

Brianda Negrete

From: Jana Zimmer <zimmerccc@gmail.com>
Sent: Tuesday, October 11, 2022 5:57 PM
To: Van Mullem, Rachel
Cc: Pettit, Brian; STEVEN KENT; Hartmann, Joan; Hart, Gregg; Lavagnino, Steve; Nelson, Bob; Williams, Das
Subject: Response to offer of facilitation- Cannabis dispensary 3823 Santa Claus Lane

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Dear Ms. Van Mullem,

We are in receipt of Deputy County Counsel Pettit's announcement that the County is willing to host a 'facilitation' meeting with the Radis and my client regarding their appeal of the Planning Commission approval of September 7, 2022 of a cannabis dispensary on Santa Claus Lane. I inquired whether the County would join as a party in such a meeting, since the County is entirely responsible for the impossible situation in which you have placed the appellants and the public. Mr. Pettit responded, in essence, that the County's sole function is to 'host' such a meeting. **This is to suggest that you propose to the Board that the County take an active role in resolving the matter in its entirety.**

Pursuant to our Public Records Act requests, we recently received an e mail from Joe Armendariz, the applicants' lobbyist, to Supervisor Lavagnino, that appears to seek County action to obtain funding to partially mitigate the impacts to affected businesses on Santa Claus Lane from the *ongoing and interconnected CalTrans and Streetscape highway improvements*. He asserts, without specificity or documentation that his client, the Radis, have lost in excess of \$200,000 in rent already. He goes so far as to assert that the County and the State may be liable for a taking. We will leave that argument for another day,^[1] but **we hope he is not suggesting that these alleged impacts be 'mitigated' by the Board granting his client a coastal development permit for a cannabis dispensary, which will exacerbate the existing and long-term access and parking conflicts on Santa Claus Lane, and which will further damage the other owners and their tenants.** However, we do think that, in order to reach any resolution, the County will have to take a seat at the table and account for their own mistakes throughout this process, even if that means finding a way to compensate *all* the owners and tenants on the Lane.

Despite the false implication in his Op-ED in the Independent of October 7, 2022,^[2] my clients, Drs. Steve Kent and Nancy Rikalo are even more affected as business owners on the Lane than the Radis. They are owners of the commercial retail buildings at 2785 and 3805-3819 Santa Claus Lane, and Dr. Kent has served as the President of the Santa Claus Lane owners association. Their tenants include predominantly visitor serving and recreation serving uses: the Garden Market, the A-Frame Surf Shop, Rincon Beach Club, , Rowen's boutique shop and Coastal Supply store. They are and have been advocating not on their own behalf as individuals, but as property owners whose tenants will be affected, and if these tenants are unable to pay their rent, they will leave uninsurable, vacant buildings to deteriorate. This, after Dr. Kent and Rikalo have spent over twenty years rehabilitating their property to provide visitor serving and recreational uses consistent with the Coastal Act and the LCP.

While those hundreds of residential owners who have opposed this location for a dispensary since 2020 have their own distinct and important concerns regarding the compatibility of the dispensary use with their enjoyment of their EDRN residential neighborhoods (e.g. Sandyland, Polo Condos, Casa Blanca, Padaro Lane, Conchita owners) **the negative impacts of a dispensary at this location for the businesses will be of a different order than the impact on residential owners.** Therefore, the County must consider a solution which appropriately mitigates and compensates for the losses suffered by *all* of the owners. A cannabis dispensary at 3823 will convert the construction- related (albeit "temporary"

damage) to a permanent condition of public and private nuisance, much like the condition at the Chick-Fil-A facing the the City of Santa Barbara.

Second, in his Op-Ed Mr. Armendariz effectively admits that a dispensary at this location would create excess traffic *in the summer months*. But the County has failed to quantify the increased traffic attributable to the dispensary other than to assert that “peak hour” trips would not trigger the County’s CEQA threshold. And PM peak hour trips are practically irrelevant to the conflicts with beach goers’ parking needs. Since the beginning of the permit process, County staff has failed and refused to analyze or quantify the increased intensity of use attributable to this dispensary in this location, even though their program EIR for cannabis concluded that parking and traffic impacts from **retail dispensarie** would be Class I, significant and unavoidable, and the County did not include any mitigation measures for cannabis retail in Section 35-144 of the ordinance. The so called ‘program’ of voluntary incentives that staff encouraged the Radis to provide at the 11th hour (in direct violation of the express prohibition in the Planning Commission Manual on staff ‘aiding’ either party in an appeal) would be entirely cosmetic and unenforceable, and completely ineffectual. If the increase in intensity of use had been quantified in a bona fide traffic study and included in a Supplemental or Subsequent EIR as the law required, the public would have had an opportunity to comment on the inadequacy of these measures, but they did not.

Mr. Armendariz offers no solution whatsoever to this conflict, but then he complains about the effect of the ongoing and forthcoming roadway improvements (CalTrans Highway Improvements and the County Streetscape Improvements) on his own client. Mr. Armendariz has claimed, in other correspondence that these combined County/Caltrans traffic improvements constitute a “taking”, for which the Radis should be compensated, or which the County should provide other funding to mitigate. We agree that the County should have better addressed the impacts from impairment of public access to all the owners and tenants on the Lane. But Dr. Kent’s several tenants have already experienced tremendous losses in revenue, to the point where some have given notice. In any event, the grant of a CDP to Radis for a dispensary without conditions to address the Coastal Act issues will solve the Radis’ “problem”, if they have one, but will compound the damage to the other owners and tenants on the Lane. There must be a global resolution which is fair to all the owners and tenants, and which directly and fully addresses the Coastal Act issues that have been raised.

Therefore, we are attaching here a proposed minimum set of conditions which would be required to begin to address the identified Coastal Act/LCP parking, circulation, compatibility and safety impacts of the dispensary, as well as the specific impacts to the “de facto” sensitive receptor at the Surf Camp building. Please review with your client whether the County is willing to *grant our appeal* and impose these conditions. If, and only if Radis and their partners Roots expressly accept the conditions, and if they are satisfactory to Surf Happens, Garden Market, Rincon and A-Frame, and if the conditions are made enforceable through a deed restriction enforceable directly by the affected owners, we would accept a revised CDP and waive our right to appeal to the Coastal Commission.

[PROPOSED] CONDITIONS OF APPROVAL

1. Surf Happens must be recognized as a de facto “youth center”:

- 1.1 The Dispensary shall be **CLOSED** for the 15 weeks per year that Surf Happens conducts Surf Camp.
- 1.2 Dispensary would be closed Saturdays, Sundays and Holidays.
- 1.3 Dispensary would be closed after 3 pm (to account for after school activities).
- 1.4 Any advertisement for the dispensary, e.g. Weedmaps shall clearly indicate the limits on hours of operation.
- 1.5 In the event that Surf Happens vacates and ceases operation and is not replaced by a substantially similar “youth center”, Section 1.1 above shall no longer apply.

2. Parking:

- 2.1 Roots/Radis shall acquire an easement for all employees to park off of Santa Claus Lane, on the north side of Highway 101, and shall provide shuttles for employee access.
- 2.2 All on- site parking (behind/south of the building) shall be dedicated to customer and delivery vehicles, only, with signs indicating use of rear for customer parking.
- 2.3 There shall be no cannabis customer parking in the County road right of way on Saturdays, Sundays and holidays.
- 2.4 Any advertisement for the dispensary, e.g. Weedmaps shall clearly indicate the approved parking times and areas for customers.

3. Completion of Streetscape prior to opening

- 3.1 The Dispensary shall not open to the public prior to the completion of the Highway 101 improvements and the County Streetscape project.
- 3.2 Prior to issuance of building permit and commencement of construction of any improvements consistent with the Coastal Development Permit, the owners shall notify property owners and tenants within 1000 feet. Any deviation in plans from those considered and approved in connection with the Coastal Development permit shall be provided to the owners and tenants and shall be subject to a determination of substantial conformity.

4. Deed Restriction

- 4.1 The Conditions of approval shall be expressly for the benefit of and shall be incorporated into a Deed restriction agreement which shall be enforceable by, the County, the Coastal Commission, or any business owner or tenant on Santa Claus Lane, or any resident within 1500 feet of the dispensary.
- 4.2 The Conditions of approval and the Deed restriction shall specifically provide that any day on which a violation in Condition 1 or 2 occurs shall constitute a violation of Conditions under the Coastal Act, and that the Owners/operators shall be jointly and severally liable for a penalty of up to \$15,000 for each day or instance of violation as provided by the Coastal Act. This Condition shall be enforceable by any affected party, whether or not the County or the Coastal Commission choose to initiate enforcement.
- 4.3 The agreement and Deed restriction shall be binding on any and all successors and assigns, including, without limitation, and successor to Roots as licensee.

5. Waiver of Appeal

- 5.1 If all parties execute an Agreement which includes the above conditions and an executed Deed restriction prior to October 28, 2022, Appellants will consent to a “de novo” approval by the Board of Supervisors of the Coastal Development permit at issue, which incorporates all of the conditions above.
- 5.2 If the Board of Supervisors approves a “de novo” CDP as set forth above, appellants will waive their right to appeal the revised CDP to the Coastal Commission, and their right to challenge the revised CDP under CEQA.

6. Costs and Fees

- 6.1 Each party shall bear their own attorneys’ costs and fees in the administrative proceedings, provided, however, that in the event of a violation of conditions, the County and the owners/operators shall be jointly and severally liable for attorneys’ fees and costs incurred by the Plaintiffs to seek judicial enforcement.

¹²¹ Under certain circumstances, unnecessary and substantial temporary interference with such property rights or an actual though temporary invasion of the right of possession of private property during construction is actionable. (Heimann v. City of Los Angeles (1947) 30 Cal.2d 746, 755 (Heimann), disapproved on other grounds in County of Los Angeles v. Faus (1957) 48 Cal.2d 672, 679.)

¹²² Mr. Armendariz falsely implies that Dr. Kent and Dr. Rikalo (“wealthy doctors”) are affected as residential owners (code for Nimby). They are not.

¹²³ Edna Valley Watch v. County of San Luis Obispo (2011) 197 Cal.App.4th 1312

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