



**BOARD OF SUPERVISORS
AGENDA LETTER**

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Planning and Development
Department No.: 053
For Agenda Of: November 1, 2022
Placement: Departmental
Estimated Tme: 1.25 hrs. on November 1, 2022
Continued Item: No
If Yes, date from: N/A
Vote Required: Majority

TO: Board of Supervisors
FROM: Department: Lisa Plowman, Director, Planning and Development
(805) 568-2086
Contact Info: Travis Seawards, Deputy Director, Planning and Development
(805) 568-2518
SUBJECT: Kent on behalf of Preserve Access on Santa Claus Lane Appeal, Case No. 22APL-000000-00029, of the Planning Commission Approval of the Roots Cannabis Storefront Retail Project, Case No. 21CDH-00000-00029, First Supervisorial District

County Counsel Concurrence

As to form: Yes

Other Concurrence:

N/A

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

On November 1, 2022, staff recommends that your Board take the following actions to deny the appeal and uphold the County Planning Commission’s approval of the Project:

- a) Deny the appeal, Case No. 22APL-00000-00029;
- b) Make the required findings for approval of the Project, Case No. 21CDH-00000-00029, including CEQA findings;
- c) Determine that the previously certified Programmatic Environmental Impact Report (PEIR) (17EIR-00000-00003) is adequate and no subsequent Environmental Impact Report or Negative Declaration is required pursuant to CEQA Guidelines Sections §15162 and 15168(c)(2); and
- d) Grant *de novo* approval of the Project, Case No. 21CDH-00000-00029, subject to the conditions of approval.

Summary Text:

On July 27, 2021, the Applicant, 3823 SLC, LLC, submitted an application for a Coastal Development Permit with Hearing (CDH), Case No. 21CDH-00000-00029, to operate a cannabis storefront retail shop in a vacant tenant space in an existing commercial structure. On May 23, 2022, the Zoning Administrator approved the Proposed Project, finding it consistent with the development standards and regulations for cannabis operations set forth in Article II Section 35-144U. A timely appeal of the Zoning Administrator’s decision was filed on May 31, 2022. On September 7, 2022, the County Planning Commission granted *de novo* approval of the Proposed Project, and on September 13, 2022, the same Appellant filed a timely appeal of the Planning Commission’s approval.

Separate from the land use entitlement process, cannabis business licenses are regulated pursuant to Chapter 50 of the County Code. Each cannabis retail site is required to obtain a cannabis business license following approval of land use entitlements and prior to operating within the County. To avoid excessive concentration of storefront retail operations within the County, Chapter 50-7 (b) limits the number of storefront retail licenses to no more than one in each of six community plan areas. In July of 2020, the County of Santa Barbara hosted six virtual community engagement meetings to receive feedback and answer questions about the amended cannabis business license ordinance (Chapter 50), which regulates cannabis storefront retail licensing. Following the community engagement meetings, applicants were invited to submit criteria-based applications (CBAs) for proposed cannabis storefront retail operations. The CBAs were ranked via a merit-based selection process, which included but was not limited to an on-site visit to the proposed retail location, and review, scoring, and ranking of a Neighborhood Compatibility Plan. The highest ranked applicant per list was selected and invited to start the process to obtain a land use entitlement from Planning and Development and a cannabis business license from the County Executive Office. Being selected allowed the applicant to apply for a land use entitlement and later a cannabis business license, but it did not guarantee either would be granted. Roots was the highest ranked out of two applicants for the combined Summerland/Toro Canyon Community Plan area. Both applicants in this area were located on Santa Claus Lane. After being selected and invited to start the process to obtain a land use entitlement, Roots submitted a CDH application for the Proposed Project.

The Proposed Project site is located within the commercial strip of development along Santa Claus Lane in the Toro Canyon Community Plan area, adjacent to the Union Pacific Railroad (UPRR) and several hundred feet from the Pacific Ocean. The site has historically been utilized for various commercial retail businesses. All existing on-site development was legally permitted and constructed in 1964 under zoning and building permits (Land Use Riders #30680, #31541, and #65229). The 3,546 square foot lease space (currently vacant) is proposed to be utilized for the cannabis storefront retail operation. The other lease spaces within the existing building are currently occupied by an architect’s office and by a retail clothing store.

In the appeal letter, included as Attachment 5 to this Board Letter, the Appellant raises the following issues with the Proposed Project:

- Conflicts with Coastal Act Policy
- Inadequate Traffic and On-site Circulation and Parking Analysis
- Inadequate Review under CEQA
- Impact of Chapter 50 Business License on the land use entitlement Process
- Inadequate Evaluation of Intensification of Use

- Incompatibility of Cannabis Retail with the C-1 Zone District
- Site Transportation Demand Management Plan and Condition 31 are Unenforceable
- Unfair Planning Commission Hearing

Staff reviewed the appeal issues and finds they are without merit. The Proposed Project is consistent with the Santa Barbara County Comprehensive Plan and Section 35-144U (Cannabis Regulations) of Article II. The information included in the administrative record, including this Board Letter, supports *de novo* approval of the Proposed Project.

A. Proposed Project

The request is for approval of a CDH to allow a cannabis storefront retail, called Roots, within an existing commercial space of 3,546 square feet that is currently vacant, but was most recently used as an art gallery. The Proposed Project includes interior building improvements and minor changes to the exterior of the building, including the relocation of doors and windows. Tenant improvements proposed to the interior of the building include a check-in area, a retail area with restroom, a service counter and payment area, a secure cannabis storage room, an office, an employee break area, a janitor's closet, a server room, and a secured cannabis intake area. Windows will be frosted for security and privacy. No new square footage or significant exterior changes are proposed. Site improvements will include accessibility upgrades, a new trash enclosure, and the relocation of the entry gate. Approximately 117 square feet of landscaping is proposed. No grading over 50 cubic yards is proposed. Hours of operation will be from 9 am to 9 pm, seven days a week. Delivery hours will be from 9 am to 9 pm. There will be approximately 8 to 10 employees working during any given shift, with a maximum of five staff members on-site at any given time. The property includes 12 on-site parking spaces. Six parking spaces will be dedicated (by signage posted on site) to on-site Roots employees and customers, as required in Condition of Approval No. 31. The remaining six spaces of the total required spaces for all uses on-site can be shared by Roots delivery drivers and patrons, and employees and patrons of the other uses on site.

Security measures will comply with all state and local requirements, including but not limited to security cameras, alarm keypads, security lighting, video surveillance and a glass-break alarm sensor. The entry doors to the storefront will lead directly into a secure, separate check-in area where customer identification will be checked. Only qualified customers will gain access to the retail area where cannabis products will be displayed and sold. Customers will be asked for a government-issued ID and the security guard will use an identification authentication system to check an individual's age and to ensure that the individual is not identified for fraud or excessive purchases. All persons who enter the check-in area will be immediately greeted by the security guard who will verify if the person may remain on the premises. This check-in area will be separated from the retail area by a secure, alarmed door. Any unauthorized person will be denied access to the retail area. No cannabis will be sold to any person who is not twenty-one years of age or older and in possession of a valid, government-issued identification card. The retail operation within the existing commercial building will be served by the Carpinteria Valley Water District, Carpinteria Sanitary District, Carpinteria-Summerland Fire Protection District, and Sheriff's Department for law enforcement. Vehicular and pedestrian access to the existing building will continue to be provided from Santa Claus Lane. The property is 0.33 acres, known as APN 005-450-012, zoned Limited Commercial (C-1), and located at 3823 Santa Claus Lane in Carpinteria, within the Toro Canyon Plan area.

B. Appeal Issue and Staff Response

The appeal application (Attachment 5) contains a letter, dated September 13, 2022, that outlines the appeal issues. The appeal issues and staff's responses are provided below.

Appeal Issue No. 1: Conflicts with Coastal Act Policy

The Appellant asserts that the CDH findings made by the Planning Commission were not supported by the evidence and that findings of consistency with Coastal Act and Local Coastal Plan policies cannot be made. Specifically, the Appellant cites Coastal Act policies 30212, 30213 and 30214, as incorporated into the County's Land Use Plan Policy 1-1 through 1-4, as well as Toro Plan Policy 2.1, that prohibit uses that interfere or conflict with public access and lower cost visitor serving recreation. The Appellant also cites Action PRT-TC-1.4 from the Toro Canyon Plan, which mandates the County "ensure the provision of adequate coastal access parking including signage designating the parking for this purpose, developing one or more parking areas." The Appellant claims that parking, traffic circulation, and safety impacts will conflict with skateboarders and bicyclists on Santa Claus Lane, and will impact access to the beach for students in Title 1 school programs (surf schools provided on the beach). The Appellant cites a study by Associated Traffic Engineers (ATE) (August 2020) that states approximately 1,800 beachgoers access Santa Claus Lane Beach by car per day. Additionally, the Appellant goes on to claim that staff failed to respond to Planning Commission questions regarding any policies from the Coastal Act that protect visitor serving uses. The Appellant also claims that the Public Works representative who reviewed the Proposed Project should have been present at the hearing, but was not. Finally, the Appellant raises an issue with changes made by the Planning Commission to Condition 31 and states that the changes do not address conflicts with beach access and recreation.

Staff Response:

The Proposed Project meets all requirements of Article II and, as detailed in Attachment 1, the findings for approval of the CDH can be made. The Appellant's assertion regarding conflicts with numerous policies within the Toro Canyon Plan, Local Coastal Plan and Coastal Act is focused on traffic and circulation policies and coastal access. The Proposed Project will not give rise to conflicts with parking for public access and recreation, traffic circulation, or safety, as demonstrated in the Nelson/Nygaard Consulting Associates, Inc. Traffic Study (Traffic Study) provided by the Applicant. The Proposed Project will not impact Title 1 school programs as the Appellant alleges and as discussed further below. Staff responded to all questions from the Planning Commission that were directed to staff at the hearing and the Public Works representative was in remote attendance via Zoom. Condition 31 was added to designate on-site parking spaces for customers and employees of the Proposed Project.

Traffic and Parking

The Proposed Project will not adversely impact traffic circulation or access to the coast via public roads. In review of the Proposed Project, County staff requested that the Applicant provide a traffic study to determine whether the Proposed Project would result in a decrease in Levels of Service (LOS) for Santa Claus Lane and the surrounding circulation network of roads (the study area). The Toro Canyon Plan establishes the minimum acceptable LOS for roadways and intersections in the Toro Canyon Planning Area as Level of Service B, and therefore a LOS-level analysis was appropriate for this policy consistency analysis. The key findings of the analysis show that the Proposed Project, which consists in a change of retail use, will not significantly impact the transportation network based on the retail store's estimated vehicular trip generation during peak hours. The Traffic Study was reviewed and determined to be acceptable by County Public Works Transportation Division staff. The analysis shows the following:

- Existing LOS within the study area are within the designated standards for weekday afternoon and weekend peak hours under the Toro Canyon Plan and anticipated future traffic conditions will likely not cause intersections to be rated below acceptable LOS A and B.
- The Proposed Project will not cause LOS at intersections within the study area to decrease below acceptable levels, nor will the new traffic generated by the Proposed Project exceed the roadway capacities during peak weekday and weekend hours.

The Traffic Study analysis of LOS and road capacities demonstrates that the Proposed Project is adequately served by existing roads and will not indirectly impede coastal access by significantly increasing traffic on Santa Claus Lane during weekday and weekend peak hours.

Nor will parking for the Proposed Project indirectly impede coastal access. The Applicant provided a parking demand and supply sufficiency analysis (included in the Traffic Study) to demonstrate consistency with the Toro Canyon Plan and to further demonstrate that the Proposed Project will not create parking or traffic impacts. The existing parking spots on the Proposed Project site are not available to beachgoers; they are for customers and employees of the commercial/office space. The Proposed Project utilizes this same area for parking, and therefore the operation is proposing to use parking spots that are not available for any other purpose. The proposed on-site parking, as shown on the Project Plans (Attachment 6), meets the parking requirements of Section 35-110 of Article II. Article II requires the entire existing commercial/office space to provide 12 parking spaces in total. Pursuant to Article II Section 35-110, the Proposed Project in particular, with 3,104 square feet of retail space and 716 square of office space, is required to provide eight parking spaces based on a ratio of 500 square feet per retail parking space and 300 square feet per space for office space. Additional uses on-site include an architect's office, which requires 2 parking spaces, and a vacant retail space, which requires 2 parking spaces. Thus, in total, 12 spaces are required for the total square footage of all existing and proposed uses on-site, and 12 parking spaces are provided. Condition 31 requires that the Applicant post signs at six of the 12 on-site required parking spaces, designating them for employees and patrons of the Roots store. The Proposed Project is also conditioned to require assignment of a Permit Compliance Planner, who will conduct periodic inspections and respond to complaints.

Finally, access to the site will not create a safety concern. The Traffic Study evaluated whether access to the Proposed Project from a major road or arterial road would require a driveway that would create an unsafe situation, or would require a new traffic signal or major revisions to an existing traffic signal. As outlined in the Traffic Study, no unsafe situations were identified and no new traffic signal or major revisions to an existing traffic signal are required. Furthermore, the Proposed Project was reviewed by Carpinteria-Summerland Fire Protection District Staff, and access was found to be adequate when the Applicant widened the driveway gate opening per District Staff request.

Coastal Policy Compliance

As analyzed in the Planning Commission Staff Report, dated August 30, 2022 (Attachment 10), the Proposed Project is consistent with Article II and with all applicable policies within the Comprehensive Plan, including the Coastal Land Use Plan and the Toro Canyon Plan. Analysis of the Proposed Project with the provisions of the Coastal Land Use Plan and Article II is sufficient to determine that the Proposed Project is consistent with the Coastal Act, as the Coastal Land Use Plan and Article II have been certified by the Coastal Commission as the local implementation tools of the Coastal Act. Each of the policies relied

on by the Appellant in this appeal issue are outlined below. These policies relate to broad policy goals and guidance on process. The application for a change of use in an existing commercial development does not conflict with these polices.

Coastal Act Sections 30212 through 30214 (summarized)

- Coastal Act Section 30212: Requires new development projects located between the shoreline and the nearest public roadway to provide public access from the nearest public roadway to the shoreline and along the coast, unless certain exceptions apply.
- Coastal Act Section 30213: Ensures that lower cost visitor and recreational facilities are protected and encouraged.
- Coastal Act Section 30214: States that public access policies of the Coastal Act shall be implemented in a manner that takes into account facts of each case.

Coastal Land Use Plan Policies 1-1 through 1-4

- Policy 1-1: The County shall adopt the policies of the Coastal Act (PRC Sections 30210 through 30263) as the guiding policies of the land use plan.
- Policy 1-2: Where policies within the land use plan overlap, the policy which is the most protective of coastal resources shall take precedence.
- Policy 1-3: Where there are conflicts between the policies set forth in the coastal land use plan and those set forth in any element of the County’s Comprehensive Plan or existing ordinances, the policies of the coastal land use plan shall take precedence.
- Policy 1-4: Prior to the issuance of a coastal development permit, the County shall make the finding that the development reasonably meets the standards set forth in all applicable land use plan policies.

The Proposed Project is located within an existing commercial structure on a fully developed site that does not provide access to the beach. The subject site is located on Santa Claus Lane, which is the nearest public roadway to the shoreline, however, the subject property is isolated from the shoreline by property owned by the Union Pacific Railroad (UPRR) and private residential properties to the south. Additionally, the subject property is separated from the UPRR property by an existing concrete masonry wall located on the UPRR property. The nearest public access to the shoreline is approximately 1,100 feet to the northwest from the subject property on Santa Claus Lane. Therefore, the Proposed Project will not impact lower cost visitor and recreational facilities.

Toro Canyon Plan Policy and Action

- The Appellant also cited Toro Plan Policy 2.1, but such a policy does not exist within the Toro Canyon Plan.
- Policy LUG-TC-8 (COASTAL) which states that “[p]rotection 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.”

- Action PRT-TC-2.4 from the Toro Canyon Plan states that “where feasible, the County shall ensure the provision of adequate coastal access parking including signage designating the parking for this purpose, appropriate safety features, and/or the installation of appropriate support facilities...”

The Proposed Project is consistent with the Toro Canyon Plan. First, Section III.B.2.b of the Toro Canyon Plan characterizes the public access for recreation at the beach frontage along Santa Claus Lane as obstructed and informal (i.e. not dedicated/protected). Second, the Toro Canyon Plan does not require existing commercial uses/structures to provide beach access parking on their property. The on-site commercial parking spots are intended to serve the on-site commercial and office uses and not beach visitors. Finally, the Proposed Project site consists of an existing developed commercial site and does not contain any Environmentally Sensitive Habitat (ESH).

Youth Centers

The Appellant’s assertion that the two surf school located on the public beach along Santa Claus Lane are “youth centers” is inaccurate because the surf schools are operated as a service to all age groups and do not primarily serve minors. Article II does not define “youth center,” but the State Health and Safety Code Section 11353.1 defines a “youth center” as “any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.” Because this definition leaves some ambiguity about the meaning of “primarily used to host recreational or social activities for minors,” Planning and Development considers the following additional criteria:

- Recreational facilities for minors (i.e., playgrounds, etc.)
- Non- and for-profit organizations that are primarily dedicated to providing recreational and/or educational activities for minors. Ex: Boys and Girls club, Girls Inc., Girl Scouts, Boy Scouts, etc.

Neither of the two businesses referenced in this appeal issue meet the State Health and Safety Code and supplemental criteria above to be classified as a “youth center”. The surf shop websites indicate that their surf school programs serve customers of all ages and that surf instruction activities are provided on public beaches. As such, the surf schools do not take place at a “facility” and instead are held at an undefined, general area on the public beach, and the schools do not hold rights to any portion of the public beach. Additionally, the distance between the westernmost property boundary and the edge of the easternmost area of the public beach generally used by the surf camps is in excess of 800 feet.

Finally, both business store fronts are located within the C-1 Zone District, which does not allow “youth centers”, schools, or similar uses as a permitted use. In Planning and Development’s review of the permit history for the surf shops, neither have obtained a Coastal Development Permit to allow a “youth center”, school, or similar use. The A-Frame Surf Shop was previously permitted under an as-built Development Plan, Case No. 04DVP-00000-00036. The Development Plan specifically identifies A-Frame Surf Shop as a shop for retail sales and identified the allocation of square footage as follows: “approximately 1,800 square feet of the structure is devoted to retail sales space, with 200 square feet located at the rear of the structure devoted to office space.” Additionally, the Surf Happens and A-Frame Surf Shop websites (Attachment 13) indicate the businesses have been in operation since 2000 (Surf Happens) and 1999 (A-Frame Surf Shop). The permitted uses for the C-1 Zone District were established in Article II prior to 1999

and have not included “youth centers”, schools, or similar uses. Therefore, neither of the surf shops would be considered non-conforming as to use.

Appeal Issue No. 2: Inadequate Traffic and On-site Circulation and Parking Analysis

The Appellant raised concerns with the Traffic Study provided by the Applicant team. Specifically, the Appellant states that the study did not consider summer beach volumes and the “discussion of peak hour trips does not address the increased day long intensity of use from the dispensary, the increased volume of drivers on the 101 stopping at the only dispensary between Santa Barbara and Oxnard, and day long beach traffic volumes, either existing or as they are anticipated to increase after the beach access and Streetscape projects are complete.” The Appellant also claims that staff “disregarded or failed to consider that the traffic analysis did not evaluate on-site circulation, which includes a one-way driveway that is unsuitable for high turnover customer traffic, or the fact that there is an encroachment on to a neighbor’s property, to which the neighbor has repeatedly objected.”

Staff Response:

As discussed at length in Appeal Issue No. 1, the key findings of the Applicant-submitted Traffic Study show that the Proposed Project will not significantly impact the transportation network based on the store’s estimated vehicular trip generation during peak hours. Based on the study analysis of LOS and road capacities, County staff, including the County Public Works Transportation Division, found that the Proposed Project is adequately served by existing roads and will not indirectly impede coastal access during weekday and weekend peak hours.

Staff did not disregard on-site circulation. On-site circulation was also analyzed in the Traffic Study, which utilized standards from the County’s Environmental Thresholds and Guidelines Manual. The Traffic Study found that the Proposed Project meets all of the applicable standards within the manual. One of the standards analyzed is whether a project with access to a major road or arterial road would require a driveway that would create an unsafe situation, or would require a new traffic signal or major revisions to an existing traffic signal. As outlined in the Traffic Study, no unsafe situations were identified. The Proposed Project meets the driveway standards within Article II Section 35-117 (Driveways), which requires a 10-foot wide driveway for side or rear parking areas.

Finally, the Appellant’s claim of encroachment onto a neighbor’s property is related to an existing wall that is located on the neighboring property to the east. The Project Plans (Attachment 6) show the existing wall on the neighbor’s property, which has been there for decades. Planning and Development has no open violation case related to the wall and has never received a complaint about the wall, until public comment in opposition to the Proposed Project. The Proposed Project meets the Article II requirements for driveways serving side or rear parking lots and the off-site wall does not impact or restrict on-site circulation. Neither Article II nor Comprehensive Plan policies require the wall and no improvements or changes to the wall are included as part of the Proposed Project. As such, the issue of whether the existing wall encroaches on the private land of another is a civil matter and not subject of this appeal.

Appeal Issue No. 3: Inadequate Review under CEQA

The Appellant claims that the CEQA findings are inadequate and are not supported by the evidence. In support of this claim, the Appellant states that the presence and operation of this cannabis dispensary on Santa Claus Lane would conflict with the key access and environmental justice policies of the Coastal Act Sections 30212-30214, and that Table 3.9-2 (County Land Use Plans and Policies Consistency Summary) of the Programmatic Environmental Impact Report (PEIR) for the Cannabis Land Use Ordinance and

Licensing Program failed to evaluate or analyze the ordinance's consistency with coastal access and recreation policies. The Appellant goes on to explain that there is no mention or analysis in the PEIR of Coastal Act Sections 30210, 30212, 30213, 30214, 30201, 30220, or 30221. Additionally, the Appellant claims that there are indirect and cumulative impacts from the Proposed Project in regards to competition for street parking. Therefore, the Appellant asserts that the Proposed Project was not within the scope of the PEIR, no mitigation measures were included in the ordinance for cannabis retail, and the site-specific direct, indirect and cumulative impacts were not analyzed. Further, the Appellant claims that because of “staff’s repeated, incorrect assertions that the project represented only a change of tenant, rather than a distinct use under [Article II] Section 35-144, and their failure and refusal to analyze the increased intensity of use of the site, the Planning Commission failed to adequately consider alternatives, and therefore the Planning Commission failed to consider the environmental justice impacts to the beach going public under AB 2616 (Burke).” Finally, the Appellant claims that the impacts of the change in intensity of use were not compared to the baseline use of the property.

Staff Response:

The Proposed Project has been reviewed appropriately under CEQA and all CEQA findings (Attachment 1) are supported by evidence in the record. Staff analyzed the Proposed Project for parking, safety and circulation impacts and determined that all environmental impacts will be fully mitigated to the extent feasible as analyzed in the PEIR for the Cannabis Land Use Ordinance and Licensing Program, 17EIR-00000-00003 (Attachment 3). Staff prepared a written checklist (Attachment 4) in compliance with State CEQA Guidelines § 15168(c)(4) to document the evaluation of the site and the activity to determine that the environmental effects of the operation are covered in the PEIR.

The Proposed Project baseline under CEQA is an existing multi-tenant commercial retail site, with existing commercial retail uses. Staff’s review of the Proposed Project is related to the change in tenant and the change in use from a “Retail Store” to a “Cannabis Retail” store.

The PEIR adequately and directly addressed potential environmental impacts from future cannabis retail stores everywhere throughout the County. The cannabis retail selection process and limitations on number of sites pursuant to County Code Chapter 50 were adopted after certification of the PEIR. Thus the PEIR studied a retail program that was much more expansive and cannabis retail sites could have been located in every strip mall throughout the County.

The PEIR considered impacts on parking, safety, and circulation from cannabis projects, including retail. Impact LU-2 was a Class II impact and stated that cannabis retail (among other cannabis uses) could result in adverse quality of life effects to existing communities due to increases in traffic (among other physical environmental impacts). Impact TRA-1 was a Class I impact and stated that cannabis activities may result in increases of traffic and daily vehicle miles of travel that affect the performance of the existing and planned circulation system. Impact TRA-2 was also a Class I impact and stated that cannabis activity operations may result in adverse changes to the traffic safety environment. The PEIR, Table 3.0-5, also looked at nearby projects and references the Santa Claus Lane Beach Access and Streetscape Improvements projects. These projects include a beach access plan and a streetscape improvements plan. These two plans implement goals, policies, and actions in the Toro Canyon Plan and Coastal Land Use Plan that are intended to increase public access to the beach and revitalize the nearby commercial area and Highway 101 vicinity.

To require subsequent CEQA review, new information must show that the Proposed Project would have one or more significant effects not discussed in the PEIR or that significant effects would be substantially more severe than shown in the PEIR. The Proposed Project will not create any new significant effects or a substantial increase in the severity of previously identified significant effects on the environment, and there is no new information of substantial importance under State CEQA Guidelines Section 15162 warranting the preparation of a new environmental document for the Proposed Project. The PEIR acknowledges that visitors come to Santa Barbara County for the purposes of “tourism, wine-tasting, beach-going, bicycling, hiking, equestrian, cultural events and other recreational activities.” The PEIR anticipated potential impacts to these activities as well as a variety of other land uses and receptors. The PEIR concluded that implementation of the cannabis land use and licensing program would result in significant and unavoidable impacts to traffic and circulation. The Board of Supervisors adopted a Statement of Overriding Considerations for Class I impacts, and the 30-day statute of limitations to challenge the adequacy of the PEIR expired without legal challenge.

As shown in the written checklist, the Proposed Project falls within the scope of the PEIR, and the effects of the Proposed Project were examined in the PEIR. The Proposed Project also incorporates all applicable mitigation measures from the PEIR related to parking, safety, and circulation. With integration of MM AQ-3, Cannabis Site Transportation Demand Management, and MM TRA-1, Payment of Transportation Impact Fees, the physical environmental impacts are mitigated to the furthest extent feasible, and all feasible measures are integrated to reduce the potential effects of the Proposed Project. The Proposed Project includes implementation of a Site Transportation Demand Management Plan (STDMP) (Attachment 8), which provides incentives for both customers and employees. The employee incentives include options such as discounts for carpooling and free monthly bus passes. Customer incentives include discounts to customers that utilize public transportation or patronize the store during non-peak hours/days. The Proposed Project was reviewed by Public Works Transportation Division Staff and no conflicts were identified with the beach access plan, and therefore Staff finds that the Proposed Project is designed in a manner that will not conflict with the beach access plan.

Since the Proposed Project was adequately reviewed under the PEIR, the County is not required to consider project alternatives, such as alternative locations. Therefore, on the basis of the whole record, including the written checklist (Attachment 3) and the previously certified PEIR, there is evidence to support the finding that the Proposed Project will not create any new significant effects or a substantial increase in the severity of previously identified significant effects on the environment, and there is no new information of substantial importance under State CEQA Guidelines Section 15162 warranting the preparation of a new environmental document for the Proposed Project.

Finally, CEQA does not require social impacts to be considered, such as the inconvenience of a parking deficit; parking impacts are only considered under CEQA when they potentially have a significant adverse impact on the environment. As discussed in detail in previous appeal issues, the Proposed Project will provide adequate parking and will not result in exceedance of road capacities in the area.

Appeal Issue No. 4: Impact of Chapter 50 Business License on CDH Process

The Appellant asserts that the Board of Supervisors’ actions under the Chapter 50 Business Licensing Ordinance prejudiced the consideration of alternatives to the Santa Claus Lane site in the CDH process. The Appellants go further to claim that the Commissioners relied upon a belief, reinforced by staff, that they were prohibited from considering any aspect of the Proposed Project or the Appellant’s claims that related to requirements of the County’s Cannabis Business Licensing Ordinance, and that this interfered

with the ability of the Appellant to receive a fair hearing. Finally, the Appellant asserts that Section A14 of the Roots Chapter 50 application packet describes features that the Appellant and community members have asserted as being incongruous with Santa Claus Lane including:

- 24-hour armed guards
- Video surveillance system both inside and outdoors, with 52 cameras
- Motion-detection-triggered alarm system and infrared detectors
- Dedicated vault to house cannabis products and cannabis
- Commercial grade non-residential metal doors
- Steel bollards installed in front of the premises
- All windows and transparent doors protected with security glass

Staff Response:

The Appellant incorrectly asserts that the decision maker for this CDH has the ability to review components of the cannabis Business License application submitted pursuant to Chapter 50. The Planning Commission’s action was based solely upon the Proposed Project’s consistency with County policy and compliance with Article II. The County decision maker’s role is to review the project before them and to approve, approve with conditions, or deny said project. The decision maker for a CDH application does not have the authority to suggest other sites that an applicant does not have control over. As outlined in detail in the Planning Commission Staff Report dated August 30, 2022 (Attachment 10), the Proposed Project is consistent with the requirements of Article II and the Comprehensive Plan, including the Coastal Land Use Plan and the Toro Canyon Plan. Further, “Cannabis Retail” is a principally permitted use in the C-1 Zone District under the Local Coastal Plan pursuant to Section 35-144U of Article II. The Local Coastal Plan was specifically amended to implement development standards and procedures for cannabis activities, and the amendment was certified by the Coastal Commission in 2018.

The Appellant also incorrectly asserts that the Planning Commission, and now the Board, has authority to reconsider Chapter 50 amendments and/or prior proceedings under Chapter 50 as part of consideration of the Proposed Project. Approval of this CDH for “Cannabis Retail” is being considered under the requirements of Article II and not Chapter 50 of County Code, which governs the cannabis business license process. As such, the Planning Commission appropriately reviewed the application materials submitted for the CDH application. At no time did staff claim that any component of the CDH application is outside of the review authority of the Planning Commission. Staff has clarified to the Appellant, Applicant, the Planning Commissioners that any appeal issues related to the business license process are outside of the review authority for this CDH application, which is fully and only regulated by Article II and the Coastal Act.

Insofar as the Appellant raises concerns regarding the cannabis business license process, such issues are beyond the scope of the CDH approval, and the claim that the Roots Chapter 50 application descriptions are incongruous with Santa Claus Lane are not the subject of this appeal and should not be considered.

Appeal Issue No. 5: Inadequate Evaluation of Intensification of Use

The Appellant asserts that the Planning Commission failed to consider impacts to the beach-going public from the change in intensity of use. The Appellant specifically states that “parking, circulation and traffic impacts attributable to the dramatically increased intensity of use of the cannabis dispensary site... have not been analyzed.” As part of this claim, the Appellant states that the staff report and analysis inappropriately focused on whether parking would meet the minimum requirement for employees in

Article II and did not consider customer use. The Appellant also contends that the proposed number of on-site parking spaces does not meet Article II requirements, and that the demand for on-site parking is at least 22 spaces, and will therefore result in the use of public parking spaces for employees and customers. Furthermore, the Appellant contends that the Planning Commission relied on projected increases in parking spaces on the east end of Santa Claus Lane from the completed streetscape project. The Appellant also claims that the Planning Commission failed to consider the added congestion and safety conflicts from the anticipated volume of traffic to the dispensary with the bike path/coastal trail.

Staff Response:

The Proposed Project, which consists of a change in tenant use at an existing, vacant commercial tenant space meets all applicable parking requirements of Article II. In addition, associated impacts related to traffic were appropriately analyzed, and the Planning Commission appropriately considered the Proposed Project based on submitted application materials, staff analysis, and public hearing testimony.

The change of use was thoroughly analyzed for consistency with County regulations, as well as for all potential environmental impacts including parking and traffic. As detailed in previous appeal issues, the proposed on-site parking, as shown on the Project Plans (Attachment 6), meets the parking requirements of Article II Section 35-110. The existing commercial/office space is required to provide 12 parking spaces, not 22 as the Appellant claims. The Appellant's assertion that 22 spaces are necessary is not based on an analysis of parking demand, but from an initial draft of the Applicant-provided traffic study that showed 22 total parking spots on-site based on parking located on the UPRR property. Article II does not require the Applicant to meet a hypothetical parking demand as claimed by the Appellant, but instead provides a standard ratio of parking spaces to square footage of types of use. The Proposed Project, with 3,104 square feet of retail space and 716 square feet of office space is required to provide eight parking spaces based on a ratio of 500 square feet per retail parking space and 300 square feet per space for office space. Additional uses on-site include an architect's office, which requires two parking spaces, and a currently-vacant retail space, which requires two parking spaces. In total, 12 spaces are required for the total square footage of all existing and proposed uses on-site. The designation of parking spaces for customers versus employees is not a requirement under Article II. However, six spaces will be dedicated (by signage posted on-site) to on-site Roots employees and customers, pursuant to Condition of Approval No. 31. The remaining six spaces of the total required spaces for all uses on-site can be shared by Roots employees and patrons, and employees and patrons of the other uses on-site. Parking calculations for the existing and proposed uses are shown on the Site Plan cover sheet included as Attachment 6. Additionally, as limited by the STDMP (Attachment 8) and the project description, Roots will have a maximum of five employees on site at any given time.

As discussed at length in Appeal Issue No. 1, the key findings of the Applicant submitted Traffic Study show that the Proposed Project will not significantly impact the transportation network based on the store's estimated vehicular trip generation during peak hours. Based on the study analysis of LOS and road capacities, County staff including the County Public Works Transportation Division has determined that the Proposed Project is adequately served by existing roads and will not indirectly impede coastal access during weekday and weekend peak hours.

As discussed at length in Appeal Issue No. 3, cannabis retail stores were also reviewed under the scope of the Cannabis Land Use Ordinance and Licensing Program PEIR, which concluded that implementation of the cannabis land use and licensing program would result in significant and unavoidable impacts to traffic and circulation. As part of the Cannabis Land Use Ordinance, Article II was amended to include "Cannabis

Retail” as a principally permitted use within the C-1 Zone District (see Section 35-144U of Article II). A change in intensity is defined as “development” under the Coastal Act, which does not mean it is not allowed, but means that a permit is required, which the Applicant is requesting in this case. There is not, however, a specific finding related to intensity for CDH applications under Article II.

Finally, Article II does not require off-site right-of-way parking along Santa Clause Lane to serve the Proposed Project, and therefore the Appellant’s claim that the Planning Commission relied on projected increases in parking spaces on the east end of Santa Claus Lane from the completed Streetscape project is not accurate. While the Santa Claus Lane Streetscape project will result in an increase in parking along the Santa Claus Lane right-of-way, and will increase the availability of parking for beach access, all required parking associated with the Roots CDH application is provided on-site.

Appeal Issue No. 6: Incompatibility of Cannabis Retail with the C-1 Zone District

The Appellant asserts that the Proposed Project will have unique lighting, security, noise, parking, traffic circulation, and safety impacts that are inconsistent with the purpose of the C-1 Zone District and therefore the findings for approval of the Proposed Project cannot be made. The Appellant adds that the proposed use is categorically incompatible with two nearby surf schools serving youth. Additionally, they claim that the dispensary would effectively rezone Santa Claus Lane back to Highway Commercial, serving only highway travelers, and not local residents. The Appellant goes on to state that Coastal Act Section 30222 applies, which states that “the use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development...” Finally, the Appellant adds that the “Coastal Commission routinely considers the purpose of a zone district in determining consistency with the Coastal Act.”

Staff Response:

The Proposed Project meets all requirements of Article II and, as detailed in Attachment 1, the findings for approval of the CDH can be made. “Cannabis Retail” is a principally permitted use within the C-1 Zone District pursuant to Article II Section 35-144U. The cannabis amendment to Article II was certified by the Coastal Commission in 2018 and at that time the Coastal Commission determined that “Cannabis Retail” was compatible with the C-1 Zone District. Thus, the Coastal Commission certified an amendment to Article II that specifically allows Cannabis Retail in the C-1 Zone District. No appeals of the ordinance were filed and the statute of limitations for challenging the ordinance has lapsed.

Compatibility of “Cannabis Retail” as a use within the C-1 Zone District was analyzed under the Cannabis Land Use Ordinance and Licensing Program PEIR. Section 3.9.4.2 (Land Use) of the PEIR analyzed potential land use impacts associated with cannabis cultivation, manufacturing, testing, distribution, and retail. Impact LU-2 was identified as a less than significant impact with mitigation, acknowledging that impacts could result in adverse quality of life effects to existing communities due to increases in traffic, odors, noise, or other physical environmental impacts. Mitigation measures were incorporated into the PEIR and development standards added to Article II to reduce the impacts of future cannabis projects to a less than significant level. These mitigation measures include the requirement for a STDMP. The Proposed Project includes an STDMP, which will implement incentives to reduce traffic demand associated with the Roots employees and customers (Attachment 8). The Proposed Project was reviewed under CEQA utilizing the PEIR Checklist, included as Attachment C, and determined that no new impacts would occur as part of the Proposed Project. Subsequent to certification of the PEIR, Section 35-144U of Article II was amended to incorporate use categories and development standards for cannabis activities.

As described in the Planning Commission Staff Report, dated August 30, 2022, incorporated herein by reference (Attachment 10), the Proposed Project is a compatible use in the C-1 Zone District and therefore will not create adverse impacts to the Santa Claus Lane area. The Proposed Project is a change of an existing “Retail” tenant to a “Cannabis Retail” tenant, and Article II does not require findings for neighborhood compatibility for a principally permitted use. Nevertheless, the lighting, security, noise, parking, traffic circulation, and safety impacts associated with the Proposed Project are similar in nature to impacts associated with other uses also allowed in the C-1 Zone District, such as “retail stores, shops or establishments supplying commodities for travelers, as well as residents in the surrounding neighborhood...” All operations associated with the Proposed Project will be conducted entirely within an enclosed building, similar to the requirements for other permitted uses in this zone.

The claim by the Appellant that allowing “Cannabis Retail” effectively rezones the site to “Highway Commercial”, serving only travelers and not the local residents, is incorrect. As noted above, Article II was amended to allow “Cannabis Retail” as a principally permitted use within the C-1 Zone District. Additionally, similar to the Proposed Project, existing retail sites in commercial zone districts that are located along a major highway such as Santa Claus Lane, are likely to serve both the nearby residents as well as highway visitors. This is not inconsistent with the purpose and intent of the C-1 Zone District which states the following: *“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.”*

As discussed at length in Appeal Issue No. 1, the surf schools referenced in this appeal do not meet the definition of a “youth center”. The surf schools serve all age groups as referenced by their websites (Attachment x), and instruction is held on the public beach and not within the retail shop locations on Santa Claus Lane. The retail locations on Santa Claus Lane are utilized for retail sales and/or rental of surf equipment, accessories, and clothing. Both business store fronts are located within the C-1 Zone District, which does allow retail stores/shops as permitted uses, but the C-1 Zone District does not allow “youth centers”, schools, or similar uses as a permitted use.

Finally, with regard to the Appellant’s reference to Coastal Act Section 30222, the Coastal Act specifically identifies that “the policies of this chapter shall constitute the standards by which the adequacy of local coastal programs... are determined.” The intention is not to apply the policy on a project basis, but as a guide for evaluating local coastal plans. As such, the reference to this Coastal Act policy is not applicable to the Proposed Project. As previously stated in this Board Agenda Letter and as shown in the Planning Commission Staff Report dated August 30, 2022 (Attachment 10), the Proposed Project complies with all applicable policies of the County’s Coastal Land Use Plan.

Appeal Issue No. 7: STDMP and Condition 31 are Unenforceable

The Appellant claims that the “amended conditions (i.e. Condition 31) proposed in the staff-solicited [STDMP] are wholly inadequate and unenforceable, and do not mitigate for the full impacts of this dispensary.” The Appellant suggests that feasible enforceable mitigation measures include the elimination of store operations on weekends, summer, and holidays, reduction in hours to outside beach attendance hours, and mandatory shuttling of employees to leave the private parking available to visitors.

Staff Response:

The Proposed Project is consistent with the requirements of Article II and the Comprehensive Plan, including the Coastal Land Use Plan and the Toro Canyon Plan, as described in detail in previous appeal issues. The Proposed Project will not result in traffic impacts, inadequate parking on-site, or impact coastal access. All required parking spaces pursuant to Article II are provided, as demonstrated on Project Plans included as Attachment 6. Condition 31 requires that the Applicant post signs at six of the 12 on-site required parking spaces, designating them for employees and patrons of the Roots store. The remaining six on-site parking spaces will be available for employees and patrons of both the Roots store as well as other uses on-site.

The Appellant does not provide evidence that the STDMP is unenforceable. The Applicant provided a STDMP that meets the requirements of Article II. In addition, the Proposed Project is required to submit a permit compliance application prior to issuance of the CDH (Condition 13). Upon submittal of a permit compliance application, a permit compliance planner will be assigned to ensure compliance with all conditions of approval. The permit compliance planner will conduct periodic inspections and respond to complaints.

Finally, the additional mitigation measures suggested by the Appellant go beyond the requirements of Article II and the Proposed Project has no demonstrated environmental impacts or policy inconsistencies. As reviewed in the PEIR Checklist (Attachment 4) prepared for the Proposed Project, no additional impacts beyond those analyzed in the PEIR were identified and no new mitigation measures beyond those from the PEIR can be applied to the Proposed Project.

Appeal Issue No. 8: Unfair Hearing

In this appeal issue, the Appellant makes claims that the Planning Commission hearing was unfair for reasons related to ex parte disclosure, the Appellant's inability to rebut statements made by Commissioners, prejudiced Commissioners, improper assistance to the Applicant by staff, and improper actions by staff in coordination of hearing dates.

Specifically, the Appellant points out that the Commissioners did not file written ex parte reports and failed to provide any specific facts pertaining to their ex parte communications. The Appellant also claims the Commissioners made assertions of fact which were false, not relevant to any required findings, and failed to provide an opportunity for the Appellant to respond. The Appellant further claims that a Commissioner prejudiced the decision makers against the Appellants by asserting that the Appellant had "attacked" staff. The Appellant also asserts that the Appellant was "denied a fair hearing because Chapter 50 amendments adopted after the Coastal Commission's certification of the County's cannabis ordinance enhanced the sense of inevitability, that regardless of Coastal Act standards, that 'site' designations under the County's Licensing ordinance would dictate the location of dispensaries."

The Appellant claims that the Planning Commission Procedures Manual specifically prohibits P&D from assisting any party in an appeal and asserts that P&D staff should not have coordinated with the Applicant to prepare an improved STDMP. The Appellant also claims the 2nd District Supervisor's office coordinated with the Applicant team and P&D staff "to discuss 'calendar' any appeal to the Board of Supervisors presumably to assure that Supervisor Hart, and not Supervisor-elect Laura Capps would hear any appeal of the Planning Commission's hearing." The Appellant goes on to state that Supervisor Hart has a conflict of interest because the Applicant made a contribution to Supervisor Hart's campaign, and insists

that Supervisor Hart “would have to first return the Radis' \$1,000 contribution to his Assembly campaign given March 24, 2022, in order to vote on the matter.”

Staff Response:

The hearing before the Board is *de novo* and therefore any claims related to an unfair hearing at the Planning Commission is not relevant to the Board’s decision. The Planning Commission complied with the Brown Act and the Procedures Manual¹. Planning Commissioners are permitted to explain the basis for their decision during deliberation and staff is authorized to provide feedback to applicants regarding whether an application meets code and policy requirements. Finally, the County followed established procedures for scheduling the appeal for hearing and issues related to campaign contributions are outside the scope of the permitting process and fall under the jurisdiction of the Fair Political Practices Commission.

Fiscal and Facilities Impacts:

Budgeted: Yes

Total costs for processing the appeal are approximately \$10,000 (40 hours of staff time). The costs for processing cannabis project appeals are partially offset by a fixed appeal fee and cannabis tax revenues. No appeal fee was collected because this project is located within the Coastal Commission’s Appeals Jurisdiction. Funding for this project is budgeted in the Planning and Development Department’s Permitting Budget Program as shown on page 387 of the County of Santa Barbara Fiscal Year (FY) 2022-23 adopted budget.

Special Instructions:

The Clerk of the Board shall publish a legal notice in the *Coastal View* at least 10 days prior to the hearing on November 1, 2022. The Clerk of the Board shall also fulfill mailed noticing requirements. The Clerk of the Board shall forward the minute order of the hearing, proof of publication, and return one printed copy of the Cannabis Program PEIR to the attention of Planning and Development Department: Hearing Support.

Attachments:

1. Findings
2. Coastal Development Permit with Conditions
3. CEQA Checklist
4. Link to Program EIR
5. Appeal Application and Letter, dated September 13, 2022
6. Project Plans
7. Traffic Study, dated February 2, 2022
8. Site Transportation Demand Management Plan
9. Planning Commission Action Letter, dated September 9, 2022
10. Planning Commission Staff Report, dated August 30, 2022
11. Zoning Administrator Action Letter, dated May 26, 2022
12. Zoning Administrator Staff Report, dated May 6, 2022

¹ The Planning Commission Procedures Manual is available at: <https://content.civicplus.com/api/assets/2358ee05-b225-45e5-b9a3-f66d15d3f78f> (last visited October 13, 2022) and available in hard copy at the Planning and Development Department offices located at 123 E. Anapamu Street, Santa Barbara, CA 93101.

13. Santa Claus Lane Surf Shop Website Screenshots
14. County Counsel Facilitation Report, dated October 13, 2022

Authored by:

Steve Conner, Planner, (805) 568-2081
Development Review Division, Planning and Development Department