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Appeal Filed: 11/15/22
49th Working Day: Waived
Staff: W. Deppe - V
Staff Report: 1/26/23
Hearing Date: 2/8/23

STAFF REPORT: APPEAL - NO SUBSTANTIAL ISSUE

APPEAL NUMBER: A-4-STB-22-0065

APPLICANT: Pat and Maire Radis

APPELLANT: Dr. Steven Kent and Nancy Rikalo

LOCAL GOVERNMENT: County of Santa Barbara

LOCAL DECISION: Approval with Conditions of Coastal Development
Permit No. 21CDH-00000-00029

PROJECT LOCATION: 3823 Santa Claus Lane, Carpinteria area,
unincorporated Santa Barbara County (APN 005-450-012)

PROJECT DESCRIPTION: Request to allow a Cannabis Storefront Retail (Dispensary), called The Roots, within an existing commercial space of 3,546 sq. ft. that is part of a larger existing commercial building and strip of development. The project includes interior building improvements and minor changes to the exterior of the building including the relocation of doors and windows. Site improvements will include accessibility upgrades, a new trash enclosure, the relocation of the entry gate, and approximately 117 sq. ft. of new landscaping to supplement existing landscaping. The project includes 12 on-site parking spaces; six parking spaces will be dedicated (by signage posted on-site) to on-site employees and customers.

STAFF RECOMMENDATION: **No Substantial Issue**

NOTE: This is a substantial issue only hearing. Testimony will be taken only on the question of whether the appeal raises a substantial issue. Generally, and at the discretion of the Chair, testimony is limited to 3 minutes total per side. Please plan your

testimony accordingly. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify. Others may submit comments in writing. If the Commission determines that the appeal does raise a substantial issue, the *de novo* phase of the hearing will occur at a future Commission meeting during which it will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

The Commission's role at the "substantial issue" phase of an appeal is to decide whether the appeal of the local government action raises a substantial issue with respect to the grounds on which the appeal was filed, which can include a claim that the approved development is not in conformity with the applicable provisions of the certified Local Coastal Program (LCP) or with the public access policies of the Coastal Act (Pub. Res. Code §§ 30210-14). Staff recommends that the Commission, after public hearing, determine that **no substantial issue exists** with respect to the grounds on which the subject appeal has been filed. The **motion** and **resolution** for a "no substantial issue" finding are found on the bottom of **page 7**.

The locally approved project is for tenant improvements to an existing 3,546 sq. ft. commercial space and establishment of a retail cannabis dispensary on a commercially-zoned property at 3823 Santa Claus Lane in the Carpinteria area of unincorporated Santa Barbara County. The commercial space is located at the southern end of a commercial strip of development along Santa Claus Lane adjacent to the Union Pacific Railroad (UPRR) and is 0.2 miles from informal public access to the Pacific Ocean. The approved project includes some interior and exterior site improvements. No new square footage or significant exterior changes were approved. The project includes 12 onsite parking spaces. Six parking spaces will be dedicated (by signage posted on site) to on-site Roots employees and customers. The project includes the conversion of one type of retail use to another.

On November 7, 2018, the Commission certified an amendment to the Implementation Plan/Coastal Zoning Ordinance (CZO) portion of the County's LCP, which added policies and provisions to allow for and regulate cannabis operations and retail in the coastal zone of the County, including allowing cannabis storefront retail as a principally permitted use with a Coastal Development Permit (CDP) in the commercial zone districts (Limited Commercial (C-1) and Retail Commercial (C-2) Zone Districts)), as long as the premises is not located within 750 feet from a school providing instruction in kindergarten or any grades one through 12, day care center, or youth center. Cannabis Business Licenses are regulated pursuant to Chapter 50 of the County Code, which is not a part of the County's LCP and is separate from the land use entitlement process of the County's LCP.

The County's final action on the subject CDP (final approval by the Santa Barbara County Board of Supervisors on November 1, 2022) was appealed to the Commission by Steven Kent and Nancy Rikalo on November 15, 2022. The Appellants' grounds for appeal contend that the project is not consistent with the provisions of the certified LCP that relate to (1) cannabis retail use zoning and regulations, and (2) coastal public

access and recreation. The Appellants also made several appeal claims that are not considered valid grounds for appeal.

The Appellants assert that the County did not sufficiently analyze the project site's consistency with the purpose of the C-1 (Limited Commercial) Zone and failed to apply the standard in Section 35-144U of the CZO which requires a 750-foot buffer from sensitive receptors, such as a "youth center." The Appellants claim that two nearby surf schools for youth should have barred the permitting of the dispensary at the project site. However, the County made findings that the surf schools referenced in the appeal do not meet the definition of a "youth center," and therefore, the exception in Section 35-144U in the CZO for sensitive receptors would not apply in this case.

The Appellants also contend that the County failed to adequately analyze the project's consistency with Coastal Act and LCP policies regarding public access and lower-cost recreation (Coastal Act Sections 30212, 30213, and 30214; and LUP policies 1-1 through 1-4) and assert that their findings are not supported by substantial evidence or adequate mitigation measures. The Appellants further assert that the County failed to adequately analyze changes to intensity of use from the existing commercial use of the site to the proposed commercial cannabis retail use, and failed to adequately analyze the project's parking, traffic, circulation, and safety conflicts with coastal access and recreation in the project area.

The County confirmed that the reconfiguration of the site will provide the required number of parking spaces pursuant to the LCP. The County explained that existing parking spaces at this commercial site are located behind the building and currently designated for customers and employees of the commercial/office building and are not available to beachgoers. Condition 31 of the County's CDP action 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 County relied on traffic and parking analyses that reasonably allowed them to conclude that the proposed project would not adversely impact coastal access and recreation in the area.

The Appellants' other contention is that the County failed to apply adequate analysis of consistency with Coastal Act and LCP policies to protect Santa Claus Lane as Existing Developed Rural Neighborhood (EDRN) or a unique community under Section 30253(e). County CZO Section 35-144U (Cannabis Regulations) does include specific requirements for commercial cannabis cultivation in EDRNs, but there are no such requirements specific to cannabis retail, and are therefore not relevant to the proposed project. The County made findings that the project is a compatible use in the C-1 Zoning District, is consistent with the Toro Canyon Plan (which includes specific policies for development along Santa Claus Lane and in the surrounding area), and will not create adverse impacts to the Santa Claus Lane area.

The Appellants also made several other contentions, described further in the report, that are outside the legal grounds for appeal pursuant to Coastal Act Section 30603(b). They instead take issue with either the standards, themselves, of the County's certified LCP,

with the site selection and licensing process (that is not part of the County's LCP), or other projects that are not the subject of this appeal.

In summary, the County's record includes extensive factual evidence and legal support for the County's findings that the project is consistent with the policies and provisions of the certified LCP. The development is relatively small in scope, does not have a significant adverse effect on significant coastal resources, would not be an adverse precedent for future coastal development permits, and doesn't raise issues of regional or statewide significance. Therefore, staff recommends that the Commission find that the appeal raises **no substantial issue** with respect to the consistency of the approved development with the policies of the County's certified LCP and the public access and recreation policies of the Coastal Act with respect to the grounds on which it was filed.

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EXHIBITS

- [Exhibit 1. Vicinity Map](#)
- [Exhibit 2. Aerial View](#)
- [Exhibit 3. Proposed Site Plan and Floor Plan](#)
- [Exhibit 4. Table from CZO Section 35-144U, Part B.4](#)
- [Exhibit 5. Final Local Action Notice for County CDP No. 21CDH-00000-00029](#)
- [Exhibit 6a. Appeal by Dr. Steven Kent and Nancy Rikalo](#)
- [Exhibit 6b. Appeal Attachments](#)
- [Exhibit 6c. Supplemental Appeal Information](#)
- [Exhibit 7. Applicant's Response](#)

I. APPEAL JURISDICTION AND PROCEDURES

A. APPEAL PROCEDURES

The Coastal Act provides that after certification of a local government's Local Coastal Program (LCP), the local government's actions on Coastal Development Permit (CDP) applications for development in certain areas and for certain types of development may be appealed to the Coastal Commission. Local governments must provide notice to the Commission of their CDP actions. During a period of ten working days following Commission receipt of a notice of local permit action for an appealable development, an appeal of the action may be filed with the Commission.

1. Appeal Areas

Approvals of CDPs by cities and counties may be appealed if the development authorized is to be located within the appealable areas, which include the areas between the sea and the first public road paralleling the sea; within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is greater; on state tidelands; or along or within 100 feet of natural watercourses and lands within 300 feet of the top of the seaward face of a coastal bluff (Coastal Act Section 30603(a)). Any development approved by a county that is not designated as the principal permitted use within a zoning district may also be appealed to the Commission irrespective of its geographic location within the Coastal Zone. (Coastal Act Section 30603(a)(4)).

In this case, the County's CDP approval is appealable to the Coastal Commission because the development is between the first public road and the sea and within 300 feet of the inland extent of a beach.

2. Grounds for Appeal

The available grounds for an appeal of a local government approval of development are limited to an allegation that the development does not conform to the standards set forth in the certified LCP or the public access policies set forth in the Coastal Act (Coastal Act Section 30603(b)(1)).

3. Substantial Issue Determination

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed. When Commission staff recommends that no substantial issue exists with respect to the grounds of the appeal, the Commission will hear arguments and vote on the "substantial issue" question. A majority vote of the Commissioners present is required to determine that an appeal raises no substantial issue and that the Commission will therefore not review the CDP *de novo*. If the Commission determines that no substantial issue exists, then the local government's CDP action will be considered final.

4. De Novo Permit Hearing

Should the Commission determine that a substantial issue exists, the Commission will consider the CDP application de novo. The applicable test for the Commission to apply in a de novo review of the project is whether the proposed development is in conformity with the certified LCP and, if the development is between the sea and the first public road paralleling the sea, the public access and recreation policies of the Coastal Act (Coastal Act Section 30604(b) & (c)). If a de novo hearing is held, testimony may be taken from all interested persons.

B. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL

On May 23, 2022, the Santa Barbara County's Zoning Administrator approved the subject project with conditions. The decision was appealed to the County's Planning Commission by Steven Kent/Preserve Access on Santa Claus Lane, and the Planning Commission denied the appeal and granted de novo approval of the subject project on September 7, 2022. On September 13, 2022, the project was appealed to the County Board of Supervisors by Steven Kent/Preserve Access on Santa Claus Lane. On November 1, 2022, the Board of Supervisors denied the appeal and approved the permit for the project with conditions. Based on the administrative record, the County's public hearings were noticed and public testimony was taken.

The County's Notice of Final Action was received by Commission staff on November 10, 2022 (Exhibit 5). Commission staff provided notice of the ten working-day appeal period, which began on November 11, 2022 and ended on November 24, 2022. Steven Kent and Nancy Rikalo filed an appeal on November 15, 2022, during the Commission's appeal period (Exhibit 6). Commission staff notified the County and the applicant of the appeal and requested that the County provide its administrative record for the permit. The administrative record was received, in part, on November 21, 2022, and the remainder on January 9, 2023. Pursuant to Section 30621(a) of the Coastal Act, a hearing on an appeal must be set no later than 49 working days after the date on which the appeal was filed with the Commission, which would be January 30, 2023; however, according to Section 30625(a), the applicant can waive that time limit. On November 17, 2022, prior to expiration of the 49-working day deadline for Commission action, the applicant waived its right to a hearing within 49 working days. The applicant provided a response to the appeal on January 4, 2023 (Exhibit 7).

II. STAFF RECOMMENDATION FOR NO SUBSTANTIAL ISSUE

MOTION: I move that the Commission determine that Appeal No. A-4-STB-22-0065 raises **NO** substantial issue with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act.

STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de

novo, and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

The Commission finds that Appeal No. A-4-STB-22-0065 does not present a substantial issue with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

III. FINDINGS AND DECLARATIONS FOR NO SUBSTANTIAL ISSUE

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND BACKGROUND

The subject CDP approved by the County of Santa Barbara (County) includes the establishment of a Cannabis Storefront Retail use, including tenant improvements to an existing commercial space of 3,546 sq. ft. that is part of a larger existing commercial building (Exhibits 1 and 2). The project includes interior building improvements and minor changes to the exterior of the building including the relocation of doors and windows (Exhibit 3). Site improvements will include accessibility upgrades, a new trash enclosure, the relocation of the entry gate, and approximately 117 sq. ft. of new landscaping to supplement existing landscaping. Hours of operation will be from 9am to 9pm, seven days a week. Delivery hours will be from 10am to 8pm. There will be 8-10 employees working during any given shift, with a maximum of five staff members on site at any given time. The project includes 12 onsite parking spaces. Six parking spaces will be dedicated (by signage posted on site) to on-site Roots employees and customers. Access will continue to be provided to the building from Santa Claus Lane. The property is a 0.33-acre parcel (APN 005-450-012) located at 3823 Santa Claus Lane that is zoned Limited Commercial (C-1).

The site has historically been utilized for various commercial retail businesses. According to the County, all existing on-site development was legally permitted and constructed in 1964 under County zoning and building permits (Land Use Riders #30680, #31541, and #65229). The other lease spaces within the existing building are currently occupied by an architect's office and by a retail clothing store. The existing commercial building currently has 13 associated parking spaces located in front of and to the rear of the building, but the parking area will be reconfigured to provide 12 parking spaces including 1 accessible van space on site.

The County's action on the CDP indicates that 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.

Background

On November 7, 2018, the Commission certified an amendment to the Implementation Plan/Coastal Zoning Ordinance (CZO) portion of the County's LCP, which added policies and provisions to allow for and regulate cannabis cultivation operations and retail in the coastal zone of the County. The amendment limited cannabis activities to appropriately zoned areas, and allowed outdoor, indoor, and mixed-light cannabis cultivation and nursery in agriculture zone districts. Further, the amendment allowed cannabis storefront retail as a principally permitted use with a CDP in the Limited Commercial (C-1) and Retail Commercial (C-2) Zone Districts, as long as the premises is not located within 750 feet from a school providing instruction in kindergarten or any grades one through 12, day care center, or youth center. The distance shall be the horizontal distance measured in a straight line from the property line of the lot on which the sensitive receptor is located to the premise, without regard to intervening structures.

As part of the County's 2018 proposed LCP amendment to allow for and regulate cannabis-related activities, the County had requested certification of a Cannabis Business License Ordinance that included definitions, requirements, and procedures for processing business licenses for commercial cannabis activities. However, there were a couple of inconsistencies between the Implementation Plan/Coastal Zoning Ordinance portion of the amendment and the proposed Business License Ordinance regarding definitions and cannabis cultivation limits. In addition, as proposed, the Business License Ordinance was proposed in a section of the County's Code outside of the certified LCP, and other than some of the definitions and a couple of cannabis cultivation limits, the Commission found that the Business License Ordinance pertains to local business issues and does not contain standards that would apply to coastal development permits. Therefore, in its action on the LCP amendment in 2018, the Commission approved Suggested Modifications to reconcile the two ordinances and to not certify the Business License Ordinance as part of this LCP amendment so that it is not the standard of review for coastal development permits and can be separately implemented by the County. The County agreed to the Commission-approved suggested modifications and the LCP amendment was certified on November 7, 2018.

Therefore, Cannabis Business Licenses are regulated pursuant to Chapter 50 of the County Code, which is not a part of the County's LCP and is separate from the land use entitlement process of the County's LCP. 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. Chapter 50 (b) of the County Code 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 (Chapter 50) regulating 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 the County's Planning and Development Department and a Cannabis Business License from the County's Executive Office. The dispensary approved by the County in the subject CDP was the highest ranked out of two applicants for the Toro Canyon Plan Area, with both applicants being located on Santa Claus Lane. After being selected, the applicant submitted a coastal development permit application to the County for the project on July 27, 2021.

Santa Claus Lane Setting and Background

Santa Claus Lane (Exhibit 2) is a popular area for beach users and surfers. Santa Claus Lane also has an approximately four-acre commercial area at the eastern end, and seaward side, of the road. The commercial area is comprised of mostly one and two-story commercial establishments. The approved project is located within a commercial lease space at the east end of Santa Claus Lane. The Lane is a frontage road between Highway 101 to the north and Union Pacific Railroad tracks and the Pacific shoreline to the south. The roadway configuration varies from two lanes with graded shoulders adjacent to the beach area at the western end, to two lanes with paved shoulders in the commercial area at the eastern end. Santa Claus Lane transitions to the southbound U.S. 101 on-ramp at the intersection with Spindrift Lane/Sand Point Road. A gated exclusive residential area, Sandyland Cove, is located to the east of Santa Claus Lane. Striped on-street parking exists adjacent to local businesses along the seaward side of Santa Claus Lane. Informal on-street parking exists throughout the landward side of the roadway, adjacent to the Highway 101 right-of-way. There is no formal parking along the beach area, but beach users typically park in the unpaved shoulders on both sides of Santa Claus Lane and walk to the sandy beach via numerous informal unmarked paths over the UPRR tracks. Some pedestrian sidewalks exist within the commercial area seaward of Santa Claus Lane, either within County road right-of-way or on private property along the building frontages.

The project area is located within the Toro Canyon Planning Area, so the policies and development standards contained in the Toro Canyon Plan (which is a component of the County's certified Land Use Plan) are applicable in this case. The Toro Canyon Plan states, in Section III.B.2.b, that "[p]ublic access for Toro Canyon's two miles of sandy beach frontage from Padaro and Santa Claus Lanes has been gradually obstructed by development of coastal properties" and that "[s]ubstantial informal (i.e. not dedicated/protected) public access occurs by crossing the Union Pacific Railroad tracks" and "climbing over large seawall rocks at the western end of Santa Claus Lane". The Toro Canyon Plan also describes Santa Claus Lane as an area that is "extensively

used by the public, although no official beach access easement exists” and where “[n]o crossing guards or signals exist to caution beach-goers of approaching trains, and traversing the seawall can be difficult”, and “limited informal roadside parking exists”. The Toro Canyon Plan states, in Section III.C.1.a, that, at Santa Claus Lane, “[o]n-street parking is available along most of the lane” and “formal perpendicular parking exists along the commercial property frontages, while informal parallel parking exists elsewhere along the roadway shoulders”. It explains that “[t]his parking serves commercial users, beach users, and truckers taking a rest break from Hwy. 101”, but that “[s]peed and turning movement conflicts can exist between vehicles entering and exiting the perpendicular parking spaces along the commercial strip and southeast-bound traffic accelerating for the freeway on-ramp, as previously described for the Sand Point Rd.-Casa Blanca access road”. Toro Canyon Plan Policies C-TC-1 and PRT-TC-1 require the County to “encourage and support reasonable development and viability of existing commercial areas through infrastructure and design improvements” and to “strive to provide new park facilities, increased beach access and new trails”. The LUP also specifies that “[i]ncreased opportunities for beach access shall be provided in the Carpinteria planning area” in LUP Policy 7-8.

On May 9, 2019, the Commission certified an amendment to the LUP and Implementation Plan/Coastal Zoning Ordinance (CZO) components of the County’s LCP, with regard to wetland, recreation, and access policies and provisions to allow for the development of a transportation improvement project, which includes construction of high occupancy vehicle (HOV) lanes along the U.S. Highway 101 corridor along the south coast of Santa Barbara County, between the City of Carpinteria and the City of Santa Barbara, and coastal access improvement projects. This LCP amendment added policies to the LUP for the Santa Claus Lane bikeway, beach access, and streetscape improvement projects, including LUP Policy 7-31, which requires specific projects to achieve regional improvements to alternative transportation modes for the purposes of increasing access to coastal resources for all members of the public, including the Santa Claus Lane Beach Access and Streetscape Improvements Project. The LCP amendment also added a new zoning overlay district (Transportation Corridor Wetland Overlay District) as Section 35-102H to the IP relating to wetlands and wetland buffers, coastal access, and recreation, which includes specific standards of development for the Highway 101: Carpinteria to Santa Barbara project, Santa Claus Lane Bikeway project, Santa Claus Lane Beach Access and Streetscape Improvements project.

On September 25, 2019, Santa Barbara County approved the Santa Claus Lane Beach Access and Streetscape Improvements project (County CDP No. 19CDP-00000-00066) that includes development of a pedestrian at-grade rail crossing and streetscape improvements along Santa Claus Lane to improve access to the beach, provide new recreational amenities to the public, increase multi-modal accessibility, and improve safety along Santa Claus Lane. The project is a mitigation measure of the Highway 101 HOV project that was approved in 2020 to provide enhanced public access to the coast and enhance alternative transportation. A public pedestrian at-grade rail crossing across the UPRR tracks to County-owned parcels on the beach (APNs 005-440-002 and 005-440-003) was approved to provide safe, legal, and single-point access to the beach. In addition, the approved streetscape improvements include reconstructing the entire

Santa Claus Lane roadway, while maintaining two 14-foot travel lanes, significantly increasing the number of public parking spaces, including the number of marked stalls, and installing a new short-term passenger loading zone in front of the rail crossing. The streetscape improvements include an approximately 500 square-foot restroom next to the proposed rail crossing, with rinse stations, benches, trash/recycling receptacles, and bicycle racks, as well as curbs and gutters and a new roundabout at the intersection of Santa Claus Lane, Spindrift Lane/Sand Point Road, and the U.S. 101 southbound on-ramp. The streetscape improvements also include a new multi-use path on the north side of Santa Claus Lane and a future connection to the Santa Claus Lane Bike Path project that will extend from Spindrift Lane/Sand Point Road to the City of Carpinteria. Other circulation improvements that were approved as part of the streetscape project include an ADA-compliant sidewalk and six pedestrian crosswalks.

The Santa Claus Lane Bike Path project by California Department of Transportation (Caltrans) and the Santa Barbara Association of Governments (SBCAG) was also recently approved by the County on August 3, 2022 (County CDP No. 21CDP-00000-00111). The project includes a 0.15-mile Class 1 paved bike path for the exclusive use of bicyclists and pedestrians extending from an existing bike path segment in the City of Carpinteria up to Santa Claus Lane to the west. The approved path will run along the southbound shoulder of Highway 101 and include a 4-ft. northbound lane and a 4-ft. southbound lane with a varied shoulder width of about 3 feet on each side. The project was identified as a mitigation measure of the Highway 101 HOV Widening project that was approved in 2020 to provide enhanced public access to the coast and provide a route for alternative transportation. The bike path will be a part of the California Coastal Trail (CCT).

With the implementation of the approved projects described above and implementation of the LUP policies related to them, coastal public access will be enhanced in the Santa Claus Lane area. However, since these approved streetscape and access improvement projects have not yet been constructed, the County appropriately analyzed the cannabis retail project relative to existing site conditions, as discussed below.

Public Correspondence

Correspondence received from members of the public before publication of the staff report is included in correspondence file for this item. These correspondences raise similar issues to those raised by the appeal that are addressed by the following sections of this staff report.

B. SUMMARY OF APPELLANT'S CONTENTIONS

The County's final action on the subject CDP was appealed to the Commission by Steven Kent and Nancy Rikalo on November 15, 2022 (Exhibit 6). The Appellants' grounds for appeal contend that the project is not consistent with the provisions of the certified LCP that relate to (1) cannabis retail use zoning and regulations and (2) coastal public access and recreation. Specifically, the Appellants assert that the County did not sufficiently analyze the project site's consistency with the purpose of the C-1 (Limited Commercial) Zone and failed to apply the standard in Section 35-144U of the CZO

which requires a 750 ft. buffer between a cannabis retail use and sensitive receptors. The Appellants also contend that the County failed to adequately analyze the project's consistency with Coastal Act and LCP policies regarding public access and lower-cost recreation (Coastal Act Sections 30212, 30213, and 30214; and Land Use Plan policies 1-1 through 1-4). The Appellants further assert that the County failed to adequately analyze changes to intensity of use from the existing commercial use of the site to the proposed commercial cannabis retail use, and failed to adequately analyze parking, traffic, circulation, and safety conflicts, with coastal access and recreation, in the project area. The Appellants' other contention is that the County failed to adequately analyze consistency with Coastal Act and LCP policies to protect Santa Claus Lane as an Existing Developed Rural Neighborhood or a unique community under Section 30253(e).

Furthermore, the appeal also contends that: (1) site selection through the County's Chapter 50 licensing analysis subverts and preempts the CDP review process, and failed to consider alternative sites; (2) the County's CEQA analysis was insufficient for the project; (3) the County failed to analyze the implications of what the Appellants assert were unpermitted changes to the interior of the structure for a temporary art gallery; (4) the proposed project would, according to the Appellants, serve primarily highway travelers and the County's decision would effectively re-zone the site back to highway commercial without an LCP amendment; (5) there were issues in how the County's process was handled that denied the Appellants and the public a fair hearing; (6) the County failed to adequately analyze the cumulative impacts of cannabis in the County and project area related to cultivation and other cannabis uses that lead to odors, traffic, and other impacts on public access areas; and (7) the County provides less protection from impacts of cannabis cultivation to existing developed rural neighborhood in the coastal zone than those in inland areas. However, these seven appeal claims do not point to the subject project's inconsistency with any specific policy or provision of the certified County of Santa Barbara LCP, or with the public access and recreation policies of the Coastal Act, and are therefore not valid grounds for appeal. Pursuant to Coastal Act Section 30603 (b)(1), the grounds for appeal are limited to an allegation that the appealable development does not conform to the standards set forth in the certified Local Coastal Program (LCP) or the public access policies set forth in the Coastal Act. Therefore, these seven assertions are not valid grounds of appeal.

See Exhibit 6 for the full text of the appeal.

C. ANALYSIS OF SUBSTANTIAL ISSUE

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for an appeal is whether a substantial issue exists with respect to the grounds raised by the appellant relative to the locally-approved project's conformity to the policies contained in the certified LCP or the public access policies of the Coastal Act. In this case, the appellant cited the County's LCP policies and provisions related to cannabis zoning and regulations and coastal access and recreation.

The Coastal Act requires that the Commission shall hear an appeal unless no substantial issue exists with respect to the grounds on which the appeal was filed under Section 30603. (§30625(b)(2).) Section 13115(c) of the Commission's regulations provides that the Commission may consider various factors when determining if a local action raises a significant issue, including but not limited to the following five factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and, where applicable, the public access and recreation provisions of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretation of its local coastal program; and
5. Whether the appeal raises only local issue as opposed to those of regional or statewide significance.

The Commission may, but need not, assign a particular weight to a factor.

In this case, the Commission determines that the appeal raises no substantial issue with regards to the grounds on which the appeal has been filed, as discussed below.

1. Cannabis Retail Use Zoning and Regulations

The Appellant asserts that the project, as approved by the County, does not conform to the following policies and provisions of the County's LCP related to cannabis retail use zoning and regulations. Specifically, the Appellants raise issues with respect to consistency with the purpose of the C-1 (Limited Commercial) Zone and with the standard in Section 35-144U of the CZO which requires a 750 ft. buffer between a cannabis retail use and sensitive receptors. Although not all of the policies and provisions of the LCP listed below were specifically identified in the appeal, they are related to the allegations identified in the appeal and pertain to the subject development.

Santa Barbara County Coastal Land Use Plan (LUP) Policy 1-1 states that all Chapter 3 policies of the Coastal Act have been incorporated in their entirety in the certified County Coastal Land Use Plan as guiding policies. In addition, LUP Policy 1-2 states that where policies within the LUP overlap, the policy which is the most protective of coastal resources shall take precedence.

Coastal Zoning Ordinance Section 35-77A.1 (C-1 Limited Commercial – Purpose and Intent) provides, in part:

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. This zone district allows diverse

uses, yet restricts the allowable uses to those that are also compatible with neighboring residential land uses in order to protect such uses from any negative impacts such as noise, odor, lighting, traffic, or degradation of visual aesthetic values.

Coastal Zoning Ordinance Section 35-77A.1 (C-1 Limited Commercial – Permitted uses) lists, as Permitted use type no. 13:

Cannabis, Retail, subject to the provisions of Section 35-144U.

Coastal Zoning Ordinance Section 35-144U (Cannabis Regulations), part B (Allowed uses and permit requirements), subpart 4 (Permit Requirements for commercial cannabis activities), provides, in part:

The below tables identifies the commercial cannabis land uses allowed by this Article in each zone, and the planning permit required to establish each use. The table provided for land uses that are:

- a. Allowed subject to compliance with all applicable provisions of this Article and subject to first obtaining a Coastal Development Permit in compliance with Section 35-169 (Coastal Development Permits) or a Land Use Permit in compliance with Section 35-178 (Land Use Permits) as applicable. Permitted uses are shown in the table as either “PP,” which denotes a Principal Permitted Use or “P,” which denotes a non-Principal Permitted Use.

...

The entry in the “Allowed Cannabis Uses and Permit Requirement by Zone” table referenced above (included as Exhibit 4), for “Retail” Land Use (under “Cannabis Retail”), for permit required by zone, for Zone C-1, is: “PP(2)”

Note (2) in the table, referenced by the “PP(2)” entry, states: The premises shall not be located within 750-feet from a school providing instruction in kindergarten or any grades one through 12, day care center, or youth center. The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the lot on which the sensitive receptor is located to the premise, without regard to intervening structures.

Coastal Zoning Ordinance Section 35-144U (Cannabis Regulations), part C (Specific use development standards), provides, in part:

All commercial cannabis activities shall comply with the following development standards specific to the applicable permit type.

...

6. Retail. No cannabis consumption, including, but not limited to, smoking, vaporizing or ingesting, shall be permitted on the premises of a retailer or microbusiness.

The subject cannabis retail use was approved in an existing commercial building located on a property zoned Limited Commercial (C-1). Section 35-77A.1 of the County's CZO states that the purpose of the Limited Commercial (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. This zone district allows diverse uses yet restricts the allowable uses to those that are also compatible with neighboring residential land uses in order to protect such uses from any negative impacts such as noise, odor, lighting, traffic, or degradation of visual aesthetic values. Permitted uses in this zone include retail stores, shops or establishments supplying commodities for travelers, as well as residents in a surrounding neighborhood, provided that such enterprises are conducted entirely within an enclosed building, such as bakeries, ice cream shops, grocery and liquor stores, hardware and appliance stores, clothing and shoe stores, sporting goods stores, pet shops, prescription pharmacies, florist shops, automobile accessory stores, garden supply stores and other similar uses. Service uses, restaurants and cafes, financial institutions, retail plant nurseries, overnight visitor-serving accommodations, and cannabis retail and testing uses are also permitted.

Cannabis retail is listed as a permitted use in Section 35-77A.1 of the County's CZO, pursuant to Section 35-144U of the CZO. The Definitions section of the CZO (Division 2) defines "Storefront Retail" for Cannabis as: "The retail sale and delivery of cannabis or cannabis products to customers, also referred to as a Storefront Retailer. A retailer shall operate from a licensed premise, which is a physical location from which commercial cannabis activities are conducted. A retailer's premise may be closed to the public. A Storefront retailer may also conduct some sales by delivery." Division 2 also defines "Permitted Use" as: "Uses that are listed within specific zone districts as permitted uses that may be allowed subject to obtaining the necessary approvals and permits as identified in the zone district and this Article."

Section 35-144U.B.4 of the CZO provides a table that designates Cannabis Retail as a Principal Permitted Use in the C-1 (Limited Commercial) zone. The table entry for Cannabis Retail in the C-1 zone also includes a note that specifies: "The premises shall not be located within 750-feet from a school providing instruction in kindergarten or any grades one through 12, day care center, or youth center. The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the lot on which the sensitive receptor is located to the premise, without regard to intervening structures." Section 35-144U.C of the CZO includes general commercial cannabis activities development standards, some of which are applicable to permits for retail uses, as well as specific standard for retail that "[n]o cannabis consumption, including, but not limited to, smoking, vaporizing or ingesting, shall be permitted on the premises of a retailer or microbusiness."

The Appellants assert that the County did not sufficiently analyze the project site's consistency with the purpose of the C-1 (Limited Commercial) Zone and misinterpreted

the term, “principally permitted use”, to mean that such a use could not be inconsistent with the LCP. The stated purpose of the C-1 Zone (Section 35-77A.1) is as follows:

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. This zone district allows diverse uses, yet restricts the allowable uses to those that are also compatible with neighboring residential land uses in order to protect such uses from any negative impacts such as noise, odor, lighting, traffic, or degradation of visual aesthetic values.

In order to carry out this purpose, the CZO designates parcels where such commercial uses have been determined to be appropriate and details the allowable uses that have been determined to be consistent with the intent of the zone. Cannabis retail is one of many commercial uses that are “Permitted Uses” (also known as “Principally Permitted Uses”) and therefore consistent with the purpose of the C-1 zone, pursuant to the certified LCP. This is not in question. It does not mean that approval of a particular cannabis retail use or any other Permitted Use is automatic. A Permitted Use is subject to the approval of a coastal development permit that is a discretionary permit (which means it can be approved, approved with conditions, or denied at the discretion of the County approval body). The standard of review for a coastal development permit is consistency with the policies and provisions of the LCP.

The Appellants further contend that the County failed to adequately analyze changes to intensity of use from converting the existing commercial use of the lease space to the proposed cannabis retail use (taking issue with treating it as a change from one C-1 retail use to another), and failed to take into account potential for higher circulation, traffic, and parking demand associated with the use in proximity to the highway and from lack of other cannabis retail sites in the region. The County did consider traffic analyses and increased demand from the proposed change to a cannabis retail use in their analysis, which will be discussed in greater detail within the Coastal Public Access and Recreation section below; however, this appeal contention takes issue with the County’s LCP standards for regulating and zoning cannabis uses rather than with the project’s consistency with specific LCP or Coastal Act policies. The County made the required findings for approval of this CDP based on substantial evidence, as discussed further below, and concluded that the project complies with all requirements of the CZO.

The Appellants also assert that the County failed to apply the standard in Section 35-144U of the CZO which requires a 750-foot buffer from sensitive receptors. The Appellants claim that the organization, Surf Happens, which has a headquarters building adjacent to the project site, approximately 29 feet to the west, should be characterized as a “youth center” because they claim that “Surf Happens has operated as a surf camp since at least 1998 as a de facto youth center” and that it “serves primarily children aged 5-17.” There have also been references to A-Frame Surf Shop throughout the County appeal process, which is also located less than 750 feet from the project site and also runs surf camps. The Appellants claim that the County developed administrative “criteria” for the definition of a “youth center” (without Coastal Commission review or inclusion in the LCP) for the specific purpose of excluding the

surf school from the definition and applied it in this case, ignoring direct evidence from the surf school owner.

The County's LCP does not define the term "youth center." However, the County's findings state that the term, "youth center," is defined by State Health and Safety Code Section 11353.1 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." The Appellants acknowledge this definition is applicable to the subject project, but they disagree with the interpretation of the definition by the County. The Appellants also argue that surf school programs conducted at the nearby beach, such as those provided by Surf Happens and A-Frame Surf Shop, should be considered sensitive receptors.

The County's findings state that, while there is some ambiguity in the definition about the meaning of "primarily used to host recreational or social activities for minors," County Planning and Development Staff consider the definition to apply to "Recreational facilities for minors (i.e., playgrounds, etc.)" and "[n]on- and for-profit organizations that are primarily dedicated to providing recreational and/or educational activities for minors...[e.g.] Boys and Girls club, Girls Inc., Girl Scouts, Boy Scouts, etc." The County also made findings that: "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 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." The County also made findings in their Board Agenda Letter that "[t]he retail locations on Santa Claus Lane are utilized for retail sales and/or rental of surf equipment, accessories, and clothing", "[b]oth 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," and "neither of the surf shops would be considered non-conforming as to use." The County concluded that since the surf schools do not meet the definition of a "youth center" and the public beach generally used by the surf schools is located in excess of 800 feet from the site, the cannabis retail use at the subject site may be allowed since it would not be located within 750 feet of a sensitive receptor pursuant to CZO Section 35-144U.

In addition to the above contentions, the Appellants made several appeal claims (related to cannabis retail use zoning and regulation) that generally fall into five appeal claim categories that are not related to LCP policies or provisions and are therefore not considered valid grounds for appeal. First, the Appellants claim that site selection through the County's Chapter 50 licensing analysis subverts and preempts the CDP review process, and failed to consider alternative sites. They also claim the County's site selection through their licensing process outside of the LCP rejected other feasible sites and state that it's determination to "select a site for the dispensary in a visitor-serving area adjacent to a public beach which attracts visitors and families of a range of incomes, disadvantaged communities, and people of color by the tens of thousands

annually, the County has also failed to consider environmental justice principles in its decision making, contrary to the intent of the Coastal Act.” As described above in background Section III.A of this report, Cannabis Business Licenses are regulated pursuant to Chapter 50 of the County Code, which is not a part of the County’s LCP and is separate from the land use entitlement process of the County’s LCP.

Second, the Appellants claim that the County’s CEQA analysis was insufficient for the project, claiming that the Programmatic Environmental Impact Report (PEIR) checklist used by the County was insufficient for the project and failed to recognize specific impacts of site location and unique characteristics of area and did not address public access and recreation policies of the Coastal Act. The County determined that the previously certified PEIR was adequate and no subsequent Environmental Impact Report or Negative Declaration was required pursuant to CEQA Guidelines Sections §15162 and 15168(c)(2). The County explained in their Board Agenda Letter that County 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, and that they prepared a written checklist 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.

Third, the Appellants claim the County failed to analyze the implications of what the Appellants assert were unpermitted changes to the interior of the subject structure for a temporary art gallery. The subject CDP approval, however, is for the proposed cannabis retail use and associated improvements, and is conditioned to comply with the approved project description and plans for this project. Fourth, the Appellants claim the proposed project would serve primarily highway travelers and the County’s decision would effectively re-zone the site back to highway commercial without an LCP amendment. The project site is zoned as C-1 (Limited Commercial) in the County’s certified LCP, which allows commercial uses that serve both the travelling public as well as the neighboring community. Fifth, the Appellants claim there were issues in how the County’s process was handled, by County staff and other parties involved, that denied the Appellants and the public fair hearings, including claims of issues with ex parte communications, false evidence, serial meetings, and process violations, as well as claims of inappropriate coordination between the Applicant’s representative, Dennis Bozanich, and the fact that he previously held a position as a County official and his involvement in the County’s decisions involving cannabis at that time.

However, these appeal claims do not point to the subject project’s inconsistency with any specific policy or provision of the certified County of Santa Barbara LCP, or with the public access and recreation policies of the Coastal Act, and are not valid grounds for appeal. Pursuant to Coastal Act Section 30603 (b)(1) and Section 35-182.6.4 of the County’s CZO, the grounds for appeal are limited to an allegation that the appealable development does not conform to the standards set forth in the certified LCP or the public access policies set forth in the Coastal Act. Rather than allege the development does not conform to LCP standards, these five claims instead take issue with the standards themselves, or with how the County’s CDP application, approval, and appeal

processes were handled for this project. Therefore, these claims should not be considered valid grounds for appeal.

The project, as approved by the County of Santa Barbara, conforms to the zoning and regulations related to cannabis retail. The subject project site is located in the C-1 Zone and Cannabis Retail is an allowable use in that zone. The County made a determination that the surf schools referenced by the Appellants do not meet the definition of a “youth center,” and therefore, the exception in Section 35-144U in the CZO for sensitive receptors would not apply in this case. The County’s approval adequately addressed the LCP policies related to cannabis retail as a commercial use. As such, the Commission finds that the Appellant’s contentions regarding cannabis zoning and regulation do not raise a substantial issue with respect to consistency with the relevant policies and provisions of the County’s certified LCP.

2. Coastal Public Access and Recreation

The Appellants assert that the project, as approved by the County, does not conform to the following Coastal Act and LCP policies related to public access and lower-cost recreation (Coastal Act Sections 20212, 20213, and 30214; and LUP policies 1-1 through 1-4), parking, traffic, circulation, safety conflicts, and policies to protect Santa Claus Lane as Existing Developed Rural Neighborhood or a unique community under Section 30253(e). Although not all of the policies and provisions of the LCP listed below were specifically identified in the appeal, they are related to the allegations identified in the appeal and pertain to the subject development.

Coastal Act Section 30210, as incorporated into the certified County of Santa Barbara LUP, in Section 3.7.1, states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Coastal Act Section 30211, as incorporated into the certified County of Santa Barbara LUP, in Section 3.7.1, states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Coastal Act Section 30212, as incorporated into the certified County of Santa Barbara LUP, in Section 3.7.1, states (in applicable part):

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: ... (2) adequate access exists nearby...

Coastal Act Section 30213, as incorporated into the certified County of Santa Barbara LUP, in Section 3.7.1, states:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Neither the commission nor any regional commission shall either: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low and moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

Coastal Act Section 30214, as incorporated into the certified County of Santa Barbara LUP, in Section 3.7.1, states:

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

(1) Topographic and geologic site characteristics.

(2) The capacity of the site to sustain use and at what level of intensity.

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

(4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.

(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.

(c) In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

Coastal Act Section 30252, as incorporated into the certified County of Santa Barbara LUP, in Section 3.2.1, states (in applicable part):

The location and amount of new development should maintain and enhance public access to the coast by... (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation...

Coastal Act Section 30253, as incorporated into the certified County of Santa Barbara LUP, states (in applicable part):

New development shall do all of the following:

....

(e) Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.

Santa Barbara County Land Use Plan Policy 2-6 provides, in part:

Prior to issuance of a development permit, the County shall make the finding, based on information provided by environmental documents, staff analysis, and the applicant, that adequate public or private services and resources (i.e., water, sewer, roads, etc.) are available to serve the proposed development. The applicant shall assume full responsibility for costs incurred in service extensions or improvements that are required as a result of the proposed project. Lack of available public or private services or resources shall be grounds for denial of the project or reduction in the density otherwise indicated in the land use plan.

Santa Barbara County Land Use Plan Policy 7-8 provides:

Increased opportunities for beach access shall be provided in the Carpinteria planning area.

Santa Barbara County Land Use Plan Policy 7-31 provides, in part:

To achieve regional improvements to alternative transportation modes for the purposes of increasing access to coastal resources for all members of the public, the following projects shall be required to enhance coastal access and non-motorized travel within the corridor:

...

- b. **Santa Claus Lane Beach Access and Streetscape Improvements Project**
– A public beach access and streetscape improvement project located within existing Caltrans and County right-of-ways, along Santa Claus Lane from South Padaro Lane to Sand Point Road. This project would provide safe, legal, and single-point public access across the railroad to the beach. This

project would also expand coastal access and enhance pedestrian and bicycle travel by completing a section of the California Coastal Trail. Development of the project would include a pedestrian at-grade rail crossing, additional beach parking, public restrooms, trash/recycle bins, bike racks, bike lanes, crosswalks, sidewalks, traffic calming measures, and landscaping. There are wetlands located within the limits of the project. This project shall be completed and open to the public no later than the completion of the adjacent phase of construction for the Highway 101: Carpinteria to Santa Barbara project.

...

Toro Canyon Plan Policy C-TC-1 provides:

The county shall encourage and support reasonable development and viability of existing commercial areas through infrastructure and design improvements.

Toro Canyon Plan Policy PRT-TC-1 provides:

The County shall strive to provide new park facilities, increased beach access and new trails.

Toro Canyon Plan Policy CIRC-TC-1 provides:

The County shall allow reasonable development of parcels within Toro Canyon while maintaining safe roadways and intersections that operate at acceptable levels of service.

Toro Canyon Plan Policy CIRC-TC-2 provides:

The County shall maintain a minimum Level of Service (LOS) B or better on classified roadways and intersections within Toro Canyon.

Toro Canyon Plan Policy CIRC-TC-3 provides:

A determination of project consistency with the standards and policies of the Toro Canyon Plan Circulation Section shall constitute a determination of consistency with Coastal Land Use Plan Policy 2-6 and the Land Use Element's Land Use Development Policy 4 with regard to roadway and intersection capacity.

Coastal Zoning Ordinance Section 35-77A.10 (C-1 Limited Commercial – Parking) provides:

As required in DIVISION 6, PARKING REGULATIONS, except that required parking spaces may be provided in publicly owned parking lots of legally constituted Parking Districts as long as the spaces provided are within a distance of no greater than 500 feet as measured along streets, not alleys, from the property line, subject to approval of the availability of the parking spaces by the Parking District Governing Board and the Director.

Coastal Zoning Ordinance Section 35-102H.1 (TCWO – Transportation Corridor Wetland Overlay District – Purpose and Intent) provides, in part:

The purpose of the Transportation Corridor Wetland Overlay (TCWO) district is to provide specific standards of development for the Highway 101: Carpinteria to Santa Barbara project, Santa Claus Lane Bikeway project, Santa Claus Lane Beach Access and Streetscape Improvements project...

Coastal Zoning Ordinance Section 35-110 (Required Number of Spaces: Commercial) in Division 6 (Parking Regulations) provides, in part:

3. Business and professional offices, such as banks, lawyers' offices, etc.:

One space per 300 square feet of gross floor area.

4. Retail business and general commercial: One space per 500 square feet of gross floor area.

A fundamental goal of the Coastal Act is to “maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone” (Coastal Act Section 30001.5, subd. (c)). To achieve this goal, both the Coastal Act and the County’s certified LCP set forth specific policies governing the provision of public access and recreational opportunities, and development along the coast. The Coastal Act, through Sections 30210, 30211, 30212, and 30213, as incorporated into the County’s certified LCP, prioritize the public’s right to access the shoreline and require the balanced provision of maximum public access as a component of new development, protection of lower cost visitor serving and recreational facilities, and management of access areas. Section 30211 specifically requires that development not interfere with the public’s right of access to the sea. Coastal Act Section 30252 states that “[t]he location and amount of new development should maintain and enhance public access to the coast by... providing adequate parking facilities”. Additionally, County LUP Policy 2-6 requires the County to make CDP findings that adequate public or private services and resources, including roads, are available to serve the proposed development. The Toro Canyon Plan also includes circulation policies that require the County to “allow reasonable development of parcels within Toro Canyon while maintaining safe roadways and intersections that operate at acceptable levels of service” and “maintain a minimum Level of Service (LOS) B or better on classified roadways and intersections within Toro Canyon.” Toro Canyon Policy CIRC-TC-3 also states that “[a] determination of project consistency with the standards and policies of the Toro Canyon Plan Circulation Section shall constitute a determination of consistency with Coastal Land Use Plan Policy 2-6... with regard to roadway and intersection capacity.”

Further, there are specific policies in the LUP and Toro Canyon Plan that emphasize the need to enhance public access to the coast in the Santa Claus Lane area and to ensure that new development does not adversely impact public access through impacts to traffic circulation or public parking (either through physical loss of parking area or the provision of insufficient off-street parking causing patrons or employees to use public on-street parking). Finally, the CZO provides minimum off-street parking requirements that must be provided for retail uses.

The Appellants contend that the County failed to apply adequate analysis of consistency with Coastal Act and LCP policies on public access and lower-cost recreation (Coastal Act Sections 30212, 30213, and 30214; and LUP policies 1-1 through 1-4) and assert that the County findings are not supported by substantial evidence. Finally, the appellants assert that the County failed to condition the permit to require implementation of mitigation measures to address conflicts with public access and recreation.

CZO Parking Standards

The appellants contend that the approved project is not consistent with the parking requirements of the LCP. The cannabis regulations of the Coastal Zoning Ordinance (Section 35-144U) do not include special parking requirements for cannabis retail uses. Similarly, the minimum parking requirements for commercial uses do not include a specific standard for cannabis retail use. Rather, the parking requirements for the subject commercial building, including the cannabis retail use default to the standards outlined in CZO Section 35-110. In applicable part, CZO Section 35-110 requires:

3. Business and professional offices, such as banks, lawyers' offices, etc.: One space per 300 square feet of gross floor area.
4. Retail business and general commercial: One space per 500 square feet of gross floor area.

The County's findings state that the number of approved off-street parking spaces on the project site will conform to the required number of parking spaces for the uses in the existing building, including the approved cannabis retail use, per the CZO standards: 12 parking spaces including 1 accessible van space on site. The County explained that existing parking spaces on the site (located behind, on the seaward side of the commercial building) are for customers and employees of the commercial/office building only and are not available to beachgoers, and therefore the cannabis retail operation is proposing to use parking spots that are not available for any other purpose. As such, the approved project will not result in physical loss of any public parking spaces.

The County findings state that on-site parking meets the parking requirements of CZO Section 35-110, which requires the entire existing commercial/office space to provide 12 parking spaces in total. This is based on the analysis presented in the "Site Transportation Demand Management Plan" (STDMP) provided as an attachment to, and referenced in, the County's final action Board Agenda Letter on the CDP, which breaks down the gross floor area for the structure, as modified for the proposed project. Based on a table provided in the STDMP and the project plans (information presented in table below), the existing 5,331 sq. ft. commercial structure would include the approved cannabis retail space of 3,546 sq. ft., an existing 1,069-square-foot vacant boutique retail space, an existing 135-square-foot miscellaneous office space, and an existing 581-square-foot architect's office. Thus, in total, based on a ratio of 500 square feet per retail parking space and 300 square feet per space for office space, 12 spaces are required for the total square footage of all existing and approved uses on-site, and 12 parking spaces are provided.

First Floor	Actual Square Footage	County Standard	Parking Spaces Required
Boutique Retail	1069 sq. ft.	per 500 sq. ft.	2.14
Office	135 sq. ft.	per 300 sq. ft.	0.45
Cannabis Retail	3,546 sq. ft.	per 500 sq. ft.	7.09
Second Floor			
Office	581 sq. ft.	per 300 sq. ft.	1.94
Total	5,331 sq. ft.		11.62

Condition 31 of the County’s CDP action 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. This will ensure that the necessary parking for the cannabis retail use is reserved for that use. The approved project does not include the use of off-site right-of-way parking along Santa Claus Lane to serve the project, and the County’s action did not rely on projected increases in parking spaces along Santa Claus Lane from the approved Santa Claus Lane Streetscape project discussed previously. 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 public parking for beach access, all required parking associated with the subject CDP will be provided on the subject commercial property rather than the public roadside parking areas.

Parking, Traffic and Circulation

The Appellants assert that the County failed to adequately analyze parking, traffic, circulation, and safety conflicts, with coastal access and recreation, in the project area. As part of this assertion, the Appellants disagree with the conclusions of parking studies submitted by the applicants, question whether the correct project description was used in determining the parking requirements, and contend that the County failed to consider projects like the Santa Claus Lane Streetscape project that they believe may magnify parking issues along Santa Claus lane in the future. The square footages of the commercial structure analyzed by the County in their calculation of the CZO parking requirements are accurate based on the project plans and the record. The Appellants also claim that the County improperly allowed the Applicants to "claim" spaces belonging to the UPRR. However, according to the County Board Agenda Letter, the County noted that “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;” however, subsequent parking studies were provided that did not rely on parking located within the UPRR lease area. The County included a condition in its final approval (No. 30: Lease Agreement), that states, in part: “This Coastal Development Permit is explicitly constrained by and approved contingent upon the Owner/Applicant maintaining a valid lease agreement with Union Pacific Railroad (UPRR) consistent with the existing lease agreement to be utilized for vehicle ingress and egress into parking spaces at the rear of the building by patrons of the cannabis retail dispensary.” While the proposed project

would use the area leased from UPRR for vehicle ingress and egress, all of the 12 required spots analyzed for the final approval are located on the project property.

The County's analysis regarding parking and traffic relative to the proposed project is based on a Traffic Study analysis by Nelson/Nygaard, dated February 2, 2022, as well as a "Site Transportation Demand Management Plan" (STDMP). The County made findings in the Board Agenda Letter that the February 2, 2022, Nelson/Nygaard Traffic Study analysis of level of service (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" and that "no unsafe situations were identified and no new traffic signal or major revisions to an existing traffic signal are required." The STDMP analyzed site access, parking supply (providing the calculations resulting in the 12 required spots described above), parking demand (based on hourly parking demand weekday and weekend for employees and customers, and discussed further below), and incentive plans (proposed for employees and customers to provide a series of measures to reduce traffic and parking overflow). 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. While these incentives are not required by special conditions of the subject CDP, they are proposed as part of the project description. Additionally, as limited by the STDMP and the project description, the cannabis retail store will have a maximum of five employees on site at any given time.

The Appellants provided two memos regarding transportation and parking issues at the site, prepared for them by Central Coast Transportation and Consulting (CCTC), dated March 29, and August 24, 2022. Both memos claim that there are inconsistencies and flaws with the analysis provided in the "Traffic and Transportation Analysis for 3823 Santa Claus Lane" document prepared for the Applicants by Nelson/Nygaard, dated February 2, 2022, as well as an earlier analysis document from Nelson/Nygaard, dated October 26, 2020 (staff notes that the County findings did not rely on this earlier report). The Appellants CCTC memo dated August 24, 2022, also includes their own parking demand estimate (based on Institute of Transportation Engineers, ITE, data) which resulted in a total parking demand estimate of 22 spaces for the site based on projected demands for the proposed use and existing uses at the subject commercial building. In contrast, the "Site Transportation Demand Management Plan" that the County considered (but was not referenced directly by the Appellants) also included a parking demand estimate table (based on ITE trip generation by hour data) that predicted the average parking spots used at peak weekday and weekend hours to be approximately 10 spaces. These demand estimates are useful for providing context of the potential parking demand for the proposed project site. In addition to the traffic and parking studies cited by the County in their approvals, the Appellants also reference a report by Associated Transportation Engineers (ATE), dated October 19, 2022 (provided to the County by the Applicants on October 26, 2022), that they have issues with. However, this report, submitted during the public comment period for the Board of Supervisors hearing, was not cited in the County's findings regarding the project's consistency with parking requirements, nor was it included as an attachment to the Board Agenda Letter.

While the traffic and parking conclusions provided in the reports commissioned by the Applicants and the Appellants differ, potentially resulting from different assumptions in the respective analyses, it was reasonable for the County to rely on the applicant's reports as well as the CZO parking standards. The County had substantial evidence to make findings that the commercial uses on site (including the approved cannabis retail project) provide adequate parking and will not adversely impact traffic or availability of public on-street parking in the area. As such, the approved project will not result in adverse impacts to coastal public access and recreation in the area. Additionally, it is reasonable to consider that the subject project site is not beach-fronting and is located at the east end of Santa Claus Lane, which is on the far end of the commercial area away from the public beach access point and would therefore be less likely to cause any conflicts with beach access parking from overflow of the designated parking spaces than establishments closer to that point. The County's PC Staff Report (as incorporated by reference in the Board Agenda Letter), states that the proposed project is not directly adjacent to the public access point and will not have direct impacts on public access to recreation on the beach." Ultimately, the LCP standard for parking requirements for the proposed project is CZO Section 35-110, which requires the entire existing commercial/office space to provide 12 parking spaces in total, which are provided by the approved project. The County made findings that the required 12 spaces are provided, and that 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, and requires assignment of a Permit Compliance Planner, who will conduct periodic inspections and respond to complaints.

Existing Developed Rural Neighborhood / Unique Community

The Appellants' other contention is that the County failed to recognize Santa Claus Lane as a unique community and to protect it as required by LCP policies that protect Existing Developed Rural Neighborhoods (EDRN) and Coastal Act Section 30253(e) that requires that new development protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses, where appropriate. While Santa Claus Lane may be a unique visitor-serving area, the LCP does not designate the area as a special community or neighborhood under the meaning of Coastal Act Section 30253(e) and does not specify its protection on that basis. The Toro Canyon Plan does include the project site within an EDRN (as shown on Figure 4) that encompasses all of the commercial and residential properties on the seaward side of Santa Claus Lane and Padaro Lane (within the boundaries of the Toro Canyon Plan area). However, the only policies in the Toro Canyon Plan regarding that designation relate to buffers for environmentally sensitive habitat areas and not to coastal access and recreation. County CZO Section 35-144U (Cannabis Regulations) does include specific requirements for commercial cannabis cultivation in EDRN, but there are no such requirements specific to cannabis retail, and are therefore not relevant to the proposed project.

The County LCP, including the Toro Canyon plan, includes specific policies related to the protection of the Santa Claus Lane area, as described above, for which the project was determined to be consistent with. The County made findings, in their Board Agenda

Letter, that the proposed project is consistent with the Toro Canyon Plan. The County made findings that “[t]he project is sited and designed to avoid impacts to the rural, natural, and agricultural environment as seen from public viewing places” and that, given the scope of the project (new use within an existing structure), “the scenic quality of the area will be preserved...”, as well as explaining that the CZO “prohibits cannabis cultivation within an EDRN, but Article II does not prohibit cannabis retail within EDRNs.” They also emphasize in that report, in responding to the Appellant’s issue raised in the appeal to the Planning Commission regarding Section 30253(e), that “the Proposed Project is a compatible use in the C-1 Zoning District and therefore will not create adverse impacts to the Santa Claus Lane area.”

Other Appeal Claims – Not Valid Grounds for Appeal

In addition to the above contentions, the Appellants made several other appeal claims (more related to coastal access and recreation than cannabis zoning and regulation) that are not considered valid grounds for appeal. The Appellants assert that the County failed to adequately analyze the cumulative impacts of cannabis in the County and project area related to cultivation and other cannabis uses that lead to odors, traffic, and other impacts on public access areas, and that the County provides less protection from impacts of cannabis cultivation to EDRNs in the coastal zone than those in inland areas. However, these appeal claims do not point to the subject project’s inconsistency with any specific policy or provisions of the certified County of Santa Barbara LCP, or with the public access and recreation policies of the Coastal Act. Pursuant to Coastal Act Section 30603 (b)(1) and Section 35-182.6.4 of the County’s CZO, the grounds for appeal are limited to an allegation that the appealable development does not conform to the standards set forth in the certified LCP or the public access policies set forth in the Coastal Act. They instead, take issue with either the standards, themselves, of the County’s certified LCP, with the site selection and licensing process (that is not part of the County’s LCP), or other projects that are not the subject of this appeal. Therefore, these claims should not be considered valid grounds for appeal.

Conclusion

The project, as approved by the County of Santa Barbara, is not expected to result in adverse impacts to coastal access and recreation in the area, and conforms with the County’s LCP regulations related to parking and circulation. The subject project includes the construction of tenant improvements with minor exterior structure and landscaping modifications and establishment of a new cannabis retail use, resulting in the conversion of one type of retail use to another. Adequate coastal access exists nearby and the proposed project will not directly interfere with the provision of maximum access in the area. The proposed on-site parking meets the parking requirements of CZO Section 35-110, which requires the entire existing commercial/office space, with the approved cannabis retail space, to provide 12 parking spaces in total. The approved development will not physically impact existing public access parking and the provision of sufficient off-street parking will avoid the use of public on-street parking by patrons or employees. The County’s approval includes a condition that 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 County also determined that the proposed project will not result in the generation of additional vehicular movement which will negatively impact existing traffic load and capacity of the street system, nor will it create adverse impacts to the Santa Claus Lane area. The County's approval adequately addressed coastal access and recreation policies of the LCP and the Coastal Act. As such, the Commission finds that the Appellant's contentions regarding coastal access and recreation do not raise a substantial issue with respect to consistency with the relevant policies and provisions of the County's certified LCP and the Coastal Act.

3. Factors Considered in Substantial Issue Analysis

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for an appeal is whether a substantial issue exists with respect to the grounds raised by the appellant relative to the locally-approved project's conformity to the policies contained in the certified LCP or the public access policies of the Coastal Act. In this case, the appellant cited policies contained in both the certified County of Santa Barbara LCP and the Coastal Act as grounds for appeal.

The Coastal Act requires that the Commission shall hear an appeal de novo unless no substantial issue exists with respect to the grounds on which the appeal was filed under Section 30603. (§30625(b)(2).) Section 13115(c) of the Commission's regulations provides that the Commission may consider various factors when determining if a local action raises a significant issue, including but not limited to the following five factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and, where applicable, the public access and recreation provisions of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretation of its local coastal program; and
5. Whether the appeal raises only local issues as opposed to those of regional or statewide significance.

The Commission may, but need not, assign a particular weight to a factor. In this case, the Commission determines that the appeal raises no substantial issue with regards to the grounds on which the appeal has been filed, as discussed below.

The first factor in evaluating whether the appeal raises a substantial issue is the degree of factual and legal support for the local government's decision that the development is consistent with the subject provisions of the Coastal Act and certified LCP. In this case, as discussed in detail above, the Commission finds that the County had substantial factual support for its conclusion that the proposed project is consistent with all of the applicable policies and provisions of the certified LCP and the public access policies of the Coastal Act. This factor weighs heavily against finding substantial issue.

The second factor is the extent and scope of the development as approved. As described above, the scope of the approved development includes the construction of tenant improvements with minor exterior structure and landscaping modifications and establishment of a new cannabis retail use, resulting in the conversion of one type of retail use to another. The approved project only applies to the subject 0.33-acre property, which is zoned as C-1 (Limited Commercial), for which cannabis retail is an allowed use. The approved project meets the parking requirements of the County's CZO and will not result in adverse impacts to traffic, circulation, or public beach access in the area. Therefore, the Commission finds that the extent and scope of development is not significant and weighs against finding substantial issue.

The third factor is the significance of coastal resources affected by the decision. Coastal public access and recreation are significant coastal resources that are protected under the County's LCP and the Coastal Act. However, as described in detail above, the County correctly found that the proposed project will not result in adverse impacts to traffic, circulation, or public beach access in the area. While coastal access and recreation are considered significant coastal resources, since they will not be affected by the project, this factor weighs against finding substantial issue.

The fourth factor is the precedential value of the local government's decision for the future interpretation of its LCP. In this case, the Commission finds that the County applied its LCP policies correctly in finding that the project is consistent with the policies of the LCP with respect to the grounds of the appeal. As such, the County's decision will have no adverse precedential value for future CDP decisions, and this factor weighs against finding substantial issue.

The final factor is whether the appeal raises issues of regional or statewide significance. This project is for a local cannabis retail store, is consistent with the policies and provisions of the LCP, will not result in any adverse impacts to significant coastal resources, and does not raise regional or statewide issues, much less significant ones. Thus, this factor also weighs against finding substantial issue.

In conclusion, the Commission finds that none of the factors listed above, used to evaluate whether a substantial issue exists, favors a finding that a substantial issue exists. For the reasons discussed above, the Commission finds that the appeal raises no substantial issue with respect to the consistency of the approved development with the policies of the County's certified LCP.