Ramirez, Angelica General Public Comment 8/02/21

From: Jana Zimmer <zimmerccc@gmail.com>
Sent: Monday, August 2, 2021 4:58 PM
To: sbcob
Subject: Fwd: Follow up to meeting of July 23 Santa Claus Lane Cannabis
Attachments: Final letter post meeting follow up 8.2.2021.pdf

Please distribute the attached letter to the Board of Supervisors and place in the Clerk's file.

---------- Forwarded message ---------
From: **Jana Zimmer** <zimmerccc@gmail.com>
Date: Mon, Aug 2, 2021 at 1:29 AM
Subject: Follow up to meeting of July 23 Santa Claus Lane Cannabis
To: Cc: <mmiyasato@countyofsb.org>, <cao@co.santa-barbara.ca.us>, Plowman, Lisa <lplowman@co.santa-barbara.ca.us>
Cc: Van Mullem, Rachel <rvanmull@co.santa-barbara.ca.us>, Williams, Das <dwilliams@countyofsb.org>, <clerk@santabarbaraca.gov>, Gregg Hart <ghart@countyofsb.org>, Hartmann, Joan <jhartmann@countyofsb.org>

To: Mona Miyasoto, Jeff Frapwell, Lisa Plowman

Please see the attached letter .

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Mona Miyasoto, County Executive Officer
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Lisa Plowman, Planning and Development Director
County of Santa Barbara
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By e-mail

August 2 ,2021

Re: Cannabis retail on Santa Claus Lane

Dear Mona, Lisa, and Jeff:

Thank you very much for meeting with me and my clients on July 23. They appreciate that you heard us out, and that you will consider the information that they (and I) have provided and that they will continue to provide, as needed. That said, we remain concerned that the County's delay in addressing the erroneous determinations that led the CEO to find *any* site on Santa Claus Lane "suitable" for a cannabis dispensary under Chapter 50 will only create more controversy and unfounded expectations on the part of the applicant, and that it has already prejudiced any intended coastal development permit process. The County's entire process since 2019 has inappropriately preempted and shifted the burden of proving (in)consistency with the LCP to the affected neighboring landowners and members of the public, whose rights to access to the coast should be paramount. A serious course correction is in order.[1]

Also, be advised that on July 27, 2021, we learned that Radis/Roots had in fact submitted their application for a CD-H to Planning and Development on July 23, the date of our meeting. For the reasons set forth below, this application should not be called complete for processing because the findings for approval simply cannot be made. This submittal apparently occurred immediately prior to

[1]In previous correspondence we have advised that your failure to submit your 2019 chapter 50 amendments to the Coastal Commission for certification inappropriately designated the site, effectively rezoned the property to Highway Commercial and illegally amended the LCP. We have already established that any CDP in this location is appealable to the Coastal Commission. Regardless of any indemnification agreement you have with the applicant Roots/Radis for third party challenges, in refusing to address and correct your errors in this case, you are exposing all County taxpayers to claims of liability if the Commission reverses your actions on appeal. And you are well aware that even if the Commission staff does not intervene early, that does not insulate the County or the applicant from their later actions. See, *O'Neil v Coastal Commission and County of Santa Barbara, (U.S. Dist. Court 2:19-CV-07719)*

or during our meeting. Therefore, this letter will also summarize and address additional procedural remedies that we believe are readily available for you and/or the Board of Supervisors to implement and to correct the staff errors that have led us to this point.

1. **Rescission of CEO site "designation"/site selection under Chapter 50 of the County Code.**

As you have repeatedly assured your constituents, Chapter 50 allows but *does not require* a site for a cannabis dispensary in each and every community plan area. This was reconfirmed to the public by Barney Melekian, your former cannabis czar, in 2020. For the Toro/Montecito Plan areas, the staff- at the direction of the First District Supervisor- erroneously eliminated two ostensibly feasible *non-beach front* C-1 sites in Montecito - without acknowledging facts which were not only presented by the community but confirmed by P&D at the Board hearing. The Board also eliminated a Summerland site based on an *alleged* conflict with a school facility, but the CEO *ignored* the Surf School and other youth serving facilities immediately adjacent to the proposed Santa Claus Lane site. The site selection process under Chapter 50 has been entirely arbitrary and unsupported by evidence. Any CDP that the County may approve will inevitably be tainted for failure to consider ostensibly feasible alternative sites, which is required both by CEQA and by the Coastal Commission in their appeal process.

During several Board meetings in 2019-2020, when discussing amendments to Chapter 50 "storefront retail" sections, staff and Board members made numerous comments and promises concerning the important weight that "neighborhood compatibility" and "community input" would receive in considering the siting of cannabis retail. As we discussed, and as the County's own record reflects, there is overwhelming opposition to a cannabis dispensary on Santa Claus Lane- of which you have been aware since your community meetings in 2020- from Padaro Lane, Sandyland and Casa Blanca residents, as well as business owners/lessees on Santa Claus Lane. Because of the County's haphazard review process, interested advocates for beachgoers, like for example, Surfrider, have not been aware of what the County has set in motion. There is no evidence that any County department actually made a fact-based "compatibility" finding for a Santa Claus Lane site under Chapter 50. Despite numerous Public Records Act requests, we have not received a single writing documenting that a site visit actually occurred, who attended, and what their observations or conclusions were. The only document relevant to Santa Claus Lane was a single e-mail from P&D staff which indicated that they *did not know* how a dispensary there would impact the Santa Claus Lane Streetscape project. The applicant erroneously portrayed the existing traffic volumes, and the present and future parking availability. They cannot even meet minimum code requirements. The applicant also falsely represented that they had conducted community outreach meetings at the Rincon Club- one of the Santa Claus Lane businesses,- but we know that never happened. Yet, the CEO's staff 'designated' the Radis site as 'compatible'.

The Roots/Radis applicant also misrepresented that they have petitions signed by 400 residents in support, but your staff have now acknowledged that you never received or could not open any such petition. No effort was made, that we know of, to follow up or obtain any such petition. We believe that if a petition exists, the signatures will reflect residents of Isla Vista, or other locations such as Lompoc, and not the area around Santa Claus Lane. As you know, Supervisor Williams, (in unsolicited comments), represented both to me and my client that he is 98.5% certain that he would grant an appeal of any approval on Santa Claus Lane by the Zoning Administrator, or the Planning Commission based on information he already has.

In light of the facts you now know, your refusal to correct your mistakes, and your determination to continue in this flawed "process" makes no sense. The Roots/Radis applicant's only "right" to apply for a permit was erroneously created, by your offices through a site designation process that should have been submitted for certification to the Coastal Commission but was not. Given that the County expressly reserved the right to withdraw or terminate any approvals under Chapter 50 for no reason, or in this case, for what would be good reason, there is no basis for you to assert any "duty" to the applicant to allow them to proceed, knowing what you now know. On the contrary, your failure to provide a transparent process to date dictates that you *finally* act consistently with the evidence you have, now, and with the representations Supervisor Williams, in particular, has repeatedly made to his constituents.

It makes no sense that the Board, collectively and without specific notice and hearing, eliminated Cuyama, Vandenberg, Montecito, and Summerland from consideration, because of community opposition, but would refuse to correct an obvious error in designating Santa Claus Lane, where the opposition is near unanimous, and the application contains other obvious flaws which we have brought to your attention. **You are once again allowing your opaque and flawed cannabis licensing process to drive your land use permit process, and that is the opposite of what should be occurring, especially in the coastal zone, where public participation in a transparent process is paramount, and new uses which conflict with coastal access and recreation simply cannot be approved.**

In all cases, the burden to establish eligibility for a permit lies with the applicant, but you have pursued a process which inverts that requirement, in violation of our client and the community's due process rights. It is the applicant's burden to demonstrate entitlement to a coastal development permit. See, e.g. *Antoine v. Coastal Commission* (1992*)* 173 Cal.App.3d 240. They have failed to even demonstrate a right to have an application processed. The County has a duty to "turn square corners" when dealing with its citizens. This, you have entirely failed to do. See, e.g., *Ventura Foothill Neighbors v. County of Ventura* (2014) 232 Cal. App. 4th 429.

As we have argued, the first fatal flaw in your process is that despite their direct implications for coastal development permits, you failed to submit your 2019 amendments to Chapter 50 to the Coastal Commission for certification, so your 'designation' of Santa Claus Lane as an appropriate site for a cannabis dispensary cannot be the basis of a decision to grant a CD-H. Apart from the fact that P&D has no evidence on which to make a recommendation that the use will not impair public access and recreation, as we discussed, you purported to make findings of "compatibility" with this historic neighborhood[2] without any public hearing or review. Your Board also declined to require a CUP in the coastal zone for any retail cannabis use, and therefore cannot now make findings that the use will not be detrimental to the community's health, safety, and welfare. Because of their failure to require CUP findings, the Board has deprived itself of even attempting to address the obvious incompatibility with the neighborhood. In 2019 the Board amended the LUDC to ban any commercial cannabis activities in an EDRN. The Roots/Radis site is squarely within an EDRN and is immediately adjacent to at least two other EDRNs. The LUDC requires a CUP for cannabis retail applications within a Mixed-Use zone and is currently requiring a CUP for the retail applicant in the Eastern Goleta Valley. The fact that permitted

[2] You may not be aware that at or soon after the time the Toro Plan was certified, and despite the fact that the Santa sign was relocated, the Board of Supervisors denied an application for road name change because they were persuaded by area residents to retain the name of Santa Claus Lane.

residential sites exist within 50 feet of the Roots/Radis site should lead to the same requirement. Yet, again, because of disparate zoning, County staff is inexplicably ignoring the facts surrounding this unique commercial site within an established EDRN and allowing for lesser standards of review and community input. On this issue, any coastal development permit that you purport to approve would be the fruit of this poisonous tree. Fortunately, in the end, the Coastal Commission will have to decide whether the dispensary use is inconsistent with LCP policy to preserve and protect beach access.

Considering what we have learned since our first PRA request of April 2021, we have several additional comments in follow-up to our meeting, and additional suggestions to resolve the matter.

First, with respect to the CEO's authority to review the evidence we have provided, and reverse their plainly erroneous determination to designate a site on Santa Claus Lane under Chapter 50:

1. We were surprised to hear you say that County Counsel has advised that the CEO does not have the authority to address determinations made in error on behalf of "the County" under its comprehensive reservation of rights under Chapter 50. If a permit can be revoked by the permitting authority (e.g. the Planning Director, or EHS, or the Building Official) upon a showing that it was approved pursuant to error or misrepresentation of critical facts it makes no sense that the CEO cannot reverse your own decision when you receive information that the site designation in this case, pursuant to your authority under Chapter 50, should not have been made, for the reasons we have previously described. We do not know the legal basis for the opinion that you cannot act in the name of the County on these facts, so we would appreciate reviewing County Counsel's reasoning and the legal support for it.[3]

2. If indeed the CEO cannot lawfully correct a mistake by their own staff in 'designating' the Radis/Roots site, or any site in the Toro Plan area, and if it is your position that only the Board of Supervisors can take such an action, we asked that you place an item on the Board's Agenda to enable them to consider our evidence and make a determination. County Code Section 2-71 gives the CEO substantial control of the Board's Agenda. **Nevertheless, if you are unwilling to exercise this authority, then by copy of this letter I am requesting that Supervisor Williams, who under the plain language of the County Code, has 'unfettered' discretion to place items on the agenda, do so himself and allow affected parties to make presentations, including P&D, the applicant, and the affected public in a duly noticed public hearing.**

3. If P&D determines to go forward with processing an application for a CD-H, we suggested that **an application cannot be called complete**, and must be denied out of hand because:

   (1) The uncontradicted evidence in your records dictates a finding that the parking and traffic impacts under current and future conditions will pose irreconcilable conflicts with coastal

[3] Please recall that two years ago, when I proposed that the Board enact a second interim ordinance to quell the illegal expansion of nonconforming cannabis cultivation sites, Supervisor Williams and the then-cannabis czar asserted that County Counsel had flatly advised that such an ordinance would be illegal. We subsequently learned that this advice had been based on a Court of Appeal case (Martin v. Superior Court) that had been expressly *overruled* by the Legislature. But that knowledge did not change the County's conduct. Therefore, if it is now your position that the CEO does not have the authority to act on behalf of the County to reverse its own errors, please share the legal opinion on which it is based so we can review it.

and beach access, and the policies of the LCP, and with bicycle and pedestrian safety along the California Coastal trail. ***Under the Coastal Act, and the LCP, and regardless of whether you fail to perform the additional required CEQA review, you cannot "override" a direct conflict with Coastal Act policy, nor can you "balance" the adverse impacts to beach access under Pub. Res. Code Section 30007.5 against the tax revenue which is your only justification for approving additional cannabis dispensaries. The County's policy to privilege tax revenue from cannabis (which is not a Coastal Act Chapter 3 policy) cannot prevail over all other policies, including environmental and neighborhood compatibility concerns, and, most importantly, essential Coastal Act access policies, as a matter of law.***

(2) As we informed you, the application confirms that the applicant does not own the property on which they have represented the code requirements **for parking** can be met. This is especially concerning because the cannabis retail permit will run with the land.

- The application materials confirm what we have already told you: that the property which the applicant erroneously 'claimed' as available for parking, behind the Radis building is owned by UPRR and is subject to a lease which can be terminated without cause. There is **no** security- for the public- in this arrangement. We are not aware of any location where UPRR has considered, let alone granted a lease for the life of an adjacent business. On appeal from a county permit decision, the Coastal Commission would pay careful attention to this fact. See, e.g. A-5-VEN-15-0038 (Dunes Development LLC) **("Failure to provide adequate parking for new or expanded development may result in displacement of existing public parking supply, including along nearby public roads, used by members of the public to access the beach.")** We do not believe that there is any set of conditions that the County or the Coastal Commission could legally impose in this location under your plainly inadequate ordinance for retail cannabis that would begin to address the clear conflicts with public beach access in this case.

- The applicant failed to disclose that there are currently four (4) other businesses operating on that property in addition to the space listed for the cannabis store. No accounting for the other businesses is even mentioned in the applicant's parking 'data'.

- There is no mention of traffic/parking consequences of a fleet of delivery vans for home deliveries, especially in such a large geographic area, or any mention of parking for the armed guards and armored cash pickup vehicles that would be required.

- The number of parking spaces in front of the Radis/Roots site- which is admittedly deficient for beach access already,- **will be reduced** after completion of the Santa Claus Lane Improvements. The application materials delicately reference certain

'nonconformities' [4]in front of the building and fail to disclose that after the SCL Streetscape project there will actually be *less* spaces available in this particular location. The total number goes from 29 (14 in front of the business and 15 across the street of the front of the building) to 11 spaces total. That is a **62% reduction of space for customers, employees, guards, delivery vans, and the other businesses on the property**. Even these spaces are not on the property owned by Radis but are shared by other businesses and beachgoers, usually carrying beach chairs, beach blankets and other beach gear. There is essentially no parking available on the Radis property for anyone. And the ITE trip generation rates clearly indicate that the demand for parking will be trebled.

(3) The applicant failed to submit any evidence demonstrating compatibility with the neighborhood. There has been no accounting for the direct conflicts with the adjacent Surf School or the other family-oriented businesses and activities in the SCL area. Any application for a liquor store would be appealable to the ABC, and the burden would be on the applicant to establish that it is appropriate. There are three, lower cost residential rentals between 42-100 feet from the Radis site which will be directly affected by parking and other conflicts with retail cannabis. How is a cannabis store, with its security needs, lighting needs, armed guards, late hours, fleets of delivery vehicles compatible with the purpose of the zone district, or with these pre-existing residential uses?

The Padaro Lane, Sandyland and Casa Blanca Existing Developed Rural neighborhoods will also be directly impacted, and have objected in near unanimity, although your opaque, backwards process has muted, ignored, and/or stifled their voices, to the point where the applicants – based on an e mail from Maire Radis to my client- now apparently believe their land use permits are a "fait accompli". The closest beach residences will no doubt be negatively affected directly in terms of their privacy, security, and quiet enjoyment, especially if the public agencies acquire a new vertical access in the area. The County's 'no tobacco products' ban on beaches will be impossible to enforce in this location.

Thus, we believe that this case is unlike any other you have considered. We do not believe there is any traffic analysis that can undermine the obvious conclusions for this site: you know there is a parking deficiency. You know that after the SCL Streetscape project the parking *in this exact location* will be decreased by 62% from existing. We told you that we are gathering evidence- professionally collected traffic counts- that already indicate that the current summer/weekend traffic volumes along Santa Claus Lane are 3 times what was assumed in the ATE reports for the Santa Claus Lane improvements approved in 2019.

If you insist on processing this application, as we have explained in prior correspondence, you will need to prepare a supplemental EIR and obtain an *unbiased, independent traffic*

[4] The County needs to investigate when any such 'nonconformities' were constructed to determine whether they are legal, or illegal nonconforming elements. There is no right to maintain, let alone expand illegal structures under the Coastal Act.

analysis from an uninterested consultant. Be advised, on this point, that we have evidence that ATE, which provided the traffic study for the SCL improvements, apparently has an incorrect understanding of the impact and applicability of ITE trip generation numbers from cannabis retail, and has indicated to us, in writing, that they would consider providing a traffic analysis *in favor of* , but not by an opponent to a dispensary. While we would normally credit their work, in this case we would not consider a traffic study by ATE to be independent or unbiased, since they have already stated their conclusions.

(4) The ITE trip generation rates for cannabis retail are at least three times greater than trip generation for all other types of retail in the C-1 zone, and the existing commercial uses at 3823 Santa Claus Lane. Cannabis retail is simply not the same as other commercial use, as the ITE manual recognizes. There is no basis to assume a lower trip generation rate in this case, than the ITE rate[5] because the trip generation for individual dispensaries where there are more than one such dispensary in close proximity to one another in an urban district is not comparable. Lompoc, with its multiple dispensaries cannot be compared to SCL, which is in an existing, developed rural neighborhood, the only proposed site directly on the beach, and Radis/Roots would be the *only* dispensary between the City of Santa Barbara and Oxnard/Hueneme (neither Carpinteria nor the City of Ventura allow them.) In this circumstance, any traffic study will have to consider trip generation/parking conflicts for this dispensary to serve travelers on the 101, in addition to the ITE rates. In addition, with respect to traffic and safety impacts, we have obtained and would submit emerging studies of highway safety impacts of cannabis dispensaries. Volumes assumed in the SCL Streetscape project seriously undercount existing conditions, especially on summer beach days. A random trip to the site at 1:00 pm this past Friday revealed NO available parking spaces, and that was on a relatively foggy day.

(5) The proposal is inconsistent with the purpose of the zone district for this location. The dispensary will function as a "highway commercial" use, serving travelers on the 101 Highway traveling between Santa Barbara and Oxnard. The local residents and businesses are uniformly opposed to this location. This property was rezoned to C-1 at the time of the Toro Plan specifically to address its unique location in relation to the beach access and existing developed rural neighborhoods such as Padaro Lane, Casa Blanca and Sandyland, which are all accessed through the same roadway(s) and highway access points. Your treatment of this property as 'just another C-1 use' is simply not grounded in reality. The Board and staff already conceded that cannabis retail is not like "any other" retail by establishing a "merit based" selection process as detailed in Chapter 50. No other commercial use is treated in that manner. Staff cannot now pretend that adding a cannabis retail store to Santa Claus Lane is not a significant change of use, and intensity of use.

Finally, given the bias in the process and the improper and unsupported site designation and, specifically, because of the Board's ad hoc and patently unsupported elimination of C-1

[5] The location halfway between Santa Barbara and Oxnard, with easy access only to Highway 101, would dictate an even higher trip rate than the ITE rate.

sites in Montecito/Coast Village Road you will not be able to fulfill your duty, under both CEQA and the Coastal Act, to consider ostensibly feasible alternative sites in C-1 zones, in identified locations where they would *not* pose a conflict with Coastal Act policy. We do not know how you can salvage a fair hearing for the public at any level, let alone compliance with CEQA, your own LCP and the Coastal Act.

Therefore, if the County maintains that the "coastal development permit review process", which has been completely subverted in this case ab initio, must nevertheless be followed to its conclusion, and if P&D intends to recommend approval, despite all the evidence that members of the public and my clients have submitted to date, we suggest the following alternative methods to promptly bring the matter to the Board of Supervisors for a decision:

1. That you schedule a hearing directly with the Board of Supervisors, as the 'highest' approval authority in the County, as specified in CZO Section 35-57B-1, so that in the event of a decision that disregards the evidence and the requirements of the LCP or CEQA, or both, we can proceed to appeal to the Coastal Commission and to seek judicial review if necessary. In this context, your insistence that we participate in a hearing at the Zoning Administrator, appeal to the Planning Commission, and only then appeal to the Board of Supervisors appears designed to discourage, rather than encourage public participation.

2. You could allow an appeal of a determination of application completeness by P&D under Section 65943 of the Government Code[6] and the coastal zoning ordinance, to enable my client to present the legal issues to the Board of Supervisors, and to enable the public to hear any response, *in public,* from County Counsel based any specific legal authority they may wish to provide.

3. Alternatively, in light of the fact that you have not responded to our contention that the County's 'site designation' through Chapter 50 can have no force or effect for land use/coastal development permit application purposes, and that you cannot call an application complete for processing which is not consistent with the LCP, you can present the matter directly to the Coastal Commission for formal dispute resolution under 14 CCR 13569, for them to directly address the question of whether your failure to submit your 2019 Chapter 50 amendments- which purported to authorize you to

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[6] ***Section 35-182.2 General Appeal Procedures.***
The decisions or determinations of the Board of Architectural Review, **Director,** Planning Commission, or Zoning Administrator may be appealed consistent with the following procedures. (In addition, final action on Coastal Development Permits may be appealed to the Coastal Commission, where applicable, in compliance with Section 35-182.6.)
A. Who May Appeal. An appeal may only be filed by an applicant or **any aggrieved person**. An aggrieved person is defined as any person who in person, or through a representative, appeared at a public hearing in connection with the decision or action appealed, or **who, by other appropriate means prior to a hearing or decision, informed the decision-maker of the nature of his concerns** or who for good cause was unable to do either.

make 'site designations' in the community plan areas, without any public review or disclosure of criteria- violates the letter and spirit of the Coastal Act.

Be advised, in any case, that in any proceeding to challenge your decisions, we will be seeking costs and attorneys' fees **from the County and the applicants, jointly and severally,** and notwithstanding any indemnification agreement you have with the applicants. Fees incurred in the administrative process will be recoverable as well.

Thank you for your attention to these issues and please let us know how you intend to remediate your ongoing violations of my client's due process rights.

Very Truly Yours,

/s/

Jana Zimmer
Attorney for Dr. Steve Kent and Dr. Nancy Rikalo

cc: Rachel Van Mullem, County Counsel
Das Williams, First District Supervisor
Clerk of the Board of Supervisors