RESOLUTION NO. 17-123

RESOLUTION OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS APPROVING AND ADOPTING AN ADDENDUM TO THE PREVIOUSLY ADOPTED MITIGATED NEGATIVE DECLARATION, IN COMPLIANCE WITH CALIFORNIA ENVIRONMENTAL QUALITY ACT REQUIREMENTS, FOR AMENDMENTS TO CHAPTER 10A.17 OF THE MENDOCINO COUNTY CODE

WHEREAS, on April 4, 2017, the Board of Supervisors adopted Ordinance Number 4381, adding Chapters 10A.17 and 20.242 to the Mendocino County Code, referred to as the Medical Cannabis Cultivation Regulation (Project); and

WHEREAS, pursuant to the provisions of the California Environmental Quality Act (Public Resources Code section 21000 *et seq.*; CEQA) and the CEQA Guidelines (Title 14 California Code of Regulations section 15000 *et seq.*) an Initial Study was prepared, which determined that the Project will not have a significant effect on the environment with the implementation of mitigation measures, which supported the adoption of a Mitigated Negative Declaration (MND); and

WHEREAS, by Resolution Number 17-042, adopted on March 21, 2017, following a public review period as required by CEQA and the CEQA Guidelines, the Mendocino County Board of Supervisors adopted a MND for the Project; and

WHEREAS, following the adoption of the MND and receiving applications for medical cannabis cultivation, the Board of Supervisors is desirous of making certain changes to Chapter 10A.17 of the Mendocino County Code; and

WHEREAS, Section 15164 of the CEQA Guidelines provides that an addendum to a previously adopted MND may be prepared if only minor technical changes or additions to the project are necessary or none of the conditions described in CEQA Guidelines Section 15162 calling for the preparation of a subsequent environmental impact report or MND have occurred; and

WHEREAS, the Mendocino County Department of Planning and Building Services has prepared an addendum to the MND for the Project (Addendum) related to the changes proposed to be made to Chapter 10A.17, which is attached hereto as Exhibit A and incorporated herein by this reference.

NOW, THEREFORE, BE IT RESOLVED that the Mendocino County Board of Supervisors, based on the whole record before it, hereby makes the following findings:

1. The above recitals are true and correct and incorporated herein by this reference.

2. The Addendum to the previously adopted MND has been completed in compliance with CEQA and the CEQA Guidelines.

3. The Addendum to the previously adopted MND was presented to the Board of Supervisors, which independently reviewed and considered the addendum and the Board of Supervisors has exercised its independent judgment in making the findings and determinations set forth herein.

4. That, based on the evidence submitted and as demonstrated by the analysis and findings included in the Addendum, none of the conditions described in Section 15162 of the CEQA Guidelines calling for the preparation of a subsequent negative declaration or environmental impact report have occurred.

5. The revisions to the design of the Project are minor and technical in nature and require only minor and technical changes to the adopted MND, which are appropriately made by the Addendum.

BE IT FURTHER RESOLVED that the Mendocino County Board of Supervisors hereby approves and adopts the Addendum to the previously adopted Mitigated Negative Declaration for the Medical Cannabis Cultivation Regulation and directs the Mendocino County Department of Planning and Building Services to attach the Addendum to the MND.

The foregoing Resolution introduced by Supervisor Brown, seconded by Supervisor Croskey, and carried this 22nd day of August, 2017, by the following vote:

AYES: Supervisors Brown, McCowen, Croskey, and Hamburg
NOES: None
ABSENT: Supervisor Gjerde

WHEREUPON, the Chair declared said Resolution adopted and SO ORDERED.

ATTEST: CARMEL J. ANGELO
Clerk of the Board

Deputy

JOHN MCCOWEN, Chair
Mendocino County Board of Supervisors

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

BY: CARMEL J. ANGELO
Clerk of the Board

Deputy

APPROVED AS TO FORM:
KATHARINE L. ELLIOTT
County Counsel

EXHIBIT A

ADDENDUM TO THE MITIGATED NEGATIVE DECLARATION

FOR

MENDOCINO COUNTY

MEDICAL CANNABIS CULTIVATION REGULATION

SCH NO. 2016112028

Modified Project Description and Project History

The Mendocino County Board of Supervisors (County) adopted a Mitigated Negative Declaration (MND) (SCH# 2016112028) for Ordinance No. 4381, known as the Medical Cannabis Cultivation Regulations, which added Chapters 10A.17 and 20.242 to the Mendocino County Code, on April 4, 2017.

The current project involves minor changes to the previously adopted ordinance. Many of these changes have been made to clarify ordinance procedures and increase ease of implantation and do not change the project description, discussion of environmental impacts, or the mitigation measures. These changes are described in detail in the staff memorandum dated, August 22, 2017 and incorporated herein by this reference.

There are two changes proposed that will, in minor ways, alter the approved mitigation measures. They include:

- Elimination of third party inspectors. Although the third party inspectors will not be used, the County will complete at least one annual inspection of each cultivation site. This change eliminates the reference to third party inspectors in Mitigation Measure BIO-1, which requires inspectors (both County and third party) to evaluate the site for the presence of sensitive habitat and consult with the Department of Fish and Wildlife. County inspectors will provide this service.
- Clarification that no application shall be approved which identifies or would require the removal of tree species listed in paragraph (I) of Section 10A.17.040 after May 4, 2017, for the purpose of developing a cultivation site. For applications where trees were removed prior to May 4, 2017, applicants shall provide evidence to the Department of Agriculture that no trees were unlawfully removed to develop a cultivation site; such evidence may include, but is not limited to, a less-than-3-acre conversion exemption or timberland conversion permit issued by the California Department of Forestry and Fire Protection ("CalFire") and trees were removed prior to May 4, 2017. If during review of an application County staff determine that trees were unlawfully removed to develop a cultivation site, the County shall deny the application. This language clarifies and enhances Mitigation Measure AG-4 (prohibition on tree removal).

Purpose

Section 15164 of the California Environmental Quality Act (CEQA) provides that the lead agency shall prepare an addendum to a previously adopted Negative Declaration (ND) if some changes or additions are necessary but none of the conditions described in Section 15162 calling for a subsequent ND have occurred. Section 15162 states that when an ND has been adopted for a project, no subsequent ND shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

1. Substantial changes are proposed in the project which require major revisions of the previous ND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

2. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous ND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

3. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous ND was certified as complete, shows any of the following: A) the project will have one or more significant effects not discussed in the previous ND; B) significant effect previously examined will be substantially more severe than

shown in the previous ND; C) mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or D) mitigation measures or alternatives which are considerably different from those analyzed in the previous ND would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

No substantial changes are proposed which would require major revisions to the previously approved Mitigated Negative Declaration. None of the proposed changes to the project will increase the severity of previously identified significant effects. The proposed changes will not result in a new environmental effect.

No additional mitigation is required. The minor changes to the mitigation measures previously discussed do not diminish the effectiveness of the mitigation measures. In the case of BIO-1, third party inspectors will be eliminated, however the County will complete its inspections required under the ordinance. This provides the same effectiveness as the original mitigation measure. In the case of AG-4, tree removal continues to be prohibited. The new language enhances the effectiveness of the mitigation measure by clarifying the effective date of the prohibition and definitively requiring permit denial if trees were removed after the effective date of the ordinance adoption.

Explanation of Decision Not to Prepare a Supplemental Mitigated Negative Declaration
See **Purpose** section above. In every impact category analyzed in this review, the projected consequences of the proposed ordinance changes are either the same or less than significantly increased compared to the project for which the Mitigated Negative Declaration was adopted. Based upon this review, the following findings are supported:

Findings

1. For the modified project there are no substantial changes proposed in the project which require major revisions of the previous MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.
2. For the modified project no substantial changes have occurred with respect to the circumstances under which the project is undertaken which will require major revisions of the previous MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.
3. For the modified project there has been no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous MND was adopted as complete. Furthermore, it is concluded that: the current project will not have one or more significant effects not discussed in the previous MND. Also, significant effects previously examined will not be substantially more severe than shown in the previous MND.
4. There are no mitigation measures or alternatives previously found not to be feasible that would in fact be feasible and would substantially reduce one or more significant effects of the project.
5. Finally, there are no mitigation measures or alternatives identified in this analysis which are considerably different from those analyzed in the previous MND, and which would substantially reduce one or more significant effects on the environment.

Conclusion

Based on these findings it is concluded that an Addendum to the adopted Mitigated Negative Declaration is appropriate to address the requirements under CEQA for the proposed ordinance changes.