



#5

de la Guerra, Sheila

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**From:** Jana Zimmer <zimmerccc@gmail.com>  
**Sent:** Friday, October 28, 2022 4:34 PM  
**To:** sbcob; Hart, Gregg; Lavagnino, Steve; Nelson, Bob; Hartmann, Joan; Williams, Das  
**Cc:** STEVEN KENT  
**Subject:** Appellants' Exhibit 180 Roots Appeal 3823 Santa Claus Lane  
**Attachments:** Exhibit 180.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.**

Please include this e mail and Attached Exhibit 180 in the record. This e mail from Das Williams', received through your Public Records portal at 4:21 pm on 10/28/2022 confirms that Supervisor Williams was very well aware in April of 2021 of the fundamental flaws both in the process and in the substance of staff's analysis and recommendations in this case. We informed the CEO's office on April 21, 2022, they they had unlawfully eliminated ostensibly feasible sites in Montecito and Summerland:

" Thank you for letting me know that the CAO's office posted its final decision on an eligible applicant yesterday. However, it is very concerning that this was done prior to giving us any information regarding your evaluation, especially since we do not know what, if any "preliminary" determinations were made that could prejudice P&D's independent processing of a coastal development permit or other required discretionary permit. In addition, the lack of information, including any "preliminary" community plan consistency analysis that your office or any other department may have performed, has made it impossible for us to determine whether to file an objection based on the incompatibility of any site on Santa Claus Lane with the LCP. To the extent available, you may consider this communication as such an objection. We are aware that this process has already been tainted by the inappropriate and erroneous elimination of two potentially viable commercially zoned sites In Montecito. We are also investigating the elimination of the Summerland site. We do not know, because we do not have any documents, what level of consideration has been given to Coastal Act issues particular to your highest ranked site. We expect that, if the County goes forward with land use permits, appropriate consideration of all ostensibly feasible alternative sites will be given due consideration in the CEQA process necessary for consideration of a coastal development permit or other discretionary permit. We do not expect that the PEIR would have addressed the very specific issues pertaining to locating a dispensary on Santa Claus Lane. Given that Chapter 50 is not part of the County's LCP, and while we have concerns about whether this new use can be considered in the coastal zone under the existing LCP, without an LCP amendment integrating relevant provisions of Chapter 50, we expect that the permit process must, at a minimum, be fully transparent and independent, as required by the Coastal Act. **The first requirement of transparency is to provide all of the documents we have requested.**" [April 21, 2021]

(805)705-3784

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## McShirley, Kadie

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**From:** Elliott, Darcel  
**Sent:** Monday, May 3, 2021 11:22 AM  
**To:** Williams, Das  
**Cc:** McShirley, Kadie  
**Subject:** RE: Public Records request- site selection for cannabis dispensary

Kadie responds to these requests and I checked with her and she did respond to it.

**From:** Williams, Das <DWilliams@countyofsb.org>  
**Sent:** Saturday, May 1, 2021 4:10 PM  
**To:** Elliott, Darcel <delliott@countyofsb.org>  
**Subject:** Fwd: Public Records request- site selection for cannabis dispensary

Did you search for any and turn them over to County staff!

Sent from my iPhone

Begin forwarded message:

**From:** Jana Zimmer <[zimmerccc@gmail.com](mailto:zimmerccc@gmail.com)>  
**Date:** May 1, 2021 at 2:43:41 PM PDT  
**To:** "Heaton, Brittany" <[brheaton@countyofsb.org](mailto:brheaton@countyofsb.org)>  
**Cc:** County Executive Office <[caoemail@co.santa-barbara.ca.us](mailto:caoemail@co.santa-barbara.ca.us)>, "Leyva, Petra" <[Petra@co.santa-barbara.ca.us](mailto:Petra@co.santa-barbara.ca.us)>, "Van Mullem, Rachel" <[Rvanmull@co.santa-barbara.ca.us](mailto:Rvanmull@co.santa-barbara.ca.us)>, "Hudson, Steve@Coastal" <[Steve.Hudson@coastal.ca.gov](mailto:Steve.Hudson@coastal.ca.gov)>, "Williams, Das" <[DWilliams@countyofsb.org](mailto:DWilliams@countyofsb.org)>  
**Subject:** Public Records request- site selection for cannabis dispensary

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Ms. Heaton and Mr. Frapwell:

Please be advised that we still have not received a single document in response to our Public Records Act request of April 5, 2021, seeking **all** documents related to the selection of a cannabis dispensary site on Santa Claus Lane. As we discussed with Ms. Heaton on Friday, the ten day *extension* of the deadline for County response expired on April 29, 2021. Ms. Heaton indicated that the package of documents that your office compiled had been sent to County Counsel, but we have not heard from them, nor have we received any documents.

Thank you for letting me know that the CAO's office posted its final decision on an eligible applicant yesterday. However, it is very concerning that this was done prior to giving us **any** information regarding your evaluation, especially since we do not know what, if any "preliminary" determinations were made that could prejudice P&D's independent processing of a coastal development permit or other required discretionary permit. In addition, the lack of information, including any "preliminary" community plan consistency analysis that your office

or any other department may have performed, has made it impossible for us to determine whether to file an objection based on the incompatibility of any site on Santa Claus Lane with the LCP. To the extent available, you may consider this communication as such an objection.

We are aware that this process has already been tainted by the inappropriate and erroneous elimination of two potentially viable commercially zoned sites in Montecito. We are also investigating the elimination of the Summerland site. We do not know, because we do not have any documents, what level of consideration has been given to Coastal Act issues particular to your highest ranked site. We expect that, if the County goes forward with land use permits, appropriate consideration of all ostensibly feasible alternative sites will be given due consideration in the CEQA process necessary for consideration of a coastal development permit or other discretionary permit. We do not expect that the PEIR would have addressed the very specific issues pertaining to locating a dispensary on Santa Claus Lane.

Given that Chapter 50 is not part of the County's LCP, and while we have concerns about whether this new use can be considered in the coastal zone under the existing LCP, without an LCP amendment integrating relevant provisions of Chapter 50, we expect that the permit process must, at a minimum, be fully transparent and independent, as required by the Coastal Act. The first requirement of transparency is to provide all of the documents we have requested. We note, also, that in certifying the County's cannabis ordinances, the Coastal Commission's modifications deleted the Business License ordinance as *unnecessary* to be certified on the following basis:

"Additionally, the Business License Ordinance, which was submitted for certification, would reside in a section of the County's Code outside of the certified LCP. Further, **other than some of the definitions and the 186 acre land use cap in the Carpinteria Valley, the Business License Ordinance pertains to local business issues and does not contain standards that would apply to coastal development permits.** Therefore, since modifications are suggested in order to include and revise certain definitions from the Business License Ordinance and note the 186 acre land use cap, certification of the Business License Ordinance is not necessary. Thus, Suggested Modification No. 4 is necessary to not certify the Business License Ordinance as part of this LCP amendment so that it is not the standard of review for coastal development permits and can be separately implemented by the County."

However, in a more recent policy guidance document, attached, the Coastal Commission specifically called out the need to address traffic and parking, and the interference of cannabis operations, including retail, with both existing and future plans related to enhancing coastal access. Issues such as traffic flow, parking requirements, setbacks, interference with existing or planned public access, existing and planned bike paths, and community compatibility are clearly Coastal Act issues which must be given full *and independent* consideration in the land use permitting process. At a minimum, any "preliminary" determinations by any department that conflict with or prejudice a full and transparent analysis in the Article II process must be disregarded. The County created serious issues in the Carpinteria area by inappropriately and erroneously recognizing pre existing cannabis operations as 'legal, nonconforming' uses through Chapter 50, and then using that 'status' to wreck havoc with the coastal development permit process, claiming that odor issues, for example, cannot lawfully be mitigated until after a coastal development permit is granted, if ever. This threatens to become another iteration of the same problem. And, given the history of other sites and other issues (e.g. O'Neil vs County of Santa Barbara), we believe that notwithstanding any prior consideration, the Coastal Commission staff will not consider themselves to be 'bound' by the modifications that they recommended in 2018, based on new information specific to Santa Claus Lane.

Please provide my office with the public record response immediately, and provide notice of and forward any application materials submitted to P&D. If required, you should consider the PRA request to be ongoing with respect to any writings arising from the land use permit process.

Thank you.

Jana Zimmer, Attorney/  
Government Relations Consulting  
(805)705-3784

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**de la Guerra, Sheila**

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**From:** Jana Zimmer <zimmerccc@gmail.com>  
**Sent:** Saturday, October 29, 2022 9:40 AM  
**To:** sbcob; Williams, Das; Hart, Gregg; Nelson, Bob; Hartmann, Joan; Lavagnino, Steve; Alexander, Jacquelyne  
**Cc:** STEVEN KENT  
**Subject:** Fwd: Roots Appeal 3823 Santa Claus Lane Appellants Additional Legal Argument re CEQA and Exhibit 179  
**Attachments:** Appellants' Supplemental Exhibits 10.28.2022.pdf  
**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Caution: This email originated from a source outside of the County of Santa Barbara. Do not click links or open attachments unless you verify the sender and know the content is safe.**

To the Clerk: We note that you have posted the below in the middle of a batch of public comment. This is **Appellants' response to a late filing from Roots, and raises a significant legal and factual issues.** Please make sure this is re-posted so that it can be seen and reviewed by the decision makers.

----- Forwarded message -----

**From:** Jana Zimmer <zimmerccc@gmail.com>  
**Date:** Fri, Oct 28, 2022 at 11:08 AM  
**Subject:** Roots Appeal 3823 Santa Claus Lane Appellants Additional Legal Argument re CEQA and Exhibit 179  
**To:** <sbcob@co.santa-barbara.ca.us>  
**Cc:** Williams, Das <dwilliams@countyofsb.org>, <bob.nelson@countyofsb.org>, Gregg Hart <ghart@countyofsb.org>, <steve.lavagnino@countyofsb.org>, Hartmann, Joan <jhartmann@countyofsb.org>, STEVEN KENT <rikalokent@cox.net>

To the Clerk and Supervisors:

Please post the attached additional argument and Exhibit

--  
Jana Zimmer

(805)705-3784

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Jana Zimmer

(805)705-3784

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## Appellants' Supplemental Argument and Exhibits Re: CEQA noncompliance and parking

The following additional argument and exhibits respond further to the applicant's late submittal of a traffic "analysis" from ATE and further supports Appellants' proposed findings for denial of permit.

Applicants have forgotten entirely that even in the Chapter 50 process, they had the burden to prove the following:

**"In addition to compliance with the zoning ordinance parking standards, that the site will have adequate parking to accommodate employees and visitors and will not disrupt the neighborhood in which the proposed business is located."**

There is no evidence that staff actually considered this "standard" in the Chapter 50 process. Despite several requests under the Public Records Act, the County never turned over a single document reflecting this specific analysis. Nevertheless, staff's purported 'findings' in the Chapter 50 process "effectively" preempted analysis and impaired the discretion of the Planning Commission to make findings for approval of the CD-H.

There is no evidence that the **SITE** will have adequate parking. To the contrary, appellants have already established, notwithstanding applicants repeated **misrepresentations** of available parking, which we have identified more than once (i.e. the fact that the applicants do not own or control the UPRR property, which they must have in order to assert entitlement to 22 spaces on site), that parking will not comply with Code for employees, let alone delivery trucks and customers. [Contrast CEQA arguments in Greenthumbs, Exh 61 ]

*On 10-27-22 A Roots' lobbyist falsely claimed in post on the Roots Facebook page that: "Roots Carpinteria will have **22 onsite dedicated guest/employee parking spaces**," and encouraged their supporters to come testify to that fact. Roots knows this is not true. Roots' representatives were advised by the County in late 2021 that they could not utilize the area leased from UPRR to meet the parking demands of the project. Several other businesses occupy the 3823 building and must utilize the same parking lot. In the 11-5-21 SBAR Staff member Planner Nereyda Harmon stated: "Proposed **parking for the project has been modified to be only on the subject property as opposed to in the lease area owned by Union Pacific Railroad (UPRR)**". In their original architectural plans labeled A17 submitted during the Chapter 50 Process, Roots proposed 20 parking spaces; a statement in the original Parking Demand analysis dated 10-26-20 and submitted by the applicants as "B6" in their Chapter 50 submission, reads: "the store will have 22 dedicated spaces reserved for customers" while estimating that the "peak hour parking demand..is 10-15 spaces" Now, per the current plan, only **SIX** of the rear parking spaces are conditioned to be dedicated to Roots' employees and patrons."*

In addition, the applicants' extremely tardy submittal of the ATE document, which should have been submitted *before* staff determined to exempt the project from CEQA, at the beginning of the CDP process, is of no help: **it confirms a bona fide disagreement among experts which, under CEQA, must be addressed in an EIR.** This *very* late hit from the applicants merely confirms that at the outset, staff should have required a Supplemental or Subsequent EIR, according to well established CEQA principles summarized in *Keep Our Mountains Quiet v. County of Santa Clara (Candice Clark Wozniak, as Trustee, Real Party in Interest)* (6th Dist. 2015) 236 Cal.App.4th 714. [MND held inadequate]. Aggrieved parties prevailing in a CEQA case (or a Coastal Act case) will be entitled to attorneys' fees which we will seek



from the County, regardless of any joint defense agreement you may have. *Edna Valley Watch v County of San Luis Obispo* (2011) 197 Cal.App.4th 1312:

The following principles in *Keep our Mountains Quiet* remain good law:

1. “[i]f there is disagreement among expert opinion supported by facts .... the Lead Agency shall treat the effect as significant and shall prepare an EIR” (citing 14 Cal. Code Regs., § 15064(b), (g)).

**Please see Appellants’ Exhibits:** Summer 2021 beach counts from NDS; Analysis from Central Coast Transportation Engineers (2), and added Exhibit 179, submitted concurrently herewith, where Mr. Fernandez points out that applicants are relying on some of the same inaccurate information contained in their prior reports.

2. It reviewed and recited the applicable “fair argument” standard: “An EIR is required whenever “substantial evidence in the record supports a “fair argument” significant impacts or effects may occur.”” (Quoting *City of Arcadia v. State Water Resources Control Bd.* (2006) 135 Cal.App.4th 1392, 1421.) A MND is permitted only “if ‘the initial study identified potential significant effects on the environment but revisions in the project plans “would avoid or mitigate the effects to a point where clearly no significant effect on the environment would occur” and there is no substantial evidence that the project as revised may have a significant effect on the environment ....”” (Quoting *Architectural Heritage Assn. v. County of Monterey* (2004) 122 Cal.App.4th 1095, 1101.)

In this case, not only did the County fail to even consider an MND, in fact the applicants refused to entertain specific changes to their project description/conditions which were narrowly and specifically tailored and which arguably might have addressed the obvious conflicts with beach access/parking and coastal visitor serving uses. [Exh 153, 155]

In applying these principles, the Court stated the following key holdings and conclusions:

- “Relevant personal observations of area residents on nontechnical subjects may qualify as substantial evidence.” (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928.) **“For example, an adjacent property owner may testify to traffic conditions based upon personal knowledge.”** (*Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 173.)

See, **Declaration under penalty of perjury of Dr. Steve Kent**, and various residents of Sandyland, Padaro Lane, Casa Blanca, Polo Condos. Any testimony regarding current conditions from applicants’ lobbyists is *hearsay*, which is not sufficient to sustain a finding. Notably, although she was present Mrs. Radis, the manager of the the LLC, failed to testify at the Planning Commission hearing. There is evidence in the record (an e mail from her to Dr. Kent), in which she asserts, as Appellants have, that even after the Streetscape improvements, the traffic issue on Santa Claus Lane **will not be** resolved. She complains that she has lost a tenant, Porch, already. Shockingly, after they entered their deal with Roots to rent their space at 3823 for \$12,000 per month- 2-3 times the going rate, her concern with post Streetscape traffic conditions disappeared.

- Because substantial evidence includes “reasonable assumptions predicated upon facts” (Guidelines, § 15384, [(b)]) and “reasonable inferences” ... from the facts, factual testimony about existing environmental conditions can form the basis for substantial evidence.” (Citing § 15384; *Banker’s Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 274; *Taxpayers for Accountable School Bond Spending v. San Diego Unified School Dist.* (2013) 215 Cal.App.4th 1013, 1054.)

Neither Dennis Bozanich, the County’s former Cannabis Czar, nor Joe Armendariz have any factual testimony to offer in this case.

- In a footnote, the Court recognized that “testimony about current conditions is not proof of what impacts a future project may have [,]” but also noted that is not the relevant inquiry in this context under CEQA: ... “[T]he question is not whether [citizen testimony] constitutes proof that [particular effects] will occur,” but whether it (or reasonable inferences from it) “constitutes substantial, credible evidence that supports a fair argument that ... [the project] may have a significant impact on the environment.” (*Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690, 721 ....) ...[F]actual testimony about existing environmental conditions can form the basis for substantial evidence supporting a fair argument that significant impacts or effects may occur.

Appellants have met this standard. The PEIR found impacts from retail to be Class I, significant and unavoidable. The PEIR findings represented that the CDP would be a fully discretionary permit, which would be denied based on site specific evidence. Instead of requiring environmental review, staff has ignored the site specific evidence, percipient witness testimony, and expert evidence to continue to recommend approval.

Furthermore, whether the ‘ordinance’ standards or CEQA thresholds are met is not determinative:

- While “[t]he County employed the [ noise ]standards set forth in its [noise] ordinance and General Plan as the thresholds for significant noise exposure, deeming any increase to be insignificant so long as the absolute noise did not exceed those standards[,]” the Court found the “weight of authority” under CEQA to be contrary to this position. It held that “an EIR is required if substantial evidence supports a fair argument that the Project may have significant unmitigated noise impacts, even if other evidence shows the Project will not generate noise in excess of the County’s noise ordinance and General Plan.” (Citing numerous cases.) The Court stated that a “lead agency should consider both the increase in noise level and the absolute noise level associated with a project.”

In this case, there is and was substantial evidence that the project may have a significant impact. The fact that, just before the Planning Commission meeting, staff “reached out” to the applicants to request a traffic management plan- which is wholly inadequate to address the impacts identified- further confirms that potential impacts do exist, and have not been mitigated. Now, after the Planning Commission decision, staff reaches out again, to ATE, for a report that concludes that there will be no impact. It was

inappropriate to rely on the PEIR, which did not address the obvious conflicts with Coastal Act, LCP and TORO Plan policy.

Finally, and most significantly from the transparency and due process perspective, after *denying* there is any traffic or parking issue for over a year and a half, Applicants, in collaboration with staff submit a “parking analysis” three working days before the hearing, knowing the impossibility of a full response from our experts. Nevertheless, in a very brief look, Appellants’ experts quickly identified that the Applicants have gone back to reliance on their original, **incorrect and incomplete assumptions** [See, Exhibit 179, e mail from J. Fernandez, 10/26/2022 ( attached )

**“The STDMP parking demand estimates are inconsistent with the prior estimates (attached, but note that this document uses a different project description and excludes demand from non-cannabis uses on the site) using industry standard sources. The table from their consultant’s study shows a range of 5.83 to 8.87 spaces per 1,000 s.f.- far higher than the zoning requirement of 2 spaces per 1,000 s.f.**

**The cannabis storefront selection process requires “a detailed plan that demonstrates, in addition to compliance with the zoning ordinance parking standards, that the site will have adequate parking to accommodate employees and visitors and will not disrupt the neighborhood in which the proposed business is located.”**

**The STDMP notes a maximum of five employees at any time, a substantial reduction from prior estimates. I don’t know why this changed.**

**So while they meet the zoning requirements there is evidence in the record that their parking supply is inadequate. Our parking demand estimate, using industry standard rates consistent with the attached study, is shown below.”**

Appellants have argued from Day One that even if this application meets minimum zoning standards, that does not provide support for a finding that, **that the site will have adequate parking to accommodate employees and visitors and will not disrupt the neighborhood in which the proposed business is located.** Because the County has persistently failed and refused to analyze the increase in intensity of use which should have been the starting point for analysis but which continues to be ignored, and which can be predicted based on specific factors applicable to this particular location, findings that there will be no significant traffic impacts cannot be made.


Exh 179:

From: **Joe Fernandez** <joe@transportationcc.com>  
Date: Wed, Oct 26, 2022 at 12:18 PM  
Subject: RE: Stdmp from PC  
To: Jana Zimmer <zimmerccc@gmail.com>

The STDMP parking demand estimates are inconsistent with the prior estimates (attached, but note that this document uses a different project description and excludes demand from non-cannabis uses on the site) using industry standard sources. The

table from their consultant's study shows a range of 5.83 to 8.87 spaces per 1,000 s.f.- far higher than the zoning requirement of 2 spaces per 1,000 s.f.

**Figure 4 Parking-Generation Rates for Consideration**

Parking-Generation Rate		Proposed Store Retail GFA (SF)	Projected Peak Parking Occupancy (spaces)
ITE Weekday Peak	7.19	 1,666	12
ITE Weekend Peak	8.75		15
Port Hueneme Store peak	8.87		15
Lompoc Store peak	5.83		10

*The rates suggest a likely range of peak hour parking occupancy levels for the proposed store of 10-15 spaces.*

The cannabis storefront selection process requires “a detailed plan that demonstrates, in addition to compliance with the zoning ordinance parking standards, that the site will have adequate parking to accommodate employees and visitors and will not disrupt the neighborhood in which the proposed business is located.”

The STDMP notes a maximum of five employees at any time, a substantial reduction from prior estimates. I don't know why this changed.

So while they meet the zoning requirements there is evidence in the record that their parking supply is inadequate. Our parking demand estimate, using industry standard rates consistent with the attached study, is shown below.

The proposed project's parking demand estimate is summarized in Table 1.

**Table 1: Parking Demand Estimate**

Parking Demand Estimate			
Land Use	Proposed Size (s.f.)	Parking Demand Rate (spaces/1,000 s.f.) <sup>4</sup>	Parking Demand (spaces)
Retail (clothing store) <sup>1</sup>	1,069	1.95	21
Offices <sup>2</sup>	2,227	2.56	57
Dispensary Retail <sup>3</sup>	2,035	7.19	146
<b>Total</b>	<b>5,331</b>	-	<b>22</b>

1. ITE Land Use Category 820, Shopping Center.  
 2. Includes architects office, dispensary office, and miscellaneous office. ITE Land Use Category 712, Small Office Building  
 3. ITE Land Use Category 882, Marijuana Dispensary.  
 4. Average demand rates from the Institute of Transportation Engineers' *Parking Generation Manual, 5th Edition*.  
 Source Nelson Nygaard, CCTC, 2022.

END OF EMAIL FROM JOE FERNANDEZ, CCTC