

**MEMORANDUM**

To: Marshall Miller

From: Courtney E. Taylor

Date: December 10, 2021

Subject: The Canna Rios LLC Cannabis Cultivation Project Requires Supplemental Environmental Review

Applicant Canna Rios, LLC applied for a land use permit (19LUP-00000-00116) for a cannabis cultivation operation in Santa Maria, California (APN 129-040-010) (the "Project"). Application materials indicate that the Project will involve growing and harvesting of cannabis.

We understand from the Board of Supervisors Agenda Letter prepared in anticipation of the December 14, 2021, hearing that the County has determined that the environmental effects of the Project are within the scope of the Programmatic Environmental Impact Report for the Cannabis Ordinance (17EIR-00000-00003) ("PEIR"). See letter to Board of Supervisors from Lisa Plowman, Director, Planning and Development, subject: Case No. 20APL-00000-00027, Bien Nacido Vineyards, et al., Appeal of the Planning Commission Approval of the Canna Rios, LLC Cannabis Cultivation Project, Case No. 19LOP-00000-00116, Fifth Supervisorial District at 2.

The PEIR itself explains that CEQA requires further environmental review for any site-specific project effects that were not addressed in the PEIR: "In accordance with the State CEQA Guidelines Section 15168(c), if subsequent cannabis site development would have effects that were not examined in the EIR, further CEQA review would be required to determine site-specific impacts, determined on a case-by-case basis, and in accordance with the use permit or development plan process applicable to the subject site." PEIR at 1-5.

The response in the Board of Supervisors Agenda Letter for the appeal states that "VOCs and terpenes are discussed in the PEIR and were considered as part of the analysis of air quality impacts." To be clear, the PEIR only analyzed the following related to air quality impacts:

1. Ozone impacts associated with VOC emissions from combustion of fuels in mobile sources and agricultural equipment; and
2. The potential odor impacts that might result from these biogenic VOCs or terpenes.

The PEIR completely failed to even describe the biogenic VOCs emitted by cannabis plants or to consider how those emissions could contribute to nonattainment with state or federal ozone standards in Santa Barbara County, San Luis Obispo County or elsewhere. Further, it did not analyze the biogenic VOCs from cannabis cultivation at all or how they might contribute to nonattainment with state and federal ozone standards.

Appellant has presented substantial evidence that the subsequent cannabis site development for this Project would have effects that were not examined in the PEIR, see above. None of these impacts are even discussed in the PEIR.

CEQA Guidelines Section 15152(f)(3)(C) involves the subject of "tiering." As defined by CEQA Section 21068.5, "tiering" means "the coverage of general matters and environmental effects in a [PEIR] prepared for a policy, plan, program or ordinance followed by narrower or site-specific [EIRs] which incorporate ... the discussion in any prior [EIR] and which concentrate on the environmental effects which (a) are capable of being mitigated, or (b) were not analyzed as significant effects on the environment in the prior [PEIR]."

A PEIR for an ordinance does not excuse the lead agency from adequately analyzing and mitigating reasonably foreseeable significant environmental effects of the project through a tiered EIR for specific projects.

On the concept of tiering, CEQA Section 21094, subdivision (a) adds as relevant: "Where a prior [EIR] has been prepared and certified for a program, plan, policy, or ordinance, the lead agency for a later project that meets the requirements of this section shall examine significant effects of the later project upon the environment by using a tiered [EIR], except that the report on the later project need not examine those effects which the lead agency determines were either (1) mitigated or avoided as a result of the prior [PEIR] and findings adopted in connection with that prior [PEIR], or (2) examined at a sufficient level of detail in the prior [PEIR] to enable those effects to be mitigated or avoided by site specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project." (Guidelines, § 15152, subd. (f)(3)(A)-(B).

Here, only the ozone impacts from VOC emission of combustion fuels and odor impacts from VOCs were examined. As such, the Board's Statement of Overriding Considerations is limited to that analysis and was adopted for those environmental effects only. The Board cannot adopt a Statement of Overriding Considerations for environmental effects that were not analyzed in the PEIR, otherwise subsequent review would never be required for general topics covered in a PEIR.

In fact, this CEQA subdivision previously contained a third option for concluding that previously identified significant effects had been adequately addressed in a PEIR and thus no subsequent review was required. It stated "Significant environmental effects have been 'adequately addressed' [in a PEIR] if the lead agency determines that they cannot be mitigated to avoid or substantially lessen the significant impacts despite the project proponent's willingness to accept all feasible mitigation measures, and the only purpose of including analysis of such effects in another environmental impact report would be to put the agency in a position to adopt a statement of overriding considerations with respect to the effects." (Guidelines, former § 15152, subd. (f)(3)(C).)

The Court of Appeal found this language invalid in *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 124, and the Guideline was amended in 2003 to delete the invalid subdivision. (Cal.Code Regs., tit. 14, § 15152, subd. (f)(c)(3) Register 2003, No. 31-Z (July 22, 2003) p. 1205.) The court said the invalid language violated CEQA insofar as it would allow an agency, in approving a later project that has significant unavoidable impacts, to forgo making a statement of overriding considerations specifically tied to that project. (*Communities for a Better Environment v. California Resources Agency*, supra, 103 Cal.App.4th at p. 124.) "[A]n agency ... could adopt one statement of overriding consideration for a prior, more general [P]EIR, and then avoid future political accountability by approving later, more specific

projects with significant unavoidable impacts pursuant to the prior [P]EIR and statement of overriding considerations. (Ibid.) “Even though a prior [P]EIR's analysis of environmental effects may be subject to being incorporated in a later EIR for a later, more specific project, the responsible public officials must still go on the record and explain specifically why they are approving the later project despite its significant unavoidable impacts.” (*Id.* at pp. 124–125).

In conclusion, the County still must analyze the impacts of the Project and feasible mitigation measures for such environmental effects. The PEIR's Statement of Overriding Considerations does not prevent required mitigation of impacts or review of effects not analyzed in the PEIR.