#4

Ramirez, Angelica Public Comment

LATE DIST

From: Jana Zimmer <zimmerccc@gmail.com>
Sent: Monday, June 21, 2021 11:45 AM
To: sbcob
Cc: Williams, Das; County Executive Office; Plowman, Lisa; John Ainsworth; Hudson, Steve@Coastal; deanna.christensen@coastal.ca.gov
Subject: Letter re: Item 4, Board of Supervisors 6.22.2021:PLEASE READ INTO THE RECORD
Attachments: Letter to Heaton and Plowman re PRA Final 5-17-21 .pdf; Letter to Board of Supervisors re Chapter 50 process Revised FINAL 6.8.2021.pdf

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June 21,2021

By e- mail: sbcob@countyofsb.org

Re: Board Agenda Item #4, June 22, 2021

Dear Honorable Supervisors:

I have previously communicated with you and your staff on behalf of Dr. Steven Kent and Dr. Nancy Rikalo regarding our request that your Board direct the County Administrative Office **to rescind their designation of April 30, 2021 of the Roots/Radis site on Santa Claus Lane for cannabis retail, and that you instead determine that there shall be no retain cannabis dispensary on Santa Claus Lane or in the Toro Canyon/Summerland Plan area, as specifically contemplated in Chapter 50 of the County Code.** I am attaching, for your convenience, our letters dated May 17, 2021, and June 8, 2021, which you already have received. In addition, please be aware that your staff still have not completed responses to our Public Records Act requests, which began on April 5, 2021. The missing categories of documents are outlined in our letter of May 17, to which we have received no response.

Your staff report for your hearing of June 22 asserts the following:

"Phase 3 - Neighborhood Compatibility included an interdisciplinary committee site visit with representatives from Public Health (Environmental Health), Sheriff, Planning & Development (P&D), the County Executive Office (CEO), and County Counsel. The scoring and ranking committee included one representative each from the CEO, P&D, and

Sheriff. This committee reviewed the Neighborhood Compatibility Plans in their entirety and completed a forced ranking in five of the six Community Plan Areas (CPAs). The highest ranked applicant in the following areas: Toro Canyon/Summerland, Eastern Goleta Valley, Isla Vista, Santa Ynez, and Los Alamos were identified and invited to start the land use entitlement /permit process on April 30, 2021,after resolution of scoring protests submitted during the ordinance defined protest period. The Final Ranked Cannabis Storefront Retail List is posted on the Cannabis Retail site: http://cannabis.countyofsb.org/retail.sbc. The top ranked applicants have 90 days to submit an application to P&D that is consistent with their Cannabis Storefront Retail Selection Application."

We have not received a shred of a writing- not a note, not a text, not a memo that indicates:

1. When the alleged interdisciplinary site committee meeting occurred.
2. Who participated.
3. What they saw, or thought they saw.
4. What information they obtained.
5. What analysis was done, and by whom, to determine that the Santa Claus Lane beach is an appropriate site for retail cannabis under the County's LCP.
6. Whether the committee reviewed the approval documents for the Santa Claus Lane Streetscape improvements, and the new and additional impact of cannabis retail on traffic, parking, pedestrian and bike safety.
7. Who in the public works department reviewed and analyzed the so called 'traffic' information submitted by the Roots/Radis applicant in context of the existing recreational uses, bike paths and so forth and what they concluded.
8. Whether the obvious conflicts between cannabis retail and beach access and recreation at this particular site were even considered, and if so, what analysis was done.
9. What communications you or your staff have had since we started to raise these issues on April 5, with the Roots/Radis applicant.

We have been informed that there has been no application for a land use permit submitted to date. If such an application were submitted, there is no rational universe in which P&D could, in good faith and based on the law and the evidence, recommend a finding of consistency with your LCP policies on coastal access and recreation, and there is no set of facts or so-called mitigation measures that will pass muster with any rational reviewer, to address the inconsistency of cannabis retail *on any site* on Santa Claus Lane with your certified local coastal program, for all the reasons set forth in our letters and based on the information we have provided. Any coastal development permit your Board might approve on appeal will be challenged.

Please recall that your Board determined, on an 'ad hoc' basis, and reacting exclusively to negative community perception, and without specific evidence, that cannabis retail would be inappropriate for Vandenberg, Cuyama, Montecito (which like Santa Claus Lane, had sites that you were specifically informed are zoned C-1, but which are **not** in an EDRN or on the beach) and Summerland. On the other hand, your CAO "determined" without any opportunity for public comment or appeal, that Santa Claus Lane is an appropriate site for cannabis retail. Now is the moment for your Board to correct that error.

Therefore, we request, pursuant to your staff recommendations in your Board letter for this hearing of June 22, 2021, Item (c) that your Board

"Provide any other direction to staff regarding the County's cannabis program";

That you direct the CAO to immediately rescind their "final" site designation under Chapter 50, posted April 30, 2021, and instead determine, based on the overwhelming evidence that your Board has received, that there is no appropriate site for retail on Santa Claus Lane.

Thank you.

Very Truly Yours,

/s/

Jana Zimmer, Attorney/
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(805)705-3784

cc: Lisa Plowman, Brittney Heaton, Rachel Van Mullem

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May 17, 2021

Lisa Plowman, Director, Planning and Development
Brittney Heaton, County Administrative Office
105 E. Anapamu St.
Santa Barbara, CA. 93101

By e-mail

Re: Permitting for approval of cannabis dispensary on Santa Claus Lane

Ms. Heaton and Ms. Plowman:

First, with regard to your anticipated processing of a permit for a cannabis dispensary at the Radis property on Santa Claus Lane, I am forwarding for your record as an attachment here in a single pdf the documents that were provided to me on May 14, 2021, pursuant to my Public Records Act request of April 5, 2021. The County has indicated its refusal to provide documents on an ongoing basis but does not indicate whether it has refused to provide documents generated between April 5, 2021, and May 14, 2021. Therefore, by separate communication, I am filing a new Public Records Act request for any documents produced in that time frame, and will do so on a monthly basis, going forward. It seems to us that it is in everyone's interest for the County to be fully transparent throughout this process, but apparently not everyone agrees. As of this writing, no one from the County has responded to my comment letter to the Board of Supervisors of May 10.

I am also forwarding here for your consideration **an e mail from Mr. Pat Radis, owner of the proposed dispensary site, to my client, dated May 12, 2021.** It appears that Mr. Radis and his prospective tenants do not have a clear concept that there remains a very substantial coastal development discretionary permit process for them to navigate before a license can be issued to them for a cannabis dispensary on their Santa Claus Lane site. Please make sure that these owners and their prospective licensees are made aware of our ongoing objections, and the basis for them. We note that other prospective cannabis licensees are already pushing a narrative that the battle has been won.

Mr. Will Radis apparently has previously attempted to 'jump the gun' in his inquiry to Mr. Melekian of 7/16/2020, where he appears to request approval of his location before they 'pick a tenant'. *It is very important that these applicants understand the process which lies ahead. We would not want them*

asserting any kind of estoppel, or vested right to proceed based on their incorrect understanding of the process. I am also providing here an e mail from the Radis' from July, 2020 acknowledging that the tenant at the location for the proposed dispensary, Porch, has left because of their concern that even after the Santa Claus Lane Improvements, the parking at the east end of Santa Claus lane will be woefully inadequate, for their retail use, not to mention the increased intensity of use for the proposed dispensary.

With regard to the permit process, it appears that notwithstanding Mr. Melekian's erroneous assumptions, which we have already pointed out- and which he contended were based on analysis from County Counsel- the County does recognize that the Radis must apply for and obtain, at a minimum, an appealable CD-H. From the documents released on May 14, it appears that County P&D and CAO staff do now understand that **this permit is appealable not only to the Board of Supervisors, but also to the Coastal Commission.**

However, the applicant should be made aware that there are other substantial issues affecting the processing of an application for this site. We have not received any response to our questions regarding impact of the ERDN (Existing Developed Rural Neighborhood) designation for this property. The process at the Board of Supervisors was less than clear, and we do not believe the Coastal Commission staff addressed this specific issue when it certified your ordinance amendments. If it is the County's position that cannabis in ERDN in the inland area is banned, but the same use in the coastal zone is allowed, we do not discern any rational basis for this distinction. (Please see the Board of Supervisors' Minute Order of July 14, 2020, attached.) We do not believe that any cannabis project should be treated as a principal permitted use in this context.

Moreover, it is clear from the issues raised by the public to date that the findings required for a CD-H to be approved will not be adequate, for this site, to address the neighborhood compatibility issues that have been raised by the public. [1] We have already advised that we do not believe you will be able to make the findings for a CD-H for a dispensary anywhere on Santa Claus Lane, even if it were processed in isolation, especially with respect to consistency with the local coastal plan, and its undeniable interference with/ impacts on public access to the beach. Significantly, the specific findings required for a CUP encompass more of the specific concerns expressed by the community.

In order to provide you and the applicant with maximum notice of our objections going forward, I am asking that P&D notify me immediately when any application materials are submitted on behalf of the Radis/Roots proposed cannabis dispensary on Santa Claus Lane, and that you do me the courtesy of

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[1] **Section35-172.8Findings Required for Approval.A Conditional Use Permit application shall only be approved or conditionally approvedonly if decision-maker first makes all of the following findings:1.That the site for the project is adequate in size, shape, location and physical characteristics to accommodate the type of use and level of development proposed.2.That adverse environmental impacts are mitigated to the maximum extent feasible.3.That streets and highways are adequate and properly designed to carry the type and quantity of traffic generated by the proposed use.4.That there are adequate public services, including but not limited to fire protection, water supply, sewage disposal, and police protection to serve the project.5.That the project will not be detrimental to the health, safety, comfort, convenience, and general welfare of the neighborhood and will not be incompatible with the surrounding area.6.That the project is in conformance with the applicable provisions and policies of this Article and the Coastal Land Use Plan.7.That in designated rural areas the use is compatible with and subordinate to the scenic and rural character of the area.8.That the project will not conflict with any easements required for public access through, or public use of the property.9.That the proposed use is not inconsistent with the intent of the zone district.**

copying me with any writings back and forth, and among County personnel as they are received and produced. It goes without saying that we expect to be put on any notification list for CEQA and/or hearings.

Second, it appears that the responses to our PRA request of April 5, 2021 are not complete:

1. There is still not a single writing reflecting any P&D analysis, preliminary or otherwise, on the consistency of the Radis/Roots site with the LCP, the Toro Plan, and/or the Coastal Zoning ordinance. This analysis should have informed the County's Chapter 50 process in ranking applicants. Can you please forward any such writing in your possession, or identify any writing you are withholding, and the basis for it?

2. There is still not a single writing reflecting any Phase III analysis, or specific scoring of the Radis/Roots site under Chapter 50. The neighborhood and community was repeatedly advised that it was during Phase III that their extensive and detailed concerns about neighborhood compatibility and compatibility with pubic use of the beach would be considered, and would factor into the analysis and scoring of the neighborhood compatibility scoresheet.

3. There is not a single document reflecting the contents of the Radis/Roots application under Chapter 50, including but not limited to information they submitted on land use conflicts, setbacks, parking, community benefit and traffic control plans.

4. There is no writing reflecting any analysis of the very substantial planning and zoning issues raised by the rejected applicant, Haven LLC in their protest filed April 5.

5. There is an e mail dated 3/6/2021 referencing a petition from Ms.Maire Radis which she asserts reflects the signatures of some 550 people supporting cannabis at Santa Claus lane. **There is no petition, or document containing signatures attached. Please provide any such attachment in full, and exactly as submitted to the County.**

6. There are unexplained redactions, including the names of recipients of e mails, allegedly under some 'medical or similar exemption' under Section 6254(c). We do not dispute that you may redact the private e mail address of a public official receiving such e mails, however, you are required to provide the name of the individual official as discernible on their address. Communications, or the fact that communications have occurred over a private e mail address of a public employee are not exempt from disclosure. Therefore, please review the files and provide this additional information.

7. We have not received any texts whatsoever. Are you contending that there have been no text messages exchanged between and among County staff, Board members, staff, prospective applicants or members of the public? Text messages are also required to be disclosed. Are you representing that the County has searched for and identified any such text messages, whether or not they are on the private cellphones of the relevant County employee?

8. There is an e mail dated 3/3/2021 from Petra Leyva to Jeff Wilson stating, in part, that she is "not sure how the roundabout would affect the last potential storefront site". There is no response. It would seem that this preliminary statement would have been investigated further, prior to rating the last potential storefront site. Once again, we have not been provided a single writing reflecting P&D's assessment or analysis of this point. If you maintain that there are no responsive documents, please so advise. If you maintain that there are such documents, but you have a legal basis for withholding them, please advise of the legal support for that position.

9. There is an e mail exchange between Darcel Elliott, Supervisor Williams' staff, and Jeff Wilson of P&D dated 12/22/2020 which illuminates some confusion on the part of the First District Supervisor's office regarding when or whether a traffic or parking study would be prepared. Please advise whether you have commissioned a traffic and parking study, and/or, provide any work order or project description for such a study when it is commissioned. As we have already indicated, notwithstanding Ms. Leyva's assumption that the department may use the PEIR for the cannabis program as the environmental document for this particular project, we have already advised that we disagree. It does not appear that the County incorporated any mitigation standards at all for retail cannabis into the coastal zoning ordinance.

Thank you in advance for your consideration of the above. If I should be directing any of these questions to County Counsel, please provide the name and e mail address of the relevant individual.

Very Truly Yours,

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Attorney for Dr. Steve Kent and Dr. Nancy Rikalo

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Board of Supervisors
County of Santa Barbara
105 E. Anapamu St., 4th floor
Santa Barbara, CA. 93101

June 8, 2021

By : e mail

Re: Cannabis Dispensary on Santa Claus Lane

Dear Honorable Supervisors:

This is to supplement and update our comment of May 11, 2021, regarding your staff's erroneous decision under Chapter 50 of the County Code to allow an application for cannabis retail on Santa Claus Lane. For the reasons set forth below, we are requesting that the County immediately rescind its decision designating the Radis/Roots site, and also, that you direct them to determine, as you did for Vandenberg and Cuyama, and based on the evidence we have provided, that there is no suitable site for cannabis retail in the Toro/Summerland Plan area.

First, I want to thank County Counsel for confirming for you verbally, on May 11, that we were correct in our prior comment that there is, at a minimum, *an appealable coastal development permit required in the coastal zone* for any cannabis retail. The public needs to know this, as they have been led to believe by the owner of the Radis/Roots site that a cannabis dispensary on Santa Claus Lane is a foregone conclusion with the CAO's "designation" under Chapter 50. I have received no other communication from County Counsel, the CAO or anyone else on staff in response to our letter.

Second, this is to provide further information to support our contention that any designation of a site for retail cannabis in the coastal zone requires a Local Coastal Plan Amendment, without which a CD-H application cannot be considered or approved. We have also made this point previously. Based on the information already in the record, and that my client has provided, the County cannot make the findings for approval of a permit, in any event.

Third, with regard to County Counsel's additional comment on May 11 that your staff is responding appropriately to our Public Records requests, I beg to differ. Your staff have repeatedly failed to provide documents which are alleged by the Roots/Radis applicant to be in your record. You have omitted or redacted documents without any justification, and where the

burden is on you to justify such omissions. *You have not provided any document reflecting Planning & Development review of the site's consistency with the LCP.*[1] Your County Counsel is no doubt aware of the governing law on this point and that you, as the entity attempting to deny access to documents that the public is entitled to see has the burden of proof to demonstrate that any claimed exemption applies. Los Angeles Unified School Dist. v. Superior Court (2007) 151 Cal.App.4th 759, 767); Citizens for Open Government v. City of Lodi (2012) 205 Cal.App.4th 296 (Lodi).

This failure to disclose critical documents- even *after* key decisions have been made- is important because the issues in this case reflect the County's ongoing violation of fundamental standards of due process and transparency in government.[2] You have allowed a process that has been conducted entirely out of public view to 'designate' Santa Claus Lane as an appropriate site for cannabis retail. You have done so without any opportunity for the public to review, comment on, or even see the prospective retailer's application materials, or any County department analysis. There has been no public hearing, and there is no appeal of the CAO's site designation, even to your Board. And, you have done this based on significant misrepresentations of key facts.

Your Board has already been embarrassed more than once by the fact that cannabis "operators" in Santa Barbara County who have presented themselves as stellar members of the community have provided misleading and inaccurate information to your staff. See, most recently, "Cannabis Grower Faces Penalties for Serious Air Pollution" (Santa Barbara Independent, June 3, 2021):

> *"At the May 20 district board hearing, the vice-chair, county Supervisor Joan Hartmann, who represents the agricultural area around Buellton, recalled that on May 4 the Board of Supervisors had approved a conditional-use permit for De Friel's operation at 8701 Santa Rosa "and praised it as a platinum standard." (While recognizing De Friel as "a leader and an innovator," Hartmann abstained in that vote.)*
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> *Referring to the long list of diesel exhaust violations at the property, Hartmann asked, "Should we have known? I think we should have ... I find that very concerning on the county side."*

Similarly, the Board should have known, and, in fact was specifically informed, that numerous growers illegally expanded their previously recognized legal nonconforming uses, but you

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[1] Please see our letter to Ms. Heaton of the CAO's office and Ms. Plowman of P&D dated May 17, 2021, (Exh 1, attached) which has not been acknowledged by either. It would be helpful if County Counsel would identify a person to whom we should address our additional concerns, to enable a response directly to us going forward.

[2] See, Exh 2, 2019-2020 Santa Barbara Grand Jury Report on Cannabis Finding #2 " The creation of a non-Brown Act Ad Hoc Sub Committee that was not open to the public led to a lack of transparency and distrust by Santa Barbara County residents." The delegation of site selection for cannabis retail to the CAO in a completely opaque process repeats and exacerbates the County's earlier lack of transparency.

chose not to stop them, claiming to be relying, instead, on your ongoing permit process to assure that all impacts would be mitigated (eventually).[3] That has not worked. With the exception of one recent filing of which we are aware, the County has done nothing to enforce its own ordinances to shut down illegal operators, to the particular detriment of the residents of the Carpinteria Valley. Bear in mind, too, that the odors from the grows, whether illegal, nonconforming or (eventually) legal have continued to pollute the beach environment on Santa Claus Lane for residents, businesses and beachgoers alike. Now, the County apparently intends to compound those impacts by approving cannabis retail, with its attendant incompatibility with the family beach environment, and its inconsistency with the paramount environmental justice policies of the Coastal Act: **preserving and protecting beach access and recreation for all Californians.**

In this context, it should be particularly "concerning" for the Board that the County CAO made a non-appealable decision to 'designate' a site for cannabis retail on Santa Claus Lane under Chapter 50, which is not part of the certified LCP. It was inexcusably naïve of County staff to have relied on easily refuted incorrect information from the owner of the Radis property regarding key parking and traffic impacts which will exacerbate the impediments to beach access existing along Santa Claus Lane. We have provided evidence (Exh 3, attached) that (1) the Radis/Roots applicant does not own the property on which they propose to 'meet' the basic code parking requirement; (2) that they *know* that they do not own that property[4]; (3) that they misrepresented the long term availability of that property for a cannabis parking dispensary; (4) that they misrepresented the adequacy of that parking to meet code; and (5) they, and staff, ignored the fact that the Santa Claus Lane Streetscape project will result in a reduction of parking spaces at the east end of SCL.[5] Your Board and staff are also aware that the County, the

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[3] In early summer of 2019, your Board declined to consider adoption of an interim ordinance (or any ordinance) mandating odor controls and termination of nonconforming uses that had illegally expanded, even though you knew that you had the legal authority to do so under Gov. Code Section 65858 (f). You were asked to require every cannabis grower in Santa Barbara County demonstrate (with tangible evidence, as your Planning Commission had recommended), the extent of their operations on January 19, 2016, which sets the limit on permissible legal nonconforming grows. Your Board was asked to take action to revoke licenses that had been approved based on misrepresentation, and to revoke licenses for cultivators who have illegally expanded operations since 1/19/2016. You refused to take *any* meaningful action to alleviate the environmental and health and safety impacts of allowing these expanded grows without permits.

[4] This is significant, because an application for any permit must include proof that the applicant has the requisite ownership interest in the property. Neither the County nor the Coastal Commission will file an application as complete for processing without it. See, e.g. Coastal Commission regulations 14 CCR 13053.5(b): "A description and documentation of the applicant's legal interest in all the property upon which work would be performed, if the application were approved, e.g., ownership, leasehold, enforceable option, authority to acquire the specific property by eminent domain, and, if a business entity, proof of the applicant's authority to conduct business in California. The application shall also include proof that all holders or owners of any interests of record in the affected property have been notified in writing of the permit application and each invited to join as a co-applicant."

[5] See, Exh 3, p. 4, e- mail from Pat Radis referencing that at least 2900 square feet of the property behind the structure belongs to the **UPRR**. That property is leased, and the typical UPRR lease can be terminated on 30 days' notice. County's response to our PRA request has not disclosed any consent by UPRR to this use.

Coastal Commission and the State Lands Commission are also seeking *additional vertical access to the beach in this area.*

Furthermore, the size and existing intensity of use of the Radis property has been misrepresented as well: The businesses that are currently on the Radis premises include: Folley (previously Porch), which is the only address listed for the proposed cannabis store and, others on the Radis property including the Domecil (airstream trailer behind building), the Cassis, a second store located in the front part of the building closest to Carpinteria, the Radis Property Management office (middle of the building, lower floor), and the Radis Electric Company (upstairs area as well as the parking in the back with the service vehicles behind the building). The parking attributed to Radis is inadequate to serve the existing five (5) businesses, their employees and their customers, let alone the massive increase in intensity of use attributable to a cannabis dispensary. (See, ITE Trip Generation for cannabis retail). In addition, Radis property employees currently park *illegally* on my client's adjacent property, despite clear signage indicating that this is prohibited.

There are numerous other examples, in the Radis/Roots submittals, of affirmative misrepresentations or incorrect representations of fact, including, specifically, their claims of community support and community outreach. The fact is that the businesses, renters and property owners along Santa Claus lane, and the residents of the area- Padaro Lane, Casa Blanca, and Sandyland, have almost unanimously voiced opposition. Dr. Kent and Dr. Rikalo have been communicating their information and their concerns regarding a Santa Claus Lane site to your staff for many, many months. It was not until we filed a Public Records Act request that they received *any* of Radis' application materials. We still have not received all of the documents relevant to the CAO's decision. **Had the Chapter 50 application materials been exposed to public review, my clients could have provided their evidence to the County prior to a decision.**

Therefore, based on the omissions, and misrepresentations in the Radis application alone, the County should revoke or withdraw the Chapter 50 site designation immediately.[6] Because of the County's failure to provide an opportunity for the public to weigh in on this specific site selection, and in light of the near unanimous opposition of the community- as in Vandenberg, Summerland and Montecito,- the CAO should determine that there will be **no** cannabis retail in the Toro/Summerland Community Plan area consistent with Chapter 50 and with representations they and your Board have made to your constituents.

In any case, as is set forth below, we contend that it would be unlawful for the County to allow retail cannabis on Santa Claus Lane, without first submitting amendments to the Local Coastal Program to the Coastal Commission. However, we believe that any such amendment would not,

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[6] The County's process in this matter violates the mandate of the Coastal Act to allow maximum public participation with maximum transparency.

and could not be certified by the Coastal Commission because of the readily apparent conflicts between retail cannabis and beach access and recreation in this specific area.

1. The designation of a site for cannabis retail in the coastal zone would require amendments to the LCP, the Toro Plan, and the Coastal Zoning Ordinance.

In 2019, your Board amended your Chapter 50 licensing ordinance to enable your CAO to 'designate' sites for retail, *without submitting those amendments to the California Coastal Commission for review and certification, in violation of the Coastal Act.*[7] **Please recall that the Coastal Commission deleted Chapter 50 from consideration for certification of the cannabis ordinance under the LCP in 2018 because they specifically found that Chapter 50 pertained to business licensing, *only,* and does not set any coastal permit standard**. Designating sites for new uses is, on the facts, tantamount to a redesignation of land uses and a rezone in the coastal zone. It cannot be allowed without compliance with the Coastal Act provisions for LCP amendments, and should not be allowed in these circumstances, at all.

First, cannabis retail is not consistent with the purpose and intent of the C-1 zone:

> ***Section 35-77A.1 Purpose and Intent.***
> The purpose of the C-1 zone district is to provide areas for commercial activities, including both retail businesses and service commercial activities, that serve the travelling public as well as the local community. **This zone district allows diverse uses, yet restricts the allowable uses to those that are also compatible with neighboring residential land uses in order to protect such uses from any negative impacts such as noise, odor, lighting, traffic, or degradation of visual aesthetic values.** *(Amended by Ord. 4318, 06/23/1998)*

Given the deceptively 'easy' on-off highway access, and the fact that it would be the only retail cannabis dispensary between Santa Barbara and Ventura, the Radis/Roots dispensary would no doubt attract highway travelers, *exacerbating the existing parking deficiencies and conflicts with beachgoers.* Your Board should recall that, prior to the certification of the Toro Plan, in 2003, the zoning on Santa Claus Lane was Highway Commercial, the purpose of which is substantially different than the purpose of the C-1 zone: "The purpose of this district is to provide areas adjacent to highways or freeways **exclusively** for uses which serve the highway traveler." The reality of cannabis retail is that rents which can be paid/commanded for dispensaries are multiples of rents for traditional commercial uses. For example, the agreed rent for the Radis/Roots dispensary, as we have now learned, will be $12,800 per month, which is multiples of the rents commanded for existing C-1 uses. Thus, a rezone would benefit only the owner of the single parcel on which the Radis/Roots dispensary would be located, and the

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See, PRC Section 30320(b) " The people of California further find that in a democracy, due process, fairness, and the responsible exercise of authority are all essential elements of good government which require that the public's business be conducted in public meetings, with limited exceptions for sensitive personnel matters and litigation, and on the official record. Reasonable restrictions are necessary and proper to prevent future abuses and misuse of governmental power so long as all members of the public are given adequate opportunities to present their views and opinions to the commission through written or oral communications on the official record either before or during the public hearing on any matter before the commission."

highway traveler in search of a convenient cannabis stop between Santa Barbara and Ventura, and would be to the detriment of the locally oriented existing businesses, the adjacent residents, and most importantly, the beach-going public. My client owns three (3) lower cost residential units within 100 feet of the proposed dispensary.

The inclusion of cannabis retail on SCL would therefore be entirely inconsistent with the purpose and intent of the C-1 zone. It has all the negatives, and none of the benefit of a commercial use that serves both the traveling public and the local community. At the time of certification of the LCPA for the Toro Canyon Plan, the Coastal Commission required modifications that would preserve traditional visitor serving uses. It is hard to fathom that the Coastal Commission would condone any County attempt to effectively rezone SCL back to Highway Commercial for the sole benefit of a single property owner and cannabis dispensary, especially given the policies expressed in connection with the adoption of the Toro Plan:

> The Highway Commercial zoning allows only limited commercial uses focusing on serving the traveling public. Because of location, access, fragmented ownership, parking constraints and limited demand, this designation did not assist in the most efficient use of the Santa Claus Lane commercial area. Business vacancies have been common, building modernization and upkeep sometimes lag, and this important gateway has been somewhat depressed. Also, both commercial strips are dominated by businesses serving locals rather than those intended by the Highway Commercial zoning. Based upon a survey of the commercial area property owners and businesses, most respondents indicated a preference for allowing additional commercial uses on Santa Claus Lane that are more geared to serve locals. **This plan zones Santa Claus Lane as Limited Commercial (C-1), with some additional use restrictions and design standards included in the TC Overlay.** The Via Real commercial properties remain designated as Highway Commercial, due to their configuration as part of the northbound Highway 101 off- and on-ramps. (Toro Plan, p. 43).

Moreover, the Santa Claus Lane site is designated as a recognized EDRN (existing developed rural neighborhood), and the Toro Plan specifically recognizes that creating *additional, (let alone fundamentally different commercial uses[8]) would be inappropriate:*

> As this is a rural and semi-rural area located between two established cities, creating additional commercial areas within Toro Canyon would be inappropriate. However, both existing commercial strips could benefit from upgrading as uses change. The **primary planning issues are to assist in reasonable upgrades of these areas to meet the needs of area residents, balanced with continuing service to the traveling public**.

[8] It is a myth that retail cannabis is 'just like' any other retail use, from the land use planning perspective. The ITE traffic generation models alone defeat that notion in terms of impacts to traffic, circulation, pedestrian and bike safety. No other retail use requires 24 hours security, lighting, fencing, armed guards. The incompatibility of a use with these impacts on surrounding residential uses, beach recreation, and family- oriented businesses is clear. There is no rational basis to conclude that the traveling public 'needs' a convenient cannabis dispensary in this location, as travelers might need a gas station, restroom, or mini mart. This is especially of concern where the cannabis dispensary proposes to take up beach parking areas with its delivery vans.

The C-1 zone specifically excludes "uses which are incompatible with their adjoining residential uses due to noise, glare, odor and hazardous material concerns." County Code Section 35-77A.3. My client owns three (3) adjoining affordable residential units which are within 42-100 feet of the proposed cannabis dispensary, a fact of which you should be aware, since the County approved their Development Plan in or about 2003.

Inclusion of a cannabis dispensary, with its attendant new traffic, parking and safety impacts would also fly in the face of Toro Plan policies, specifically the extensive public access policies. The Plan specifically recites:

> "Policy LUG-TC-8 (COASTAL) Protection of ESH and public access shall take priority over other development standards and where there is any conflict between general development standards and ESH and/or public access protection, **the standards that are most protective of ESH and public access shall have precedence**."
>
> GOAL C-TC: Maintain an Appropriate Commercial Balance in Toro Canyon, Consistent with the Primarily Rural and Semi-Rural Nature of the Area.
>
> Policy C-TC-1: The county shall encourage and support reasonable development and viability of existing commercial areas through infrastructure and design improvements.
>
> Action C-TC-1.1: County staff shall work with area residents and Santa Claus Lane property and business owners to discuss programs for additional parking, improved drainage and possible formation of a business improvement district to address landscaping, maintenance and other infrastructure needs.
>
> DevStd C-TC-1.2: Commercial development on Santa Claus Lane shall incorporate a sidewalk that is contiguous and visually compatible with sidewalks in front of neighboring businesses as well as other necessary street and drainage improvements in accordance with County Road Department standards and any approved Streetscape Plan for Santa Claus Lane.

These policies priorities dictated that the Highway Commercial zoning be changed to C-1, with its attendant emphasis on compatibility with local needs and residential uses. Modifications that were required by the Coastal Commission were intended to preserve visitor serving/beach access, *not* to create a 'convenient' cannabis shop for the highway traveler which would undermine the beachgoer's access.

Of course, based on the documents we have reviewed, there was apparently no Planning Department analysis or input into the CAO's decision under Chapter 50- completely out of public view- that Santa Claus Lane would be a 'suitable' location for a cannabis dispensary. The virtual takeover of the Carpinteria Valley by the cannabis industry, and its attendant

cumulative negative land use incompatibility impacts,[9] which were unknown at the time of certification of the Toro Plan, were obviously not considered.

2. The County's CD-H process and findings are inadequate to address the conflicts between cannabis retail and beach access.

In 2019, in response to the State-wide inundation of cannabis cultivation and cannabis- related commercial uses, the Coastal Commission clearly recognized that the impacts to coastal resources from any aspect of the newly legalized cannabis industry, including retail, can be significant, and must be addressed.[10] As you should know, the Coastal Commission issued a guidance document to local agencies considering cannabis and cannabis- related development in the Coastal Zone in April of 2019. (See, Exhibit 4, attached) Pertinent to "retail", the suggestions focused on issues of parking, coastal public access, overloading of roads, security, fencing and lighting conflicting with the "character" of the affected area. **The portions of the guidance document specific to retail could have been written with Santa Claus Lane (SCL) specifically in mind:**

> p. 9: To address public access impacts associated with cannabis cultivation, LCPs could include provisions that are protective of public access resources, including, for example, by:
>
> Requiring that all cultivation operations and development, including accessory development such **as retail and tasting facilities,** provide and assure that parking is available to serve the cultivation operation without impacts to parking used for coastal public access;
>
> p. 10 As with cultivation, the manufacturing, testing, distribution, **and retail** of cannabis may also pose coastal resource protection issues. For example, manufacturing and distribution facilities may result in the overloading of public works facilities, such as roads, if allowed in areas not normally associated with the processing and transport of goods, such as in light commercial or rural residential areas.
>
> **p. 11-12** For impacts related to manufacturing, distribution, microbusinesses, retail, and other commercial cannabis-related activities, LCPs could include provisions that are protective of coastal resources, including, for example, by:
>
> - Requiring cannabis-related development near the coast or other public lands or trails, **especially retail** and microbusiness facilities, to provide and assure that parking is available to serve the operation;
> - ¬ Requiring setbacks to reduce visibility of the operations and structures in visually sensitive locations, including near public accessways and trails;
> - ¬ Requiring downward facing lights to minimize glare and other lighting impacts;

[9] Roots/Radis proudly announced their "local" (i.e. Carpinteria Valley) sourcing of cannabis, without any explanation or consideration of the impacts of truck/delivery routes and times impacting local roads in the EDRN.

[10] See, e.g., Coastal Commission Guidance to local agencies on cannabis, April 2019, Attachment 4.

- ¬ Requiring security structures, including fencing and signage, to blend in with the character of the surrounding area;

- ¬ Requiring public access plans for individual, cannabis-related CDP applications for development located near existing or planned public access sites, visitor-serving uses, and/or coastal access roads that assure the public's continued access and demonstrates that the proposed operation is compatible with the public's continued use and enjoyment of these areas, uses, or facilities.

While the County's Coastal Development Permit (CD-H) process and findings are also inadequate to address the issues that are specifically related to cannabis retail, the "designation" of the SCL site by the CAO through the licensing ordinance effectively preempted the Local Coastal Plan process entirely. It is clear from the documents we have been able to review that the County gave no consideration whatsoever to assuring that the public's continued access would or even could be assured at this location.

Therefore, even if the Coastal Commission were to determine that a cannabis retail facility in the Santa Claus Lane location could be considered without an LCP Amendment, based on the facts now known to the County, no such coastal development permit could be approved. See, Cannabis PEIR "justification" Policy 1-4:

> "County Planning and Development staff would also review all permit and license applications for cannabis cultivation, manufacturing, testing, distribution, and retail activities on a case-by-case basis. Through this project review process, the decision-making authority can make findings on whether the cannabis facilities meet applicable coastal policies. If in the event that the decision-making authority **cannot make the requisite findings of approval to issue a coastal development permit, the application for a coastal development permit must be denied.**" *(emphasis added)*

In this instance, and apart from the fact that they cannot meet minimum ordinance parking requirements on their property, the County would have to make a mandatory finding, among others, that the development will comply with the public access and recreation policies of Article II and the Comprehensive Plan including the Coastal Land Use Plan. Given the facts already provided, and known, there is simply no factual basis on which the County could make the required findings, nor can one be invented.

3. The County cannot tier from the cannabis Program EIR for cannabis retail projects in the coastal zone.

Apparently, P&D staff erroneously believe that a coastal development permit for cannabis retail can be exempt under CEQA. However, any claim that your Program EIR (PEIR) for cannabis can be found adequate to serve as the environmental document to support a permit for cannabis retail in this location in the coastal zone must fail because, among other things[11], that document did not consider the impacts of cannabis retail on the public access and recreation policies of the LCP/CZO, *at all.* See, *Banning Ranch Conservancy v. City of Newport Beach* (2017), where the

[11] Even if measures specific to coastal retail outlets had been discussed, there are no mitigation measures from the PEIR incorporated into the coastal zoning ordinance section applicable to retail dispensaries. There is no mitigation measure that can effectively address the conflict with coastal access in this location.

City failed to analyze ESHA impacts, and therefore failed to adequately consider alternatives and mitigation measures as required by CEQA. What is most significant about the Cannabis PEIR, in this context, is that while it recites that LCP Policy 1-2 (the LCP conflicts policy, mirroring Section 30007.5 of the Coastal Act) requires that where there is a conflict among Coastal Act policies, those *most protective of coastal resources (including access)* must prevail, *there is no discussion whatsoever of the potential conflicts of cannabis uses or facilities with coastal access.* (See, Cannabis PEIR Section 3.9-2, Exhibit 6) In fact, even the Coastal Commission comment letter of November 17, 2017 does not mention potential conflicts with Coastal Act policies 30210-30214, or conflicts with public access, coastal access, or coastal recreation. This will certainly be a substantial emergent issue warranting the Commission's review of any permit the County might approve.

The Supreme Court in *Banning Ranch* held that by "openly declar[ing] that it was omitting any consideration of potential ESHA from the EIR," **the City "ignored its obligation to integrate CEQA review with the requirements of the Coastal Act and gave little consideration to the Coastal Commission's needs.**" The Court emphasized that, "[b]y definition, projects with substantial impacts in the coastal zone are regionally significant." (Citing *Guidelines,* § 15206(b)(4),(C).) The Court acknowledged that while a lead agency is not required to make a "legal" ESHA determination in an EIR, "it must discuss potential ESHA and their ramifications for mitigation measures and alternatives when there is credible evidence that ESHA might be present on a project site."

Impacts to ESHA under Coastal Act Section 30240- which reflect a legal policy to protect sensitive resources- are no more entitled to consideration in an EIR than impacts to access and recreation policies under Pub. Res. Code Section 30210, 30212 and 30213, and as reflected in the County's LCP policies and certified coastal zoning ordinance. Yet, the PEIR, while purporting to support a County-wide program, does not even mention these critical Coastal Act policies.

The Court's discussion of the failure to consider feasible mitigation measures and alternatives is critical here. Had the County properly reviewed impacts to access and recreation from the designation of a site in the Toro/Summerland area, they might have acknowledged that any cannabis dispensary on Santa Claus Lane would have significant unaddressed traffic, parking, pedestrian, bike and auto safety and circulation impacts, inconsistent with the Santa Claus Lane Streetscape project,- which has been approved by the Coastal Commission- and they would have recognized and properly considered alternatives which would have had **no** adverse impact on coastal access and recreation. For example, the County might have considered, in a publicly reviewable document, the alternatives that were identified but dismissed by the County out of hand, with no rationale, including the C-1 zoned parcels off Coast Village Road in Montecito, and the ostensibly feasible Summerland parcel. **Or the County could (and should) have considered the no project alternative, since nothing in Chapter 50 *requires* identification of a retail site in every single planning area. But the County did not do this in its PEIR, or at all.** If P&D attempts to exempt the Santa Claus retail sites from supplemental environmental review, the key requirement of consideration of alternative sites will have been completely subsumed by the Board's 'ad hoc' treatment of the issue. Even though the Planning Director

specifically informed the Board that there were two sites appropriately zoned C-1 in the Montecito/Coast village road area, the Board simply ignored that alternative, and failed to explore it at all, without even the pretext of a rational basis. (Appendix 1, Hearing date: December 17, 2019) Thus the licensing 'process' will have fatally tainted any forthcoming discretionary permit process.

The fact that the PEIR may not have been challenged on this precise basis when it was certified is not an excuse for the failure of the County to engage in appropriate supplemental environmental review, based on the evidence, now. The public's lack of awareness of the County's decision-making subsequent to the certification of the PEIR is entirely the fault of the County, which conducted its subsequent proceedings and amendments to Chapter 50, as well as its consideration of site designation in a manner that left the affected public entirely in the dark at best, or was intentionally misleading, at worst. (See, Appendix 1). And, even if the County were to prevail on a new CEQA challenge, the Coastal Commission would have to make its own CEQA findings to support any retail dispensary coastal development permit on appeal. See, Pub. Res. Code Section 21080.5 and *Ross v. Coastal Commission (2011)* 199 Cal. App. 4th 100.[12] Notably, too, while significant effects under CEQA may be overridden, such is not the case under the Coastal Act, or the LCP. The County's certified LCP Policy 1-2 mandates that public access and resource protection must prevail over other considerations. And, where there is any conflict between provisions of CEQA and the Coastal Act, the Coastal Act prevails. Pub. Res. Code Section 21174.

4. <u>The County cannot make the findings to approve a Coastal Development Permit (CD-H) for cannabis retail on Santa Claus Lane</u>

Based on the Coastal Commission Cannabis Guidance document, the County's CD-H process and findings[13] are simply inadequate to address the most important specific standards that should

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[12] CEQA Guidelines section 15252, subdivision (a) provides: —(a) The document used as a substitute for an [environmental impact report] or negative declaration in a certified program **shall include at least the following items: [¶] (1) A description of the proposed activity, and [¶] (2) Either: (A) Alternatives to the activity and mitigation measures to avoid or reduce any significant or potentially significant effects that the project might have on the environment.** In any consideration of siting cannabis on Santa Claus Lane, the Commission would have to consider alternatives, even if the County failed to do so.

[13] A conditional use permit should be required for any cannabis dispensary -particularly in an EDRN- as your Board considered for cultivation- to address the unique neighborhood compatibility impacts associated with cannabis retail- security, fencing, lighting, and trip generation rates far in excess of other retail uses. Section 35-172 states: "The purpose of this section is to provide for uses that are essential or desirable *but **cannot be readily classified as principal permitted uses** in individual districts by reason of their special character, uniqueness of size or scope, or possible effect on public facilities or surrounding uses. The intent of this section is to provide the mechanism for requiring specific consideration of these uses.*" It is simply erroneous to consider cannabis retail as principally permitted. Many of the required CUP findings are not encompassed within the CD-H process and cannot possibly be made for cannabis retail in this location based on existing conditions: ***Section 35-172.8 Findings Required for Approval.***

A Conditional Use Permit application shall only be approved or conditionally approved only if decision-maker first makes all of the following findings:

1. That the site for the project is adequate in size, shape, location and physical characteristics to accommodate the type of use and level of development proposed.

be considered, including but not limited to a public access plan which preserves and protects not only the family- oriented character of the area, but also existing, and planned access to the beach. However, the evidence already in the County's possession demonstrates that the only way to preserve access is to decline to award any permit for a cannabis dispensary on Santa Claus Lane.

The County has *yet* to make public all of the relevant documents requested in our three (3) PRA requests. Nevertheless, based just on the documents that we finally received in the last weeks, over six weeks after the CAO's "decision" that the Roots/Radis site was 'suitable', we now know that certain critical assertions made in the applications for the SCL site were false and erroneous. These errors were and will be prejudicial to any legitimate land use permitting process, which the Board has completely preempted through your uncertified Chapter 50 determination, without even considering Coastal Act access policies and your own pending cumulative projects, including the Santa Claus Lane (SCL) streetscape improvements.

The clearly predictable interference of this project with existing and planned beach access, and recreation, which violates specific policies in your LCP, is critical in this case. There is an acknowledged, existing parking deficiency on SCL, which will not be cured by the County's SCL improvements, as staff and the Supervisor for the First District have specifically acknowledged. The Radis/Roots applicant claimed, under penalty of perjury, that there are sufficient parking places on their site to serve their use, per the coastal zoning ordinance requirements. However, as described above, the applicant does not own the property on which spaces are designated on their plan in the back of the proposed structure, and the claimed number of spaces in the front will be reduced by the SCL Streetscape project. Cannabis customers will also have to compete for parking not only with beachgoers, but with four other business on the Radis/Roots parcel. So no, <u>they do not even meet basic code requirements.</u>

Worse, you have no idea how the circulation and parking needs of this project will impact the 101 on -ramp, or the roundabout the Coastal Commission approved as part of the Santa Claus Lane Streetscape Improvements, and that you haven't even built yet, or how it would impact beach access in general. Even if the trip generation rates in the applicants' document were accurate, which we do not concede, there is **no information about parking and traffic impacts on the weekends, or in summer, when the needs are most critical for the public beach access**. (See, P&D e mail Exh 5- the *only* evidence that P&D even reviewed the project area.)

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2. That adverse environmental impacts are mitigated to the maximum extent feasible.
3. That streets and highways are adequate and properly designed to carry the type and quantity of traffic generated by the proposed use.
4. That there are adequate public services, including but not limited to fire protection, water supply, sewage disposal, and police protection to serve the project.
5. That the project will not be detrimental to the health, safety, comfort, convenience, and general welfare of the neighborhood and will not be incompatible with the surrounding area.
6. That the project is in conformance with the applicable provisions and policies of this Article and the Coastal Land Use Plan.
7. That in designated rural areas the use is compatible with and subordinate to the scenic and rural character of the area.
8. That the project will not conflict with any easements required for public access through, or public use of the property.
9. That the proposed use is not inconsistent with the intent of the zone district.

Furthermore, there has been no analysis of the impacts of delivery of product, and the pick-up and delivery to customers. Despite these fatal flaws in the Radis/Roots submissions, your CAO staff apparently believes no independent review of parking, safety and traffic circulation impacts is warranted. It is readily apparent that there is no set of facts that can be constructed that would address the fundamental conflict with beach access in this location.

Chapter 50 does not *require* a retail site in every planning area, and your Board – or at least the First District Supervisor-- represented to his constituents that if the public were opposed, you would not designate any site in the Toro/Summerland area. (e- mail from Das Williams to Tim Robinson). The general public comment- when it was allowed prior to submission of the Roots/Radis application- was, indeed, almost unanimously opposed, both from area residents and area businesses. We have submitted that comment to P&D for the record but not received the courtesy of an acknowledgment of that submittal. Based these facts alone,- which apply with equal force to the "competing" cannabis dispensary to the east, your CAO should not have designated *any* site on SCL.[14]

Once again, your Chapter 50 provisions on retail were never certified by the Coastal Commission and are of no force or effect in the coastal zone. If your Board wishes to 'designate' sites in the coastal zone for cannabis retail, you must do so through the local coastal plan amendment process. Please see Appendix 1 attached, which summarizes and references the sequence of Board of Supervisors' actions on cannabis.

Claims by the applicant/lessor of the Roots site that the cannabis retail use will be compatible with the community are simply unsupported. All the public comments you received (or allowed) before the applications were submitted, in or about August of 2020, orally or in writing were uniformly opposed to retail cannabis on SCL. The so-called petition of 500 " locals" in support of cannabis on SCL which was referenced by Ms. Radis – and proof of which we have been requesting for a two months- either does not exist, or you don't want us to know where the signators live.[15] We do know, now, from the application materials that the employees that they claim are "locals" all live in Lompoc or their experience is in Ventura County. Likewise, we have seen no announcement and no evidence of any community meetings held "in the spring of 2021", or at any other time.

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[14] Your Board explicitly eliminated unincorporated inland regions of the County including Vandenberg Village, and Cuyama, stating on the record that the residents of those communities did not want cannabis retail, hence, they would not be considered. Your Board eliminated sites that were clearly eligible on Coast Village Road, knowing that they were eligible as correctly zoned. You also eliminated a site in Summerland, based on questionable 'disqualification' of its location to an educational facility. Yet, you ignored the Surf Happens Surf school on SCL, as well as the three legal, lower cost residences within 100 feet of the Roots/Radis site, and the family-oriented beach and businesses adjacent to the cannabis dispensary site. The Board's entire conduct of this matter has been completely unfair to your First District constituents; arbitrary, capricious, and completely lacking in evidentiary support or policy justification.

[15] We have not even been told whether this petition has been redacted, or the basis for withholding it, if it exists. We do note that at least one of the documents in the Roots/Radis application is labeled "Isla Vista". It would be no surprise if 500 UCSB students signed a petition in support of a dispensary there.

In your Chapter 50 process, your CAO has simply ignored the facts, and fundamental principles of due process, transparency and fairness. This entire process, including your withholding of documents my client should have had access to months ago, has been a rolling due process violation and systematic denial of the public's right to participate. These are core values of the Coastal Act, which you have ignored. See, Pub. Res. Code Section 30006: "The Legislature further finds and declares that the public has a right to fully participate in decisions affecting coastal planning, conservation, and development; that achievement of sound coastal conservation and development is dependent upon public understanding and support; and that the continuing planning and implementation of programs for coastal conservation and development should include the widest opportunity for public participation."

By way of comparison, it is ironic that alcohol sales are more strictly regulated than cannabis, which is still not legal under federal law, and therefore requires armed guards at dispensaries, extensive fencing, special security, and extensive night lighting. If this were a liquor store, the presence of 3 legal residences which the County approved on my client's property within 100 feet of the Radis property alone would be grounds to grant an appeal and denial of a license. The Surf School, and other beach/recreation youth-oriented businesses, as well as the proximity of the Casa Blanca and Sandyland residences are likewise incompatible with cannabis retail.

Under the California Constitution, the ABC has full authority to license alcohol outlets *BUT any person has the right of appeal,* and the burden is on the applicant to provide evidence to support the license. Under Chapter 50, you purported to select sites completely in the "back room", with no opportunity for public participation or appeal, nor public review of the application documents and evidence, and, apparently, no review even from your Board. While your Board eliminated sites on an 'ad hoc' basis with inadequate public notice, the site 'designation' was done in private, by the CAO. Under the Coastal Act, when you change allowed uses in a specific community plan area, you are required to specifically amend your Land Use Plan and coastal zoning ordinance to do so. Instead, in this case, you have allowed your CAO to "designate" sites in your community plans as appropriate for cannabis dispensaries, without public participation or the opportunity to appeal or object.

Finally, and lest we forget, cultivation and sale of cannabis other than for medical purposes was an illegal use in all zone districts until 2016, let alone in **EDRNs** like Santa Claus Lane. During the course of your incoherent process of ordinance amendments, you banned cannabis in EDRN's in the inland areas, but failed to address the consequences of considering them in the Coastal Zone. Santa Claus Lane is designated an EDRN. When the Coastal Commission certified your cannabis ordinance in 2018, it excluded Chapter 50 from the LCP on the clearly expressed representation that Chapter 50 dealt with business licensing, not Coastal Act standards. Now you are authorizing a new use, with uniquely negative properties, in a coastal EDRN, adjacent to not only the three residential units on my client's property, beach and family-oriented businesses, but also the Casa Blanca residential subdivision, and the Sandyland homes, as well as the additional Santa Claus Lane Beach access you are seeking. This new use will plainly

interfere with public access and coastal recreation and is incompatible with the surrounding residential uses and family/beach-oriented business. There is no rational basis for the distinctions you have made, on their face or as applied.

Based on the above, we are urging your Board to take action, now, to remedy the situation you have created. You should also be aware, from your own experience, that regardless of the passage of time, the Coastal Commission staff will take an independent view of the correctness of the County's action, regardless of the effect on the individual owner. Any alleged 'harm' the prospective applicant may claim from "reliance" on incorrect positions taken by the County will fall upon the County- and the County taxpayers- to remediate in damages.[16] Alternatively, if you disregard the facts and the law and force my client to expend tens of thousands of dollars to participate in a permit proceeding, in order to be able to challenge your decision, the County will be liable for attorneys' fees- including those attributable to necessary work in permit proceedings- when a challenge to any permit you approve is successful.

Therefore, we request that the CAO reconsider and rescind their designation of any site in the Toro/Summerland Community Plan area, based on the new information that has been provided. We will appreciate the courtesy of a reply to this letter within 14 days of this date.

Very Truly Yours,

/s/

Jana Zimmer

cc: Lisa Plowman, P&D Director
Mona Miyasato, CAO
Jeff Frapwell, Asst CAO
John Ainsworth, Executive Director, California Coastal Commission
Steve Hudson, California Coastal Commission
Deanna Christensen, California Coastal Commission
Rachel Mullem, Chief Assistant County Counsel

[Exhibits delivered separately, by e-mail this date]

[16] See, e.g., *O'Neil LCPA* W17a-7-2019; and *O'Neil v. Santa Barbara County, California Coastal Commission* Case No. 2:19-cv-07749-ODW (AFMx) Order Denying Santa Barbara County's Motion to Dismiss and Granting California Coastal Commission's Motion to Dismiss.

Appendix 1- Cannabis Retail and Coastal Zoning Ordinance- Summary of timeline and changes to Ch 50

- On **May 1, 2018** the Santa Barbara County Board of Supervisors [BOS] added Chapter 50 to its Code, establishing a "Commercial Cannabis Business License"[17]. The purpose of the Ordinance was to "*Require a local Cannabis Business License for anyone engaged in any activity, recreational or medicinal, including the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery, or retail sale of cannabis and cannabis products*". Further, the originally adopted Chapter 50 allowed for a maximum of eight retail stores in the unincorporated County and specified that there were to be no more than two stores per Supervisorial District. The original Chapter 50 established a "random selection" process for issuance of retail licenses [Ch 50-7] for "pre-qualified" applicants.

- On **May 15, 2018** the BOS voted to submit the above referenced Chapter 50 to the California Coastal Commission for certification;[18] this Board action included submission for certification of a few other unrelated items.

- On **October 22, 2018** the BOS adopted a Resolution to accept the Coastal Commission's conditional certification of its above- referenced Local Coastal Program-re: Cannabis Land Use regulations and accepted the modifications requested by the Coastal Commission.[19] , Modification #4 concerned the Cannabis Business Licensing Ordinance [Chapter 50]. The Commission opted NOT to certify the Cannabis Business License Ordinance and instead, inserted some of the features *from* the Business Licensing Ordinance into the Coastal Zoning Ordinance [CZO]- including definitions of wording, and the 186-acre cultivation cap. The Commission's reasoning is summarized in their LCPA staff report, Pg 3: "*the Business License Ordinance would reside in a section of the County's Code outside of the certified LCP, and other than some of the definitions, the 186-acre land use cap, and the inconsistency regarding outdoor cultivation, the Business License Ordinance pertains to local business issues and does*

[17] . ATTACHMENT 1 - Chapter 50 - BUSINESS LICENSING ORDINANCE - Final

[18] Exhibit B - Chapter 50 - BL,

[19] Attachment 2 - BOS Resolution for Acceptance of Modifications by the CCC,

not contain standards that would apply to coastal development permits." [20] (The acceptance of the CZO *did* include the allowance of Cannabis Retail in certain zones[21].)

- On **January 29, 2019** the BOS held a several-hour-long hearing discussing possible amendments to the Cannabis Land Use and Business Licensing Ordinance. At this hearing, CEO Cannabis Czar Bozanich first mentioned a recommendation to place cannabis retail stores in "community plan areas" and specified "a combined Toro Canyon/Summerland",[22] There was no analysis or reason given for this change, but the Board "conceptually directed" that staff return with this and many other "amendments" to Chapter 50, as well as amendments to the LUDC and Article II.

- On **April 9, 2019** the BOS adopted modifications and amendments to the LUDC/ART II and Chapter 50. Ch 50 was amended to specify community plan areas into which retail could be placed including Toro/Summerland[23]. This marks the first time a location in the Coastal zone was specified within Chapter 50.

- On **April 29, 2019,** the Coastal Commission issued its Guidance document to local government, "**Cannabis in the Coastal Zone and the Regulatory Requirements of the Coastal Act.**"

- On **August 27, 2019** the BOS again made several amendments to Chapter 50; among the amendments, the BOS eliminated the "random drawing" selection and instead inserted the concept of a "selection process".[24]

- On **November 5, 2019** the BOS again discussed possible amendments to the Chapter 50, including establishing a "criteria-based application review", and directed staff to

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[20] Attachment 3 - CCC LCPA Staff Report, Exhibits and Addendum,

[21] CZO Cannabis Regs as adopted 2/27/2018 Attachment 3A - CZO,

[22] 1/29/19 Board letter Pg 4 Board Letter

[23] 4/9/2019 Amended Ch 50 Amendments for Chapter 50 - BUSINESS LICENSING ORDINANCE 3-2019 - Redlined version,

[24] 8/27/19 Amended Ch 50 Attachment 2 - Amendments for Chapter 50 - Redlined version,

return with proposed amendments; in addition, the BOS asked that Vandenberg Village, Cuyama and Montecito be excluded from consideration of cannabis retail site, but "Toro/Summerland" remained.

- On **December 17, 2019** the BOS formally adopted the changes included in the previous discussion of amending the Ordinance. P&D Director Plowman confirmed that in fact the Montecito CPA did contain two parcels that would qualify for retail cannabis that staff had previously "missed". The BOS declined to add Montecito to the list, without articulating *any rational basis for that exclusion.*

- On **January 14, 2020** the BOS adopted the most recently amended Ch 50.[25] This included the elaborate and detailed language re what the retail proposals should include, and the concept of "neighborhood compatibility".

[25] 1/14/2020 Amended Ch 50 Attachment 2 - Ordinance Amending Chapter 50 (Redlined Version),