

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



Th15a

Filed: 4/6/2018
Staff: Katie Butler - SC
Staff report: 6/22/2018
Hearing date: 7/12/2018

STAFF REPORT: REQUEST FOR RECONSIDERATION

Application Number: A-3-SLO-17-0053-REC

Applicant: Lynn Clemence-Lucas

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

Project Description: Allow use of an existing two-bedroom, 2,477-square foot single-family blufftop residence as a vacation rental and incorporate conditions 1 through 14 from San Luis Obispo County's approval of file number DRC2016-00066.

Commission Action: Denial

Staff Recommendation: Deny request for reconsideration

SUMMARY OF STAFF RECOMMENDATION

On March 8, 2018, the Commission denied a coastal development permit (CDP) for the proposed use of an existing single-family residence as a vacation rental on the grounds that it was not consistent with the San Luis Obispo County Local Coastal Program (LCP). The Commission's regulations allow an applicant to request that the Commission reconsider its decision to deny a permit application provided that the applicant makes such a request within thirty days of the Commission's action. The grounds for reconsideration of a CDP denial are provided in Coastal Act Section 30627:

The basis of the request for reconsideration shall be either that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error of fact or law has occurred which has the potential of altering the initial decision.

The Applicant for the project that was denied by the Commission requested reconsideration within the required thirty-day period. The Applicant is not claiming that relevant new evidence exists, but rather contends that a number of errors of fact and law occurred, including misrepresentations made by project opponents related to affordable housing displacement, the actual number of existing short-term rentals in Cambria, and the site's lack of uniqueness. The Applicant also asserts errors of fact and law related to lack of findings to support denial of the project; improper Commissioner use of Airbnb website information during the hearing; Commissioner deference to the minority opinion in the local decision on the matter; and improper Commission staff communication with project opponents and Commissioners.

Having reviewed the Applicant's contentions, staff recommends that the Commission **deny** the request for reconsideration for the following reasons: the facts that the Applicant claims were misrepresented by project opponents were already debated at the hearing by both sides as well as staff, and Commissioners weighed all evidence before them when making their decision; Commissioner introduction of website evidence during the hearing is not improper and, even if it was, one Commissioner's reliance on "independent research" does not negate that the Commission's decision is otherwise supported by substantial evidence; nothing in the law precludes a Commissioner from concluding on the same side as a particular person who testifies before them, so agreement with "the minority opinion on the local decision" is not an error of law; and the claims of a lack of findings to support denial and improper Commission staff communications are without merit. As such, no errors of fact or law occurred which have the potential of altering the Commission's original decision, and staff recommends that the Commission deny the reconsideration request. The motion and resolution to act on this recommendation follow below on page 4.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION	4
II. FINDINGS AND DECLARATIONS	4
A. APPLICANT’S RECONSIDERATION REQUEST	4
B. PROJECT DESCRIPTION.....	5
C. COMMISSION DENIAL OF CDP APPLICATION	5
D. ANALYSIS OF RECONSIDERATION REQUEST	6

EXHIBITS

Exhibit 1 – Reconsideration Request

Exhibit 2 – Location Maps

Exhibit 3 – Adopted Findings for Commission’s March 8, 2018 denial¹

CORRESPONDENCE

¹ The findings attached in **Exhibit 3** do not include the Adopted Report’s exhibits. The full Adopted Report can be accessed at: <https://www.coastal.ca.gov/meetings/agenda/#/2018/6>. In addition, the video of the March 8, 2018 denial hearing and the June 6, 2018 revised findings hearing can be accessed at <http://cal-span.org/unipage/?site=cal-span&owner=CCC&date=2018-03-08> and <http://cal-span.org/unipage/?site=cal-span&owner=CCC&date=2018-06-06>.

I. MOTION AND RESOLUTION

Staff recommends that the Commission, after public hearing, deny the reconsideration request. To implement this recommendation, **staff recommends a NO vote on the following motion.** Failure of the motion, by voting NO as is recommended by staff, will result in denial of the request for reconsideration. The motion passes only by an affirmative vote of a majority of Commissioners present.

***Motion:** I move that the Commission grant reconsideration of Coastal Development Permit Application Number A-3-SLO-17-0053-REC, and I recommend a **no** vote.*

***Resolution to Deny Reconsideration:** The Commission hereby **denies** the request for reconsideration of the Commission's March 8, 2018 decision on Coastal Development Permit Application Number A-3-SLO-17-0053-REC on the grounds that: (a) there is no relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the March 8, 2018 hearing on the application; and (b) there is no error of fact or law which has the potential of altering the Commission's March 8, 2018 decision on the application.*

II. FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

A. APPLICANT'S RECONSIDERATION REQUEST

The Applicant submitted correspondence on April 6, 2018 that identifies the grounds of her request for reconsideration (see **Exhibit 1**). The request for reconsideration asserts that the Commission committed various errors of fact and law and that, but for these errors, the Commission may have voted differently than it did on March 8, 2018. The Applicant asserts that the Commission relied on misrepresentations and inaccurate assertions in denying the CDP application to allow use of a single-family residence as a vacation rental, and as a result, made errors in fact and law which should be remedied.

The errors of fact and law claimed by the Applicant include: (1) the Commission did not adopt findings to support its denial of the CDP because such findings cannot be made given the project's consistency with the LCP and Coastal Act; (2) misrepresentation by project opponents of affordable housing displacement; (3) misrepresentation by project opponents of the actual number of existing vacation rentals in Cambria; (4) the introduction by a Commissioner of certain website data regarding vacation rentals in Cambria during deliberation caused confusion and was only shared with some Commissioners; (5) misrepresentations by project opponents regarding the location of the proposed vacation rental which led to wrongful conclusions about the site's uniqueness with respect to public access and recreation; (6) the Commission gave improper consideration to the minority opinion in the local decision instead of relying on the LCP and Coastal Act; and (7) Commission staff engaged in improper communication with Commissioners to influence the decision. See **Exhibit 1** for the full description of these contentions.

B. PROJECT DESCRIPTION

The Applicant is requesting that the Commission reconsider its decision to deny the request for use of an existing oceanfront two-bedroom, 2,477-square-foot single-family residence as a vacation rental and the use of said rental pursuant to a San Luis Obispo County-approved CDP, including Conditions 1 through 14 (County file DRC2016-00066). These conditions included requirements for: no more than four individual tenancies per calendar month with no more than six occupants per tenancy; maintenance of the residential appearance and character of the site; no onsite advertising of the vacation rental; traffic volume of no more than 10 vehicle trips per day; onsite (driveway or garage) parking only; compliance with County noise standards; designation of a local property manager or contact person who is available 24 hours per day to respond to neighborhood questions and concerns; payment of transient occupancy tax (or TOT); and recourse for violations of these conditions, including revocation of the Minor Use Permit (MUP) (which is a type of CDP in San Luis Obispo County's LCP).

The proposed vacation rental is located at 2701 Windsor Boulevard (APN 023-011-010) on the blufftop at the north end of the Marine Terrace neighborhood, or the West Lodge Hill area, in the unincorporated community of Cambria in San Luis Obispo County (see **Exhibit 2**). The residence is immediately adjacent to an existing blufftop park and vertical beach access stairway at the terminus of Wedgewood Street/Sherwood Drive. The residence is also approximately 100 feet from the entrance to the Fiscalini Ranch Preserve (Preserve) and is across the street (Windsor Boulevard) from one of the Preserve's public parking areas. The adjacent Preserve entrance provides direct access to the 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 Service Line (USL) of Cambria. Vacation rentals are allowed as a conditional use in the RSF land use category.

C. COMMISSION DENIAL OF CDP APPLICATION

On March 8, 2018, the Commission considered the CDP application de novo and denied the proposed vacation rental use by a final vote of 6-4.² Based on Commissioner comments made during that hearing (which were reflected in findings adopted by the Commission on June 6, 2018 – see **Exhibit 3**), the Commission recognized that the LCP includes specific distance standards between vacation rentals in Cambria, generally requiring such rentals to be separated by minimum distances (i.e., 200 feet away from other vacation rentals on the same street, and 150 feet away from other vacation rentals overall). The Commission also recognized that the LCP also allows for lesser distances between vacation rentals if the findings for a Minor Use Permit (MUP, which is a type of CDP under this LCP) approval are made.³ In other words, a vacation rental may be approved consistent with the LCP even if it does not meet the prescribed distances between vacation rentals subject to making these MUP findings. However, in this case,

² The six Commissioners who voted to deny the CDP application were Commissioners Aminzadeh, Howell, Peskin, Sundberg, Uranga, and Vargas. The four Commissioners who voted to approve the CDP application were Commissioners Groom, Luévano, Turnbull-Sanders, and Ward.

³ Including that the proposed vacation rental is otherwise consistent with the LCP and with neighborhood character, will not be detrimental to health, safety, welfare, or property, will not generate unsafe traffic volumes, and is in conformity with the public access and recreation policies of the Coastal Act.

the Commission found that approval of the lesser distance was not appropriate given existing vacation rental density in this area of Cambria and potential impacts to neighborhood character and long-term housing availability based on evidence presented at the March 2018 Commission meeting. And although the proposed vacation rental would have provided a high-priority visitor-serving use while meeting the LCP's operational standards for vacation rentals (e.g., with respect to tenancy, noise, parking, signage, etc.), the Commission found that the project would be located in an area that is already oversaturated with vacation rentals where a distance waiver was not appropriate. The distance limits in the LCP are intended to spread out vacation rentals in residential neighborhoods, thereby protecting against oversaturation of rentals and maintaining neighborhood character for long-term residents and the community overall. Approval of the project would have resulted in an even further concentrated number of vacation rentals in this particular location, inconsistent with the intent and requirements of the LCP, and the Commission found that exercising additional discretion to allow for lesser distances in this case was not appropriate and denied the CDP application. See the Commission's adopted denial findings in **Exhibit 3**.

D. ANALYSIS OF RECONSIDERATION REQUEST

The grounds for reconsideration of a CDP application denial are provided in Coastal Act Section 30627,⁴ which states, in applicable part:

The basis of the request for reconsideration shall be either that there is relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter or that an error of fact or law has occurred which has the potential of altering the initial decision.

The Applicant is not claiming that relevant new evidence exists, but that errors of fact and law occurred. Thus, the question before the Commission is whether there was a legal or factual error(s) that had the potential to alter the Commission's decision to deny the permit application. In this case, and for the reasons discussed further below, the Commission determines that the contentions concerning: the Commission's findings; affordable housing displacement; the number of existing vacation rentals in Cambria; Commissioner introduction of website evidence into the record at the hearing; the uniqueness of the project site; Commissioner consideration of the local decision; and improper staff communication with Commissioners do not constitute grounds for reconsideration of the Commission's denial of the permit application because none of the contentions represent errors of law or fact that have the potential of altering the Commission's decision to deny the permit application. These contentions are discussed further below. See **Exhibit 1** for the full text of the contentions.

Applicant's Contention 1: The Commission failed to make findings to support its denial

The Applicant claims that the Commission failed to make findings in support of its denial of the application, and further claims that such findings (had they been made) could not be supported by substantial evidence in the record because the application was fully compliant with the LCP

⁴ See also the Commission's implementing regulations found at Sections 13109.1 to 13109.6 of Title 14 of the California Code of Regulations (CCR).

and the public access and recreation policies of Chapter 3 of the Coastal Act. The Applicant asserts that “no evidence was presented by the opponents, substantial or otherwise, that identified any tangible or demonstrable impact to the immediate residential neighborhood...” but that the Applicant instead provided substantial evidence that the neighborhood is dominated by public access that would mitigate any impacts from one more vacation rental in the neighborhood. The Applicant also claims (with respect to consistency with Chapter 3 policies) that the Coastal Act “clearly favors the subject application over permanent residents...” and that the motels/hotels versus vacation rentals discussion during the hearing was not based on any definitive analysis by either side (therefore making it incorrect to use it as a basis for the Commission’s decision on the matter).

First, the Commission did adopt findings in support of its denial of the application. At the March 8, 2018 hearing, Commissioners explained the basis for their denial, which are reflected in the revised findings adopted on June 6, 2018 (see **Exhibit 3**). Because the Commission denied the CDP application whereas Staff had initially recommended approval of the CDP application (including through the published Staff Report), it was necessary for Staff to prepare revised findings and to present them for Commission adoption at the June 6, 2018 meeting. The Commission’s regulations clearly provide for such a revised findings procedure.⁵ Thus, this contention does not represent an error of law.

Next, at the March 8, 2018 hearing, staff recommended that the Commission find the project consistent with the LCP for many, if not all, of the same reasons articulated by the Applicant in the reconsideration request – while also recommending that the Commission grant the distance modification in this instance based on the public access benefits and Staff’s assessment of less-than-significant impacts of granting the distance modification. Staff made it clear that the LCP is not specific as to when a modification to the distance standard may be granted but recommended findings to approve it based on Staff’s interpretation and weighing of the relevant evidence in relation to LCP and Coastal Act standards. Staff’s recommendation was based in part on the proposed vacation rental meeting all of the required operational standards and being a high-priority visitor-serving use in a prime visitor destination – arguments being made in the request for reconsideration. As with all CDP applications that come before it, the Commission has the discretion to approve or deny a CDP after receiving the staff recommendation, hearing testimony, weighing the evidence, and applying their best judgment in accordance with applicable legal standards. As mentioned previously, it is worth noting that the proposed project required a *discretionary* modification to LCP distance standards, and the Commission exercised its discretion to deny it.

In this case, six Commissioners believed that the project’s inconsistency with the LCP’s distance standard provisions (and the fact that the project would be within the LCP’s distance standard of not one but four other vacation rentals) was problematic enough to take priority over the visitor-serving and public access benefits of the project. The four Commissioners who voted to approve the CDP agreed with the staff recommendation that the findings to modify the LCP’s distance

⁵ See CCR Section 13096(b): “If the commission action is substantially different than that recommended in the staff report, the prevailing commissioners shall state the basis for their action in sufficient detail to allow staff to prepare a revised staff report with proposed findings that reflect the action of the commission.”

standard could be made. This particular issue in this LCP of the distance modification for vacation rentals that do not meet the distance standard was discussed at the hearing, with staff and Commissioners noting that this issue was somewhat unique in that the findings could plausibly be made in either direction and still be consistent with the LCP based on interpretation, evaluation, and weighing of the evidence presented. It is obviously the opinion of the Applicant that the proposed modification to the distance standard should have been approved. However, the Commission's discretionary action to deny the CDP application does not constitute an error of law; rather, the Commission's action represents its weighing of the evidence presented, as further discussed below, regarding the oversaturation of vacation rentals in this neighborhood of Cambria and the effect of vacation rentals on community housing stock, as well as the impacts on community character and housing affordability.

With respect to the contention that Commissioners were influenced by incorrect or inconclusive data on the affordability of hotels/motels and vacation rentals, the Applicant herself states that evidence was submitted from both sides on this issue. The Commission therefore had this information (including the information which the Applicant now relies upon in her reconsideration request) when it made its decision, and consideration of it does not now represent an error of fact or law that would have somehow altered the Commission's decision.

Therefore, the Applicant's contentions that the Commission did not adopt findings in support of its denial and that it disregarded the LCP and Coastal Act because the project was wholly consistent with both are not errors of law or fact that have the potential of altering the Commission's initial decision to deny the proposed vacation rental.

Applicant's Contention 2: Opposition misrepresented affordable housing displacement

The Applicant contends that the opposition used inflated numbers of existing vacation rentals to highlight how such rentals preclude and displace affordable housing. Specifically, the Applicant quoted San Luis Obispo County Supervisor Bruce Gibson who, in opposition to the project, stated during the hearing that "There are currently around 400 vacation rentals licensed in Cambria, that's about 10 percent of the housing stock and another 10 percent are folks' second homes, so we have somewhere between 20 to 25 percent of the residential housing stock in Cambria devoted to visitor-serving uses." Supervisor Gibson also stated that "The conversion of a home to a short-term rental immediately impacts the long-term housing stock of this community and in doing so puts pressure on the low end of the rental market." The Applicant claims that the number of actual rentals presented by Supervisor Gibson was wrong; that second homes are not considered visitor-serving accommodations; that it should be intuitive to a reasonable person that the long-term rental rate for an oceanfront home in any California coastal community would not be affordable to low- or moderate-income persons; and that no evidence was presented at the hearing in support of the contention that vacation rentals have had the effect of displacing affordable workforce housing. The Applicant claims that these were errors of fact that affected the discussion about displacement of long-term and affordable housing.

On the issue of the actual number of vacation rentals, during the March 8, 2018 hearing, the Applicant's representative (Mr. Jeff Edwards) and a project supporter (Ms. Toni LeGras) both mentioned that the most recent number of licensed vacation rentals in Cambria was around 343 or 374 (the discrepancy appeared to be based on when the data was collected) with around 30 to 40 percent of those not reporting TOT (based on their discussions with the tax collector's office).

When asked by Commissioner Luévano to clarify the number of active vacation rentals, Commission staff noted that in interactions with the tax collector's office, Staff had heard similar numbers to those identified by the Applicant's representative and Ms. LeGras. So, the Applicant's representative, a project supporter, and staff all stated the vacation rental numbers provided by the tax collector's office at the hearing, which was slightly less than the numbers presented by the opposition. The Commission heard from both sides, as well as Staff, on this issue, and as such, weighed the competing evidence on this matter when it made its decision.

It is true that the opposing sides presented different figures for the number of vacation rentals during the hearing, and that there is a discrepancy between the overall number of licensed rentals versus those that are actively being used as vacation rentals. This was discussed at the hearing at length and this discrepancy was made clear, mostly by the Applicant and project supporters. As such, one side's figures at the hearing do not now represent an error of fact that would have somehow altered the Commission's initial decision. The Applicant's numbers for active versus inactive vacation rentals in the reconsideration request are the same as those that staff verified as true at the hearing, so the Commission weighed this evidence when it made its decision. The bottom line is that in weighing the competing evidence of total number of vacation rentals and number of licensed rentals versus active rentals as asserted by supporters and opponents of the proposed project, the Commission concluded that the weight of the evidence supported denial of the proposed project.

With respect to the Applicant's claim that the opposition counted second homes as visitor-serving accommodations (thus skewing the numbers of actual, active vacation rentals), Staff's clarification at the hearing regarding the overall number of active and non-TOT-paying vacation rentals addressed this issue. Finally, regarding the Applicant's claim that the opposition misrepresented the impact of a vacation rental on affordable housing and that it should be intuitive that oceanfront homes would not be affordable housing, the Applicant is correct that neither she nor the opposition presented any specific facts at the hearing on this question. However, this is evidence which, in the exercise of reasonable diligence, could have been presented at the hearing and does not represent an "error of fact." In the absence of such facts, each Commissioner relied on the evidence presented to weigh this matter of affordable and long-term housing displacement with respect to vacation rentals.

Therefore, the Applicant's contention that the opposition overstated the project's impact on affordable housing is not an error of fact that has the potential of altering the Commission's initial decision to deny the proposed vacation rental.

Applicant's Contention 3: Opposition misrepresented the current number of licensed active vacation rentals

The Applicant claims that the opposition used misleading and false information about the growth of vacation rentals in Cambria, when in actuality, the data indicates "an increasing and significant number of inactive or dormant vacation rentals," as detailed by a 2015 San Luis Obispo County Grand Jury Report. The Applicant claims that this growth of licensed but dormant rentals "constitutes an unforeseen circumstance, which renders the distance standard unreliable when considering the possible saturation and concentration of vacation rentals and unnecessary when considering the approval of an additional one." In other words, the Applicant contends that this growth of inactive rentals should be considered a "unique circumstance that

cannot be foreseen,” which was a rationale discussed by the County and the Commission when the distance modification allowance was certified as part of the LCP (but not made part of the LCP requirements for such a distance standard).

As described above, the number of vacation rentals in Cambria was discussed at length at the March 8, 2018 hearing, with staff ultimately affirming Mr. Edwards’ and Ms. LeGras’ assertions that there were around 340 to 370 licensed rentals in Cambria, 20 to 40 percent of which were not actively paying TOT (depending on the time the data was collected). So, the question of the actual number of active vacation rentals in Cambria was discussed during the hearing, and the Commission was presented with information and data from both the Applicant and project supporters as well as those in opposition to the project. This was captured in the Commission’s weighing of the evidence and consideration of the conflicting testimony. The Applicant argues in the reconsideration request that there has been a steady decrease in active vacation rentals, but this point was also discussed by both Mr. Edwards and Ms. Le Gras at the hearing. The Commission heard testimony on this question and had this information when it made its decision, and it does not now represent an error of fact that would have somehow altered the Commission’s decision.

The Applicant now claims that this decline in the number of active vacation rentals in the area should be considered the basis for the Commission to approve the proposed rental. This argument could have been made by the Applicant at the hearing, but was not. It does not now represent an error of fact and is not new evidence that would have the potential of altering the Commission’s decision. The Commission had the competing information before it regarding the LCP and the existing numbers of rentals when it voted to deny the project.

Therefore, the Applicant’s claims regarding the number of existing vacation rentals and the decline in the number of active vacation rentals are not errors of fact that have the potential to alter the Commission’s initial decision to deny the proposed vacation rental.

Summary regarding Applicant’s Contentions 1 through 3

It is worth noting at this time that the substantive claims made in Applicant’s Contentions 1 through 3 do not represent relevant new evidence which, in the exercise of reasonable diligence, could not have been presented at the hearing on the matter, nor are they errors of fact or law which have the potential of altering the initial decision. As explained above, the evidence which the applicant now relies upon in her reconsideration request is generally the same evidence that was presented to the Commission at the initial hearing on this matter and which the Commission duly weighed in denying the CDP application here. In fact, with respect to the first three contentions, the Applicant is simply attempting to *re-argue the merits* of the matter relying on the same evidence presented at the initial hearing, which does not meet the standard for reconsideration.

Applicant’s Contention 4: A Commissioner improperly introduced website data during deliberations

The Applicant contends that a Commissioner introduced website data from off of his laptop during deliberations that was shared only with Commissioners, and that the Applicant could not be certain what was being viewed and did not have an opportunity to rebut or respond to any findings concerning the concentration and possible saturation of vacation rentals in the

neighborhood. Specifically, the Applicant claims that Commissioner Vargas opened the Airbnb website for the neighborhood around the Clemence-Lucas property and stated that he could see 26 listings for rentable vacation homes. In the reconsideration request, the Applicant provided an Airbnb screenshot of the neighborhood from several days after the hearing and asserts that the site shows only 18 rentals. The contentions state that another point of confusion is whether or not the listings are duly licensed vacation rentals, homestays, or bed and breakfasts. The Applicant claims that the representations made by Commissioner Vargas cannot be considered substantial evidence because it was improperly introduced, and that the Airbnb information was shared with some members of the Commission, which may have influenced their vote and possibly the final outcome of denying the application.

Commissioner Vargas' introduction of Airbnb website evidence during the hearing was not improper or an error of law. As a preliminary matter, the Applicant did not identify any legal authority for the proposition that a Commissioner could not introduce his or her "independent research" into the record as evidence for weighing and consideration by the Commission in making its decision, nor is Commission Staff aware of such authority. Commissioner Vargas' introduction of the Airbnb website evidence into the record for consideration is akin to any commenter who introduces evidence for the first time during the public testimony portion of the Commission hearing on a CDP application. Although the veracity and probative value of such evidence is debatable given how it was introduced into the record, this same issue applies to all such record evidence other than first-hand testimony. Furthermore, Commissioners were capable of and entitled to consider questions of the veracity and probative value of the Airbnb website evidence in its weighing of the evidence at the time it took action. Finally, as discussed in Contention #3 above, the actual number of licensed and active vacation rentals in Cambria was also discussed during the hearing, so Commissioners had competing information regarding the issue for which Commissioner Vargas introduced the Airbnb website evidence when making their decision and thus exercised its discretion in weighing the competing evidence.

In any case, *even if* Commissioner Vargas' introduction of Airbnb website information constituted an abuse of discretion or otherwise did not constitute substantial evidence supporting the Commission's decision, such error would be *de minimis* and non-prejudicial, because "California decisions adhere to the so-called 'residuum rule,' under which the substantial evidence supporting an agency's decision must consist of at least 'a residuum of legally admissible evidence'" (*TURN v. PUC* (2014) 223 Cal.App.4th 945, 960-61). The other evidence considered and relied upon by the Commission in making its decision to deny the proposed project (including as memorialized in the revised findings staff report approved by the Commission on June 6, 2018) clearly constitutes substantial evidence upon which the Commission's decision to deny the CDP was justified.

For these reasons, therefore, the introduction of Airbnb information from a Commissioner into the record for consideration is not an error of law that has the potential of altering the Commission's initial decision to deny the Applicant's proposed use of her home as a vacation rental.

Applicant's Contention 5: Opposition misrepresented precedential effects of approval

The Applicant contends that the opposition represented that there was nothing unique, special or remarkable about the location of the subject property, and that this represents an error of fact.

The Applicant claims that the site is in fact special and unique because while many homes may be in close proximity to the Fiscalini Ranch Preserve and the beach, the subject property is only one of three homes in Cambria immediately adjacent to ADA access to the Preserve and a designated Preserve parking area. The Applicant's current contention states that this "misleading information presented by opponents was persuasive for several commissioners who wrongfully concluded an approval of the subject application would establish a precedent allowing subsequent applicants to secure the same distance modification or waiver..."

The Commission heard both the Applicant's and the opposition's perspectives on the matter of whether or not the project site was unique during the hearing. The opposition did not present "untrue" information on this point that could be considered an error of fact, and both sides appropriately presented their evidence and made their arguments with respect to why the distance modification should and should not be approved. In any case, it is worth noting that the Commission and Staff were clear at the hearing that the LCP does not *require* a uniqueness finding to be made in order to approve a distance modification. The Commission understood that such modifications are considered on a case-by-case basis applying the standards set forth in the LCP and, therefore, exercised its discretion to determine that a modification was not appropriate given the high volume of existing vacation rentals in the vicinity of the project site and potential significant adverse impacts of modifying the distance requirement to allow an additional short-term rental at this location, as substantiated by the evidence in the record.

For these reasons, statements related to the lack of uniqueness in this case made by those in opposition to the project do not constitute an error of fact that has the potential of altering the Commission's decision to deny the Applicant's proposed use of her home as a vacation rental.

Applicant's Contention 6: Commissioner improperly considered minority opinion in local decision

The Applicant contends that Commissioner Peskin improperly deferred to and relied on the supervisor who represents the Cambria area (Supervisor Bruce Gibson) constituting "improper consideration and unfounded reliance on the minority opinion in a local agency decision." The contention states that Commissioner Peskin "appears to have prejudged the matter before the hearing and wrongfully influenced other Commissioner(s) to oppose the application." In sum, the Applicant believes that Commissioners relied on the local representative's vote on the matter to determine what their vote should be, instead of evaluating the application on its own merits against the LCP and Coastal Act.

The Commission's consideration of Supervisor Gibson's testimony on the matter was part of the process that is undertaken by Commissioners for each item before them whereby they receive, gather, and weigh evidence when making their final decision. In other words, Supervisor Gibson's testimony was appropriately admitted evidence into the record for consideration by the Commission in evaluating the proposed project in relation to LCP requirements. Nothing in the law (Coastal Act or otherwise) prevents the Commission from concluding on the same side as a particular person who testifies before them (whether it be a project supporter, project opponent, Applicant, elected official, etc.). To the contrary, the Commission's consideration and reliance upon Supervisor Gibson's testimony was a wholly appropriate basis upon which to base its decision (at least, in part) to deny the CDP. Certain Commissioners simply concurred with the position held by Supervisor Gibson regarding application of the evidence after hearing all sides

and evaluating the project in terms of its consistency (or lack thereof) with the LCP and the Coastal Act. Furthermore, any suggestion that the Commission “improperly considered the minority opinion” at the local decisional level is baseless; the decision at the local level is part of the record, which the Commission may consider in its evaluation, but upon a finding of Substantial Issue of the local CDP appeal (as it did here), the Commission reviews all CDP applications *de novo*. The statements made by the Applicant to assert this “improper consideration of the minority opinion” are the Applicant’s own opinion of what happened at the hearing, and any deference by Commissioners to or agreement with the elected supervisor for the project area do not in any way constitute an error of law that has the potential of altering the Commission’s decision to deny the project.

Applicant’s Contention 7: Improper and undisclosed CCC staff communication

The Applicant claims that a member of Commission staff, acting in an unofficial capacity, communicated with Commissioners and project opponents and that such communications were not disclosed as *ex parte* communications. Specifically, the Applicant contends that Sarah Christie, the Commission’s Legislative Director, communicated with one or more members of the Commission, as well as with project opponents (including San Luis Obispo County Supervisor Bruce Gibson). The Applicant contends that the “most overt” of these communications occurred on the day of the hearing (March 8, 2018) when the Applicant claims that Ms. Christie “appeared to be conferring with Supervisor Gibson and repeatedly coaching some of the opposition members...” and that “Even if Ms. Christie only said hello to these people, the appearances alone are inappropriate.” The Applicant claims that Ms. Christie was “working at cross purposes with the Central Coast District staff recommendation for approval of the permit in question and in doing so, contradicted the very staff that was working in an official capacity.” The Applicant asserts that since there were no disclosures in connection with the alleged *ex parte* communications, the Applicant was not afforded an opportunity to rebut any of the information communicated, and therefore this alleged violation constitutes an error of law.

The Applicant does not provide any tangible evidence other than speculation that Ms. Christie communicated with any Commissioners, and admits that the communications observed on March 8, 2018 between Ms. Christie and project opponents may have only been friendly greetings. The Applicant has not provided any basis or facts for this claim of an error of law in this regard. Ms. Christie has confirmed that she did not have any written or oral communications with Commissioners or with Supervisor Gibson or his staff on this matter before the March 8, 2018 hearing. Ms. Christie indicated that she sat and spoke with Supervisor Gibson at the hearing because they have known each other for 20 years, and that she engaged in a friendly greeting after the hearing with two local Cambria residents whom she knew. Ms. Christie also stated that she spoke generally with Commissioner Groom about potential statewide policy implications regarding how the Commission interprets LCP vacation rental policies (and Commissioner Groom voted in favor of the project). The Applicant’s claims regarding improper and undisclosed communications are thus baseless and do not constitute an error of law that has the potential of altering the Commission’s decision to deny the project.

As a matter of law, even assuming Ms. Christie *did* communicate with Commissioners, Supervisor Gibson, and/or opposition members regarding this matter, those communications would not constitute an error of law. First, a communication between a staff member acting in

his or her official capacity and any commission member or interested person does not constitute an ex-parte communication (see Coastal Act Section 30322(b)(1)). Any communications between Ms. Christie and Commissioners and/or Supervisor Gibson was in Ms. Christie's official capacity. Second, even assuming Ms. Christie did communicate with Supervisor Gibson or project opponents outside of her official capacity, these would not be considered ex parte communications as defined in Coastal Act Section 30323 because they do not involve Commissioners; thus, the ex parte rules do not apply to such communications. In any event, as discussed above, Ms. Christie did not engage in the communications as alleged by the Applicant, did not improperly communicate with members of the public or the Commission, and there were no undisclosed ex parte communications associated with this hearing.

Conclusion

For the above reasons, the Commission denies the request for reconsideration because there is no relevant new evidence that could not have been presented at the March 8, 2018 hearing nor has there been an error of fact or law that has the potential of altering the Commission's decision to deny the permit application for the vacation rental.