

RESOLUTION NO. 24-017

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 TO STREAMLINE CANNABIS CULTIVATION PERMITTING PROCESSES

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, 4405, 4408, 4411, 4413, 4420, 4422, 4438, 4463, and 4522 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 agenda summary 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.

BE IT FURTHER RESOLVED that the Mendocino County Board of Supervisors hereby approves and adopts the proposed ordinance amendment to streamline cannabis cultivation permitting processes attached here as Exhibit B.

The foregoing Resolution introduced by Supervisor Williams, seconded by Supervisor Haschak, and carried this 23rd day of January, 2024, by the following vote:

AYES: Supervisors McGourty, Mulheren, Haschak, Gjerde and Williams
NOES: None
ABSENT: None

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

ATTEST: DARCIE ANTLE
Clerk of the Board

MAUREEN MULHEREN, Chair
Mendocino County Board of Supervisors

Deputy

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

APPROVED AS TO FORM:
JAMES R. ROSS
Interim County Counsel

BY: DARCIE ANTLE
Clerk of the Board

Deputy

ADDENDUM TO THE MITIGATED NEGATIVE DECLARATION

FOR

MENDOCINO COUNTY
MEDICAL AND ADULT-USE 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. Since that time, the County has approved multiple modifications for minor changes, which have had separate addenda.

The current project involves modifying the previously adopted ordinance (Chapter 10A.17) to streamline cannabis cultivation permitting processes. The proposed amendment makes minor changes that will further streamline cannabis cultivation permitting processes and allow the Mendocino County Cannabis Department to implement the cannabis program more efficiently. There are no substantial changes proposed to the ordinance. The proposed changes fall within the intent of the MND and all mitigation measures.

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. The proposed change to the project will not increase the severity of previously identified significant effects. The proposed change will not result in a new environmental effect.

No additional mitigation is required. The proposed change does not affect the effectiveness of the mitigation measures as there will be no additional environmental impact associated with providing clarity to the ambiguous terms.

Explanation of Decision Not to Prepare a Supplemental Mitigated Negative Declaration:

See the Purpose section above. In every impact category analyzed in this review, the projected consequences of the proposed ordinance change are the same as 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.

The proposed amendments to Chapter 10A.17 are discussed below in numerical order as presented in Chapter 10A.17 along with the reasoning demonstrating the proposed amendment will not cause new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

The only proposed amendments not discussed below can be classified as editorial changes, which do not have any chance of causing new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

Sec. 10A.17.020 – Definitions

Definitions for “Attorney General’s Guidelines” and “Hoop House” were removed from the definitions section as a clean-up of the section because they are not referenced in the Cannabis Ordinance. The removal of these terms will not cause new significant environmental effects or a substantial increase in the severity of previously identified significant effects as they were not utilized in the remainder of Chapter 10A.17.

The definition for “Mixed light cultivation” or “mixed light” was amended so that cultivators who use the light deprivation method and no artificial light do not fall within this definition. Rather, they will now fall under the outdoor cultivation definition and will be able to operate with an outdoor cultivation CCBL. This definition matches the license types of the California Department of Cannabis Control (“DCC”). This change in definitions merely allows cannabis cultivators to utilize light deprivation growing methods, which do not require significant buildouts or a significant increase in their environmental impact footprint. As such, it will not cause new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

Sec. 10A.17.040 – General Limitations on Cultivation of Cannabis

Subsections (A)(2) & (5) were amended to change the date that the increased setback requirements kick in to be based on the phases that the applications were submitted rather than the date of January 1, 2020. As drafted, the intent was for the increased setback to not apply to Phase One and Phase Two applications because they would have been submitted before the January 1, 2020, date. However, due to MCD delays in reviewing and processing Phase One applications many Phase One applications have fallen into the increased setback requirement. As such, this change better reflects the initial intent. The MND was adopted with the initial intent of having the increased setback apply to Phase Three applicants rather than Phase One applicants. As such, this amendment will not cause new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

Subsection (6)(b) was amended to align with Mendocino County Planning and Building Services (“PBS”) Policy Statement #1, Cannabis Processing in Residential Structures, published on October 26, 2022. This amendment allows licensed cannabis cultivators to utilize existing residential structures for limited cannabis processing. As such, this amendment will decrease the potential

environmental impact of cannabis cultivators because licensed cultivators no longer need to build commercial buildings to process their cannabis onsite. As such, this amendment will not cause new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

Subsection (B) was amended due to the proposed removal of the fence requirement for commercial cannabis cultivation, as further discussed below. See below for further analysis in regard to removing the fence requirement.

Subsection (H) was amended to remove the fence requirement for commercial cannabis cultivation. Rather than requiring a fence, the proposed amendment refers to DCC security measures to secure commercial cannabis cultivation sites. As such, all CCBL holders must secure their cultivation site as required by the DCC. This amendment will allow CCBL holders to decrease their environmental impact footprint because they are no longer required to build a fence around their cultivation area, which causes additional disturbances to the environment. Now CCBL holders can utilize existing security measures that secure the entire property and not require the building of a new fence. As such, this amendment will not cause new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

Subsection (L) was added so that the fence requirements remain for cannabis cultivation that is exempt from acquiring a CCBL under Chapter 10A.17. This was added because the exempt cannabis cultivation is not regulated by the DCC and does not fall under their jurisdiction. This amendment does not change any requirements for cannabis cultivators that are exempt from CCBL licensing under Chapter 10A.17. As such, this amendment will not cause new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

Sec. 10A.17.060 – CCBL Types

The CCBL Types were amended so that cultivators who use the light deprivation method and no artificial light are not required to acquire a mixed light CCBL. Rather, they will now fall under the outdoor cultivation definition and will be able to operate with an outdoor cultivation CCBL. This proposed amendment matches the license types issued by the DCC. Please see the above analysis regarding the amendment to Section 10A.17.020.

The language added at the end of the section allows current mixed-light CCBL holders to elect to operate under the old definition so they will not be forced to obtain a new license under the amended definitions. This amendment allows CCBL holders to operate under their CCBL issued before the amendment and, as such, will not cause new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

Sec. 10A.17.070 – Requirements for All CCBL's

Subsection (F)(1) was amended to change the timeline for CCBL holders to install an alternative power source if they do not have a grid power source. The amended timeline will be based on the date the CCBL is issued rather than the date the application is submitted. Chapter 10A.17 was drafted with the intent that there would be limited time between the date an application was submitted and permit/CCBL issuance. As such, it was not intended to require individuals to make a capital investment to install an alternative power source without knowing if they were going to be issued a CCBL. This proposed amendment matches the original intent and does not shift the consequences of the delayed review process onto the applicants/CCBL holders. The amendment does remove the requirement that CCBL holders must install an alternative power source if they do not have a grid power source. Rather, it merely extends the timeline that those CCBL holders have to install an alternative power source. As such, the amendment will not cause new significant environmental effects or a substantial increase in the severity of previously identified significant

effects.

Subsection (G) was amended to require CCBL holders to maintain all Track and Trace records and to provide such information to MCD upon request. This requirement was added based on the request of the Mendocino Department of Agriculture ("Dept. of Ag") due to a lack of response for information in preparation for the Crop Report. This amendment merely requires CCBL holders to maintain Track and Trace records and provide those to MCD upon request, which will have no effect on the environmental impact of the cultivation operation. As such, the amendment will not cause new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

Subsection (X) was amended to refer to the new proposed renewal section, as discussed further below. See below for further analysis regarding the new renewal section.

Subsection (X)(1) was amended to remove the term "annual" because, as proposed, CCBLs will have five (5) year expirations rather than annual. The increased expiration proposal is discussed further below.

Subsection (Y) was amended to remove the requirement for MCD to conduct on-site pre-CCBL inspection. MCD is currently testing its ability to conduct remote/satellite inspections to confirm compliance with the Cannabis Ordinance before issuance. Removal of the on-site inspection requirement provides MCD the flexibility to decide on how to best complete the pre-CCBL inspections and does not remove the pre-CCBL inspection requirement. As such, site inspections are still required and a CCBL will not be issued if a site is out of compliance with Chapter 10A.17. Therefore, the amendment will not cause new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

Subsection (Z) was amended to allow for the assignment of CCBL applications in addition to issued CCBLs. This was added to lift the transferability restriction so that individuals who no longer wish to continue commercially cultivating cannabis can assign an application before issuance so the number of individuals in the program does not decrease. This amendment does not alter any requirements to obtain a CCBL or any operational requirements for CCBL holders. As such, the amendment will not cause new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

Sec. 10A.17.090 – CCBL Application and Zoning Review

This section was amended to change the term "annual" to "every five (5) years" because the Board has directed staff to increase the expiration date of CCBLs to every five (5) years rather than requiring annual renewals. This amendment does not alter the requirements to obtain a CCBL and only lengthens the time between CCBL renewals from every year to every five (5) years. This will not increase the number of CCBLs available or alter the zoning or environmental requirements of CCBLs. As such, the amendment will not cause new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

The proposed added language clarifies MCD's ability to move an application forward if it does not receive a response from external referrals within the allotted thirty-day timeline. Without such clarity, it has been unclear what occurs when there is no response, or delayed response, on external referrals. This proposed language provides clarity that MCD can move an application forward if it determines that all requirements of Chapter 10A.17 are satisfied. This amendment merely provides clarity to Chapter 10A. 17 regarding MCD's current policy to move CCBL applicants forward if it has not heard from external referrals after the allotted thirty-day timeline. All CCBL applicants still must meet all requirements found in Chapter 10A.17. As such, the amendment will not cause new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

Subsection (C) was amended regarding the requirements for site plans submitted with a CCBL application. The proposed amendment would provide MCD planners with the information needed to expedite the review process and remove items not needed during that process. CCBL holders still must submit all information in their site plans for MCD to conduct a proper review of the application to ensure all requirements in Chapter 10A.17 are met. As such, the amendment will not cause new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

Sec. 10A.17.100 – CCBL Review and Issuance

Subsection (C)(1)(b) was amended to allow MCD to extend compliance plans for additional one-year terms. In some instances, it can take over one (1) year to obtain permits or complete projects needed to come into compliance. MCD can now allow CCBL holders to remain in the program under a compliance plan so long as they are making good faith efforts to come into compliance. CCBL holders still must come into compliance with all Chapter 10A.17 and Zoning and Building codes. This amendment merely allows CCBL holders to maintain their CCBL if the compliance issuance cannot be resolved within a year for circumstances outside of their control. As such, the amendment will not cause new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

Subsection (D)(1) was amended to provide some clarity in potential denial scenarios and to better reflect how MCD currently processes and reviews applications. This amendment does not limit MCD's ability to deny CCBL applications if they do not meet the requirements in 10A.17. As such, the amendment will not cause new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

Subsection (F) was inserted to provide clarification on what is required to submit for a renewal application. Previously no section in the Cannabis Ordinance addressed the process to submit for a renewal. As such, the amendment will not cause new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

Subsection (G) was inserted to provide clarification that applicants and CCBL holders must inform MCD whenever there are proposed changes to the information provided in the initial application. As drafted, the proposed language allows MCD to adopt a form that would allow it to decide on whether additional information/documents and a full review are required for a proposed change, or if only notice to MCD is required. If the modification is such that only requires notice, MCD will develop an expedited review and approval process. Currently, there is no requirement that CCBL holders must notify MCD if any changes were made to their cultivation operation or cultivation site. With no such requirement, many CCBL holders made changes without MCD approval. As such, the amendment will not cause new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

Subsection (H) was inserted to allow MCD to regulate future workflow caused by the increased expiration dates. The inserted language allows MCD to provide shorter expiration dates to CCBLs one time as a means to stagger future renewals. This amendment addresses the administration of the increased expiration date. As such, the amendment will not cause new significant environmental effects or a substantial increase in the severity of previously identified significant effects. See above for additional analysis regarding the potential impact of increasing the CCBL expiration date.

Sec. 10A.17.120 – Certifications

This section was repealed because it has not been implemented by the County and there are no current plans to implement the certification program. Additionally, the state has its own laws regarding organic cannabis and is finalizing rules regarding the Appellations program. As such, the amendment will not cause 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.

Based on the discussion in Finding 1, above, no new significant environmental effects resulting from the proposed definition 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 that was not known and could not have been known at the time the previous MND was completed. The baseline conditions describing the overall impacts of 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, the 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 amendments do not involve substantial 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 that 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 to Chapter 10A.17 do not involve substantial 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 change.