ORDINANCE NO. 4405

ORDINANCE AMENDING SECTION 20.242.040 – EXISTING MEDICAL CANNABIS CULTIVATION SITES, AS IT RELATES TO EXPANSION ON PARCELS WITHIN THE RANGELAND ZONING DISTRICT

The Board of Supervisors of the County of Mendocino, State of California, ordains as follows:

Section 1. Section 20.242.040 of the Mendocino County Code is hereby amended to read as follows:

Section 20.242.040 Existing Medical Cannabis Cultivation Sites

(A) Referrals of applications to the Department for review related to existing cultivation sites shall include the Agriculture Commissioner's determination that the cultivation site existed prior to January 1, 2016, unless the Agricultural Commissioner requests the assistance of the Department in making this determination as part of the referral to the Department.

(B) Cultivation sites, in conformance with the MCCO, may be allowed on a legal parcel with an approved Zoning Clearance, Administrative Permit or Minor Use Permit as required for the zoning district in which the cultivation site is located and as listed in Table 1.

TABLE 1
Zoning Permit Requirement for Existing Medical Cannabis Cultivation by Zoning District and Medical Cannabis Cultivation Ordinance Permit Type

MCCO Permit Type		C Small Outdoor	C-A Small Indoor, Artificial Light		C-B Small, Mixed Light	1 Medium Outdoor	1-A Medium Indoor, Artificial Light	1-B Medium Mixed Light	2 Large Outdoor	2-A Large Indoor, Artificial Light	2-B Large Mixed Light	4 Nursery
Min Parcel Area (ac)		NA	NA		NA	5	5	5	10	10	10	10
Cultivation Area Limit (sf)		2,500	500	501 - 2,500	2,500	2,501-5,000	2,501-5,000	2,501-5,000	5,001-10,000	5,001-10,000	5,001-10,000	22,000
Zoning District	RR 5*	ZC	AP	UP	ZC	ZC	--	ZC	--	--	--	--
	RR 10	ZC	AP	UP	ZC	ZC	--	ZC	ZC	--	ZC	ZC
	AG	ZC	AP	UP	ZC	ZC	--	ZC	ZC	--	ZC	ZC
	UR	ZC	AP	UP	ZC	ZC	--	ZC	ZC	--	ZC	ZC
	RL	ZC	AP	UP	ZC	ZC	--	ZC	ZC	--	ZC	ZC
	FL **	ZC	AP	UP	ZC	AP	--	AP	AP	--	AP	AP
	TPZ**	ZC	AP	UP	ZC	AP	--	AP	AP	--	AP	AP
	I1	ZC	ZC	ZC	ZC	--	ZC	ZC	--	ZC	ZC	ZC
	I2	ZC	ZC	ZC	ZC	--	ZC	ZC	--	ZC	ZC	ZC
	PI	ZC	ZC	ZC	ZC	--	ZC	ZC	--	ZC	ZC	ZC

-- = Not Allowed, ZC = Zoning Clearance, AP = Administrative Permit, UP = Minor Use Permit
* Parcels in the RR-5 zoning district must have a minimum parcel size of five (5) acres.
** Existing cultivation sites in the FL and TPZ zoning districts are permitted subject to limitations of this section. Expansion of existing cultivation sites in the FL and TPZ zoning districts is permitted, subject to the issuance of an Administrative Permit.

(C) An existing cultivation site located in a zoning district not listed in Table 1 of this section may continue subject to the requirements of Chapter 10A.17 and the following planning permit requirements for a Zoning Clearance, Administrative Permit or Minor Use Permit.

(1) Planning Permit Requirements:

(a) Outdoor Cultivation (pursuant to a MCCO Type C Permit) not exceeding 2,500 square feet requires an approved Zoning Clearance.

(b) Indoor Artificial Light Cultivation (pursuant to a MCCO Type C-A Permit) not exceeding 500 square feet requires an approved Administrative Permit.

(c) Indoor Artificial Light Cultivation (pursuant to a MCCO Type C-A Permit) between 501 and 2,500 square feet requires an approved Minor Use Permit.

(d) Mixed Light Cultivation (pursuant to a MCCO Type C-B Permit) not exceeding 2,500 square feet requires an approved Zoning Clearance.

(2) Any future lapse or revocation of the MCCO permit will extinguish the permittee's ability to obtain a future permit from the Department to continue or resume an existing cultivation site that is not within a zoning district listed in Table 1 of this section.

(D) An existing cultivation site, which qualifies for a MCCO permit, may continue within the FL (Forest Land) or the TPZ (Timber Production Zone) zoning districts not to exceed 2,500 square feet of cultivation with a Zoning Clearance, Administrative Permit or Minor Use Permit as listed in Table 1. The existing cultivation site may be expanded to a MCCO Outdoor or Mixed-Light permit type that allows up to 10,000 square feet of cultivation in conformance with all applicable MCCO requirements and conditions and with an approved Administrative Permit or Use Permit as listed in Table 1.

(E) Transferability of Permits. Permits issued pursuant to this Section shall not be transferable to another person, except that the permittee may transfer the permit to a spouse/domestic partner, child, parent, or, for estate planning purposes, to a trust in which the permittee serves as a trustee, which shall not be deemed a change in ownership for purposes of this Chapter.

Section 3. Severability. If any provision of this ordinance, or the application thereof, is held invalid, that invalidity shall not affect any other provision or application of this ordinance that can be given effect without the invalid provisions or application; and to this end, the provisions or application of this ordinance are severable.

Section 4. California Environmental Quality Act. Section 15164 of the CEQA Guidelines (Title 14 California Code of Regulations section 15000 *et seq*.) provides that an addendum to a previously adopted mitigated negative declaration 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 review document have occurred. Based on the addendum prepared for this ordinance, which is attached to the staff memorandum accompanying this ordinance, the Mendocino County Board of Supervisors hereby make the following findings:

A. The addendum to the previously adopted mitigated negative declaration has been completed in compliance with CEQA and the CEQA Guidelines.

B. The addendum to the previously adopted mitigated negative declaration 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.

C. That, based on the evidence submitted and as demonstrated by the analysis 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

D. The revisions to the ordinance are corrective and non-substantive in nature.

E. The addendum to the previously approved mitigated negative declaration is hereby approved and adopted by the Board of Supervisors.

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this 13TH day of March, 2018, by the following roll call vote:

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

WHEREUPON, the Chair declared the Ordinance passed and adopted and **SO ORDERED**.

ATTEST: CARMEL J. ANGELO
Clerk of the Board

Deputy

APPROVED AS TO FORM:
KATHARINE L. ELLIOTT,
County Counsel

DAN HAMBURG, 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

ADDENDUM TO THE MITIGATED NEGATIVE DECLARATION

FOR

MENDOCINO COUNTY

MEDICAL CANNABIS CULTIVATION REGULATION

SCH NO. 2016112028

DRAFT

Modified Project Description and Project History:
The Mendocino County Board of Supervisors (County) adopted a Mitigated Negative Declaration (MND) (SCH No. 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 includes minor changes to the previously adopted Ordinance to correct the double asterisk (**) notation to Table 1 of Chapter 20.242.040 to clarify that expansion of existing cultivation sites in the Rangeland (RL) Zoning District is allowed pursuant to a Zoning Clearance. It also involves deleting a reference to Rangeland in Section 20.242.040(D).

Within Table 1 a Zoning Clearance is identified as the permit type for existing cultivation in the Rangeland Zoning District. The requirement to obtain an Administrative Permit in the Rangeland Zoning District appears in a double asterisk (**) associated with Table 1 of Chapter 20.242. The double asterisk (**) reads as follows:

> "** Existing cultivation sites in the FL, TPZ and RL zoning districts are permitted subject to limitations of this section. Expansion of existing cultivation sites in the FL, TPZ and RL zoning districts is permitted, subject to the issuance of an Administrative Permit."

Section 20.242.040(D) reads as follows:

> "An existing cultivation site, which qualifies for a MCCO permit, may continue within the FL Forest Land), the TPZ (Timber Production Zone), or the RL (Rangeland) zoning districts not to exceed 2,500 square feet of cultivation with a Zoning Clearance, Administrative Permit or Minor Use Permit as listed in Table 1. The existing cultivation site may be expanded to a MCCO Outdoor or Mixed Light permit type that allows up to 10,000 square feet of cultivation in conformance with all applicable MCCO requirements and conditions and with an approved Administrative Permit or Use Permit as listed in Table 1."

The references to the Rangeland zoning district in both the double asterisk (**) and Section 20.242.040(D) were added late in the ordinance drafting process. Upon review, the additions were not made as a result of the CEQA analysis or mitigation measure implementation, or pursuant to the direction of the Board of Supervisors.

Under the proposed ordinance change for which this addendum is being prepared, references to Rangeland would be removed from both the double asterisk (**) for Table 1 and from Section 20.242.040(D).

The discussion in the CEQA document related to expansion in Phase 1 requiring an Administrative Permit is limited to lands zoned Forest Land and Timber Production Zone. The need to obtain an Administrative Permit was not anticipated or relied upon within the CEQA analysis for potential impacts. The analysis contained in the Initial Study was conducted assuming cultivation sites in Rangeland would comply with Table 1 and all applicable cultivation permit requirements, performance standards, and mitigation measures contained in the Ordinance and Initial Study. The requirement of an Administrative Permit was not used as a basis of this analysis.

Removing the double asterisk (**) and reference to Rangeland in Section 20.242.040(D) at this time is considered a correction to the ordinance and a non-substantive change consistent with the Board direction received on November 13, 2017.

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.*

Removing the double asterisk (**) notation to Table 1 of Chapter 20.242.040 and reference to Rangeland in Section 20.242.040(D) would clarify that no Administrative Permit is required for expansion in Rangeland up to the maximum amount of cultivation allowed for each permit type. These changes are considered a correction to the ordinance and a non-substantive change. No substantial changes are proposed which would require major revisions to the previously approved Mitigated Negative Declaration. The need to obtain an Administrative Permit was not anticipated or relied upon within the CEQA analysis. The analysis contained in the Initial Study was conducted assuming cultivation sites in Rangeland would comply with Table 1 and all applicable cultivation permit requirements, performance standards, and mitigation measures contained in the Ordinance and Initial Study. Because the need to obtain an Administrative Permit was not anticipated or relied upon within the CEQA analysis the change would not require major revisions to the previous ND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. No additional mitigation is required. All adopted mitigation measures will remain in full force and effect.

All previously assumed baseline conditions are still applicable and cultivation permit requirements, performance standards, and mitigation measures contained in the Ordinance and Initial Study remain. No substantial changes have occurred with respect to the circumstances under which the project was 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.

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 of the previous ND was certified has been identified.

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, showing any of the following:

    a. That the current project will have one or more significant effects not discussed in the previous MND;

    b. That significant effects previously examined will not be substantially more severe than shown in the previous MND;

    c. That there are 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.

    d. That, there are 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 the above analysis, it is concluded that this Addendum to the adopted Mitigated Negative Declaration is appropriate to address the requirements under CEQA for the proposed ordinance changes and that no additional subsequent environmental review is needed to review the impact of the proposed ordinance changes.