



## HUMBOLDT BAY MUNICIPAL WATER DISTRICT

828 SEVENTH STREET, PO BOX 95 • EUREKA, CALIFORNIA 95502-0095

OFFICE 707-443-5018 ESSEX 707-822-2918

FAX 707-443-5731 707-822-8245

EMAIL [OFFICE@HBMWD.COM](mailto:OFFICE@HBMWD.COM)

Website: [www.hbmwd.com](http://www.hbmwd.com)

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October 26, 2018

Planning Commission Clerk  
Planning and Building Department  
Humboldt County  
3015 H Street  
Eureka, CA 95501

**RE: Case Number CUP16-1107 & 16-484, SP18-022, Key Parcel Numbers 317-182-019-000 and 317-182-020-000**

Humboldt Bay Municipal Water District (District) submits this letter to express concerns regarding Conditional Use Permits 16-1107 and 16-484 and Special Permit 18-022 submitted by Edward Cox (Applicant) because the operation poses a potential risk to fish and wildlife, and may threaten water quality of the Mad River Watershed. There are a number of impacts from these projects that need to be considered including water quality, and impacts on protected species. Further, we believe the project is not exempt from the California Environmental Quality Act (Pub. Resources Codes, § 21000 et seq., "CEQA

The Applicant seeks two conditional use permits for operation of existing outdoor medical cannabis facility (project). CUP16-1107 includes a 12,200 SF cultivation with two greenhouses, a 1,200 SF ancillary nursery and 200 sf indoor propagation room which are not included in the 12,200 SF cultivation area; and a 21,000 SF area for outdoor cultivation. The water source is a deeded stream diversion on the adjacent property and a well permit application has been submitted for irrigation needs. The annual water budget is approximately 225,000 gallons. CUP 16-484 and SP18-022 includes a 21,000 SF outdoor medical cannabis facility (project) and requests a permit to divert water from a creek for water irrigation on the property. An estimated 253,000 gallons of water are needed for irrigation. Both permit requests state water will be stored in tanks totaling 9,000 gallons.

The District requests the County require a full environmental review. The Cannabis Land Use ordinance section 55.4.11 allows the County to require additional information from the applicant. Given the size of these operations, and their intention to store riparian water, we encourage the County to request a number of these materials including: Irrigation Plan, Hazardous Materials Site Assessment,

Surveys for Biological Resources and Sensitive Habitat, documentation of water use, source, and storage.

### **I. Pre-Existing Cultivation Site Permits Are Specifically Prohibited in Timberland Production Zones**

Timberland Production Zone (TPZ) is a special zoning designation in order to afford superior protection to timberland preserves. These areas are devoted to and used for growing and harvesting timber, or for growing and harvesting timber and compatible uses. As approved, the ordinance provides “[p]ermitting of Pre-Existing Cultivation Sites is prohibited where located within the [Commercial Timberland (TC)] or TPZ.” This definitively forbids cultivation within any TPZ without exception. The Applicant’s project concerns key parcel number 315-011-001, which is zoned “100% TPZ.” It would be against the plain language of the ordinance to approve the project in such a zone.

### **II. Water Rights**

The applicant states that: “Water source is via a deeded stream diversion on the adjacent parcel to the south (APN 317-182-018). A well permit application has been submitted to the County for irrigation needs. It is unclear if this is an existing well or a proposed well. At the least, the Planning Department should condition any approval upon obtaining a finalized permit from the Humboldt County Environmental Health Department for the well.

Furthermore, the statement that the water source is via a deeded stream diversion on the adjacent parcel, requires further investigation and confirmation. The Planning Department should verify the content of the deed restrictions on the water source. In addition, we respectfully request that the County verify with the Water Board the water rights claimed to be owned and permitted (including the proposed expanded use of water) by the applicant prior to issuing a CUP and that the existing stream diversion water rights are allowable to be diverted to the Applicant’s parcel.

### **III. The Project is not exempt from CEQA**

The referral document states that environmental review is not required. However, it further states that the exemption description is “TBD” – to be determined.

There is a “reasonable possibility” that unusual circumstance will cause a significant environmental impact. Therefore, a categorical exemption is not appropriate (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th at p. 1105.) There is a reasonable possibility that the year-round operation, including intense water extraction and artificial lighting and heating mechanisms, have the possibility of adversely impacting the adjacent timberland, wildlife habitat, and drinking water source. Therefore, the project is not exempt from CEQA.

There are a number of cannabis operations occurring in the Mad River area, drawing on limited water and posing a potential threat to the drinking water source and sensitive habitats. This is only one of many similar operations in the area. While the County may find reason to conclude each project individually is exempt, a point not conceded by the District, permitting each of these operations based on an exemption avoids adequate analysis of impacts of the cumulative impact on the river. “All exemptions ...are inapplicable when the cumulative impact of successive projects of the same place, over time is significant.” (CEQA Guidelines, § 15300.2, subd. (b).) Cumulative impacts refer to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts... The individual effects may be changes resulting from a single

project or a number of separate projects. (CEQA Guidelines, § 15355, subd. (a).) Essentially, an agency cannot forego environmental review if, “taking into consideration the effects of past, current, and probable future projects, the environmental effect is significant.” (Aptos Council v. County of Santa Cruz (2017) 10 Cal.App.5th 226, 285.) Due to the cumulative impacts of the multiple operations in the area, a categorical exemption would not be appropriate. Thus, the District claims that this project is not fit for the CEQA exemption for existing facilities.

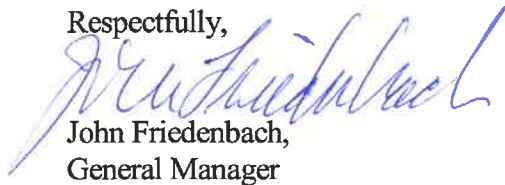
Further, an exception to the CEQA exemption is for unusual circumstances. This project proposes to establish a commercial cultivation and production operation in a rural wooded area that had not previously undergone any CEQA environmental review. The District claims it would only be appropriate for the project to undergo such environmental review.

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For the above reasons, the District requests the Planning Department require full environmental review of Conditional Use Permit application 16-1107 and 16-484 and Special Permit 18-022 for Cannabis Cultivation Sites. Additionally, we request that the District be notified when the level of environmental review is determined and when the draft environmental document is available for review by the public.

In closing, we respectfully request all referral comments be included in the Planning Commission Packets. This will allow the Commissioners to have a full understanding of the agencies/public concerns.

Respectfully,



John Friedenbach,  
General Manager