12/20/2017  
Staff: Katie Butler - SC  
Staff Report: 10/19/2017  
Hearing Date: 11/8/2017

## APPEAL STAFF REPORT: SUBSTANTIAL ISSUE DETERMINATION ONLY

**Appeal Number:** A-3-SLO-17-0053

**Applicant:** Lynn Clemence-Lucas

**Appellants:** Joseph M. and Barbara A. Crowley

**Local Government:** San Luis Obispo County

**Local Decision:** County file number DRC2016-00066 approved by the San Luis Obispo County Board of Supervisors on September 19, 2017

**Location:** 2701 Windsor Boulevard (APN 023-011-010) in the Cambria area of San Luis Obispo County

**Project Description:** Allow use of an existing two-bedroom, 2,477-square-foot single-family residence as a vacation rental

**Staff Recommendation:** No Substantial Issue

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**Important Hearing Procedure Note:** This is a substantial issue only hearing. Testimony will be taken only on the question of whether the appeal raises a substantial issue. Generally and at the discretion of the Chair, testimony is limited to three minutes total per side. Please plan your testimony accordingly. Only the Applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify. Others may submit comments in writing. If the Commission determines that the appeal does raise a substantial issue, the de novo phase of the hearing will occur at a future Commission

meeting, during which the Commission will take public testimony. (California Code of Regulations, Title 14, Sections 13115 and 13117.)

## **SUMMARY OF STAFF RECOMMENDATION**

San Luis Obispo County approved a coastal development permit (CDP) allowing an existing oceanfront single-family residence to be used as a vacation rental at 2701 Windsor Boulevard in the community of Cambria. The Appellants, Joseph and Barbara Crowley, contend that the County-approved project is inconsistent with the distance location requirement and the minor use permit allowance of the Local Coastal Program's (LCP) Coastal Zone Land Use Ordinance (CZLUO) Section 23.08.165, which is the County's certified vacation rental ordinance.

After reviewing the local record, staff has concluded that the appeal does not raise a substantial issue with respect to the project's conformance with the LCP. First, while the project does not conform to the LCP's standard location and distance separation requirements (i.e., no vacation rental shall be located within 200 feet of another vacation rental on the same or opposite side of the street, or within a 150-foot radius around the proposed vacation rental), and in fact would be located within a 150-foot radius of four existing vacation rentals, the LCP specifically allows for modifications to those requirements through the County's public CDP process. In addition, the County made specific CDP findings, including that modifying the locational standards will not be detrimental to public health, safety, and welfare of the general public or persons residing or working in the neighborhood of the use; that the project is not inconsistent with the character of the neighborhood or contrary to its orderly development because the immediate surrounding vicinity is dominated by recreation and access to the Fiscalini Ranch Preserve; and that the proposed use will not generate a volume of traffic beyond the safe capacity of all roads providing access to the project. Finally, the County conditioned its approval to protect residential community character and neighborhood compatibility by including strict limitations on occupancy, vehicles and parking (e.g., onsite parking only), tenancy, and noise; a prohibition against changing the residential character of the home's appearance; and penalties for violations of any of these conditions, consistent with and pursuant to the standards required in the LCP's vacation rental ordinance.

In summary, the County used the provisions of the vacation rental ordinance to allow for a distance location modification that will provide for a high-priority Coastal Act and LCP visitor-serving use. Vacation rentals provide an important visitor function that allows small groups and families another option for overnight accommodations near the beach and shoreline throughout the state of California. The County-approved project provides an appropriate balance between providing a visitor-serving accommodation along the coast and ensuring controls are in place to avoid significant adverse impacts to adjacent residents and coastal resources. Staff recommends that the Commission determine that the appeal contentions do not raise a substantial LCP conformance issue, and that the Commission decline to take jurisdiction over the CDP for this project. The single motion necessary to implement this recommendation is found on page 4 below.

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### EXHIBITS

Exhibit 1 – Location Maps

Exhibit 2 – Project Site Photos

Exhibit 3 – County’s Findings and Conditions

Exhibit 4 – Appeal of San Luis Obispo County’s CDP Decision

Exhibit 5 – Vacation Rental Location Map

### CORRESPONDENCE

### EX PARTE COMMUNICATION

## I. MOTION AND RESOLUTION

Staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of no substantial issue would mean that the Commission will not hear the application de novo and that the local action will become final and effective. To implement this recommendation, staff recommends a **YES** vote on the following motion. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission determine that Appeal Number A-3-SLO-17-0053 raises no substantial issue with respect to the grounds on which the appeal has been filed under Section 30603. I recommend a yes vote.*

***Resolution to Find No Substantial Issue.** The Commission finds that Appeal Number A-3-SLO-17-0053 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.*

## II. FINDINGS AND DECLARATIONS

### A. PROJECT DESCRIPTION AND LOCATION

The County-approved project authorizes an existing oceanfront 2,477-square-foot single-family residence to be used as a residential vacation rental (APN 023-011-010).<sup>1</sup>

The project site is located at 2701 Windsor Boulevard on the blufftop at the north end of the Marine Terrace neighborhood in the unincorporated community of Cambria in San Luis Obispo County (see **Exhibit 1**). The residence is immediately adjacent to an existing blufftop park and beach access stairway at the terminus of Wedgewood Street/Sherwood Drive and is approximately 100 feet from an entrance to the Fiscalini Ranch Preserve (Preserve). This entrance provides direct access to the Preserve's Bluff Trail, which is a popular public access amenity. The project site is located in the County's Residential Single-Family (RSF) land use category and is within the Urban Reserve Line (URL) and Urban Service Line (USL) of Cambria. Vacation rentals are allowed as a conditional use in the RSF land use category.

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<sup>1</sup> A residential vacation rental is defined in CZLUO Section 23.08.165 as "the use of an existing residence, or a new residential structure that has been constructed in conformance with all standards applicable to residential development, as a rental for transient use. This definition does not include the single tenancy rental of the entire residence for periods of thirty consecutive days or longer." The definition in the LCP's Coastal Zone Framework for Planning has not been updated since the vacation rental ordinance was first adopted in 2003: "A Residential Vacation Rental is the use of an existing residence, or a new residential structure that has been constructed in conformance with all standards applicable to residential development, as a rental for transient use. Rental shall not exceed one individual tenancy within seven consecutive calendar days. This definition does not include the one time rental of a residence for 14 consecutive days or less in any calendar year, "Bed & Breakfast Facilities," "Homestays," and "Hotel, Motels," which are defined separately; and rooming and boarding houses (included under "Multi-Family Dwellings") or rental of an entire structure for 30 days or longer." [Added 2003, Ord 2933]

See **Exhibit 1** for a location map; see **Exhibit 2** for photographs of the site and surrounding area.

## **B. SAN LUIS OBISPO COUNTY CDP APPROVAL**

On May 19, 2017, the San Luis Obispo County Planning Department Hearing Officer considered and denied the Applicant's proposed CDP/Minor Use Permit (MUP) application number DRC2016-00066 to allow the use of an existing single-family dwelling to be used as a vacation rental. The Applicant appealed the Hearing Officer's denial to the County's Board of Supervisors on that same day. The Board of Supervisors held a public hearing to consider the appeal on September 19, 2017. On that date, the Board upheld the Applicant's appeal and reversed the Hearing Officer's original denial, subject to specific findings and conditions of approval (see **Exhibit 3**) intended to ensure that the project satisfies specific LCP requirements regarding vacation rentals.

A complete and legally sufficient Notice of Final County Action (NOFA) from the County for the CDP was received in the Coastal Commission's Central Coast District Office on September 26, 2017. The Coastal Commission's ten-working-day appeal period for this action began on September 27, 2017 and concluded at 5pm on October 10, 2017. One valid appeal, submitted by Joseph and Barbara Crowley, was received during the appeal period (see **Exhibit 4**).

## **C. APPEAL PROCEDURES**

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. The following categories of local CDP decisions are appealable: (a) approval of CDPs for development that is located (1) 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) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff, and (3) in a sensitive coastal resource area; or (b) for counties, approval of CDPs for development that is not designated as the principal permitted use under the LCP. (Coastal Act Sections 30603(a)(1)-(4).) In addition, any local action (approval or denial) on a CDP for a major public works project (including a publicly financed recreational facility and/or a special district development) or an energy facility is appealable to the Commission. (Coastal Act Section 30603(a)(5).) This project is appealable because a vacation rental is not designated as a principally permitted use in the RSF land use category, and because the site is located between the sea and first public road, within 300 feet of the beach, and within 300 feet of a coastal bluff.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the certified LCP or to the public access policies of the Coastal Act. Section 30625(b)(2) of the Coastal Act requires the Commission to consider a CDP for an appealed project de novo unless a majority of the Commission finds that "no substantial issue" is raised by such allegations.<sup>2</sup> Under Section 30604(b), if the Commission conducts the de novo portion of an

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<sup>2</sup> The term "substantial issue" is not defined in the Coastal Act or in its implementing regulations. In previous decisions on appeals, the Commission has considered the following factors in making substantial issue determinations: the degree of factual and legal support for the local government's decision; the extent and scope

appeals hearing (upon making a determination of “substantial issue”) and finds that the proposed development is in conformity with the certified LCP, the Commission must issue a CDP. If a CDP is approved for a project that is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone, Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act. Because this project is located between the nearest public road and the sea, this additional finding would need to be made if the Commission were to approve the project following a de novo hearing.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons opposed to the project who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding the substantial issue question must be submitted in writing. (California Code of Regulations, Title 14, Section 13117.) Any person may testify during the de novo CDP determination stage of an appeal (if applicable).

#### **D. SUMMARY OF APPEAL CONTENTIONS**

The Appellants contend that the County-approved project is inconsistent with the intent of the vacation rental ordinance, which the Appellants further contend allows for exceptions to the locational standards under a minor use permit for unique cases only. In addition, the Appellants state that the Board’s findings regarding the project site’s proximity to the Fiscalini Ranch Preserve (and the County’s reliance on this fact to deem this a unique case) were based on photographs of vehicles illegally angle-parked near the entrance to the Preserve. The Appellants contend that the County cannot base their approval on an illegal parking situation and that this location is not a legal parking area for the Preserve. The Appellants contend that the County’s approval sets a precedent that would allow for any property that is near recreation, the beach, or a park (which is “most of Cambria” according to the Appellants) to qualify for a minor use permit to allow a vacation rental. Finally, the Appellants contend that the proper standard to be applied is “unique circumstances for providing visitor serving uses.” See **Exhibit 4** for the full text of the appeal contentions.

#### **E. SUBSTANTIAL ISSUE DETERMINATION**

##### **1. Applicable LCP Provisions**

The County’s LCP includes operational standards for vacation rentals, along with other policies related to visitor-serving uses and neighborhood compatibility. CZLUO Section 23.08.165, first adopted by the County in 2003 and amended in 2013, is the primary mechanism for regulating vacation rentals in the Coastal Zone of San Luis Obispo County, and is applicable to the urban areas of Cambria, Cayucos, and Avila Beach. CZLUO Section 23.08.165 states (*in relevant part*):

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of the development as approved or denied by the local government; the significance of the coastal resources affected by the decision; the precedential value of the local government's decision for future interpretations of its LCP; and, whether the appeal raises only local issues as opposed to those of regional or statewide significance. Even when the Commission chooses not to hear an appeal (by finding no substantial issue), appellants nevertheless may obtain judicial review of a local government’s CDP decision by filing a petition for a writ of mandate pursuant to the Code of Civil Procedure, Section 1094.5.

**23.08.165 – Residential Vacation Rentals:** *The Residential Vacation Rental is the use of an existing residence, or a new residential structure that has been constructed in conformance with all standards applicable to residential development, as a rental for transient use. This definition does not include the single tenancy rental of the entire residence for periods of thirty consecutive days or longer. Rental of a residence shall not exceed four individual tenancies per calendar month as defined in Subsection d. The use of residential property as a vacation rental within the Cambria and Cayucos and Avila Beach urban reserve lines shall comply with the following standards:*

- a. **Purpose.** *The purpose of this section is to establish a set of regulations applicable to residential vacation rentals. These regulations are in addition to all other provisions of this Title. In the adoption of these standards the Board of Supervisors find that residential vacation rentals have the potential to be incompatible with surrounding residential uses, especially when several are concentrated in the same area, thereby having the potential for a deleterious effect on the adjacent full time residents. Special regulation of residential vacation rentals is necessary to ensure that they will be compatible with surrounding residential uses and will not act to harm and alter the neighborhoods they are located within.*

...

- c. **Location.**

*(1) Cambria. Within all residential land use categories, no residential vacation rental shall be located within (1) 200 linear feet of a parcel on the same side of the street as the vacation rental; (2) 200 linear feet of the parcel on the opposite side of the street from the vacation rental; and (3) 150 foot radius around the vacation rental. These same distances apply to other types of visitor-serving accommodation (i.e. Bed and Breakfast or Homestay.) Distances shall be measured from the closest property line of the existing residential vacation rental unit, and/or other visitor-serving accommodation, to the closest property line of the property containing the proposed residential vacation rental unit. This location standard can be modified through Minor Use Permit approval when a Development Plan is not otherwise required.*

...

- d. **Vacation rental tenancy.** *Rental of a residence shall not exceed four individual tenancies per calendar month. The first day of each tenancy determines the month assigned to that tenancy. No additional occupancy of the residence (with the exception of the property owner and private non-paying guests) shall occur. A residential vacation rental shall only be used for the purposes of occupancy as a vacation rental or as a full time occupied unit. No other use (i.e.: home occupation, temporary event, homestay) shall be allowed on the site.*

- e. **Number of occupants allowed.** *The maximum number of occupants allowed in an individual residential vacation rental shall not exceed the number of occupants that can*

*be accommodated consistent with the on-site parking requirement set forth in subsection (i) hereof, and shall not exceed two persons per bedroom plus two additional persons. The Zoning Clearance shall specify the maximum number of occupants allowed in each individual vacation rental.*

- f. **Appearance, visibility and location.** The residential vacation rental shall not change the residential character of the outside appearance of the building, either by the use of colors, materials, lighting, or by the construction of accessory structures or garages visible from off-site and not of the same architectural character as the residence; or by the emission of noise, glare, flashing lights, vibrations or odors not commonly experienced in residential areas.*
- g. **Signs.** Availability of the rental unit to the public shall not be advertised on site.*
- h. **Traffic.** Vehicles used and traffic generated by the residential vacation rental shall not exceed the type of vehicles or traffic volume normally generated by a home occupied by a full time resident in a residential neighborhood. For purposes of this section, normal residential traffic volume means up to 10 trips per day.*
- i. **On-site parking required.** All parking associated with a Residential Vacation Rental shall be entirely onsite, in the garage, driveway or otherwise out of the roadway, in accordance with subsection e., above. Tenants of Residential Vacation Rentals shall not use on-street parking at any time.*
- j. **Noise.** All residential vacation rentals shall comply with the standards of Section 23.06.040 et seq. (Noise Standards).<sup>3</sup> No residential vacation rental is to involve on-site use of equipment requiring more than standard household electrical current at 110 or 220 volts or that produces noise, dust, odor or vibration detrimental to occupants of adjoining dwellings. In addition, property owners and/or property managers shall insure that the occupants of the residential vacation rental do not create loud or unreasonable noise that disturbs others and is not in keeping with the character of the surrounding neighborhood. Loud and unreasonable noise shall be evaluated through field observations by a County Sheriff, County Code Enforcement or other official personnel, based upon a threshold of noise disturbance related to the residential vacation rental use that is audible from a distance of 50 feet from the property lines of the rental property.*

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<sup>3</sup> **CZLUO Sections 23.06.044-050 - Noise Standards.** Sections 23.06.044-050 establish standards for acceptable exterior and interior noise levels and describe how noise is to be measured. These standards are intended to protect persons from excessive noise levels, which are detrimental to the public health, welfare and safety and contrary to the public interest because they can: interfere with sleep, communication, relaxation and the full enjoyment of one's property; contribute to hearing impairment and a wide range of adverse physiological stress conditions; and adversely affect the value of real property. It is the intent of this chapter to protect persons from excessive levels of noise within or near various residential development and other specified noise-sensitive land uses.

...

Other LCP policies protect and encourage, and give certain priorities to, visitor-serving accommodations in the coastal zone, including:

***LCP Coastal Plan Recreation and Visitor-Serving Facilities Policy 1. Recreation Opportunities.*** *Coastal recreational and visitor-serving facilities, especially lower-cost facilities, shall be protected, encouraged and where feasible provided by both public and private means. ...*

***LCP Coastal Plan Recreation and Visitor-Serving Facilities Policy 2. Priority for Visitor Serving Facilities.*** *Recreational development and commercial visitor-serving facilities shall have priority over non-coastal dependent use, but not over agriculture or coastal dependent industry in accordance with PRC 30222. All uses shall be consistent with protection of significant coastal resources. The Land Use Plan shall incorporate provisions for areas appropriate for visitor-serving facilities that are adequate for foreseeable demand.*

In general, LCP policies, such as LCP Coastal Plan Recreation and Visitor-Serving Facilities Policies 1 and 2, encourage and protect visitor-serving facilities, and state that visitor-serving facilities shall be prioritized over non-coastal dependent use, but not over agriculture or coastal dependent industry. The purpose of the County’s vacation rental ordinance is to provide for Coastal Act and LCP priority visitor-serving facilities and uses, particularly adjacent to the coast, but also in a manner that ensures vacation rentals “will not act to harm and alter the neighborhoods they are located within” or have a “deleterious effect on the adjacent full time residents.” As described in CZLUO Section 23.08.165(a), the LCP recognizes that “residential vacation rentals have the potential to be incompatible with surrounding residential uses” and that because of this potential “special regulation of these uses is necessary to ensure that they will be compatible with surrounding residential uses.” This section also recognizes that high concentrations of vacation rentals in the same geographic area have the potential to cause incompatibility. As such, the LCP’s vacation rental ordinance seeks to balance the objectives of providing visitor-serving uses in a manner that protects residential community character by including numerous standards and restrictions on such rentals, including on noise, traffic, occupancy, and location.

On this latter point, the LCP’s vacation rental location standard requires a minimum separation distance between vacation rentals with the purpose of avoiding concentrations of vacation rentals and associated neighborhood impacts in the same area. Specifically, the LCP states that, in Cambria, no residential vacation rental shall be located within (1) 200 linear feet of a parcel on the same side of the street as the vacation rental, (2) 200 linear feet of the parcel on the opposite side of the street from the vacation rental, and (3) a 150-foot radius around the vacation rental.<sup>4</sup> The project does not comply with this standard because it would be located within a 150-foot radius of four existing vacation rentals, one of which is on the same side of the street and less than 200 feet from the County-approved project. Specifically, the approved vacation rental

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<sup>4</sup> For the purposes of these measurements, the LCP states that distances shall be measured from the closest property line of the property containing the residential vacation rental unit and/or other visitor-serving accommodation, to the closest property line of the proposed residential vacation rental unit.

would be located immediately adjacent to an existing vacation rental on the parcel to the north (2757 Windsor Boulevard) and within 90 feet of three other vacation rentals (306 Wedgewood Street, 2675 and 2698 Sherwood Drive) (see **Exhibit 5**).

## **2. Appellants' Contentions**

The Appellants contend that the County-approved project is inconsistent with the intent of the vacation rental ordinance, and cites the 2003 Coastal Commission hearing when the vacation rental ordinance was approved as an LCP amendment. At that hearing, the County representative stated that the minor use permit (MUP) tool to allow for exceptions to the location requirements would only be used for “unique circumstances that we can’t anticipate today, to actually deal with those where it does provide visitor serving uses.” The Appellants state that the County has denied four other MUP exceptions, and like those that were denied, the proposed project does not provide any unique visitor-serving use. The Appellants state that the Marine Terrace neighborhood already has adequate visitor-serving accommodations with “110 presently licensed vacation rentals.”

Next, the Appellants state that the Board’s findings regarding the project site’s proximity to the Fiscalini Ranch Preserve (and the County’s reliance on this fact to deem this a unique case) were based on photographs of vehicles illegally angle-parked near the entrance to the Preserve. The Appellants contend that the County cannot base its approval findings on an illegal parking situation. Specifically, the Appellants state that the County code prohibits angle parking on Windsor Boulevard; the Preserve only provides one parking space (for handicapped visitors); the Preserve does not condone or encourage illegal parking on Windsor Boulevard; the illegal parking trespasses on privately-owned land; and the California Fire Code requires that a “fire apparatus road” (i.e. a public street) cannot be obstructed in any manner by parked vehicles and that an unobstructed width of 20 feet, exclusive of shoulders, must be maintained at all times. In sum, the Appellants state that “an illegal (and tortious) parking situation is not an excuse to justify ignoring the LCP.”

Finally, the Appellants contend that the County’s approval sets a precedent that would allow for any property that is near recreation, the beach, or a park (which they state is “most of Cambria”) to qualify for a MUP to allow a vacation rental. And that the proper standard to be applied is “unique circumstances for providing visitor serving uses.” The Appellants contend that the whole point of the vacation rental ordinance is to balance the competing desires of residents and visitors in a coastal area that has attractions for both, and that allowing “commercial development in any attractive residential neighborhood makes a mockery of the ordinance and effectively rezones the neighborhood.”

See **Exhibit 4** for the full text of the appeal contentions.

## **3. Analysis**

In this case, the County conditioned its approval with the standards and requirements of CZLUO Section 23.08.165, including limits on: occupancy (six persons total, or two persons per bedroom plus two additional persons), vehicles used and traffic generated (not to exceed that normally generated by a full-time resident, or up to ten trips per day), parking (onsite only), tenancy (maximum of four individual tenancies per month), no onsite advertising of the rental, and noise

(no loud or unreasonable noise). The County’s approval also included: requirements for a local property manager or contact person to be available 24 hours a day; a prohibition against changing the residential character of the home’s appearance; and penalties (including potential permit revocation) for violations of any of these conditions, all pursuant to CZLUO Section 23.08.165. (See **Exhibit 3** for the County’s conditions.) These requirements are, by design, intended to protect residential community character and neighborhood compatibility, and the County appropriately conditioned this project accordingly. However, the County-approved project does not meet the location standards in CZLUO Section 23.08.165(c)(1). Specifically, it would be located within a 150-foot radius of four existing vacation rentals at 2757 Windsor Boulevard (which is also on the same side of the street and less than 200 feet from the County-approved project), 306 Wedgewood Street, and 2675 and 2698 Sherwood Drive) (again, see **Exhibit 5**).

However, the location standards are allowed to be modified through “minor use permit approval” as stated in CZLUO Section 23.08.165(c)(1). Neither this section nor the CZLUO provisions regarding MUP approvals specify under what circumstances the modification is allowable and what findings need to be made when approving the modification through MUP approval. In the absence of this specificity in the vacation rental ordinance or MUP sections, the County relied on the findings required to be made for each CDP approval for a Development Plan<sup>5</sup> as specified in CZLUO Section 23.02.034(4), which includes broad required findings that projects must be found to be consistent with the general welfare, and that projects will not be inconsistent with neighborhood character and will not generate traffic exceeding road capacity, as follows:

***CZLUO Section 23.02.034(4).*** *The Review Authority shall not approve or conditionally approve a Development Plan unless it first finds that:*

- (iii) the establishment and subsequent operation or conduct of the use will not, because of the circumstances and conditions applied in the particular case, be detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood of the use, or be detrimental or injurious to property or improvements in the vicinity of the use;*
- (iv) the proposed project or use will not be inconsistent with the character of the immediate neighborhood or contrary to its orderly development; and*
- (v) the proposed use or project will not generate a volume of traffic beyond the safe capacity of all roads providing access to the project, either existing or to be improved with the project.*

Again, while the Appellants argue that the project should not qualify for a modification of the required 150-foot radius and 200-foot distance requirements because the property is not a unique case, CZLUO Section 23.08.165(c)(1) does not require the County to find uniqueness with the residence to allow a distance modification. In fact, this CZLUO section does not specifically state the required findings and circumstances under which the County may allow a deviation

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<sup>5</sup> In the coastal zone, a Development Plan is a type of coastal development permit. An MUP is another type.

from the otherwise required location standards.<sup>6</sup> In the absence of specific LCP direction or guidance, the County applied (as it has in past situations) the broad community character and neighborhood compatibility-type findings applicable to Development Plan CDP approvals, and then applied the typical vacation rental ordinance requirements regarding noise, traffic, and other operational limitations as conditions of approval to the approval to find overall project consistency with the LCP.<sup>7</sup> Thus, the Commission finds that the County reasonably used its discretion by adapting the findings standards for issuance of a Development Plan CDP in the processing of this vacation rental application and that the County's approach does not raise a substantial issue with respect to the grounds raised by the appeal. Furthermore, although the County findings do not specifically use the word "unique," it appears that this particular site's blufftop location and very close proximity to a blufftop park and associated beach accessway, as well as the Preserve, could reasonably be deemed as "unique circumstances," taking into consideration the prioritization of public access under the Coastal Act, thus justifying the modification of the vacation rental distance requirement even under the Appellants' proposed standard. As such, this appeal contention does not raise a substantial issue with respect to LCP conformance.

With respect to the Appellants' contention about the County's findings related to public access and recreation (specifically, illegally parked cars at this entrance to the Fiscalini Ranch Preserve), the County did not rely simply on photos of parked cars at the entrance to the Preserve to find that this is an important public access point. The Preserve (and the Bluff Trail, to which this residence is in close proximity) is a well-known, well-established, and heavily-used public access amenity in Cambria. Whether the parking situation at the terminus of Windsor Boulevard may or may not be legally designed, designated, or maintained by the Preserve does not make this entrance to the Preserve any less important as a public access amenity, nor does it make it improper for the County to find this to be an important public access point.<sup>8</sup> The County found

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<sup>6</sup> To provide further clarity in the implementation of CZLUO Section 23.08.165(c)(1), the County could request an LCP amendment to its vacation rental ordinance to provide specificity as to when and why a distance modification could or should be granted.

<sup>7</sup> It seems that the Appellants' reliance on a "unique circumstances" standard for modifying the vacation rental distance requirement appears to be based on the County representative's use of the term at the 2003 Coastal Commission hearing which approved the vacation rental ordinance as an LCP amendment. Though neither the Appellants' approach (unique circumstances standard per County statement at Commission hearing) nor the County's approach (applying standards for issuance of Development Plan CDP) for modifying the vacation rental distance requirement is directly supported by the LCP, the Commission finds that the County's approach at least has more legal and factual support than the Appellant's approach. This is so because the standards for issuance of a Development Plan CDP are intended to protect coastal resources, including community welfare, character, and traffic; thus, if these findings can be made for a proposed vacation rental, protection of these coastal resources can be analogized and extrapolated with respect to the proposed modification of the vacation rental distance requirement. Furthermore, Section 23.08.165 specifically references Development Plan approval standards in stating: "The location standard can be modified through Minor Use Permit approval when a Development Plan is not otherwise required." Thus, the County has at least some statutory basis for its reliance on a Development Plan CDP approval standard. Finally, the Commission has previously found that the County's approach here does not raise a substantial issue for other similarly-situated vacation rentals (see A-3-SLO-16-0080).

<sup>8</sup> The official trail map (as of October 2017) for the Fiscalini Ranch Preserve identifies the northern terminus of South Windsor Boulevard as a designated limited parking area ([http://www.ffrpcambria.org/pdf/FFRP\\_new-trail-map\\_2017.pdf](http://www.ffrpcambria.org/pdf/FFRP_new-trail-map_2017.pdf)).

that the immediate project vicinity is a “public focal point for public access and parking for the Fiscalini Ranch Preserve, a popular coastal recreation and open space area.” Also, the County found that this particular location is “dominated by recreation and access to the Fiscalini Ranch Preserve and beach access.” The County’s findings in this regard accurately reflect the nature of the project area and do not conflict with the provisions of the LCP that the County relied on to approve the MUP (namely, Section 23.02.034). As such, this appeal contention does not raise a substantial issue with respect to LCP conformance.

Finally, with respect to the Appellants’ contention that the County decision would set a precedent by allowing any property nearby public recreational access to become a vacation rental, the County evaluated the fact-specific circumstances of this particular site, including that it is an oceanfront property with direct beach and Preserve access that is highly suitable for visitor-serving uses, and found the site appropriate for a residential vacation rental. The County thus provided adequate analysis in this case, and thus this appeal contention does not raise a substantial issue with respect to LCP conformance. The County’s approval does not set a precedent for categorical approval of any property nearby public recreational access to become a vacation rental property. Even under the County’s approach that it took here (and has taken previously for similarly-situated proposals) to approve the vacation rental, the County must still make the findings required per Section 23.02.034, which necessarily requires consideration of the fact-specific circumstances on the ground.

The Commission recognizes that vacation rentals engender unique issues and potential impacts regarding the appropriate number, location, and concentrations of vacation rentals, and how vacation rentals may or may not adversely impact a community’s residential and community character and the ability for communities to provide a stable year-round populace and services, such as school systems, police, fire, and library staff. It is also recognized that the LCP’s goals and vision for Cambria clearly include protection and maintenance of its small-town character and its emphasis on the residential nature of, and on the attraction of permanent year-round residents to, the beach community. At the same time, the LCP specifically allows for vacation rentals, including because of the importance of providing visitor-serving uses in the coastal zone, particularly along oceanfront properties such as this project site, which the Coastal Act and the LCP prioritize for visitor-serving uses over lower-priority private residential uses. The approved project being analyzed under appeal is allowing a particular existing single-family residence to be used as a vacation rental, and it is not a broader determination of whether vacation rentals generally may or may not be appropriate in residential land use categories and/or how they may or may not impact local residents on a community-wide scale. Those questions have already been settled in this case as the LCP allows for vacation rentals and distance modifications, and puts in place standards for evaluating such rentals. The reduction in the distance requirement in this case, which can increase the concentration of vacation rentals and their associated potential impacts to residents and the community on a case by case basis, is expressly allowed per the LCP. Thus, issues related to the possibility that vacation rentals are undesirable or incompatible with residential uses and local residents more generally do not raise a substantial issue.<sup>9</sup>

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<sup>9</sup> As stated above, notwithstanding the Commission’s finding that the appeal does not raise a substantial issue with respect to conformity with the LCP regarding vacation rentals, Commission staff notes that the County should update its vacation rental ordinance to ensure that distance requirement modifications are implemented in a

In general, the LCP seeks to protect and maximize coastal access and recreation opportunities in a manner that is consistent with the protection of coastal resources, including community character (see LCP Recreation and Visitor-Serving Facilities Policies 1 and 2 above). The regulation of residential vacation rentals plays an important role in implementing such goals by ensuring that rentals are provided in a manner that protects access, resources, and the integrity of communities. Such regulation is intended to, among other things, ensure that such rentals do not cause problems in the surrounding area (such as noise and parking issues, etc.). There are various regulatory tools available to address these kinds of potential problems. These include limiting the intensity and duration of vacation rental use, and restricting the number and density of such units to address cumulative impacts. The County-approved project includes numerous conditions to protect community character and neighborhood compatibility, including with respect to traffic, noise, and occupancy, and thus the project can be found consistent with the LCP.

In this case, the County reasonably found that by requiring the project to adhere to the standards of CZLUO Section 23.08.165 (with respect to parking requirements, limitations on numbers of occupants, designation of a 24-hour property manager contact, etc.), and including stipulations for revocation of the CDP/MUP if these standards are violated, potential impacts to surrounding property owners can be avoided and that the use will not have community-wide significant adverse coastal resource impacts. Additionally, the project is also conditioned to comply with CZLUO Section 23.06.040 et seq. related to noise standards, which prohibits the rental from producing “noise, dust, odor or vibration detrimental to occupants of adjoining dwellings.” All told, the County applied 14 conditions designed to protect residential community character and neighborhood compatibility, including by placing strict limits on maximum occupancy, parking and locations, tenancy, and noise; a prohibition against changing the residential character of the home’s appearance; and penalties for violations of any of these conditions. These conditions reasonably ensure that the vacation rental will successfully operate compatible with the neighborhood. Thus, the appeal contentions do not raise a substantial LCP conformance issue.

## **F. CONCLUSION**

When considering a project that has been appealed to it, the Commission must first determine whether the project raises a substantial issue of LCP conformity, such that the Commission should assert jurisdiction over a de novo CDP for the development. At this stage, the Commission has the discretion to find that the project does not raise a substantial issue of LCP conformance. As explained above in footnote 2 above, the Commission has in the past considered the following factors in determining whether the issues raised in a given case are “substantial”: the degree of factual and legal support for the local government’s decision; the extent and scope of the development as approved or denied by the County; the significance of the coastal resources affected by the decision; the precedential value of the County’s decision for future interpretations of its LCP; and, whether the appeal raises only local issues as opposed to those of regional or statewide significance.

In this case, these five factors, considered together, support a conclusion that this project does not raise a substantial issue of LCP conformance. With respect to the first factor (degree of

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consistent manner by including specific findings of approval necessary to approve vacation rentals within the distance requirement.

factual and legal support for the government’s decision), the appeal contentions relate to the project’s consistency with the location standards in CZLUO Section 23.08.165 and lack of evidence that this is a unique case warranting deviation from that standard. The County’s approval appropriately considered the LCP’s requirements with respect to these issues, and the approved conditions are designed to minimize any potential impacts to surrounding property owners from the approved development, including with a distance modification reduction, which is allowed per the LCP. Although the LCP does not provide a clear implementing standard for granting a location distance modification per CZLUO Section 23.08.165, as explained in footnote 8 of this staff report, the County reasonably relied on the findings required to be made for a CDP/development plan approval per CZLUO Section 23.02.034 to grant the modification, and the Commission finds that this approach used by the County in this instance (as it has been used in past similar instances) does not raise a substantial issue with respect to LCP conformity. (See CZLUO Section 23.08.165(c)(1) [“This location standard can be modified through Minor Use Permit approval *when a Development Plan is not otherwise required*” (emphasis added)].) Thus, there is adequate factual and legal support for the County’s decision.

With respect to the second and third factors (extent/scope of development as approved or denied and significance of coastal resources affected by the decision, respectively), the approved project would result in allowing an existing residence to be used as a residential vacation rental, and does not include any physical expansion of the existing residence. As conditioned, the approval ensures that the use of the site as a residential vacation rental will not result in an intensification of use impacts as compared to a year-round residential use. Such mitigating conditions include limitations on the number of tenancies in a month, the number of occupants allowed, modifications to the exterior of the building, traffic generated, and noise compliance. Thus, the extent and scope of the approved development is relatively minor, and the use will not have any significant adverse effects on coastal resources (of which community character is the primary concern), and conversely will in fact have significant benefits to coastal resources, including promotion of coastal public access and recreation, which are key use priorities of the Coastal Act.

With respect to the fourth factor (precedential value of the County’s decision for future interpretations of its LCP), because the County followed the requirements of CZLUO Section 23.08.165 in its approval, this project is not expected to set an adverse precedent for future interpretation of the LCP. However, specifically with respect to the location distance modification allowed per CZLUO Section 23.08.165(c)(1), notwithstanding the fact that the Commission finds that the County’s approach to this issue does not raise a substantial issue with respect to LCP conformity (see footnote 8 of this staff report for further explanation), the County should update the LCP to provide clear implementing standards and to ensure consistent future application of this provision. With respect to the fifth factor (whether the appeal raises only local issues as opposed to those of regional or statewide significance), the availability of visitor-serving recreational opportunities and protection of community character are, in general, issues of statewide significance. The County-approved project, however, is solely related to approval of one new vacation rental within a coastal community for which the LCP specifically allows for vacation rentals as well as modification to the distance requirement for said vacation rentals and does not on its own raise an issue of regional or statewide significance.

In short, the Appellants’ contentions do not raise a substantial issue with respect to consistency

with applicable LCP policies and standards and are further adequately addressed by the County's conditions of approval. Based on the foregoing, including when all five substantial issue factors are weighed together, the appeal contentions do not raise a substantial LCP conformance issue and thus the Commission declines to take jurisdiction over the CDP application for this project.

For the reasons stated above, the Commission finds that Appeal Number A-3-SLO-17-0053 does not present a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

**APPENDIX A – SUBSTANTIVE FILE DOCUMENTS**

- Notice of Final County Action

**APPENDIX B – STAFF CONTACT WITH AGENCIES AND GROUPS**

- County Planning Staff