

ATTACHMENT 5 - APPEAL APPLICATION



Appeal Application

County Use Only	Appeal Case No.:
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STEP 1: SUBJECT PROPERTY

005-040-012
 ASSESSOR'S PARCEL NUMBER(S)
 3823 Santa Claus Lane, Carpinteria, 1st Supr Dis
 PROPERTY ADDRESS (IF APPLICABLE)
 Roots Cannabis Storefront Retail
 BUSINESS/ESTABLISHMENT NAME (IF APPLICABLE)

STEP 2: PROJECT DETAILS

Roots Cannabis Storefront Retail
 PROJECT TITLE
 21CDH-00000-00029
 CASE NO(S).
 County Planning Comm 9/7/2022
 DECISION MAKER DATE OF ACTION

Is the appeal related to cannabis activities? Yes No

STEP 3: APPEAL CONTACTS

APPELLANT

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AGENT

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ATTORNEY

JANA ZIMMER
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STEP 4: APPEAL DETAILS

Is the Appellant the project Applicant? Yes No

If not, please provide an explanation of how you are an "aggrieved party", as defined in Step 5 on page 2 of this application form:

Appellant, Preserve Access on Santa Claus Lane, by and with Steven Kent represent aggrieved neighbors and the public, and are asserting the rights of the public to preserve access to the public beach at Santa Claus Lane, as well as to use the new bike route/coastal trail safely, and to preserve lower cost coastal recreation Coastal Act Section 30212,30213,30214, Toro Plan

Please provide a clear, complete, and concise statement of the reasons or ground for appeal:

- Why the decision or determination is consistent/inconsistent with the provisions and purposes of the County's Zoning Ordinances or other applicable law;
- There was error or abuse of discretion;
- The decision is not supported by the evidence presented for consideration;
- There was a lack of a fair and impartial hearing; or
- There is significant new evidence relevant to the decision which could not have been presented at the time the decision was made.

Please see attached Exhibit A, incorporated by reference herein which sets forth the following points in detail.

Why the decision or determination is consistent/inconsistent with the provisions and purposes of the County 's Zoning Ordinances or other applicable law. The approval is inconsistent with the public access and recreation policies of the Coastal Act, the LCP and the Toro Plan; inconsistent and incompatible with the Existing Developed Rural Neighborhoods, inconsistent with the purpose of the C-1 zone district; ; There was error or abuse of discretion; County failed to analyze site specific impacts from increased intensity of use under CEQA; failed to analyze inconsistency with Coastal Act policies, including the impact of the increased intensity of use under PRC 30106

SEE ATTACHED EXHIBIT "A"

Exhibit "A" to Appeal by Steven Kent and Nancy Rikalo of Radis/Roots cannabis dispensary 3823 Santa Claus Lane, of Planning Commission decision of Sept 7. 2022

The Coastal Development Permit findings made by the Planning Commission were a result of erroneous interpretations and application of the law, and were not supported by the evidence. Evidence presented by appellants and other members of the public, including expert testimony and direct lay testimony submitted under penalty of perjury, which was un rebutted, demonstrate that Findings of consistency with Coastal Act and LCP policies cannot be made.

- 1. The policies of the Coastal Act regarding public access and recreation expressed in Pub. Res. Cod 30212, 30213 and 30214, as specifically incorporated into the County's Land Use Plan Policy 1-1 – 1-4, as well as Toro Plan Policy 2.1 prohibit uses that interfere or conflict with public access and particularly, lower cost visitor serving recreation. In addition, Public Access policy specifically applicable to Santa Claus Lane (Action PRT -TC-1.4) mandates that, in addition to pursuing public access, the "County shall ensure the provision of adequate coastal access parking including signage designating the parking for this purpose, developing one or more parking areas"(also see Action CIRC TC 4.3).**

In their deliberations, and in response to the evidence and public testimony, it was manifestly clear that a majority of the Planning Commission were of the view that a dispensary on Santa Claus Lane would be inappropriate at that location. After the close of the public hearing, Chair Parke pointedly asked staff whether there was any specific policy in the Coastal Act **that protects visitor serving uses**. There was no response. The Planning Commission was not told that Pub. Res. Code 30213, one of **three** access provisions which are specifically incorporated into the LCP in Policy 1-1 to 1-4 provides: **"Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. " They were also not told that the Toro Plan requires- specifically on Santa Claus lane- that the County must assure adequate coastal access parking.** The Planning Commission was provided with Coastal Commission precedential decisions which demonstrate that in determining this question, the Coastal Commission- which is the final arbiter of the interpretation of the LCP- has repeatedly and specifically found that projects which give rise to conflicts with parking for public access and recreation can be denied on that basis.

Most, if not all of the clear concerns expressed by Commissioners with the appropriateness of siting a dispensary on Santa Claus Lane could and should have been addressed through the application of these policies to the facts presented, but the Commission was not advised of these particular provisions, either by staff or by counsel. To the contrary, in the staff report, in its consistency analysis at Section 6, page 27, staff asserts that Coastal Act Sections related to access, Sections 30212-30214 are not applicable, and Section 30213, in particular, "is not applicable to the proposed project because the proposed project will not impact lower cost visitor and recreational facilities." There is **no** evidence to support this assertion. The staff analysis simply fails to address the legal requirements: coastal access and adequate public parking are linked in the LCP and in the proper application of the Coastal Act. In fact, in this case, the testimony and expert evidence provided by appellants, which was un rebutted,

demonstrates that the parking, traffic circulation and safety impacts, as well as the negative impacts of this categorically incompatible use to two Surf camps serving youth, conflicts with skateboarders and bicyclists on Santa Claus Lane, and access to the beach for students in Title 1 school programs dictate a finding of inconsistency with policy .

The staff report and analysis inappropriately focused on whether parking would meet the minimum for employees in Article II and did not consider customer use at all. The parking, circulation and traffic impacts attributable to the dramatically increased intensity of use of the cannabis dispensary site which will negatively impact public access and public use of the area have not been analyzed. The finding that the development meets minimum code (even if correct) does not address the indirect and cumulative impacts from the competition for street parking. The staff proposed finding states:

“The development will comply with the public access and recreation policies of this Article and the Comprehensive Plan including the Coastal Land Use Plan. The Planning Commission finds that the proposed project will comply with the public access and recreation policies of this Article and the Comprehensive Plan including the Coastal Land Use Plan. As discussed in Section 6.3 of the staff report, dated August 30, 2022, and incorporated herein by reference, the surrounding roads are adequate to serve the proposed development and the project would not result in significant increases in traffic during the weekday peak hours. In addition, there is no public access to the beach from the subject property and the on-site commercial parking spots are to serve the on-site uses and are not for beach visitors.”

This finding is inadequate at best: 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. A recent study by ATE (August 2020, a summer Saturday) states that approximately 1800 beachgoers *per day* access Santa Claus Lane beach by car.

But there was **no** discussion of these policies in Section 6.3 of the staff report, or anywhere else. Staff merely asserted -incorrectly- that the access and recreation policies did not apply.

2. The CEQA findings are inadequate and not supported by the evidence.

In its support for Finding 1.1., Staff proposed that the Planning Commission find that the *“proposed Project is within the scope of the PEIR, and the effects of the proposed Project were examined in the PEIR”*. The Planning Commission relied upon staff’s completion of the “CEQA checklist” to reach this conclusion. In fact, Table 3.9-2 **“County Land Use Plans and Policies Consistency Summary” of the PEIR for the Cannabis Land Use Ordinance and Licensing Program, 17EIR-00000-00003**” failed to evaluate or analyze the ordinance’s consistency with coastal access and recreation policies. There is no mention or analysis in the PEIR of Coastal Act Sections 30210, 30212, 30213, 30214 30201, 30220, or 30221.

Nevertheless, the PEIR findings concluded that traffic impacts from cannabis retail would be class I, significant and unavoidable. 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. Thus, the Commission erred in reliance upon the PEIR to make these findings.

Staff's analysis of the impacts of the dispensary disregarded the legal standard in the coastal zone, which has been well established law since 1980 (Stanson v. South Coast Regional Coastal Commission) See, Coastal Act Section 30106. In directing the Planning Commission to treat the change as merely a change of tenant, and in failing to fully evaluate the direct, indirect and cumulative impacts on coastal resources from the **increased intensity of use** as required in the Coastal zone, they violated CEQA as well as the Coastal Act.

The Commission's decision disregarded the law, and the un rebutted evidence. The sworn testimony of Dr. Kent and Rikalo, the testimony of the A-Frame surf shop owner, the testimony from representatives of at least five local homeowner associations, all supported a finding (proposed by the dissenting Commissioner for the First District), that a cannabis dispensary at this site would conflict with policy to protect the existing visitor serving businesses, including the surf schools primarily serving youth, and family oriented restaurants, such as Padaro Grill, as well as access to and along the coast by the public, including programs serving Title one schools. **This testimony was not and could not be refuted by the applicants.**

3. The Board of Supervisors' actions under the licensing ordinance prejudiced the consideration of alternatives to the Santa Claus Lane site in the coastal development permit process.

The applicant finally conceded at the hearing that notwithstanding the "outcome" of the Chapter 50 site selection process (from which there was no appeal available to the public, which evaluated only two sites, **both** on Santa Claus Lane, and which was drafted and implemented by the applicant's lobbyist, the former County Deputy CEO in charge of the cannabis program, Dennis Bozanich), the Planning Commission had full discretion to reject a coastal development permit for the site.

Nevertheless, because of staff's repeated, incorrect assertions that the project represented only a change of tenant, rather than a distinct use under 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, including **alternative locations** in the relevant non-coastal planning area in Montecito, or the non- beachfront area of Summerland, or the alternative of requesting the City of Carpinteria to rescind its ban on retail dispensaries, or the alternative of considering a commercial site north of Highway 101, or the alternative of siting a retail store at one of the cultivation sites, (as suggested by one of the members of the public) none of which would have the same (or any) impacts on the beach going public, and therefore the Planning Commission failed to consider the environmental justice impacts to the beach going public under AB 2616 (Burke).

More importantly, when a majority of the Commission indicated their leaning toward finding the use *incompatible* with surrounding areas, County Counsel asserted that the Commission could not deny the dispensary based on its inconsistency with the Statement of Purpose for the C-1 zone.¹ Chair Parke then asked whether there was anything in the law that would protect visitor serving uses. Counsel did not answer this question directly, but Section 30213 of the Coastal Act specifically provides that lower cost visitor serving uses are to be protected. See, e.g. LCP-1-EUR-17-0063-2 (Cannabis). Staff and Counsel also failed to advise the Planning Commission of the Coastal Commission’s guidance document on Cannabis, of which the Board of Supervisors is well aware, and which specifically recommends:

“Requiring public access plans for individual, cannabis-related CDP applications for development located near existing or planned public access sites, visitor-serving uses, and/or coastal access roads that assure the public’s continued access and demonstrates that the proposed operation is compatible with the public’s continued use and enjoyment of these areas, uses, or facilities.” [See, attachment to Zimmer Letter to Board of Supervisors of 6/8/2021.]

Counsel also could have, but did not advise of the provisions of Section 30222 of the Coastal Act, also incorporated by reference into the County’s LCP:

§ 30222: 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, but not over agriculture or coastal-dependent industry

The Coastal Commission has consistently considered compatibility with visitor serving uses in its consideration of location of cannabis dispensaries. See, No. LCP-1-HUM-16-0075-2 Part B (Commercial Cannabis Land Use Ordinance – Medical Dispensaries) *“consistent with the policies of the LUP that prioritize visitor-serving commercial uses, the proposed amendment will not allow cannabis retail on CR-zoned lands. Therefore, the CR lands are protected for priority visitor-serving commercial recreational uses consistent with the certified LUPs.”*; LCPA LCP-6-ENC-21-0058-2 (Cannabis Ordinance) *“The new use will be permitted within zones that currently provide similar uses and development types (e.g., commercial, industrial), and will not be permitted in the City’s visitor-serving or ecological resource/open space zones; See, also, LCP-6-SAN-20-0076-*

¹ We respectfully disagree with this assertion by the Deputy County Counsel. The Coastal Commission routinely considers the purpose of a zone district in determining consistency with the Coastal Act. See, LCP-3-MCO-18-0004-1 (Commercial Cannabis Ordinance) *“... the amendment adds the retail sale of cannabis within the Coastal GC zoning district as an allowable use, which is an appropriate place to house commercial facilities selling cannabis products. The amendment thus designates specific types of commercial cannabis activities to particular zoning districts so as to ensure their compatibility with the coastal zone’s unique geographies and resource considerations”* The Coastal Commission has no problem using the word “compatibility” in this context.

4 (Cannabis Outlets and Production Facilities) “...the City adopted code amendments to modify the certified LCP so as to convert the medical marijuana consumer cooperatives into a separately regulated commercial service, marijuana outlets, in a limited number of industrial and commercial zones that avoid visitor-serving areas”

The majority of the Planning Commission was clearly misled by the failure to provide the information they requested.

4. **The Planning Commission improperly considered the laudatory goals of the cannabis program to outweigh conflicts with Chapter 3 policy.** The PEIR identified Class I, significant impacts from cannabis retail. **As a matter of law**, Coastal Act policies cannot be ‘overridden’, nor can they be balanced against non- Coastal Act Chapter 3 policies, however laudable, like revenue generation for the County, or even the desire to eliminate the illegal cannabis market. Pub. Res. Code Section 30007.5. And the County’s “need” or desire to provide dispensaries is simply not a relevant consideration for the Planning Commission on a project in the coastal zone.
5. Despite the fact that Board made findings in its cannabis PEIR that the traffic impacts from cannabis *retail* would be significant and unavoidable , and the fact that the cannabis ordinance failed to implement any mitigation measures for retail, **the Planning Commission failed to consider the full impacts to the beach going public from the change in intensity of use attributable to the dispensary.** The impacts of the change in intensity of use were not compared to the baseline use of the property, (which preceded the unpermitted conversion of the building to an ‘art gallery’ prior to application submittal) but to a mythical Starbucks which cannot be approved in the zone district without a CUP, if at all.²

The Planning Commission accepted staff’s legally erroneous recommendation and considered the change as merely from one retail use to another. The Commission also apparently accepted the completely unsupported proposed “finding” of P&D – that the two surf schools/camps on Santa Claus Lane cannot be considered “youth centers”, or that a cannabis dispensary cannot otherwise be considered incompatible with the mapped EDRNs, or with the express purposes of the C-1 zone, or the three lower cost residences within 100 feet, or the impact on youth from Carpinteria Title 1 schools programs. The Planning Commission failed to consider the undisputed testimony and expert evidence submitted by appellant which established the defects in staff’s analysis, or the multiple cases considered by the Coastal Commission, the ultimate interpreter of the LCP, which clearly recognize the impacts of parking on the public’s ability to access the beach.

- 5.1 The parking to be provided on site does not meet Article II requirements. Applicants failed to rebut expert testimony that establishes that the demand for onsite parking is at least 22 spaces, *not the 12 offered*. “Applying the parking demand rates from this

² The County is walking itself into creating a public nuisance, which the City had to contend with in the matter of the Chick-Fil-A on upper State street.

study to evaluate results in a peak demand of 22 spaces (for employees and other tenants, only). **This will result in a significant overflow and usage of public parking spaces, particularly where employees occupy public spaces for the duration of their shifts.” This conclusion is critically important: neither staff nor the applicant even tried to rebut the evidence of the Coastal Commission’s findings on substantial issue in numerous cases, based specifically on conflicts between private parking needs and the public’s access to the beach.**

- 5.2 The Planning Commission failed to analyze, quantify, or consider the extraordinary traffic impacts from highway travelers, [50,000 ADT per day] and from the unique beach front setting as the only dispensary between Santa Barbara and Oxnard.
 - 5.3 The Planning Commission failed to consider summer beach volumes, and instead relied in its findings exclusively on impacts from peak hour trips, which is an inaccurate if not irrelevant measure in this specific setting. ATE- the County’s consultant on the Streetscape project, and, apparently, the applicant’s consultant now,³ has previously opined that the beach serves at least 1840 beach users who arrive by car on a typical summer Saturday.
 - 5.4 The Planning Commissioners 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.
 - 5.5 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.
 - 5.6 The Planning Commission inappropriately relied on “projected” increases in parking spaces on the east end of Santa Claus Lane, from the completed Streetscape project but did not factor in existing beach attendance or projected growth in beach attendance from the anticipated safe railroad crossing. [Exh ATE report of July 2020] This incorrect assertion that all will be well by 2023 allegedly came from Public Works, after their representative had steadfastly refused to acknowledge that the Streetscape project would result in the removal of 12 parking spaces directly across from the proposed location.
6. The Planning Commission failed to consider the specific and unique lighting, security, noise, and traffic, conflicts from this particular and highly regulated commercial use as inconsistent with the purpose of the C-1 zone. Indeed, allowing this dispensary would effectively rezone the Lane back to Highway Commercial, serving only highway travelers, and not the local residents. Therefore, the finding that the project is consistent with all of the policies of Article II could not be made.
 7. The Planning Commission failed to consider Coastal Act policy Section 30213, which is incorporated into the LCP, and which mandates that lower cost recreation and visitor serving uses **be protected**. The Chair specifically asked Counsel and staff whether there was any LCP policy that protects visitor serving uses, but neither responded.

³ There was no direct testimony or site- specific presentation from ATE.

8. The Planning Commission failed to consider ostensibly feasible alternative locations, which would not present any conflict with public access and recreation, including but not limited to Montecito, (a site on Coast Village Road zoned C-1 and in the County, not the City) Summerland,⁴ or on one of the cultivation sites in the Carpinteria valley.
9. The Planning Commission failed to consider or impose feasible enforceable mitigation measures, such as elimination of store operations on weekends, summer, and holidays, reduction in hours to outside beach attendance hours, or mandatory shuttling of employees to leave the private parking available to visitors. The amended conditions (i.e. Condition 31) proposed in the staff-solicited TDM are wholly inadequate and unenforceable, and do not mitigate for the full impacts of this dispensary. *The fact that staff solicited this amended traffic management plan is further evidence that the parking and circulation conflicts do exist and are significant. The changes to Commission 31, however, do not come close to addressing the conflicts with beach access and recreation.*
10. The majority of Planning Commissioners tried in good faith but were prevented from providing a fair hearing.
 - 10.1 Appellants specifically requested County Counsel to advise the Commissioners to file written ex parte reports as is required in Coastal Commission proceedings. They did not do so.
 - 10.2 Commissioners failed to provide *any* specific facts pertaining to their ex parte meetings with applicants' representatives, despite the Planning Commission procedures manual requiring that they do so. [See, Planning Commission Procedures B2].
11. Commissioners made assertions of fact **after the close of public hearing** which were false or incorrect, and not relevant to any required findings, and failed to provide an opportunity for appellants to respond, explain or rebut them.

Specifically, after first saying she was undecided, Commissioner Bridley asserted, without any basis in fact, that appellant had 'worse' traffic deficiencies on their property than the applicants. The record reflects that the County approved a final development plan which found that appellants' property complied with all requirements of Article II. and the only testimony on the issues, from Mr. Sep Wolfe, confirmed that appellant had and has more onsite parking than applicants. The commissioner did not disclose where she obtained the (incorrect) information she relied on. Appellants were not afforded the opportunity to respond to this false charge.⁵

⁴ The Montecito and Summerland sites were incorrectly removed from consideration by the Board in 2020 in the Chapter 50 process. Either would be more suitable than Santa Claus Lane.

⁵ Commissioner Bridley also asserted, without disclosing the evidence on which she relied, that the Streetscape project would ameliorate any parking or traffic concerns on the east end of Santa Claus Lane. The Public Works representative was not present to defend his new found position. **Hearsay**

Second, Commissioner Ferrini asserted, without stating a basis in fact, or where or when he had obtained his information, that appellants had “attacked” staff. Neither appellants nor appellants’ attorney made any such “attack”⁶. Because of the attacks on them, which were designed to and apparently did prejudice the decisionmakers against appellants, **appellants submitted their testimony in Declarations under penalty of perjury, which none of applicant’s representatives did.**

Commissioner Parke, who also indicated he was “on the fence” and sympathetic to the appellants’ appeal issues, expressed a concern that if he voted in favor of the appeal, it might have the opposite effect, and he would **“want the members of the BOS to have most open possible minds and I think that if I vote no and say you folks are wrong that could be perceived as somewhat offensive; if I vote for the project and that both respects and honors what the Board has already done and asks them to take another look at it..... given the fact that I don’t see a compatibility requirement.....”**. In his final comments, Chair Parke spoke of Santa Claus Lane as a “necessary” location for cannabis grown in the County to be sold. This is not the Planning Commission’s responsibility, but given their concerns with the Santa Claus Lane site, the Planning Commission should have granted the appeal and directed staff to examine all of the ostensibly feasible alternative locations in the Toro/Montecito areas for their consistency with land use regulations. While Commissioner Parke was diligent in his attempts to conduct a fair hearing, this concern about the Board of Supervisors’ potential reaction to a vote to deny was not a legally relevant consideration.

alone cannot support a finding. Although Mrs. Radis was present, she failed to testify *at all* to attempt to rebut **her own prior assertion** (before they “won” the Chapter 50 proceeding) that after the Streetscape project, and its removal of 12 spaces opposite the building, parking would be impaired for the existing beach-oriented businesses going forward. Dr. Kent submitted his Declaration under penalty of perjury, and was required to attest under penalty of perjury that the assertions in the appeal were true to the best of his knowledge. **All witnesses and proponents-including the lobbyists- should be required to testify under oath at the Board hearing, as they would be required to do in APCD hearing Board proceedings, or proceedings to terminate illegal nonconforming uses.**

⁶ “.Appellants have both the right and duty to critique staff opinions and their analysis when they have facts showing that it is not compliant with legal standards. *Baca v. Moreno Valley Unified School Dist.*, 936 F. Supp. 719 (C.D. Cal. 1996) [Speech Criticizing a District Employee, Even If Later Proved to Be Defamatory, Is Protected by Both the California and Federal Constitutions from Government Censorship and Prior Restraint] In fact, the only “attacks” made in this proceeding have been false and defamatory statements made by applicants’ representatives, Mr. Armendariz in his letter to Public Works of _____, 2022, his e-mail to Planner Dargel of 5/9/2022, Mr. Bozanich, in his e mail to County Counsel dated 8.25.2022, urging County Counsel *not* to provide legal advice to their own client, and Supervisor Williams’ false and defamatory statements about appellant and appellant’s unnamed “representative” in his e mail to the owner of the Surf school and others, dated 8/25/2002

11.1 Despite specific written requests to County Counsel and to the Chair of the Commission, and despite the Chair’s specific question to them, neither staff nor counsel advised the Commission with respect to the key legal issues in the case. That is, whether 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, Section 30212-30214, **including Section 30213 which is expressly incorporated in the LCP, and which mandates protection of existing, lower cost visitor serving uses.**

11.2 The County denied appellants’ due process rights to a fair hearing as follows:

11.2.1 The Planning Commission Procedures Manual specifically prohibits P&D from assisting any party in an appeal. Notwithstanding that absolute prohibition, and after the appeal of the Zoning Administrator decision, P&D announced at the Planning Commission hearing that P&D staff had ‘reached out’ to the applicant to “suggest” that applicants prepare a revised Traffic Management Plan, which they did not share with the appellants. Based upon this plan- which was not timely made available for public review- , P&D suggested changes to conditions (Condition 31). While these facts make it clear that Appellants’ objections to the zoning administrator approval are and were valid, the Condition changes do not in fact address the myriad traffic, parking and circulation impacts, or their negative effect on public access and recreation, access to the beach, and safe use of the bike land/coastal trail. See, also, Armendariz e-mail to P&D 5/9/2022, seeking their help in preparing to meet “the wolf at the door”.

11.2.2 Second, while County Counsel failed and refused to advise the Planning Commission on the specific legal issues in this case, as they were specifically requested to do on August 15, 2022, Mr. Bozanich, the County’s former Deputy County Administrator who was intimately involved in the cannabis ordinance until January of 2020, and who, with applicants and their other representatives had consistently promoted the belief that the site selection under Chapter 50 was binding on P&D, the Zoning administrator, the Planning Commission and Board members in the coastal development permit process, announced at the beginning of and multiple times throughout their presentation that they have ‘always’ acknowledged that the Planning Commission has discretion to deny the permit.

11.2.3 The 2nd District Supervisor’s office privately shared unidentified “data points” with P&D, via Mr. Bozanich, who immediately contacted P&D to share these “data points” prior to setting hearing dates on this matter; the “data points” were evidently pertaining to Supervisor Hart’s presumed departure for Sacramento, assuming he wins the Assembly seat in November. In addition to sharing these points with staff, Mr. Bozanich approached Supervisor Hartmann’s and Supervisor Williams’ offices to discuss “calendarizing” 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. Apparently, the applicants’ lobbyists have reason to be

certain that Mr. Hart will vote to deny the appeal. He would have to first return the Radis' \$1000 contribution to his Assembly campaign given March 24, 2022, in order to vote on the matter.

Throughout the hearing, and in particular during their deliberations, Commissioners seemed to rely upon a belief, reinforced by staff, that they were somehow prohibited from considering any aspect of the project or the appellants' claims that related to requirements of "Chapter 50"- the County's Cannabis Licensing Ordinance. This interfered with the ability of the appellants to receive a fair hearing, since information presented by the appellants- and then ridiculed or contradicted by applicants' representative Bozanich- was pertinent to the appellants' assertion of incompatibility with visitor serving uses. For instance, appellants, and public commenters, mentioned the incompatibility of armed guards and other high-security requirements of a cannabis store. But Mr. Bozanich mocked these concerns, asserting that cannabis is no longer cash-dependent business: "that ship sailed" "security profile brought forward seems a bit foreign to current reality is....akin to Tiffany's store...."- in essence, accusing appellants of fabricating these features. In fact, Section A14 of the Roots Chapter 50 application packet describes the very features appellants and community members have asserted as being incongruous with Santa Claus Lane including:

- 24 hr armed guards; including "during all hours of operation"
- 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- "the vault walls and floor will be reinforced with plate steel"
- Doors will be "commercial grade non-residential metal doors" and described as "16 gauge steel doors"
- "Steel bollards will be installed in front of the premises to prevent a vehicle from driving through"
- All windows and transparent doors will be protected with "security glass such as ArmorPlast Riot Glass to prevent intrusion and deter looting during civil unrest events".

The security measures described above are taken word for word from the applicants' Chapter 50 application. If in fact these measures are no longer a part of the project and are "foreign to current reality" as Mr. Bozanich claimed during his testimony to the Planning Commission- then the applicants' Chapter 50 application should be considered no longer valid. The CAO has full authority to rescind their approvals. [See, Zimmer letter to Mona Miyasoto, July 5, 2021]

At times in the applicants' presentation, representative Bozanich seemed to be testifying as if he were still representing the County, boasting about the ordinance he helped draft, mischaracterizing the motives behind the County's permissive land use ordinance "we did not trust the state to enforce regulations". These statements were not corrected or countered by staff, leaving the misleading impression with the Commission that the County's cannabis ordinance was superior to others in the State, and the specific project before them was "exactly the project we intended".

Finally, appellants were 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.

When the cannabis ordinance and licensing program were established in February and March of 2018, the siting of retail stores was general, and no location in the coastal zone was specified. As originally adopted and submitted along with the land use ordinance to the CCC, Chapter 50-7 a) 1 read: *"to avoid excessive concentration of storefront retail operations, a maximum of two storefront retail operations may be allowed in each Supervisorial District. If after the issuance of 7 cannabis business licenses there are not storefront retail operations in each Supervisorial District, the 8th cannabis retail license shall only be issued if proposed to operate in the Supervisorial District without a cannabis storefront retail operation."*

On October 22, 2018 the Board of Supervisors (BOS) received and accepted the CCC modifications to the Cannabis Land Use Ordinance. Among the suggested modifications accepted by the BOS was the decision of the CCC not certify the Business License Ordinance as part of this LCP amendment so that it is not the standard of review for coastal development permits ". Elements of Chapter 50 that did relate to CDPs, including the 186-acre cap on cultivation in the Carpinteria Overlay District, were incorporated into the Coastal Zoning Ordinance.

On January 29, 2019, then-Deputy CEO Bozanich brought an item to the BOS suggesting several amendments to Chapter 50, and to the Cannabis Land Use Ordinances [LUDC and Article II]. Among the suggested changes suggested by CEO Bozanich was to amend Chapter 50 to specify certain Community Plan areas for location of cannabis retail. No explanation was given for this suggestion other than the potential for a *"circumstance of excess concentration and insufficient access for other unincorporated communities"*. This possibility had not previously been mentioned or considered by the BOS. Mr. Bozanich suggested "Orcutt, Los Alamos, Santa Ynez, Eastern Goleta Valley, Isla Vista/Goleta, and a combined Summerland & Toro Canyon " as well as two unnamed areas not covered by community plans. This was the first mention of Toro Canyon or any coastal area being a target of a retail store.

The BOS directed that, and other amendments return to the Board and on April 2, and April 9, 2019 Chapter 50 was amended to specify Toro Canyon and other community plan areas [except Montecito]. **The amendment was not sent to the Coastal Commission.** The ordinance was amended to read: "To avoid excessive concentration of storefront retail operations A maximum of one storefront retail operation may be allowed in each of six community plan areas: 1)Orcutt, 2)Los Alamos, 3) Santa Ynez, 4) Eastern Goleta Valley, 5) Isla Vista/Goleta, 6) Summerland and Toro Canyon, plus up to two countywide for all sites in areas not covered by the six community plan areas listed above"

On August 27, 2019, the BOS once again amended Chapter 50, most of the changes were in sections not related to storefront retail, however, storefront retail process was amended, to amend the pre-qualification and selection processes.

On November 5, 2019, Deputy CEO Bozanich returned to the BOS with additional suggested amendments to Chapter 50 focused on the retail selection process. An additional concern expressed by Supervisor Hartman was the fact that her constituents in Vandenberg Village were not in favor of cannabis retail in their unincorporated community, so she asked that the two non-community plan sites

be eliminated. Following BOS direction, additional ordinance amendments were adopted by the BOS on December 19, 2019; this amendment including the elimination of the two additional sites that were to be in unincorporated areas not covered by Community Plans. Criteria-based categories and percentages to be weighed were discussed at these hearings, resulting in the community engagement processes that took place in 2020.

Conclusion

Once again, the County's treatment of cannabis in the Carpinteria Valley, and now, in the appeals jurisdiction of the coastal zone, irrationally discriminates against the very resources most deserving of protection: the established and existing public access and visitor serving uses on Santa Claus Lane, the Existing Developed Rural Neighborhoods (EDRN) which are protected entirely from cannabis related projects in the inland areas, but not in Carpinteria, and the general public. The findings for approval of a dispensary on Santa Claus Lane simply cannot be made. The Board of Supervisors knew this- or should have known it when they arbitrarily selected Santa Claus Lane as the site for a retail dispensary under the Chapter 50 ordinance. [See, Letter to Board of Supervisors June 8 2021, letter to Miyasoto, July 5, 2021, letter to Board of Supervisors]. The Board is now in a position to address and correct their past errors, and it should do so by granting this appeal, and directing staff to revisit more appropriate locations for a dispensary which do not directly conflict with Coastal Act policy.