MEYER BLOCK
WINELAWYERS

April 2, 2018

Jeffrey M. Brax
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Sonoma County
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Re: Ministerial Cannabis Permit Applications

Dear Mr. Brax:

I represent No Pot on Purvine, a group of local residents alarmed by the burgeoning number of applications for cannabis permits being filed in Sonoma County. Commercial growers' rush to obtain ministerial permits is especially disturbing, given that the County issues such permits without notice, a hearing, a right of appeal, or environmental review.

## A. Introduction

My clients have two concerns about the way Sonoma County processes ministerial permits under its Cannabis Ordinance.

The first arises when the same applicant seeks ministerial and discretionary permits for the same site at the same time. A County planner advises that this is common practice among growers, because obtaining a ministerial permit from the Agricultural Commissioner is "much faster" than obtaining a use permit from PRMD. Granting ministerial approval to the smaller project under these circumstances would, in my view, constitute piecemealing.

A second issue occurs when multiple applicants file multiple ministerial permit applications simultaneously for the same parcel. This is authorized by the Cannabis Ordinance for "multi-tenant operations" (26-88-254(f)), the meaning of which is unclear, but gives rise to two concerns.

First, insofar as the applicants are acting in concert, they are proposing a single project which they are segmenting into smaller pieces to avoid CEQA review. There is already evidence of misleading "multi-tenant" applications being filed in an effort to game the system.

Second, even if the applicants are not acting in concert, the applications' cumulative impacts must be considered under CEQA. Since the total area proposed for cultivation would require a use permit in the case of a single applicant, to approve five ministerial applications for the same area would be piecemealing.

B. 334 Purvine Road

On August 16, 2017, Sam Magruder and Petaluma Hills Farm, LLC ("Applicant") filed a discretionary use permit application with PRMD, seeking approval for a 32,000 square-foot commercial grow at 334 Purvine Road, later expanded to 42,560 square feet (UPC 17-00020). In March 2018, the Applicant filed a ministerial permit application with the Department of Agriculture for a 10,000 square-foot grow on the same parcel (APC 18-0004).

Upon deeming the ministerial application complete, the County will be required to conduct a preliminary review to determine whether the proposed activity is a "project" for purposes of CEQA (CEQA Guidelines § 15060(c).) "Project" means the whole of an action which may impact the environment. (CEQA Guidelines § 15378.) The term refers to the underlying activity, not to the particular approval being sought, and must be interpreted broadly to provide the fullest possible protection to the environment (*Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263, 274.)

This expansive definition ensures that agencies do not review applications with blinders on. CEQA does not allow the County to grant ministerial approval to APC 18-0004 while ignoring the larger picture. The County knows the same Applicant has filed two applications to conduct the same activity on the same parcel. It knows the Applicant has submitted the same plans and technical reports in support of both applications. Therefore, the County knows of the Applicant's plan to expand his small grow into a large one. It cannot look the other way.

The courts have invalidated similar attempts to segment ministerial and discretionary applications. In *Orinda Assn v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1172, for example, the court invalidated a county's ministerial approval of a demolition permit

while a discretionary application for a mixed-use development by the same developer on the same site was pending. Viewed in isolation, the court held, the demolition permit was ministerial. In context, its was the first phase of a larger, discretionary project. (*Id*. at 1172-73.)

Context also mattered in *Coffee Lane Alliance v. County of Sonoma* 2007 WL 185478. There, DuMol Wine Company obtained ministerial well, grading and encroachment permits to plant a vineyard, while informing neighbors that it also planned to build a winery. The neighbors challenged issuance of the ministerial permits on grounds of piecemealing, asserting that the vineyard and winery were part of a single project.

The court disagreed because, it held, construction of the winery was not a reasonably foreseeable extension of the vineyard. It emphasized that DuMol had not filed an application for a winery use permit, meaning that the winery was "but a gleam in DuMol's eye . . ." Because the ministerial permits were consistent with a vineyard-only project, no purpose would be served, the court reasoned, by conducting environmental review of those permits in conjunction with a winery that may never be built.

Unlike the DuMol winery, the expanded Purvine Road project is more than a gleam in the Applicant's eye. It is a planned and entirely foreseeable extension of the smaller project. For the County to ignore the relationship between the ministerial and discretionary applications would elevate form over substance. CEQA demands substance over form.

That environmental analysis of the larger project will occur *after* the smaller project is approved is legally insufficient. CEQA requires that environmental effects be considered at the earliest possible stage of an undertaking, *before* any part of it is approved. Agencies should refrain from taking any action "which gives impetus to a planned or foreseeable project in a manner that forecloses alternatives or mitigation measures . . ." (CEQA Guidelines § 15004(b).)

Approval of the smaller grow on Purvine Road would constrain the County's ability to condition or change the larger one. Once in operation, the smaller grow will also skew the baseline for evaluating the larger project's impacts. The two applications are phase I and phase II of a single cannabis cultivation venture. For the County to approve phase I, knowing phase II about to follow, would condone piecemealing.

C. 3977 Adobe Road

Of equal concern is the County's decision to process five pending ministerial permit applications for commercial cannabis cultivation at 3977 Adobe Road (APC17-0012, 0023, 0024, 0025 and 0026).

Under the Cannabis Ordinance, the County may ministerially approve multiple zoning permits on a single parcel for "multi-tenant operations" (26-88-254(f)), provided the combined area proposed for cultivation does not exceed the maximum allowed with a use permit (43,560 square feet outdoor and 22,000 square feet indoor or mixed light per parcel).

The maximum outdoor grow allowed under any single zoning permit is 10,000 square feet. The Adobe Road applications propose to cultivate a total of 43,100 square feet. A single application for a grow of that size would require a discretionary use permit. If that one application is split into five applications, however, the Cannabis Ordinance entitles the County to grant ministerial approval, without due process or CEQA review. That is form over substance.

Applicants are already looking to exploit this gaping hole in the County's regulatory framework. On Adobe Road, for example, public records suggest that the corporate applicant (Moss Ranch, Inc.) and one of the individual applicants (Carla Lynn Ericson) are alter egos. If so, their separate ministerial applications are really a single discretionary application for a 19,600 square-foot grow, and splitting the application into two pieces is an improper attempt to evade the use permit review process.

The County should investigate the relationship among the remaining Adobe Road applicants. If they are in fact partners, joint venturers, alter egos, or are otherwise acting in concert, all five applications constitute a single discretionary project, which may not be chopped into ministerial pieces.

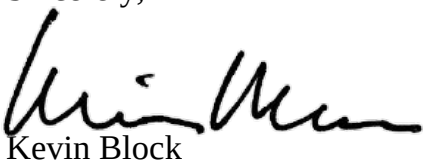
Even if the Adobe Road applicants are genuinely independent of one another, CEQA requires that the impact of their combined activities be considered. Calling the permits ministerial does not entitle the County to ignore their cumulative effects. (See *Planning Arviv Enterprises, Inc. v. South Valley Area Commission* (2002) 101 Cal.App.4th 1333, 1346-1347.)

D. Conclusion

In the Purvine Road case, the Applicant hopes to secure quick approval of a 10,000 square-foot grow free from environmental analysis and public input. Its aim is to make cannabis cultivation a *fait accompli* in my clients' neighborhood in advance of the larger project's use permit hearing. In the Adobe Road case, planned or not, the upshot will be ministerial approval of a 43,100 square-foot grow, again without public scrutiny or analysis of environmental impacts.

I respectfully request that the County refrain from issuing ministerial permits in either case, and in similar cases, until the applications have undergone CEQA review. The County should treat ministerial and discretionary applications pending at the same time for the same parcel as a single project subject to CEQA, and should do the same for all "multi-tenant" applications if the combined area proposed for cultivation exceeds the maximum allowed by a single ministerial permit.

Sincerely,



Kevin Block

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