




AGENDA ITEM NO.

L-1

COUNTY OF HUMBOLDT

Hearing Date: December 6, 2016

To: Board of Supervisors

From: John H. Ford, Director, Planning and Building Department 

Subject: Appeal of the Planning Commission Approval of the Royal Gold Conditional Use Permit Application
Case No.: CUP-13-021A
File No.: APN 516-191-079
Glendale Area

RECOMMENDATIONS

That the Board of Supervisors:

1. Open the public hearing and receive the staff report, testimony and argument by the appellant and applicant, and public comment.
2. Based on the findings in the staff report and testimony received about the project, deny the appeal in full, adopt the Mitigated Negative Declaration, and adopt Resolution 16-____ (Exhibit A of Attachment A) approving the Royal Gold Conditional Use Permit application subject to the conditions of approval (Exhibit B of Attachment A).
3. Direct the Clerk of the Board to give notice of the decision to the appellant, the project applicant, the agent and any other interested party.
4. Close the public hearing.

Prepared by _____
Michael Wheeler, Senior Planner

CAO Approval



REVIEW:

Auditor _____ County Counsel  Human Resources _____ Other _____

TYPE OF ITEM:

____ Consent
____ Departmental
☒ Public Hearing
____ Other _____

PREVIOUS ACTION/REFERRAL:

Board Order No. _____

Meeting of: _____

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT

Upon motion of Supervisor

Seconded by Supervisor

Ayes
Nays
Abstain
Absent

SEE ACTION SUMMARY

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: _____

By: _____

Kathy Hayes, Clerk of the Board

SOURCE OF FUNDING: The applicant is responsible for all costs associated with the processing of the project. Applicant fees are deposited into Planning and Building Department Current Planning Revenue Account 1100-277-608000.

DISCUSSION:

Project Summary

The matter before your Board of Supervisors is an appeal of the Planning Commission's August 4, 2016 adoption of a Mitigated Negative Declaration and approval of the Royal Gold Conditional Use Permit application.

The project consists of a Conditional Use Permit (CUP) after-the-fact for the applicant (Royal Gold LLC) to allow the manufacturing and distribution of potting soil within an approximately 18.9-acre area spread across multiple parcels in the Glendale area. Note: since March of 2009, Royal Gold has been operating their soil manufacturing, wholesale, and distribution business from the site, without the benefit of County review. Issuance of the Conditional Use Permit will close the open code compliance case and bring into compliance with zoning the existing soil manufacturing operation and allow expansion from approximately 60,000 cubic yards of annual production to 100,000 cubic yards, as well as placement of a new 7,800 square foot building. The proposed membrane structure utilizes an arched truss design and will be placed over an area where stockpiles of material are currently stored and utilized for similar activities. Coco pith is used as the basis for their soil products, though other components include: sawdust, compost, chicken manure, and fish bone. All of the materials used are imported and then processed at the project site. Daily operation primarily involves the importing of organic materials, grinding, screening, sorting, stockpiling, mixing, packaging, and distribution of the final soil product.

The Conditional Use Permit findings are addressed in Exhibit A to the Draft Board Resolution (Attachment A) and in the Planning Commission staff report (Attachment D).

Basis of Appeal

The basis of the appeal is set forth in the appeal letter submitted Humboldt Baykeeper which was received by the Planning and Building Department on August 17, 2016 (Attachment B). The appellants brought up four issues related to the Planning Commission's action approving the Royal Gold Conditional Use Permit, summarized as:

- 1) An EIR should be prepared instead of a Mitigated Negative Declaration.
- 2) There are potential hazards and hazardous materials impacts.
- 3) There are potential water quality impacts.
- 4) There are potential biological resource impacts.

Planning Commission Decision

The Humboldt County Planning Commission (Planning Commission) conducted a Public Hearing with regard to the Royal Gold Conditional Use Permit on August 4, 2016. In testimony before the Planning Commission, Humboldt Baykeeper raised the same concerns that are the subject of the present appeal, and the Planning Commission, after review of the staff report and supplemental information (Attachment C) and after consideration of public testimony (Attachment E), including a rebuttal of the Humboldt Baykeeper's arguments by the applicant and their consultants, made the findings required by CEQA and adopted the Mitigated Negative Declaration and approved the project by adopting Resolution, No. 16-35, on a vote of 6 in favor and 1 opposed.

Staff Recommendation

As described in greater detail below, Staff recommends that the Board of Supervisors deny the appeal based on a determination by the Planning Commission that the Mitigated Negative Declaration mitigates project effects to a level below the threshold of significance.

Staff Discussion

The staff recommendation is supported by the following analysis:

Appeal Issue No. 1: The lead agency should prepare an Environmental Impact Report instead of a Mitigated Negative Declaration for the project as the appellant believes a fair argument may be made the significant impacts will occur that will substantially degrade the quality of the environment and substantially reduce the habitat for fish and wildlife species. The appellants argued that the Mitigated Negative Declaration for the project is inadequate due to the failure to identify potentially significant impacts to water quality, hazardous materials, and biological resources.

Approach in Planning Commission Action: The Planning Commission heard this issue during public comments on the project and also received a response from the applicant's consultant addressing this issue. In evaluating the matter and public record on this project, the Planning Commission adopted the Mitigated Negative Declaration.

Request from Appellants: The lead agency should prepare an Environmental Impact Report instead of a Mitigated Negative Declaration for the project

Staff Recommendation: Staff supports the Planning Commission adoption of the Mitigated Negative Declaration (MND). An initial study was prepared for the project in accordance with the provisions of §15070 of the State CEQA Guidelines and a notice of intent to adopt a mitigated negative declaration was provided to allow public and agency review within the period provided by §15105 of the State CEQA Guidelines. The MND was submitted to the State Clearinghouse for 30 day review in accordance with §15073 of the State CEQA Guidelines which included referral and review by applicable resource agencies, including the Regional Water Quality Control Board and the California Department of Fish and Wildlife. None of the resource agencies commented or had issues with the approach in the MND. Prior to approving the project, the Planning Commission considered the proposed mitigated negative declaration together with all comments received during the public review process and public hearing, and acted to adopt the mitigated negative declaration on the basis of the whole of the record before it (including the initial study and comments received) finding that there is no substantial evidence that the project will have a significant effect on the environment and that the mitigated negative declaration reflects the lead agency's independent judgement and analysis. The project approval and the Planning Commission's decision to adopt the mitigated negative declaration were appealed by Humboldt Baykeeper. Staff believes that the response from the applicant's consultant (Appendix F) addresses the appellant's fair argument claim with respect to reduction of habitat for fish and wildlife species and explains why there would be no substantial reduction. Specifically, the consultant found that the comments provided by the appellant were based on a limited amount of research, misinformation, opinion, speculation, and numerous unsupported conclusions that do not meet the criteria for substantial evidence in §15384 of the State CEQA Guidelines. Staff concurs with this assessment.

Appeal Issue No. 2: Hazards and Hazardous Material Impacts. It is necessary to conduct further analysis of possible contamination of potting soil products from dioxins, furans, and PCP.

Approach in Planning Commission Action: The Planning Commission heard this issue during public comments on the project and also received a response from the applicant's consultant addressing this issue. In evaluating the matter and public record on this project, the Planning Commission adopted the Mitigated Negative Declaration.

Request from Appellants: Appellant believes that it is necessary to conduct further analysis of potential impacts to groundwater, surface water, and possible contamination for potting soil products from dioxins, furans, and PCP.

Staff Recommendation: The hazardous materials remediation activities that have occurred on site were addressed thoroughly in the mitigated negative declaration (see pages 28-29 of Planning Commission staff report (Attachment 4 to Attachment D of Board Report). Management of the cleanup of the former McNamara and Peepe Lumber Mill is handled by the California Department of Toxic Substances Control (CA DTSC). The Project Manager for CA DTSC has indicated that the activities conducted by Royal Gold in the area of the concrete cap is not a concern provided groundwater monitoring wells are protected from damage and nothing is done to inhibit future ground water monitoring at the site. Furthermore, prior site investigations conducted on the site since the mid-1980s have concluded that the location of significant levels of contamination were in the area of the former green chain. A reinforced concrete cap was installed over the green chain area in the 1990s to prevent human contact and to stop rainwater infiltration. Based on these investigations, there is no indication that other areas of the site have significant hazardous materials contamination including TCP/PCP or dioxin/furan. Mitigation measure MI-6 addresses the potential impacts of ground disturbance from the project in the unlikely instance that grading for the placement of a structure may uncover or disturb unknown hazardous materials at the site. The CA DTSC Project Manager considered MI-6 adequate for the proposed project and stated that the standard for soils analysis should be the U.S. EPA Regional Screening Levels (RSLs) for industrial/commercial use. As noted in the consultant's response to the appeal comments (Attachment F), *"the Humboldt Bay Keeper (sic) appeal letter provides no information or evidence other than speculation that potential impacts to hazardous materials contamination at the site could occur from the Royal Gold soil operation."* Staff supports the applicant's consultant contention that this issue is adequately addressed in the MND, Mitigation Measures, and Conditions of Approval.

Appeal Issue No. 3: Water Quality Impacts. The appellant makes the claim that *"self-reported data show that the company's stormwater pollution prevention controls are presently inadequate, and this problem will be compounded by the disturbance of dioxins and furans at the site without adequate investigation and mitigation measures."*

Approach in Planning Commission Action: The Planning Commission heard this issue during public comments on the project and also received a response from the applicant's consultant addressing this issue. In evaluating the matter and public record on this project, the Planning Commission adopted the Mitigated Negative Declaration.

Request from Appellants: Appellant believes that exceedances of effluent standards show that the existing Industrial General Permit to protect water quality and the SWPPP are not adequate to prevent significant impacts to water quality.

Staff Recommendation: The operations are conducted in compliance with all required state water quality permit requirements and through the applicant's Industrial General Permit for water quality and implementation of a Stormwater Pollution Prevention Plan (SWPPP). The operations were examined and reviewed by the Regional Water Quality Control Board and found to be in compliance. Staff supports the applicant's consultant contention that this issue is adequately addressed in the MND, Mitigation Measures, and Conditions of Approval. The applicant's consultant states that: *"No information or evidence was provided by Humboldt Bay Keeper (sic) to indicate that aquatic species in the Mad River will be impacted by the Royal Gold soil operation other than their misinterpretation of self-reported stormwater sample data available online through the State Water Resources Control Board (SWRCB) Storm Water Multiple Application and Report Tracking System (SMARTS). The letter does not give any indication that the appellant has personal knowledge of potential habitat at the site or understands the existing disturbed environmental baseline. Instead, the basic inference made by the appellant was that*

since exceedances of Numeric Action Levels (NALs) were reflected in the self-reported data, then the Royal Gold soil operation must be having significant impacts to aquatic species in the Mad River. The appellant did not provide any specific information about what hydrologic connection the site has to the Mad River or how aquatic species are specifically being impacted by the exceedances of Numeric Action Levels (NALs) established by the SWRCB. This unsupported conclusion does not meet the criteria for substantial evidence in §15384 of the CEQA Guidelines. Therefore, the appeal letter from Humboldt Bay Keeper (sic) is lacking sufficient information and evidence to substantiate the claim that the biological resources analysis in the MND is not adequate in addressing impacts to aquatic species and their habitat." (Appendix F). Staff agrees with this conclusion.

Appeal Issue No. 4: Impacts to Biological Resources. The appellant states that: "*Hall Creek is one of the Mad River tributaries that has been the subject of funding from the California Department of Fish & Wildlife's Fisheries Restoration Grant Program. This program awards grants to restore fish habitat in high-priority watersheds for salmonids, including Coho and Chinook salmon and steelhead. Bay Keeper (sic) is particularly concerned that the proposed Project's impacts to wildlife and water quality may interfere with this CDFW high-priority restoration.*"

Approach in Planning Commission Action: The Planning Commission heard this issue during public comments on the project and also received a response from the applicant's consultant addressing this issue. In evaluating the matter and public record on this project, the Planning Commission adopted the Mitigated Negative Declaration.

Request from Appellants: The MND fails to provide meaningful information with respect to wildlife impacts, and fish in the Mad River could be impacted by sediment and stormwater runoff.

Staff Recommendation: The project as proposed, conditioned and mitigated has been referred to the California Department of Fish and Wildlife, which found that measures included were protective of biological resources. Staff supports the applicant's consultant contention that this issue is adequately addressed in the MND, Mitigation Measures, and Conditions of Approval. The applicant's consultant concluded that: "*The appellant did not provide any specific information about what hydrologic connection the site has to Hall Creek or how aquatic species are specifically being impacted by the exceedances of Numeric Action Levels (NALs) established by the SWRCB. This unsupported conclusion does not meet the criteria for substantial evidence in §15384 of the CEQA Guidelines. Therefore, the appeal letter from Humboldt Bay Keeper (sic) is lacking sufficient information and evidence to substantiate the claim that the Royal Gold soil operation may interfere with CDFW restoration efforts on Hall Creek.*" Staff concurs with this assessment.

FINANCIAL IMPACT: There will be no impact on the General Fund. The appellant is responsible for paying all costs involved in the processing of the appeal application.

BOARD'S STRATEGIC FRAMEWORK:

The General Plan Amendment and Zone Reclassification supports the Board's Strategic Framework through its core role of supporting business, workforce development and creation of private sector jobs.

OTHER AGENCY INVOLVEMENT: The Department has referred the appeal of conditional use permit approval to applicable agencies for comments and recommendations, including the Department of Public Works and the Division of Environmental Health.

ALTERNATIVES TO STAFF RECOMMENDATIONS: The Board of Supervisors can choose to approve the project as approved by the Planning Commission and not make any changes to the Conditions of Approval, or the Board of Supervisors uphold the appeal and make changes to the conditions of approval in addition to those recommended by staff. If either of these

alternatives is pursued, the staff would request that the matter brought back before the Board at a later date to consider a revised resolution and/or revised Conditions of Approval.

ATTACHMENTS:

NOTE: The attachments supporting this report have been provided to the Board of Supervisors; copies are available for review in the Clerk of the Board's Office.

- Attachment A: Draft Board Resolution
 Exhibit A - Findings
 Exhibit B – Conditions of Approval
- Attachment B: Appeal filed by Humboldt Baykeeper, August 17, 2016
- Attachment C: Resolution of the Planning Commission, Resolution No. 16-35
- Attachment D: Planning Commission Staff Report and Supplemental Information
- Attachment E: Action Summary of Planning Commission Hearing on August 4, 2016
- Attachment F: Applicant's Consultant responses to comments on appeal.

ATTACHMENT A

Draft Board Resolution

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings; Meeting on December 6, 2016

RESOLUTION NO. ____-____

RESOLUTION OF THE BOARD OF SUPERVISORS

OF THE COUNTY OF HUMBOLDT

CERTIFYING COMPLIANCE WITH THE

CALIFORNIA ENVIRONMENTAL QUALITY ACT

AND APPROVING THE ROYAL GOLD CONDITIONAL USE PERMIT APPLICATION

FILE #516-101-079; CASE # CUP-13-021A

WHEREAS, Royal Gold submitted an application and evidence in support of approving a Conditional Use Permit; and

WHEREAS, the Planning and Building Department - Planning Division has reviewed the submitted application and evidence and has referred the application and evidence to involved reviewing agencies for site inspections, comments and recommendations; and

WHEREAS, the Planning Division, the lead department pursuant to Section 202 of Resolution No. 77-29 (County CEQA Guidelines), has prepared a Mitigated Negative Declaration for the subject proposal in accordance with the California Environmental Quality Act (CEQA); and

WHEREAS, Attachment 2 in the Planning Commission staff report includes evidence in support of making all of the required findings for approving CUP-13-021; and

WHEREAS, the Planning Commission held a public hearing on August 4, 2016 during which they considered the Mitigated Negative Declaration and received staff reports, accepted public comment, and deliberated on the proposed Royal Gold Conditional Use Permit application; and

WHEREAS, the Planning Commission, in conformance with Sections 15090 and 15091 of the State CEQA Guidelines, adopted the Mitigated Negative Declaration in Attachment D and: (a) found that it has been completed in compliance with CEQA and reflects the Lead Agency's independent judgment and analysis; (b) it has reviewed and considered the information contained in the Mitigated Negative Declaration for the project; and (c) the proposed project, as conditioned and mitigated, will not have a significant effect on the environment; and

WHEREAS, the Planning Commission made the findings in Attachment 2 of the Planning Division staff report for Case No.: CUP-13-021 based on the submitted evidence; and

WHEREAS, the Planning Commission conditionally approved the Conditional Use Permit as recommended in the Planning Division staff report for Case No.: CUP-13-021; File No. APNs: 516-101-079; and

WHEREAS, on August 17, 2016, the Planning Commission approval was appealed by Humboldt Baykeeper; and

WHEREAS, the Board of Supervisors on December 6, 2016 held a public hearing on the project and considered the issues of appeal.

NOW, THEREFORE, be it resolved, determined, and ordered by the Board of Supervisors that:

1. The Board of Supervisors, in conformance with Sections 15090 and 15091 of the State CEQA Guidelines, certifies that (a) the Mitigated Negative Declaration in Attachment D has been completed in compliance with CEQA and reflects the Lead Agency's independent judgment and analysis; (b) it has reviewed and considered the information contained in the Mitigated Negative Declaration for the project and all public and agency comments; and (c) finds that the proposed project, as conditioned and mitigated, will not have a significant effect on the environment, and adopts the mitigated negative declaration for the project.
2. The Board of Supervisors denies the appeal in full and adopts this Resolution and the findings in Exhibit A, and approves the Royal Gold Conditional Use Permit Application (Case No. CUP-13-021) subject to the conditions set forth Exhibit B of this Resolution.

DATED: December 6, 2016

MARK LOVELACE, Chair
Humboldt County Board of Supervisors

Adopted on motion by Supervisor
and the following vote:

, seconded by Supervisor

AYES: Supervisors:
NOES: Supervisors:
ABSENT: Supervisors:
ABSTAIN: Supervisors:

STATE OF CALIFORNIA)
County of Humboldt)

I, Kathy Hayes, Clerk of the Board of Supervisors of the County of Humboldt, State of California do hereby certify the foregoing to be a full, true, and correct copy of the original made in the above-titled matter by said Board of Supervisors at a meeting held in Eureka, California as the same now appears of record in my office.

In Witness Whereof, I have hereunto set
my hand and affixed the Seal of said
Board of Supervisors.

KATHY HAYES
Clerk of the Board of Supervisors of
the County of Humboldt, State of California

EXHIBIT A

Required Findings:

To approve this project, the Hearing Officer must determine that the applicant has submitted evidence in support of making **all** of the following required findings.

1. The proposed development is in conformance with the County General Plan;
2. The proposed development is consistent with the purposes of the existing zone in which the site is located;
3. The proposed development conforms with all applicable standards and requirements of these regulations; and
4. The proposed development and conditions under which it may be operated or maintained will not be detrimental to the public health, safety, or welfare; or materially injurious to property or improvements in the vicinity.
5. The proposed development does not reduce the residential density for any parcel below that utilized by the Department of Housing and Community Development in determining compliance with housing element law (the midpoint of the density range specified in the plan designation) unless the following written findings are made supported by substantial evidence: 1) the reduction is consistent with the adopted general plan including the housing element; and 2) the remaining sites identified in the housing element are adequate to accommodate the County share of the regional housing need; and 3) the property contains insurmountable physical or environmental limitations and clustering of residential units on the developable portions of the site has been maximized.

1. General Plan Consistency. The following table identifies the evidence which supports finding that the proposed subdivision is in conformance with all applicable policies and standards in Chapters 2-4 of the Framework Plan (FRWK).

The proposed development must be consistent with the General Plan. The following table identifies the evidence which supports finding that the proposed development is in conformance with all applicable policies and standards of the Framework Plan (FRWK) and the Northern Humboldt General Plan (NHGP).

Plan Section(s)	Summary of Applicable Goal, Policy, or Standard
Land Use Designation: MIXED / Dispersed Housing, Grazing, Commercial Diagrammatic NHGP	Although, the project site is designated Diagrammatic Commercial, it has been determined during previous application approvals that industrial uses of this nature are consistent with the Diagrammatic Commercial designation. As stated in the staff report (page 3) for the ICM Lumber Company Conditional Use Permit (CUP-32-86) which allowed a wood remanufacturing plant to occur on parcel 516-101-79, <i>"The Northern Humboldt General Plan designates this area as Diagrammatic Commercial. Staff believes this project may be found consistent with this designation based upon the Plan's principles of "encouraging the grouping of urbanizing developments into unified residential, commercial, and industrial areas." This site has historically been in industrial use by Bonnie Stud Mill and Trend Industries."</i>
Evidence Which Supports Making the General Plan Conformance Finding	
The proposed use would allow the manufacturing and distribution of potting soil within an approximately 1½-acre area spread across multiple parcels in the Glendale area. The project site is located in the unincorporated community of Glendale on an existing industrial site that has been used for industrial purposes since the 1950s. The western portion of the site (516-101-79, -83) was historically used for lumber mill operations by Bonnie Stud Mill, Trend Industries, and ICM Lumber Company (CUP-32-86). The eastern portion of the site (516-101-08, -60, -81, -84 & 516-111-62, -63) was also historically used for lumber mill operations under several different owners from the 1950s to 2002. The site was operated by Molalla Forest Products, Inc. from the 1950s to March 1969 when it was purchased by the Simpson Timber Company. Simpson never operated the mill at the site and sold it to McNamara & Peepe (M&P) in May 1969. M&P operated at the site from 1969 to May 1984 when the company filed for bankruptcy. Blue Lake Forest Products began operation at the site in 1986 and ceased operations in April 2002 when their company also filed for bankruptcy. After Blue Lake Forest Products ceased operations, Gess Environmental conducted a greenwaste recycling and composting operation on the eastern portion of the site for several years prior to moving closer to Arcata. Historic use of the site is evidenced in the 1954 aerial photos from the Merle Shuster collection (search term: Glendale) which are available on-line from the HSU Library Humboldt Room. Pursuant to Volume I of the General Plan (Framework Plan), the Communities of Glendale and Fieldbrook were targeted for preparation of a Community Plan. A draft of the Community Plan was developed in January 2006 by the Fieldbrook-Glendale Community Services District (whose boundaries are mostly coincident with the Community Planning Area mapped under the Framework Plan, and may be modified and adopted in the future, following adoption of the new General Plan. 'Economic Goals' contained in the draft plan (Page 19) include: developing a stable and diverse economic base supporting long-term local employment by designating adequate industrial and commercial sites, increasing the number of manufacturing jobs and creating skilled jobs and gross area of new commercial space, and protecting existing businesses and industrial areas from encroachment of non-complimentary uses. Based on the above analysis, staff finds that the proposed use is consistent with the Commercial Diagrammatic of the Northern Humboldt General Plan.	

Plan Section(s)	Summary of Applicable Goal, Policy, or Standard	Evidence Which Supports Making the General Plan Conformance Finding
Housing §2400 (FRWK)	Housing shall be developed in conformity with the goals and policies of the Humboldt County Housing Element.	The project does not involve the development of housing, nor does it involve the removal of existing housing inventory as it is for the conversion of a detached accessory structure. Furthermore, the parcel was not included in the 2014 Housing Inventory. The project is in conformance with the standards in the Housing Element.
Hazards §3200 (FRWK)	New development shall minimize risks to life and property in areas of high geologic, flood and fire hazard.	<p>A small part of the eastern portion of the site (APNs 516-101-60 & 516-111-63) is a State Response hazardous materials site (Envirostor ID: 12240115) due to the use of wood anti-stain solutions while the site was operated by the McNamara & Peepe (M&P) Corporation (See Figure 4 – Site Plan). Spillage and drippings of the wood anti-stain solutions caused pentachlorophenol (PCP) and tetrachlorophenol (TCP) contamination of the portion of the site containing the green chain area. The remedial actions at the site were completed and certified by the California Environmental Protection Agency's Department of Toxic Substances Control (DTSC) on March 9, 1998. The site continues to be monitored, and a contract was recently executed by DTSC to enable a third-party to conduct groundwater monitoring and research remediation options for soil and groundwater (See Section 8. Hazards and Hazardous Materials for a more detailed discussion).</p> <p>All of the reviewing agencies have recommended approval or conditional approval of the project. The subject property is not subject to flooding. The subject parcel is not located within an Alquist-Priolo special studies zone or a tsunami run-up zone. All other referral agencies have recommended approval of the proposed project.</p>

<p>Biological Resource §3420 (FRWK)</p>	<p>Protect designated sensitive and critical resource habitats.</p>	<p>Land uses in the project area include Highway 299, Glendale Drive, various industrial operations, agricultural operations, E&O Bowl, Murphy's Market, and numerous rural residences. Further, the project site has historically been used for lumber milling operations, so wildlife in the area are accustomed to the presence of commercial and industrial activities in the area.</p> <p>Potential wildlife impacts resulting from the project would be limited to short-term impacts. Activity on the project site is intermittent and potential wildlife impacts would be limited to times of operation and would be limited to temporary disturbance. There is the potential for impact on some wildlife species resulting from the noise levels produced by the equipment and vehicles/trucks that will be used for this project. More sensitive wildlife species would tend to move away from activity areas or make use of the area during evening, night, early morning and times of the year the project is not consistently in operation (July – March). Since the project site is limited (18.9 acres) and mostly paved, wildlife moving from one place to another would be expected to go around the activity area when it is in operation. Existing wildlife corridors are located outside of the project site, primarily the active channel of the Mad River and adjacent tributaries. Wildlife living in the area has already adapted to existing and historic disturbances (Highway 299, Glendale Drive, commercial, industrial, and rural residential uses) and would not be further disturbed by this project. There will be no significant impact on fish species in the Mad River or its tributaries because the project site is located on a former industrial site and sediment control and stormwater runoff are regulated by the requirements of the RWQCB Industrial General Permit (WDID# 121025790) which includes a Storm Water Pollution Prevention Plan (SWPPP).</p> <p>The project does not involve excavation. No tree removal is proposed.</p>
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<p>Archaeological and Paleontological Resources §3530 (FRWK)</p>	<p>Protection and enhancement of cultural resources. Mitigation measures shall be required where new development would adversely impact archaeological or paleontological resources.</p>	<p>The project area contains no known historic, archeological or paleontological resources as defined in CEQA Guidelines Sec. 15064.5. The North Coastal Information Center (NCIC) has not identified any culturally sensitive areas on the project site in the past and has recommended approval of previous applications (LLA-03-15).</p> <p>The project will not disturb any human remains; since no known human remains exist on the project site. Other than drainage maintenance activities most of the production activity occurs on already paved surfaces.</p> <p>An Archaeological Survey Report (June 2014) was completed by William Rich of William Rich & Associates which concluded on Page 19: <i>"This investigation has determined that no historic properties are present in the project area. This supports a finding that the proposed conditional use permit for Royal Gold's potting soil manufacturing operation will not result in an adverse effect to historical resources, as none are present. No further archaeological studies are recommended at this time. It is the opinion of this author that the investigation constitutes a good faith effort to identify cultural resources at the project location. It is unlikely, given the disturbed project setting, background research and intensive field survey that significant cultural resources will be discovered during project implementation. If, however any archaeological materials are uncovered during project activities, the following pages offer recommendations for ensuring that potential project impacts to significant cultural resources are eliminated or reduced to less than significant levels."</i></p> <p>The inadvertent discovery protocol recommendation contained in the Archaeological Survey Report (June 2014) completed by William Rich & Associates has been included below as mitigation measure MI-5 in the event that any cultural resources are discovered during project operations. The proposed project will therefore not impact the items listed in this section and the necessary findings can be made. Based on the project description and its location, the proposed project will not result in a significant impact to cultural resources.</p>
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<p>Noise §3240 (FRWK)</p>	<p>Conform with noise standards.</p>	<p>This project, by its relative nature, contributes to ambient noise levels only during periods of operation. Project-related sounds will be limited to daytime operations, generally Monday through Saturday from 8:00 a.m. to 6:00 p.m. The project is proposed to occur year round but with the most intense operations occurring for 12 weeks between April and June of each year. The remaining months will have reduced activity between July and March when limited project related sounds would be generated.</p> <p>Rural residential development occurs adjacent to the project site (See Figure 4 – Site Plan). The nearest residential structures to high activity areas occur to the west, south, & east of the project site boundaries. As described in the discussion of the Mitigated Negative Declaration, the majority of the mobile and stationary equipment at the site complies with the County's 60 dBA Ldn noise standard with the exception of the grinder. To mitigate the noise impacts of the grinder, it is proposed to relocate it to the central portion of the project site and place it within the new 7,800 square foot square building that will be located in the southeast corner of parcel 516-101-84. At this location the grinder will be approximately 450 feet from the nearest residential structure which occurs to south. Being located inside the building will provide some noise buffering for the closest residential uses. A concrete block wall or similar noise buffering structure will also be placed directly south of the grinder to further buffer noise levels for the residential uses to the south. The individual concrete blocks are 2 feet wide by 6 feet long and 2 feet tall. The blocks will be stacked 3 high and form a wall that is 6 feet tall. The concrete block wall will be approximately 72 feet long. With the distance from the nearest residential structure (450 feet) and the proposed noise buffering structures (building and concrete block wall), it is estimated that the grinder will produce a noise level of 60 dBA Ldn or less at the exterior of the closest residential structure. These measures are included below as mitigation measure MI-7.</p> <p>Some of the equipment used at the site (e.g. grinder or screen) may generate minor amounts of localized groundborne vibration but not to the extent that it would be considered excessive or abnormal. This equipment is not considered to generate groundborne noise levels.</p> <p>During construction of the proposed 7,800 s.f. building in the southeast corner of parcel 516-101-84, there will be a temporary increase in ambient noise levels in the project area. Given the distance from the adjacent residential uses and the temporary nature of the construction activity, it is anticipated that noise impacts will be less than significant.</p>
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2. The proposed development is consistent with the purposes of the existing zone in which the site is located; and 3. The proposed development conforms with all applicable standards and requirements of these regulations. The following table identifies the evidence which supports finding that the proposed development is in conformance with all applicable policies and standards in the Humboldt County Zoning Regulations.

Zoning Section	Summary of Applicable Requirement	Evidence That Supports the Zoning Finding
§314-8.1: Unclassified (U)	The Unclassified (AG) Zone is applied to areas which have not been studied enough to place them in some other zone. Single family residential development and agriculture are principally permitted uses. Other uses are allowed with a Use Permit. The purpose of the "U" Zone, as stated in Section 314-2(a) of the Humboldt County Code, is to allow a variety of activities with a use permit if the project insures orderly development in conformance with the General Plan.	<p>Although, the project site is zoned Unclassified (U) and designated Diagrammatic Commercial, it has been determined during previous application approvals that industrial uses of this nature are consistent with the Diagrammatic Commercial designation.</p> <p>The Unclassified (U) zone allows a reduction/increase in the development standards such as setbacks, ground coverage, distance between major buildings, etc. with the granting of a use permit. As stated in Section 314-8.1, <i>"The building height, site area, setbacks and other requirements for all other uses shall be as required by the Planning Commission in the granting of a Use Permit."</i> This application proposes the placement of a 7,800 s.f. (65' W x 120' L) building (See Sheet E1-1.0) in the southeast corner of parcel 516-101-84 on an existing concrete pad (See Figure 4 – Site Plan). This proposal is compliant with the setback requirements in the Unclassified (U) zone and the Cal-FIRE Fire Safe Regulations</p>
Min. Lot Size	6,000 s.f.	The project site is 18.9 acres spread across eight parcels.
Min. Lot Width	50 feet	No new subdivisions or lot line adjustments are proposed.
Max. Lot Depth	3 times the lot width	No new subdivisions or lot line adjustments are proposed.

Yard Setbacks	Front: 20 feet Rear: 10 feet Side: 5 feet	For the most part, the project involves the use of existing buildings. The Unclassified (U) zone allows a reduction/increase in the development standards such as setbacks, ground coverage, distance between major buildings, etc. with the granting of a use permit. As stated in Section 314-8.1, <i>"The building height, site area, setbacks and other requirements for all other uses shall be as required by the Planning Commission in the granting of a Use Permit."</i> This application proposes the placement of a 7,800 s.f. (65' W x 120' L) building (See Sheet E1-1.0) in the southeast corner of parcel 516-101-84 on an existing concrete pad (See Figure 4 – Site Plan). This proposal is compliant with the setback requirements in the Unclassified (U) zone and the Cal-FIRE Fire Safe Regulations.
Max. Bldg. Height	None specified.	<26 feet
Max. Ground Coverage	40%	<10%
§314-109.1.3.2.4.1 Parking:	The parking requirements specify 1) for office space – one space per 300 sf plus one space for each employee; 2) for manufacturing – the higher of one space per 1500 sf within all enclosed buildings or one space for each (manufacturing) employee at peak shift; and 3) warehousing – the higher of one space for every 4 employees or one space per 2500 sf gross floor area for warehousing. Parking facilities containing 6 through 40 spaces need to include one handicap parking space permanently signed and two handicap spaces are required with any combination of uses which occur with a space of more than 10,000 sf.	Parking will be provided in accordance with the approved parking plan.

4. Public Health, Safety and Welfare: The following table identifies the evidence which supports finding that the proposed location of the use and conditions under which it may be operated or

maintained will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the vicinity, and will not adversely impact the environment.

Code Section	Summary of Applicable Requirement	Evidence that Supports the Required Finding
§312-17.1.4	The proposed development will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the vicinity.	All reviewing referral agencies have recommended approval or conditional approval of the project. The applicant's proposed handling of the waste has been reviewed and approved by the Division of Environmental Health. The project's conditions of approval include the requirement that they obtain all necessary permits from DEH. The project is not expected to be detrimental to public health safety or welfare.
§3111-3(b) Fire Safe Regulations	SRA Fire Safe Regulations shall not apply to land use or development which requires a use permit where the Planning Director and CDF [now Cal Fire] determines that no increase in fire risk would result from the use or activity.	Fire protection services are provided to the project site by the Blue Lake Fire Protection District and/or California Department of Forestry and Fire Protection (CDF). The risk of causing a wildfire would not be significant because most project activity will occur within existing industrial buildings and on concrete pads away from existing vegetation. Equipment shall be "fire-safe" and equipped with spark arrestors. The access road and storage areas shall be maintained in a state such that it is free of vegetation during times of activity.

5. Residential Density Target: The following table identifies the evidence which supports finding that the proposed project will not reduce the residential density for any parcel below that utilized by the Department of Housing and Community Development in determining compliance with housing element law.

Code Section	Summary of Applicable Requirement	Evidence that Supports the Required Finding
17.1.5 Housing Element Densities	The proposed development shall not reduce the residential density for any parcel below that utilized by the Department of Housing and Community Development in determining compliance with housing element law (the midpoint of the density range specified in the plan designation), except where: 1) the reduction is consistent with the adopted general plan including the housing element; and 2) the remaining sites identified in the housing element are adequate to accommodate the County share of the regional housing need; and 3) the property contains insurmountable physical or environmental limitations and clustering of residential units on the developable portions of the site has been maximized.	The parcel was not included in the 2014 Housing Inventory. It is an existing industrial site that has been used for industrial purposes since the 1950s.

Environmental Review

An initial study was prepared for the project by the Humboldt County Planning Division, as Lead Department pursuant to Section 202 of the County's CEQA Guidelines, in accordance with the provisions of § 15070 of the State CEQA Guidelines and a notice of intent to adopt a mitigated negative declaration (MND) was provided to allow public and agency review within the period provided by § 15105 of the State CEQA Guidelines. The MND was submitted to the State Clearinghouse (SCH#2016032061) for 30 day review in accordance with § 15073 of the State CEQA Guidelines which included referral and review by applicable resource agencies, including the Regional Water Quality Control Board and the California Department of Fish and Wildlife. The comment period closed on April 20, 2016 and none of the resource agencies commented or had issues with the approach in the MND. Prior to approving the project at their meeting of August 4, 2016, the Planning Commission considered the proposed mitigated negative declaration together with all comments received during the public review process and public hearing, and acted to adopt the mitigated negative declaration finding (1) that there is no substantial evidence that the project will have a significant effect on the environment and (2) that the mitigated negative declaration reflects the lead agency's independent judgement and analysis. The Board of Supervisors finds that (a) the Mitigated Negative Declaration in Attachment D of the Board staff report has been completed in compliance with CEQA and reflects the Lead Agency's independent judgment and analysis; (b) it has reviewed and considered the information contained in the Mitigated Negative Declaration and all public and agency comments; and (c) finds that the proposed project, as conditioned and mitigated, will not have a significant effect on the environment.

Exhibit B

Modified CONDITIONS OF APPROVAL (As Adopted by the Planning Commission 8-4-16)

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.

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 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.

ATTACHMENT B

Appeal filed by Humboldt Baykeeper, August 17, 2016



August 17, 2016

Mr. Rob Wall, Interim Director
Humboldt County Planning and Building
3015 H Street
Eureka, CA 95501
RWall@co.humboldt.ca.us

Re: Appeal of CUP 13-021 - Royal Gold, LLC, Glendale

Dear Mr. Wall,

I am writing on behalf of Humboldt Baykeeper to appeal the decision by the County Planning Commission to approve CUP 13-021 and the associated Mitigated Negative Declaration (MND) for Royal Gold, LLC's existing operations and expansion at 1689 Glendale Drive in Glendale. Humboldt Baykeeper was launched in 2004 with a mission to safeguard coastal resources for the health, enjoyment, and economic strength of the Humboldt Bay community through education, scientific research, and enforcement of laws to fight pollution.

Pursuant to CEQA §15070(a), a Lead Agency shall prepare, or have prepared, a negative declaration or a Mitigate Negative Declaration when the Initial Study shows there is no substantive evidence, in light of the whole record before the agency, supporting a fair argument that the Project may have a significant effect on the environment. Humboldt Baykeeper believes that there is evidence that clearly support a fair argument that significant impacts will occur due to the proposed Project and is likely to substantially degrade the quality of the environment and substantially reduce the habitat for fish or wildlife species [CEQA Mandatory Findings of Significance §15065 (a)(1)]. For these reasons, Humboldt Baykeeper strongly recommends that the Lead Agency prepare an EIR, and opposes the use of an MND for this proposed Project.

The Mitigated Negative Declaration for this project is inadequate due to the failure to identify potential significant impacts to the environment, specifically impacts to water quality and hazardous materials (the potential to impact a known contamination site), and impacts to northern red-legged frogs detected on the subject parcel.

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(707) 825-1020
www.humboldt-baykeeper.org



The project site is near the Mad River, approximately one mile upstream of the intake for the municipal drinking water supplies for 65% of Humboldt County's population, the estimated 80,000 residents in the cities of Blue Lake, Arcata, Eureka, and the unincorporated areas of McKinleyville, Fieldbrook, Glendale, and Manila.

The Mad River and Hall Creek support protected aquatic species and their habitat, including Chinook (*Oncorhynchus tshawytscha*) and Coho salmon (*O. kisutch*), summer and winter-run Steelhead (*O. mykiss*), Eulachon (*Thaleichthys pacific's*), and Longfin smelt (*Spirinchus thaleichthy*). Other native fishes include resident rainbow trout, coastal cutthroat trout, California roach, three-spine stickleback, riffle and prickly scullions, pacific lamprey, brook lamprey, green sturgeon, and the Humboldt sucker. Numerous protected bird species rely on these fishes as food sources. Sensitive amphibians include the northern red-legged and yellow-legged frog, torrent salamander, and tailed frog. A species of concern, the Western pond turtle is also found within the Mad River.

Hall Creek is one of the Mad River tributaries that has been the subject of funding from the California Department of Fish & Wildlife's Fisheries Restoration Grant Program. This program awards grants to restore fish habitat in high-priority watersheds for salmonids, including Coho and Chinook salmon and steelhead. Baykeeper is particularly concerned that the proposed Project's impacts to wildlife and water quality may interfere with this CDFW high-priority restoration.

Hazards and Hazardous Materials Impacts

The project site is located partially on the site of the former McNamara & Peepe lumber mill, which in 1967 was the site of a major spill of the dioxin-laden wood preservative, pentachlorophenol, which resulted in a devastating fish kill. Blue Lake Forest Products operated the site until it filed for bankruptcy in the 1990s, leaving the California Department of Toxic Substance Control (DTSC) responsible for remediating and monitoring the contamination plume as it moves toward the Mad River. In 1998, a steel-reinforced concrete cap was designed and constructed over contaminated soils to prevent human contact and to stop the infiltration of rainwater. The plume of dioxin contamination is moving toward the Mad River, and is of great concern due to the proximity to Humboldt Bay Municipal Water District's intakes, which are approximately one mile downstream.

In 2014, DTSC's Five-Year Review Report for the site stated that

[G]roundwater elevations have increased at the site and PCP/TCP impacts have been documented in groundwater. The remedy [a.k.a. the concrete cap] no longer appears to be protective of groundwater resources. It is recommended that a Feasibility Study be conducted to assess remedial alternatives, a Remedial Action Plan (RAP) Amendment be developed based on the results of the

Feasibility Study, Groundwater monitoring and cap inspection continue until the implementation of the RAP amendment.¹

If groundwater rises to the surface, sheet flow can contaminate soils and stormwater. According to the staff report, the applicant currently stores compost over the steel-reinforced concrete cap over the contaminated soil. It is unclear from the MND whether the applicant's unpermitted activities ongoing since 2009 and/or the proposed expansion have the potential to impact the area of known or suspected contamination. Since DTSC's soil and groundwater investigation is ongoing, it is premature to declare no significant impacts will occur as a result of the proposed project. In addition, further development of the site could impede future remediation.

Any disturbance of contaminated soil caused by grading, excavation, and other heavy equipment use in or near the dioxin contamination site has the potential to have significant negative impacts to water quality, biological resources, and human health, and has not been adequately addressed and mitigated to less than significant in the MND.

Mitigation Measure MI-6 states that

Prior to issuance of the building permit and initiation of any associated grading, soil samples will be taken at all grading/footing locations, and analyzed for contaminants of concern. The results of any laboratory analysis will be forwarded to DTSC for review. Should contamination be discovered within the areas targeted for excavation, the applicant shall prepare a Soil Management Plan to ensure that all contaminated material excavated is properly disposed of (MND at 60).

MI-6 is not adequate to ensure that there are no significant impacts related to hazardous materials, given the lack of information about where grading will occur relative to known dioxin/PCP contamination; which contaminants of concern the soil must be analyzed for; where, how many, by what methods, and by whom samples must be obtained; specific significance thresholds for contaminants of concern; or any specifics whatsoever about what the Soil Management Plan would contain and how it would protect the environment and human health. This amounts to a total deferral both of the lead agency's duty to investigate potentially significant project impacts, and of the lead agency's duty to evaluate feasible mitigation measures with set performance standards that would reduce or avoid any such impacts.

Humboldt Baykeeper believes that to avoid or mitigate potential impacts to groundwater, surface water, and possible contamination of potting soil products from dioxins, furans, and PCP, it is necessary to conduct further analysis. Given the contaminants known to be on site, the MND fails to ensure that construction and project related disturbances will not result in the further spread of contamination. MI-6 should be modified according to the results of further assessment by including a specific list of constituents of concern

¹ Available online at

http://www.envirostor.dtsc.ca.gov/public/deliverable_documents/7151016056/5-YEAR%20REVIEW%20REPORT%202014_final.pdf

(including dioxins and furans), identification of the extent of grading and excavation related to the project, assessment of the potential risk of further contamination of groundwater and surface water, as well as the potential mobilization of soil contamination.

Water Quality Impacts

Polluted stormwater runoff from Royal Gold, LLC's activities has the potential to negatively impact aquatic species and their habitat in the Mad River and its tributary, Hall Creek. According to the MND, "Requirements of the permitting agencies will ensure that water is not degraded" (MND at 85). Although the MND relies on the applicant's Industrial General Permit (IGP) to protect water quality and protected species habitat, self-reported stormwater sample data available online through the State Water Resources Control Board's SMARTS database show numerous exceedances of technology based effluent standards, and receiving water standards, including standards for total suspended solids, nitrites, phosphorus, iron, and zinc.

It is clear from these exceedances of water quality standards that the existing Stormwater Pollution Prevention Plan (SWPPP) is not adequate to prevent significant impacts to water quality.

Impacts to Biological Resources

The MND fails to assess potential impacts to aquatic species and their habitats from these water quality impacts, which are described in detail above. Rather, the MND states that there will not be significant impacts to wildlife since such impacts would be short-term in that they would be limited to hours of operation, but this is nearly equivalent to all daylight hours. The MND also fails to provide evidence supporting its conclusion that wildlife are accustomed to commercial and industrial uses since it was a lumber mill until approximately 15 to 20 years ago, and that wildlife would simply move away from noise associated with the project activities. In any event, such relocations caused by the project's habitat modification could be considered to be significant, and should be further evaluated for impacts to the species. The MND fails to provide meaningful information on this point. In addition, the MND fails to address the northern red-legged frog populations on the site as described in public comments submitted by Dr. Mourad Gabriel at the hearing.

Further, the MND states that fish in the Mad River will not be impacted since sediment and stormwater runoff are regulated by the Regional Water Control Board's Industrial General Permit and associated Stormwater Pollution Prevention Plan (MND at 20). Again, however, self-reported data show that the company's stormwater pollution prevention controls are presently inadequate, and this problem will be compounded by the disturbance of dioxins and furans at the site without adequate investigation and mitigation measures.

Conclusion

At the August 4 Planning Commission hearing we submitted both written and verbal comments calling for an Environmental Impact Report be prepared to further analyze

impacts to hydrology and water quality, hazards and hazardous materials, and biological resources, and to mitigate or avoid these impacts.

Despite our comments urging the Planning Commission to deny the findings that the proposed development and conditions will not be detrimental to public health, safety, and welfare, and the finding that there is no substantial evidence that the project will have a significant effect on the environment, the CUP was approved on August 4, 2016. We therefore appeal this decision to the Board of Supervisors.

Sincerely,

____s/
Jennifer Kalt, Director
jkalt@humboldtbykeeper.org

Cc: Jason Flanders, Aqua Terra Aeris Law Group