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VIA E-MAIL ONLY

Alia Vosburg, Planner
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Joe Dargel, Supervising Planner
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Re: 1385 Anderson Lane (APN 065-250-031); Application of Heritage Enterprises
(Sea View Farms) to Cultivate Cannabis (Application No. 21 CDH-00000 00020)

Dear Ms. Alia Vosburg and Mr. Joe Dargel:

This firm has been retained by a group of homeowners on Dorwin Lane, Anderson Lane, and More Ranch Road in Santa Barbara County to take all actions necessary to oppose the subject-application to cultivate cannabis at 1385 Anderson Lane, Santa Barbara, California 93111, commonly known as Sea View Farms, (APN 065-250-031) (the "Property") and to ensure the application undergoes the appropriate review process with the benefit of robust public engagement.

As discussed below, the current permit process for the Project and the Project itself raises serious concerns.

1. **The Planning and Development Department's Initial Determination to Require Development Plan Approval**

On March 7, 2019, the Property owners (the "Applicants") filed a Santa Barbara County development application to permit a mixed-light cannabis cultivation project (initially, Application No. 19CDH-00000-00011) at the Property (the "Project"). After an initial review of the Project proposal by the assigned County planner, Jackie Campbell, the Santa Barbara County Department of Planning and Development (the "Planning and Development Department") determined that the Project necessarily involved a significant amount of new construction. This included, in part, construction to reuse the seventy (70) plus year-old wood and fiberglass greenhouse shells; construction of new employee work, break, and restroom areas; and construction of a new septic system in order to replace and update the existing, unpermitted, and inadequate wastewater disposal system. Consequently, the Planning and Development Department required the Applicants to withdraw their "CDH" application (19DVP 00000-00011) and to submit a "Development Plan" application for the Project (19DVP-00000-00035).

It is our understanding that the Planning and Development Department determined that a Development Plan was required for this Project pursuant to Section 35-68.3, subparagraph No. 5, and section 35-169.2, subdivision (2), of the Santa Barbara County Coastal Zone Ordinance (the "CZO"). As discussed in greater detail in Section 3, below, there is no question that this Project falls within the scope of the CZO requirement for the submission of a Development Plan and the review of that Development Plan by the County Planning Commission. The Applicants submitted a Development Plan application on October 23, 2019.

In response to the 19DVP-00000-00035 Development Plan application, the Planning and Development Department sent the Applicants a comprehensive "incompleteness" letter dated November 26, 2019, authored by the then-assigned County planner, Stephen Peterson. Among other things, the letter outlined the need for the Applicants to submit permit applications for both illegal, unpermitted septic systems on the Property. The letter also discussed the need for the Applicants to meet with the County Fire Department to set up a site visit and provide the Fire Department an opportunity to address fire safety issues, such as those relating to the long and narrow private access to the Property.

Nonetheless, in May 2021, after the Applicants retained the formerly-assigned Planning and Development Department planner, Stephen Peterson, in a private capacity, the Planning and Development Department impetuously changed course. In direct contradiction to the incompleteness letter and the realities of the Project, it determined that a Coastal Development Permit (in the form of CDH review of the Project by the Zoning Administrator) was satisfactory without the approval of a Development Plan. Thereafter, the Applicants submitted the pending application (Application No. 21CDH-00000-00020).

The scope of the Project as proposed in October 2019 and the scope of the Project as proposed in May 2021, however, are the same. Although the scope has not changed, the Planning and Development Department is discrediting its initial determination to require a Development Plan in order to address substantial land use concerns with the Project. As discussed below, Development Plan review and approval is appropriate and necessary for the Project.

2. **The Scope of the Project Ignores the Realities of the Project and the Current Condition of the Property**

The Planning and Development Department's justification that the Project merely amounts to "normal repair and maintenance" ignores the realities of the Project and the current state of the Property. It also makes one wonder why the County desires to minimize the nature of the Project and lessen the standard of review and the CZO findings necessary for Project approval. This is particularly curious considering the project is located within the Coastal Commission's appeal jurisdiction and the findings required specifically for such locations.

The Planning and Development Department's statement that the Project "is limited to use of an existing, legal non-conforming greenhouse and normal repair and maintenance of said greenhouse" (Application Incompleteness Letter, p. 3) is grossly misguided. The proposed Project is not limited to the use of existing, legal non-conforming greenhouses. As previously mentioned, the scope of the Project includes, in part, the construction of new employee work, break, and restroom areas; the installation of three (3) 20,000-gallon water storage tanks; the construction of an up-to-date septic system; and the demolition of nine (9) structures. It is unclear how a Project with such a scope could be "limited to the use of an existing, legal non-conforming greenhouse."

It is equally unclear how installation and reconstruction of utilities, the demolition of structures, and the construction of new employee areas could qualify as "normal repair and maintenance" by the terms' generally understood meanings or as the terms are used in the California Building Code (Cal. Code Regs., Title 24) as adopted by Chapter 10 of the Santa Barbara County Code of Ordinances. "Normal repair and maintenance" may include cleaning parts that show deterioration; checking, testing, and replacing safety equipment; or checking for and replacing damaged utilities like light bulbs. Demolishing nine (9) structures; constructing an employee breakroom and restrooms; installing water storage tanks; and upgrading an illegal, unpermitted septic system does not qualify as "normal repair and maintenance." (See California Building Code, Chapter 2, Definitions.)

Similarly misguided is the Planning and Development Department's statement that "[t]he greenhouse will undergo "... no structural alterations or improvements [] under the scope of the Project." Chapter 2 of the California Building code is illustrative. "Alteration" is defined as follows:

Any construction or renovation to an existing structure other than repair or addition. [] A change, addition or modification in construction, change in occupancy or use, or structural repair to an existing building or facility. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, resurfacing of circulation paths or vehicular ways, changes or rearrangement of the structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.

First, use of the existing, dilapidated greenhouses will require extensive rehabilitation, renovation, and reconstruction. Moreover, converting an illegal, unpermitted residence into an employee breakroom and restrooms in conformity with the California Building and Fire Codes will require implementing structural alterations, structural repair, and improvements. Such a conversion, from residence to employee spaces, also constitutes a change in use.

Further, the construction and improvements required to convert the unpermitted residence into employee areas would need to comply with the occupancy standards set out in the California Building Code. The current standards must vastly differ from those in place, if any, when the existing structures—flimsy wood and fiberglass sheds—were constructed and/or allowed within the County nearly seventy (70) years ago. We find it likely that the implementation of such heightened occupancy standards will require structural alterations and improvements. Lastly, by upgrading the existing, unpermitted septic system to Environmental Health and Safety standards and installing three (3) new water storage tanks, the Applicants are, by the nature of the work, making improvements to the existing greenhouse.

The Planning and Development Department’s minimization of the scope for the Project—characterizing alterations and improvement as “normal repair and maintenance”—also ignores the realities of the condition of the Property and the greenhouse where the improvements will be made. Time has taken a toll on the Property and the existing greenhouses. The enclosed photographs of the greenhouses and the Property show their condition as of January 2022. Moreover, it is our understanding that agricultural pollution and illegal wastewater discharges are a common occurrence at the Property. The enclosed photographs depicting environmental pollution at the Property have previously been provided to the Planning and Development Department.

“Normal maintenance and repair” will not prevent illegal discharges and the resulting pollution in the future, or ensure compliance with water quality regulations. We intend to make this known the State Water Resources Control Board and the Central Coast Regional Water Quality Control Board. This is particularly concerning given that the Property is in close

proximity to the Atascadero Creek Greenway, the Pacific Ocean, and multiple Environmentally Sensitive Habitats (“ESH”), such as the ESH along the Atascadero Creek Greenway and the ESH located on the northern portion of the parcel neighboring the Property to the east (APN 065-250-044).

Similarly, “normal maintenance and repair” will not prevent odors generated as a result of the Project from negatively impacting the neighboring residential zones. Nor will “normal repair and maintenance” ensure the structures on the Property, including the proposed new employee spaces, comply with California Building and Fire codes. The enclosed photographs of the greenhouses speak for themselves.

Ultimately, completing the Project requires full-scale construction. The Planning and Development Department’s characterization of this Project as “normal repair and maintenance” runs contrary to the facts of this Project.

3. The Coastal Zoning Ordinance Requires a Development Plan for the Project

Setting aside the contradictions contained in the scope for the Project and the Planning and Development Department’s attempts to minimize the nature of the Project, the Project satisfies the criteria under Article II, Coastal Zoning Ordinance, to require a Development Plan. Article II, section 35-169.2, subdivision (2), requires the approval of a Development Plan prior to the approval of any Coastal Development Permit for a structure that is not otherwise required to have a discretionary permit where either:

- the structure is 20,000 or more square feet in gross floor area; or
- the structure is an attached or detached addition that, together with existing structures on the lot will total 20,000 square feet or more of gross floor area.¹

As a preliminary matter, mixed-light cultivation in the AG-I zone, as is proposed here, requires a Coastal Development Permit. Moreover, it is our understanding that aside from a Coastal Development Permit, the Applicants will not “otherwise [be] required to have a discretionary permit.” Additionally, the Project is seeking approval to, in part, cultivate cannabis in a 141,100 square foot structure. Thus, the Coastal Development Permit is for a structure that is 20,000 square feet or more in gross floor area.

Furthermore, Section 35-169.2 fundamentally requires the Planning and Development Department to consider the scope of the proposed project within the context of the entire

¹ Recognizing there is an accessory dwelling unit exception to this requirement, it does not apply to the Project.

property (i.e., within the context of all pre-existing structures at the subject-property which will remain as part of a project and structures that will be added to the subject-property).

The current Project description includes the reuse of over 140,000 square feet of existing greenhouse structures and includes several “additions” to the Property, including: (1) a 545 square foot employee breakroom and restroom; (2) installation of three (3) 20,000- gallon water storage tanks; and (3) a new up-to-date septic system. These additions bring the Project within the ambit of Section 35-169.2, subdivision (2)(a), because such additions, together with the existing greenhouse, will total 20,000 square feet or more of gross floor area.

Notably, Article II, section 35-169.2, does not establish an exception for “normal repair and maintenance” projects. As a result, there appears to be no question that this Project falls well within the scope of the CZO requirement for the submission of a Development Plan and the review of that Development Plan by the County Planning Commission.

4. **The Project is Subject to the California Environmental Quality Act**

Regardless of the County’s determination regarding a Development Plan, the Project is subject to the California Environmental Quality Act (“CEQA”) which, at the very least, mandates that the County prepare an Initial Study for this proposed Project. The Project may, and likely will, result in direct and reasonably foreseeable indirect physical changes in the environment. Further, the Project does not qualify for a statutory or categorical exemption. Any determination to the contrary will be challenged by all legal means.

Thus, at a minimum, the County must prepare an Initial Study. We find it likely, in part considering the potential impact of operating a private septic system in close proximity to a coastal bluff, the Atascadero Creek Greenway, and Environmentally Sensitive Habitats; the foreseeable light, noise, water, and air pollution; and increased commercial traffic along Anderson Lane and Shoreline Drive, the County will conclude the Project has the potential to have a significant effect on the environment.

We intend to closely monitor the County’s CEQA process for the Project to ensure the Project’s environmental review is not unjustifiably minimalized.

5. **The Project Will Negatively Impact the Community and Nearby Residential Zones**

Based on the scope of the Project, our clients have grave concerns about the likelihood the Project will cause a significant negative effect on the nearby residences. It is important to recognize that there are approximately eighteen (18) private residences in close proximity to the Project, all of which are located within the Coastal Commission’s appeal jurisdiction, and many of which are isolated on a Residential Zone (20-R-1) “island.” Our clients’ concerns about the

Project are obvious and significant. Those concerns include, but are not limited to, the following²:

- Traffic safety and congestion: The Project will necessarily create a large commercial operation that will occur continuously throughout the year, seven days a week, from 10:00 AM to 8:00 PM. The additional daily employees, the introduction of security personnel, the transportation of cannabis waste by a third-party licensed transporter, and the transportation of cultivated product will significantly increase the use of Anderson Lane and Shoreline Drive. Anderson Lane is narrow, and the only means by which our clients can access their residences. Such amplified use, and the use of Anderson Lane by cannabis and waste haulers or delivery trucks, will increase the risk of vehicle-vehicle and vehicle-pedestrian collisions. This risk of collision will worsen in the winter months when the sun sets at approximately 5:00 PM, but operations at the Property continue for another three (3) hours.
- Odor: The Project will inevitably produce noxious odors. As seen in the South County, odor control is not effective. Permitting a commercial cannabis cultivation operation in close proximity to residential neighborhoods will inevitably result in numerous complaints and lawsuits. Moreover, missing from the Project's odor abatement proposal is the manner in which odor complaints can be lodged with the operators or the manner in which the operators will rapidly respond to such odor complaints.
- Lighting: Based on the Project's scope, nighttime security lighting will be installed on the exterior of the greenhouse. Although not contemplated in the current Project proposal, extensive lighting will also be required for operations to continue after 5:00 PM in the winter. The nearby residents should not be subjected to bright lights during the night. To that end, the proposed landscaping along the eastern and northeastern Property lines will not benefit residences located to the south of the Property.
- Neighborhood compatibility: Forcing a large-scale commercial operation into this neighborhood would be out of proportion to the long-standing character of the neighborhood, which is largely comprised of smaller operations. By contrast, all prior uses of the Property have been minimal and intermittent at best.
- Noise: The Property is located in a quiet neighborhood, and noise travels far. It is likely that the operations at the Property will result in undesirable noise.

² Our clients reserve their right to comment upon any other circumstances of the Project based on presently-unknown details.

- Security: Establishing any kind of a large-scale cannabis operation will cause a significant increase in public notoriety of the neighborhood. Such increased exposure would tend to increase the prospect of criminal activity.

We urge you to reconsider the permit process for the Project and give the Project the comprehensive review it deserves. You can be sure that regardless of the permit process the County utilizes, this firm will be actively involved in ensuring our clients' legitimate concerns are fully evaluated and considered by the public decision makers. Ultimately, we strongly believe Project approval should be denied. Depending on the ultimate outcome, our clients may have additional rights of legal action based on the existence of a public and/or private nuisance.

While we have met with Ms. Vosburg in the past, in an effort to avoid a protracted appeal process and/or litigation, we would welcome a meeting to discuss the Project and the contents of this letter. Thank you for your attention to this matter.

Very truly yours,



Mark Manion
for PRICE, POSTEL & PARMA LLP

CC: Chairperson Bob Nelson (bob.nelson@countyofsb.org); Supervisor Das Williams (dwilliams@countyofsb.org); Supervisor Gregg Hart (ghart@countyofsb.org); Supervisor Joan Hartmann (jhartmann@countyofsb.org); Supervisor Steve Lavagnino (steve.lavagnino@countyofsb.org); Clients

















