HUMBOLDT COUNTY
PLANNING AND BUILDING DEPARTMENT
CURRENT PLANNING DIVISION
3015 H STREET, EUREKA, CA 95501 ~ PHONE (707) 445-7541

**10/15/2018**

**PROJECT REFERRAL TO: Humboldt Bay Municipal Water District**

**Project Referred To The Following Agencies:**
Building Inspection Division, Public Works Land Use Division, Health and Human Services Environmental Health Division, County Counsel, CalFire, California Department of Fish And Wildlife, Northwest Information Center, Bear River Band Rohnerville Rancheria, Regional Water Quality Control Board, North Coast Unified Air Quality Management District, Humboldt County District Attorney, Humboldt County Agriculture Commissioner, HCSO, California Water Resources Control Board, Division of Water Rights, Southern Trinity Joint Unified School District, Southern Trinity Volunteer Fire Protection District, Humboldt Bay Municipal Water District

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**Applicant Name** Broad Spectrum, LLC **Key Parcel Number** 208-241-017-000

**Application (APPS#)** 11737 **Assigned Planner** Zsofia Odry (707) 268-3727 **Case Number(s)** CUP16-369

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Please review the above project and provide comments with any recommended conditions of approval. To help us log your response accurately, please include a copy of this form with your correspondence.

Questions concerning this project may be directed to the assigned planner for this project between 8:30am and 5:30pm Monday through Friday.

County Zoning Ordinance allows up to 15 calendar days for a response. If no response or extension request is received by the response date, processing will proceed as proposed.

☐ If this box is checked, please return large format maps with your response.

**Return Response No Later Than 10/30/2018**

Planning Commission Clerk
County of Humboldt Planning and Building Department
3015 H Street
Eureka, CA 95501
**E-mail:** PlanningClerk@co.humboldt.ca.us **Fax:** (707) 268-3792

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**We have reviewed the above application and recommend the following (please check one):**

☐ Recommend Approval. The Department has no comment at this time.

☐ Recommend Conditional Approval. Suggested Conditions Attached.

☐ Applicant needs to submit additional information. List of items attached.

☐ Recommend Denial. Attach reasons for recommended denial.

☒ Other Comments: See attached letter

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DATE: 10/30/18 PRINT NAME: John Friedenbach, General Manager

# HUMBOLDT BAY MUNICIPAL WATER DISTRICT

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**GENERAL MANAGER**
JOHN FRIEDENBACH


October 30, 2018

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

**RE: Case Number CUP16-369, Key Parcel Number 208-241-017-000**

Humboldt Bay Municipal Water District (District) submits this letter to express concerns regarding Conditional Use Permit 16-369 submitted by Broad Spectrum, LLC. (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. The pond appears to be a potential species problem. Section 55.4.12.8 of the Cannabis Land Use regulations require that ponds and reservoirs be set back from streams, springs, and other hydrologic features. They also have to be designed so that they can be drained.

The Applicant seeks a conditional use permit for operation of an existing 17,000 square foot mixed-light and outdoor cannabis cultivation operation. The Applicant states that irrigation water will be sourced from a shallow subsurface perched water table and that two Class II watercourses flow through the site and drawings show a spring fed pond. It appears from the provided maps that the two Class II watercourses are tributaries of the Mad River.

The Applicant states that it has file for a Long Term Streambed Alteration Agreement with the CDFW and that it has filed an NOI with the Regional Water Quality Control Board.

## I. The Project May Harm Mad River Water Flows and Fish

Mad River is a waterway subject to the protections of the public trust doctrine which establishes a local government responsibility to maintain the flows of the waterway for public use. (*Cal. ex rel. State Lands Com v. Superior Court* (1995) 11 Cal.4th 50, 63 [the beds of navigable rivers are owned by the

state in trust for the public.]) The project proposes to source irrigation water from a Class II spring diversion. Therefore, we respectfully request that the County verify the water rights at the Water Board claimed to be owned and permitted by the applicant prior to issuing a CUP. In addition, storm water runoff from the project could carry chemicals and debris into the Mad River, contaminating not only the drinking water source, but also fish and other species in the water bodies, assuming the Class II spring terminates into the Mad River.

It is the District's understanding and belief that the State Water Board has determined that the Mad River is fully appropriated and there are no more water rights available for appropriation. (See State Water Board Order 98-08; Water Code, § 1206.) Therefore, we respectfully request that the County verify with the Water Board the water rights claimed to be owned and permitted by the applicant prior to issuing a CUP.

## II. The Project Is Subject to CEQA Review

There is a reasonable possibility that the activity will have a significant effect on the environment. Therefore, a full environmental review should be conducted for this project. Reliance on a prior environmental document or an exemption will not adequately capture the likely environmental impacts, especially given the cumulative impacts of this project, in conjunction with other projects in the Mad River area.

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.)

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.

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For the above reasons, the District requests the Planning Department require full environmental review of Conditional Use Permit applications CUP16-369 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. Furthermore, we request that the CUP application be suspended until such time as an LTSAA is issued by the CDFW and is circulated for agency referrals. We also request that the CUP be suspended until such time as the NOI filed with the Regional Water Quality Control Board and its associated compliance documents are completed and circulated for agency referrals.

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

Cc: Gordon Leppig, CDFW
Kason Grady, NCRWQCB, Division Chief Cannabis Regulatory