

SUPPLEMENTAL INFORMATION #1

For Board of Supervisors Agenda of:
December 6, 2016

- Consent Agenda Item }
- Continued Hearing Item }
- Public Hearing Item }
- Department Report }
- Old Business }

Re: Appeal of the Royal Gold Conditional Use Permit; File No: APNs 516-101-021; Glendale Area; Case No: CUP-13-021A

Attached for the Board's record and review is (are) the following supplementary information item(s):

1. New Condition of Approval (No. 7) requiring an Indemnification Agreement be executed:

- 7. **The applicant and property owner shall sign and return an indemnification agreement by which the applicant and property owner agree to hold Humboldt County harmless from any claim, action or proceeding related to challenge of the approval of the project or the adoption of the environmental document that accompanies the project.**

2. Indemnification Agreement (attached).

3. Revised Exhibit B to Attachment A: Modified Conditions of Approval.

INDEMNIFICATION AGREEMENT

This Indemnification Agreement ("Agreement") is entered into by the applicant for the project identified below ("Applicant") and the owner or owners of the property that is the subject of such application for the project identified below ("Property Owner"). This Agreement is effective as of the date last signed below.

Applicant and the Property Owner hereby agree to indemnify, defend, and hold harmless Humboldt County ("County"), the Humboldt County Board of Supervisors, the Humboldt County Planning Commission, and their officers, employees, and agents, including consultants (collectively, the "Indemnified Parties") from any claim, action, or proceeding against the Indemnified Parties to attack, set aside, void, annul or otherwise challenge the approval of the project as identified below or the adoption of the environmental document that accompanies the project.

This indemnification obligation shall include, but not be limited to, damages, costs, expenses, attorney's fees, or expert witness costs that may be asserted by any person or entity, including the Applicant and Property Owner, arising out of or in connection with the approval of the project, as identified below, or adoption of the environmental documents that accompany the project, including any claim for private attorney general fees claimed by or awarded to any party against the County.

The Applicant and the Property Owner agree that they shall be jointly and severally liable for this indemnification obligation. Applicant and Property Owner further agree that County shall be able to choose its counsel in the defense of any claim, action or proceeding as described above, however, Applicant and Property Owner have the right to approve such counsel, which approval shall not be unreasonably withheld. The County agrees to promptly notify the Applicant and Property Owner of any claim, action, or proceeding.

To the extent the County is required to use any of its resources to respond to a claim, action or proceeding as described above, Applicant and Property Owner will reimburse the County within forty-five days upon receipt of an invoice describing the work done, the time spent on such work, and the hourly rate for such work by the employee of agent of the County.

The person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute this Agreement and that this Agreement is a valid and legal agreement binding on the Applicant and Property Owner and enforceable in accordance with its terms.

PROJECT: Royal Gold Conditional Use Permit
Project Number: CUP-13-021
APN: 516-101-079, et al.

APPLICANT:

Signed: _____

Printed Name: _____

Title: _____

PROPERTY OWNER:

Signed: _____

Printed Name: _____

Title: _____

Revised Exhibit B

Modified CONDITIONS OF APPROVAL

Approval of the Conditional Use Permit is conditioned upon the following terms and requirements which must be fulfilled before a building permit may be issued or use initiated.

1. The applicant shall obtain all necessary Building Permits for existing and proposed buildings.
2. The applicant shall reconfigure the parking area to the satisfaction of the Department of Public Works to prevent backing of vehicles onto the county road right of way pursuant to County Code 313-109.1.6.1.
3. The applicant shall obtain all necessary permits from the Division of Environmental Health (DEH).
4. The Applicant shall pay the \$125.00 Review for Conformance with Conditions Fee as required by the County's adopted Schedule of Fees and Charges.
5. **Prior to hearing**, the applicant shall submit a check to the Planning Division payable to the Humboldt County Recorder in the amount of \$2,260.00. Pursuant to Section 711.4 of the Fish and Game Code, the amount includes the Department of Fish and Wildlife (DF&W) fee plus a \$50 document handling fee. This fee is effective through December 31, 2015, at such time the fee will be adjusted pursuant to Section 713 of the Fish and Game Code. Alternatively, the applicant may contact DF&W by phone at (916) 651-0603 or through the DF&W website at www.dfg.ca.gov for a determination stating the project will have *no effect* on fish and wildlife. If DF&W concurs, a form will be provided exempting the project from the \$2,260.00 fee payment requirement. In this instance, only a copy of the DF&W form and the \$50.00 handling fee is required.
6. The applicant shall submit a letter from the Blue Lake Fire Protection District stating that the recommendations in their letter of November 23, 2013 have been addressed to their satisfaction.
7. **The applicant and property owner shall sign and return within 5 days of the Board's action on the project an indemnification agreement by which the applicant and property owner agree to hold Humboldt County harmless from any claim, action or proceeding related to challenge of the approval of the project or the adoption of the environmental document that accompanies the project.**

On-Going Requirements/Development Restrictions Which Must Continue for the Life of the Project

1. The project shall be developed, operated, and maintained in conformance with the Project Description, the approved Site Plan, the Plan of Operations, and these conditions of approval. Changes shall require modification of this permit except where consistent with Humboldt County Code Section 312-11.1, Minor Deviations to Approved Plot Plan.
2. Applicant shall ensure that noise generated by the operations shall not exceed 55 60 dBA/Ldn at all property lines the exterior of any residence.
3. All exterior lighting shall be compatible with the surrounding setting and shall not be directed beyond the boundaries of the parcel.

4. One (1) nameplate non-illuminated and not exceeding twenty (20) square feet in sign area may be permitted without modification of this permit. The sign shall conform to Section 314-87.2 of the Humboldt County Code and will maintain adequate sight visibility from points of ingress/egress.
5. Should the Planning Division receive complaints regarding fugitive dust caused by vehicle trips associated with the operation of the potting soil operation, the applicant shall prepare and submit a dust management plan the Planning Director for consideration and approval, and then implement the approved dust management plan for the life of the project.
6. Site visibility must be maintained at the driveway approach in conformance with County Code Section 341-1 et seq.
7. The applicant and successor's in interest shall adhere to all of the Mitigation Measures attached hereto as Exhibit A and incorporated hereby reference. The applicant and successor's in interest are required to pay for Mitigation Monitoring on a time and material basis as set forth in the schedule of fees and charges as adopted by ordinance of the Humboldt County Board of Supervisors. The Department will provide a bill to the applicant. Any and all outstanding Planning fees to cover the Mitigation Monitoring shall be paid to the Humboldt County Planning Division, 3015 "H" Street, Eureka.
8. The applicant must maintain compliance with the state solid waste regulatory requirements in California Code of Regulations Title 14.
9. If following the odor implementation minimization plan (OIMP) does not successfully reduce odor impacts, the applicant must take additional reasonable and feasible measures to minimize odors. The OIMP must then be revised to incorporate the measures and submitted to the Humboldt County Department of Health and Human Services, DEH.
10. The OIMP shall be reviewed annually by the applicant to determine if any revisions are necessary.

Informational Notes

1. If archaeological resources are encountered during construction activities, all onsite work shall cease in the immediate area and within a 50 foot buffer of the discovery location. A qualified archaeologist will be retained to evaluate and assess the significance of the discovery, and develop and implement an avoidance or mitigation plan, as appropriate. For discoveries known or likely to be associated with Native American heritage (prehistoric sites and select historic period sites), the Tribal Historic Preservation Officers (THPOs) for the Bear River Band of Rohnerville Rancheria, Blue Lake Rancheria, and Wiyot Tribe are to be contacted immediately to evaluate the discovery and, in consultation with the project proponent, City of Eureka, and consulting archaeologist, develop a treatment plan in any instance where significant impacts cannot be avoided. Prehistoric materials may include, but are not limited to, obsidian or chert flakes, tools, locally darkened midden soils, groundstone artifacts, shellfish or faunal remains, and human burials. Historic archaeological discoveries may include, but are not limited to, 19th century building foundations; structural remains; or concentrations of artifacts made of glass, ceramic, metal or other materials found in buried pits, old wells or privies. Should known or suspected Native American skeletal remains or burials be inadvertently discovered, the provisions of Section 7050.5 of the

California Health & Safety Code and Section 5097.98 of the Public Resources Code shall apply (see at <http://www.nahc.ca.gov/profguide.html>).

The applicant is ultimately responsible for ensuring compliance with this condition.

2. The applicant is responsible for receiving all necessary permits and/or approvals from other state and local agencies.
3. This permit shall expire and become null and void at the expiration of one (1) year after all appeal periods have lapsed (see "Effective Date"); except where construction under a valid building permit or use in reliance on the permit has commenced prior to such anniversary date. The period within which construction or use must be commenced may be extended as provided by Section 312-11.3 of the Humboldt County Code.
4. The applicant is required to pay for permit processing on a time and material basis as set forth in the schedule of fees and charges as adopted by ordinance of the Humboldt County Board of Supervisors. Any and all outstanding Planning fees to cover the processing of the application to decision by the Hearing Officer shall be paid to the Humboldt County Planning Division, 3015 H Street, Eureka. The Department will provide a bill to the applicant upon file close out after the Planning Director's decision.
5. The Humboldt County Fire Safe Ordinance (Section 3111-1 et seq.) establishes development standards for minimizing wildfire danger in "state responsibility" designated areas. Exceptions to the 30-foot setback requirement may be pursued upon demonstration of providing the "same practical effect" of the setback through a combination of construction material choices, non-flammable vegetative buffers, and other design features.