

RESOLUTION NO. 23-064

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 SECTION 10A.17.040 OF THE MENDOCINO COUNTY CODE TO PROVIDE CLARITY ON THE TREE REMOVAL PROHIBITION.

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, and 4463, 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.

The foregoing Resolution introduced by Supervisor Williams, seconded by Supervisor Mulheren, and carried this 28th day of March, 2023, by the following vote:

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

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

ATTEST: DARCIE ANTLE
Clerk of the Board

GLENN MCGOURTY, 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:
CHRISTIAN M. CURTIS
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

DRAFT

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 (the “Ordinance”), 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, specifically Section 10A.17.040(K) of the Ordinance, to clarify existing law as adopted under Ordinance No. 4381, regarding the Ordinance’s tree removal limitations provisions by defining ambiguous terms within the Ordinance. The proposed amendments will allow for a more efficient implementation of the tree prohibition requirements. There are no other changes proposed to the Ordinance. The proposed definitions fall within the intent of the MND and tree removal prohibition.

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 project 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. 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 adopted changes only clarify ambiguous terms impacting Phase 1 of the County's Cannabis Program (Phase 2 and Phase 3 permits are not allowed within the Forest Lands and Timber Production Zone districts where impacts to forest lands would occur), and will not change the anticipated environmental impacts evaluated in the previous MND. Furthermore, even if the adopted clarifying changes would result in some additional physical effects on the environment, for the reasons explained below, such effects would be minimal. Thus, no new significant effects or substantial increase in severity of effects will occur.

The previous MND recognized that there is a baseline condition of existing cannabis cultivation activities, which typically include related infrastructure such as roads and ponds, that caused trees to be removed and forest land to be degraded due to unpermitted and/or unregulated cultivation practices. (MND, p. 21.) Furthermore, the previous MND expressly sought to address the potential impacts on forestry resources associated with (1) the cultivation of cannabis, which includes areas cleared of timber for the installation cultivation sites, roadways, and water storage; and (2) Cal Fire's reported "surge" in CEQA-exempt Less-Than-Three acre Conversions as cannabis cultivators moved into forested landscapes. (MND, pp. 34, 37.)

In addressing the potential impacts from regulated activities that were reasonably likely to occur post-adoption of the Ordinance, the previous MND recognized that additional development activities at permitted sites (including access road and water supply infrastructure and drainage improvements to address safety and water quality concerns), may be required "to come into compliance with federal, state and local regulations." (MND, p. 20.) To address those impacts, the MND recommended a tree removal prohibition for the development of "cannabis cultivation sites" (which is expressly defined in the Ordinance adopted with the previous MND)(MM AG-4), but did not expressly include the installation or improvement of roadways, water storage or other similar related infrastructure, as a mitigation measure. (MND, p. 37.) The previous MND, thus, found that with implementation of the proposed mitigation measure, the impact would be less than significant. (MND, p. 37.) Accordingly, the proposed definition is consistent with the mitigation measure adopted to address the stated significant impacts identified in the MND, which found that mitigation measure to be sufficient to reduce impacts to less than significant.

Furthermore, the current administration of the Mendocino Department of Cannabis ("MCD") has reviewed 532 applications for completeness and, to date, less than 6% of the applications have been identified as potentially violating the tree removal prohibition requirements. All of those applications could still be approved if additional evidence is provided to demonstrate that the potential tree removal falls under an exemption that already exists in the tree removal

prohibition provisions of the existing Ordinance. In addition, the County cannot accept any new permit applications for Phase 1 because the deadline for filing an application has already ended. Thus, to the extent the project could potentially authorize some additional tree removal, its effects would be limited to cultivation sites that already exist and have been recognized in the MND as forest lands that have been degraded due to prior unpermitted and/or unregulated cultivation practices.

2. 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.

As stated in the discussion in Finding 1, above, the project would not involve any new significant environmental effects or a substantial increase resulting from the adoption of the proposed definition. The circumstances under which the project is undertaken remain the same as was considered in the MND.

3. There is 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, as to the following:
 - a. The project will not have one or more significant effects not discussed in the previous MND;

As stated in the discussion in Finding 1, above, the project would not have any significant effects not discussed in the MND resulting from the adoption of the proposed definition. The proposed changes to the Ordinance involve the same proposed activities, potential impacts and impact significance determinations that were considered and addressed in the MND. Furthermore, because Phase 1 was largely targeted at addressing impacts of unpermitted and unregulated cannabis operations that existed prior to the adoption of the Ordinance, the baseline conditions describing the overall impacts of cannabis cultivation remain largely the same as was considered in the MND. Thus, the significant effects of the project remain the same as were considered in the MND.

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

As stated in the discussion in Finding 1, above, the project would not involve a substantial increase in severity of the previously identified impacts in the MND resulting from the adoption of the proposed definition. The proposed changes to the Ordinance involve the same proposed activities, potential impacts and impact significance determinations that were considered and addressed in the MND. Furthermore, because Phase 1 was largely targeted at addressing impacts of unpermitted and unregulated cannabis operations that existed prior to the adoption of the Ordinance, the baseline conditions describing the overall impacts of cannabis cultivation remain largely the same as was considered in the MND. Thus, the severity of the significant effects of the project remain the same as were considered in the MND.

- c. 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, that were declined to be adopted.

The adoption of the proposed definition of the tree removal prohibition does not involve any previously rejected mitigation measures or alternatives that were originally found to be infeasible. Thus, there were no previously considered mitigation measures that were declined to be adopted.

- d. 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 have substantially reduced one or more significant effects on the environment, that were declined to be adopted as a mitigation measure.

The adoption of the proposed definition of the tree removal prohibition project did not decline to adopt any mitigation measures. The adoption of this definition clarifies an ambiguity in the previously adopted mitigation measure by relying on its express language to affirm the Board's original intent.

Conclusion

Based on these findings it is concluded that no subsequent EIR or MND need be prepared for the proposed Ordinance change, and an Addendum to the adopted Mitigated Negative Declaration is appropriate to address the requirements of CEQA.