



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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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]groundwater 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@humboldtcounty.org

Cc: Jason Flanders, Aqua Terra Aeris Law Group