



November 24, 2021

Via Email

Santa Barbara County Board of Supervisors
123 E. Anapamu Street
Santa Barbara, California 93101

Re: **Appeal of Planning Commission Approval**
Canna Rios LLC - Outdoor Cannabis Cultivation (19LUP-00000-00116)

Dear Chair Nelson and Honorable Supervisors,

My name is John H. Haan, Jr. and I am a partner at Rogers, Sheffield & Campbell, LLP. Our law firm, along with the Law Office of Courtney E. Taylor, represents the interests of West Bay Company, LLC, RTV Winery, LLC, and Bien Nacido Vineyards, L.P. regarding their appeal of the Planning Commission's approval of 19LUP-00000-00116, a Land Use Permit for an outdoor cannabis cultivation operation located at 4651 Santa Maria Mesa Road in Santa Maria (APN 129-040-010) (the "Project"). While the Board of Supervisors' hearing on my clients' appeal is not until December 14, 2021, there is a specific issue related to the Project that I want to bring to the attention of the Board of Supervisors and County Counsel, which we do not feel was adequately addressed at the Planning Commission hearing. Specifically, the issue relates to the definition of "trimming" in the California Code of Regulations and Santa Barbara County Land Use and Development Code ("LUDC"). At the Planning Commission appeal hearing for the Project on May 5, 2021, the Applicant was asked what constitutes trimming, and the Applicant provided the following explanation of how it will harvest the proposed cannabis plants:¹

We do the same thing with cannabis. We go uh to 20 days before, and we start taking some of the leaves off, it causes air to go in and to the plant, it gives the plant a little healthier structure, and then we go in 10 days before, we do it again, and then toward the end we take the colas that we don't think that are any good, and we'll try and move them to the side in the plant, so when we are harvesting, we are just harvesting colas and we're done.

At the hearing, Applicant's counsel went on to state that the legal definition of "trimming", as it relates to "processing", only applies to dried cannabis (according to the State regulations). However, there is nothing in the California Code of Regulations that supports this contention. California Code of Regulations §15000 (eee) defines "processing" as "all activities associated with the drying, curing, grading, trimming, rolling, storing, packaging, and labeling of cannabis or nonmanufactured cannabis products." There is no distinction made between wet and dry trimming, or trimming before or after crops are removed from the soil. The literal definition of "trimming" is "to remove by or as if by

¹ See Planning Commission Hearing Video from May 5, 2021 at 5:18:52
(http://sbcounty.granicus.com/player/clip/4120?view_id=3&redirect=true).

cutting.”² Because this language unambiguously applies to any activity associated with “trimming”, there is no need to hunt for a different explanation in the legislative intent.³ Thus, the act of removing leaves (and any other material from the plant) before or during harvest clearly falls within the definition of “trimming”.

Moreover, the actions that Applicant will take in “harvesting” its cannabis fit within the cannabis industry’s definition of “trimming”. GAIACA, a company specializing in cannabis waste solutions, provides the following definition of “trim” on its website (**emphasis added**):⁴

When we talk about the trim, we’re referring to the leaves that are intentionally pruned from the plant during a harvest. It shouldn’t be confused with shake, which includes the loose leaves and stems that fall off naturally.

Shake is high in THC and other cannabinoids, while trim tends to have much lower cannabinoid content. For this reason, many growers simply discard their trim assuming that it has no value. However, when you realize all the things that can be done with those discarded leaves, you may think twice about tossing them aside.

The GAIACA website goes on to identify what can be done with “trim” as follows (**emphasis added**):⁵

- Make concentrates and extracts
- Enhance your meals and beverages
- Make cannabutter and other edibles
- Create homemade salves
- **Compost it**

The GAIACA website then gives a brief discussion of disposing cannabis trim responsibly (**emphasis added**):⁶

Although you may want to explore some creative ways to use your marijuana trimmings, it’s unlikely you’ll be able to use all of it, especially if you’re growing commercially. And maybe you’re not interested in making edibles or extracts.

At any rate, you need to be mindful of how you discard your trimmings. Because they’re part of the cannabis plant and have the potential to be psychoactive, you need to treat them as you would treat any other cannabis waste.

The laws for handling cannabis waste vary from one jurisdiction to the next, so you’ll need to refer to any regulatory authorities and licensing agencies where you live.

² “trim.” Merriam-Webster.com. 2021. <https://www.merriam-webster.com> (23 November 2021).

³ “If there is no ambiguity in the language of the statute, then the Legislature is presumed to have meant what it said, and the plain meaning of the language governs.” (*People v. Castenada* (2000) 23 Cal.4th 743, 747.)

⁴<https://www.gaiaca.com/what-to-do-with-cannabis-trim/> at “What Is Cannabis Trim?”

⁵ *Id.* at “What Can you Do With Cannabis Trim?”

⁶ *Id.* at “Dispose of Your Cannabis Trim Responsibly”.

In California, for example, cultivators are exempt from the law that requires most cannabis businesses to render their waste unusable and unrecognizable, but there are still a number of specific regulations that must be followed.

For instance, any business that generates two or more cubic yards of waste per week must recycle all organic waste. The waste may be composted on-site, self-hauled to an organic waste recycling facility, or hauled away by a waste disposal provider that recycles organic waste.

If you're a small-scale home grower, your best bet is probably to compost your trimmings or haul them yourself to an approved facility. If you run a commercial operation, you should always work with a licensed cannabis waste management services provider. The laws regarding cannabis waste are myriad and complex, and failure to comply can jeopardize your licensure or subject you to massive fines. Always go with the professionals.

Additionally, it appears the Project will create substantial waste as it will require a composting area covering .76 acres (113,705 sq ft). Given the size of the composting area, it is unfathomable that no "trimming/processing" will be occurring on-site as the need for a composting area of this size is a result of trimming/processing that will be occurring as part of the Project. If there was no on-site trimming/processing occurring, there would be no need for an on-site composting area, as the entire cannabis plant would be removed and taken off-site for processing (thereby creating waste at the processing facility and not at the Project site).

To provide context with respect to the trimmed plant material and composting area, it is conceivable that as much as 184,800 pounds of cannabis plant waste material (337 cubic yards) will be generated annually from this cultivation operation. Literature indicates that cannabis cultivation can produce a gross yield of 2,500 pounds of dry cannabis per acre, with 575 pounds of that gross yield being the cannabis flower (*i.e.*, cola)⁷. This leads to a net cannabis plant waste yield of 1,975 pounds per acre. Dry cannabis plants have a typical density of 547.8 pounds per cubic yard⁸. When these fixed cannabis characteristics are combined with the Project's operating parameters (*i.e.*, 48 cultivated acres and 2 crops per year) a total cannabis plant waste of 184,800 pounds (337.3 cubic yards) is estimated. This volume of compost would require processing through accelerated composting techniques to avoid the stacking of subsequent years wastes. It is inconceivable that 337 cubic yards can be mixed with the necessary bio-wastes and organic wastes and have the necessary room to mix and turn the piles, all within a 0.76 acre area.

In light of the above, the Project fails to meet the requirements of LUDC Section 35.42.075.D.1.o, which requires that the drying, curing, and/or trimming of harvested cannabis shall either (1) be located within an enclosed structure which utilizes best available control technology, or (2) include techniques and/or equipment that shall achieve an equivalent or greater level of odor control as

⁷ Estimated Cost of Production for Legalized Cannabis, Caulkins, Rand Drug Policy Research Center, July 2020 (https://www.rand.org/content/dam/rand/pubs/working_papers/2010/RAND_WR764.pdf).

⁸ Mechanical Properties Of Hemp (Cannabis Sativa) Biomass, Kronbergs et. al., Proceedings of the 8th International Scientific and Practical Conference Volume 1, 2011(https://agris.fao.org/agris-search/search.do;jsessionid=694F67C6A184B3B685633DA39B2AC107?request_locale=fr&recordID=LV2011000674&query=&sourceQuery=&sortField=&sortOrder=&agrovocString=&advQuery=¢erString=&enableField=)).

could be achieved using an enclosed structure which utilizes best available control technology. The Project's activities are neither contained within an enclosed structure, nor using equipment or technology that achieves an equivalent or greater level of odor control as could be achieved using an enclosed structure, which utilizes best available control technology (or "BACT").

There is evidence that even the Applicant is unclear whether their activities constitute "trimming" under the LUDC. The original Project Description included "trimming" of cannabis on-site in the outdoor cannabis areas. The Staff Report at the Planning Commission hearing on May 5, 2021, however, removed this reference but did not indicate or state that the removal of references to trimming on-site was a modification made by the Applicant prior to the hearing. Other changes to the Project were specifically identified, but this was not.

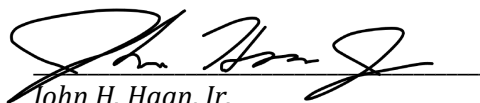
The Project site plans state there will be "No drying, trimming, or finish packaging onsite..." with other references to activities which state that harvested cannabis will be "boxed and shipped away same day..." These statements are incorrect, as Applicant intends to engage in processing by harvesting and trimming cannabis in the field and packing cannabis onsite. The LUDC specifically defines "processing" for cannabis as "All activities associated with drying, curing, trimming, storing, packaging, and labeling of nonmanufactured cannabis products." The activities proposed by the Applicant fall within the County's own definition of "processing" and the attendant odor control methods in LUDC Section 35.42.075.D.1.o are required upon commencement of any Project activities.

BACT for enclosed cannabis structures has been demonstrated by other cannabis growers in the County, most recently the Planning Commission deemed the "platinum standard" to be the odor control system proposed by CVW Organic Farms. That project includes both carbon filtration systems (*i.e.*, carbon or molecular filters or scrubbers) which are currently viewed as the best control technology for reducing VOC emissions from cannabis cultivation facilities, and vapor phase systems (which are reported to reduce odors by 98.7% to 100%⁹, from Criterion Environmental Inc. and Byers Scientific, respectively). The LUDC clearly requires the Applicant to reduce odors from the Project to the equivalent of at least 98.7%, and to implement odor technology that achieves an equivalent or greater level of odor control as could be achieved using an enclosed structure which utilizes best available control technology. The Applicant fails to demonstrate that it has met the requirements of LUDC Section 35.42.075.D.1.o.

If you would like to further discuss this issue prior to the hearing, please let me know.

Respectfully submitted,

ROGERS, SHEFFIELD & CAMPBELL, LLP


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Cc: Client
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Caroline Kim, Santa Barbara County Counsel

⁹ See CVW Organic Farms odor plans available here:
https://cosantabarbara.app.box.com/s/q97rv82305oyfnbdjhcyxrr_dhu3dgtkqy/file/754011897897