RESOLUTION NO. 18-191

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, which was subsequently renamed the Mendocino 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 an MND for the Project; 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, following the adoption of the MND and receiving applications for medical cannabis cultivation, the Board of Supervisors adopted amendments to Chapters 10A.17 and 20.242 of the Mendocino County Code, by Ordinance Nos. 4381, 4392, 4408, 4411 and 4413, for all of which the Board of Supervisors adopted addenda pursuant to CEQA; and

WHEREAS, the Board of Supervisors is desirous of making additional certain changes to Chapter 10A.17 of the Mendocino County Code, as more specified in the staff memorandum and ordinance accompanying this resolution; and

WHEREAS, an addendum to the MND for the Project (Addendum) related to the changes proposed to be made to Chapter 10A.17 has been prepared, 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.

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 Mendocino 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 McCowen, seconded by Supervisor Brown, and carried this 11th day of December, 2018, by the following vote:

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

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

ATTEST: CARMEL J. ANGELO
Clerk of the Board

Deputy

GEORGEANNE CROSKEY, 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

ADDENDUM TO THE MITIGATED NEGATIVE DECLARATION

FOR

MENDOCINO COUNTY

MENDOCINO CANNABIS CULTIVATION REGULATION

SCH NO. 2016112028

DRAFT

Date: December 11, 2018

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 March 21, 2017. Since that time, the County has approved multiple modifications for minor changes, including one change that renamed the project title to the Mendocino Cannabis Cultivation Regulations. Previous modifications have had separate addenda filed under the previous title.

The current project includes minor modifications to the previously adopted ordinance. The changes are described in more detail in the staff memorandum dated December 11, 2018, and incorporated herein by this reference.

Several definition changes are proposed to more closely align them with current State regulations. Minor definition changes have been applied to the following terms:

- Cultivation
- Cultivation site
- Immature plant
- Mature plant
- Nursery
- Processing
- Minor changes to the name of each cultivation type

There are several definitions deleted due to corresponding changes or deletions to the sections of the ordinance where the terms are used. These include:

- Nursery producer
- Seed producer
- Collective
- Medical marijuana collective
- Church
- Residential treatment facility
- Wildlife exclusionary fence

There are several procedural or administrative changes to the Chapter 10A.17. These include changes to the track and trace permit requirements, revisions to the fees and inspection section, extension of the Phase One application period, eligibility for filing a notice of non-cultivation, revisions to criminal history and background check requirements, additional provisions regarding permit denial, and public nuisance clarifications.

Additionally, the entire section related to medical marijuana collectives has been deleted and the section related to nurseries has been modified to more closely align with State regulations.

The above changes are minor in nature. These changes do not change the project description, discussion of environmental impacts or the adopted mitigation measures, and could not reasonably have a significant impact on the environment.

Summary of other changes

There is a change to the existing definition of "legal parcel" in section 10A.17.020. The change would include adding the underlined text to the definition:

> "Legal parcel" or "Parcel" means a lot of real property which was created pursuant to the Subdivision Map Act or for which an application for subdivision was on file with the Department of Planning and Building Services prior to January 1, 2016, or for which a certificate of compliance was recognized and recorded prior to January 1, 2016; provided, however, for real property within Industrial zoning districts, subdivisions or certificates of compliance may be recognized and recorded after January 1, 2016.

The requirement of a wildlife exclusionary fence has been deleted from section 10A.17.040(H).

In section 10A.17.080(B)(4) it states that multiple permits may be granted on a single legal parcel that is owned by multiple persons residing on that parcel. The requirement that each of the owners reside on the parcel has been deleted.

The setback to requirement of 1,000 feet found in Section 10A.17.040(A)(1) has been modified to no longer apply to churches or residential treatment facilities.

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 proposed changes do not affect the effectiveness of the mitigation measures as there will be no additional environmental impacts associated with the changes.

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.

   No new significant effects or increase of severity of effects are anticipated. Modifying the definition of "Legal parcel" to include those parcels for which an application for subdivision was on file with the Department of Planning and Building Services prior to January 1, 2016 will not change the anticipated environmental impacts. Although there would be an expansion in the number of sites eligible for a cultivation permit, there are approximately 20 parcels that this change would impact. The estimated 20 parcels comprise a small fraction of all land in Mendocino County eligible for cultivation. In addition, any cultivation existing on one of the parcels that would be eligible for cultivation with this change would be required to follow all Phase One requirements that are currently in place. Any new cultivation that may be proposed on one of the affected parcels would be required to comply with all existing regulations for Phase Three applicants.

   The change removing the requirement for wildlife exclusionary fencing does not present new significant effects. The presence of wildlife exclusionary fencing was not relied upon in the analysis of potential effects to wildlife or other resources. The requirement to enclose the garden area with a six foot tall, secure, locakable fence remains in Section 10A.17.040(H). Additionally, Section 10A.17.090(F) continues to require that any fuel, fertilizer, pesticides, or other substance toxic to wildlife, children, or pets, must be stored in a secured and locked structure or device.

   Changing the requirement related to multiple owners needing to reside on the parcel in order to obtain permits does not allow a substantial number of new of permits to be issued. In cases where there are multiple owners, permits are still limited to one per owner but the permit is no longer tied to residency. The eligibility for permits would still be limited to pre-existing or relocation sties and be required to follow all Phase One requirements. This change does not present new significant effects.

The 1,000 foot setback requirement to churches and residential treatment facilities has been eliminated. While this may allow for additional parcels to be eligible for permits, eligibility would still be limited to pre-existing or relocation sties and be required to follow all Phase One requirements. This change does not present new 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.

   Based on the discussion in Finding 1, above, no new significant environmental effects resulting from the proposed text amendment are anticipated. The circumstances under which the project is undertaken remain the same.

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.

   There has been no new information of substantial importance which was not known and could not have been known at the time the previous MND was complete. The baseline conditions describing the overall impacts of existing cannabis cultivation remain the same.

4. The proposed changes do not constitute a change in the level of significance previously discussed in the original MND. As such, it is concluded that: the current project will not have one or more significant effects not discussed in the previous MND. Furthermore, significant effects previously examined will not be substantially more severe than shown in the previous MND. 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.

   The proposed changes do not involve changes to, or analysis of any mitigation measures. No new potential impacts have been identified requiring new mitigation measures to be developed.

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.

   The proposed amendments do not involve changes to, or analysis of any mitigation measures.

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.