

To: Mayor and City Council, Planning Commission  
From: City Attorney  
Re: Gold Rush Project Issues

Recommendation: Review and comment upon reports. Set for future hearings in conjunction with project review process.

Discussion: This meeting is for the purpose of providing the Council and Commission with a first look at three components of consideration of the Gold Rush project--the financial plan, the waste water treatment approach, and a draft development agreement. The other components which have already been provided for information are the project application, the staff approach to project processing, and the draft environmental impact report.

In essence, the development agreement is the document which ties all of these components together, although each stands on its own as well. As previously discussed in the development agreement workshop a development agreement is a contract, not a regulation. If the applicant and the City cannot agree voluntarily on contract terms there will be no development agreement. A development agreement, if approved by ordinance after public hearings, protects the applicant from changes in future plans, regulations, and fees in return for providing community benefits over and above the mitigation measures and conditions of approval on the project. A project can be approved without a development agreement, but no protection or additional benefits are provided. Such agreements customarily have terms ranging from 10 to 20 years, reflecting anticipated project build out.

The document provided with this report is a first draft and represents an offer by Gold Rush to enter into such an agreement. Like any contract offer it is subject to negotiation, which has not yet occurred pending Council and Commission comment. There are provisions in this draft which I cannot recommend, but nothing that appears insurmountable at this point. As more fully discussed below the draft generally tracks the priority issues identified by the Council following the original EIR scoping sessions and the various workshops.

Since much remains to be done before a second draft is ready for possible Council and Commission consideration this discussion is limited to the themes of the proposed agreement. They are:

1. Gold Rush will pay in full the costs of providing city services to the project. This issue is addressed in the Goodwin Report, commonly known as the project financial plan. There will be a detailed briefing on that report at this meeting and a request for comment. As noted in that staff report Proposition 13 and its progeny have created a "structural deficit" for each new residential unit constructed since the property taxes received do not cover the service costs involved. This is proposed to be addressed through a special tax on each new house to insure that the cost of city services are fully recovered. Issues remain as to the exact amount of that special tax and how to stabilize the revenue stream over the project life so no subsidy by present taxpayers occurs. Those issues will be more fully addressed in the next draft.

2. Gold Rush will be required to pay in full all costs of the waste water treatment for the project and cooperate in a revamping of the current disposal easement. It will also be required to make a substantial contribution to upgrading of the existing plant over and above paying its service costs. That report is also on this agenda and will be further discussed.

3. Gold Rush will fund up to \$1.3 million dollars in open space and recreational property acquisitions to be determined by the City Council. The major issue here is to what extent, if at all, the project will receive credit for such funds against mitigation fees otherwise due.

4. Gold Rush will provide up to \$1 million dollars in matching funds for road repairs within the developed areas of the City. It is anticipated federal and state funding will be available on a 4 to 1 basis, resulting in \$4 million in repairs over time.

5. Gold Rush would make available to the City ten acres of land offsite to provide potential economic development opportunities. If accepted, the use of that land would be subject to future policy and environmental review.

6. Gold Rush would provide capital funding to the Sutter Fire Protection District through the AB 1600 fees recently adopted. Funding for full time paid staffing would be provided through a special tax on the project imposed by the county wide community facilities district for fire service to which the Council consented some time ago. There is some confusion about exactly how the various fees are to be calculated due to inconsistencies between the annexation master tax agreement, the CFD formation, and the AB 1600 calculations. That will be worked out in the second draft.

7. Gold Rush would be required to use its best efforts to have sales tax revenues from the project for purchases such as construction materials attributed to Sutter Creek. It would also be required to actively recruit local contracts and labor for both local economic and housing stock reasons.

8. Gold Rush would be required to implement its proposed affordable housing program to offset the impacts of project generated workforce, as well as additional housing for work force created by secondary employment generated by the project. The details of the housing program are still under discussion but the staff is supportive of the concepts expressed.

9. Gold Rush would be required to provide a full secondary access to the project in a future phase. The design and phasing of that access is under discussion in the environmental review process.

10. Gold Rush will, as a result of a separate agreement with the school district, pay all state mandated school fees in full and make available a school site to the District. If accepted, use of that site will be subject to future policy and environmental review by the District Board. Additionally, at the request of a Councilmember, Gold Rush will commission and fund a study as to the feasibility of creating a separate school district in

Sutter Creek for future city use. None of these issues are, strictly speaking, within the City's regulatory purview and are therefore mentioned for information only.

For the record, at the various scoping sessions and workshops the Council identified the following issues as priorities for consideration during the Gold Rush project processing. They, and the review mechanism used can be summarized as:

1. A project financial plan to insure the project pays its own way--draft financial plan complete and under review.
2. A mitigation program for all traffic impacts from the project in consultation with ACTC--in draft EIR.
3. Analysis of a smaller or phased project alternative--in draft EIR.
4. Creation of potential for additional tax revenue generation through economic development opportunities--in draft DA
5. Plan detail on tree and vegetation removal and grading--in draft EIR and conditions of approval
6. Small subdivision detail after large lot division--in draft EIR and conditions of approval
7. School Impacts Mitigation--see discussion above.
8. Waste Water Treatment Approach and Spray Easement Revision--see discussion above.
9. Provision of affordable and workforce housing as part of project--see discussion above.
10. Provision of recreational and open space property to meet project needs--see project description in application and draft development agreement.

In my view, all of the priority issues identified have or are being addressed as part of the process although, as noted above, a lot of work needs to be done in order to create a second draft suitable for further consideration. Upon receipt of Council and Commission comments, that process will begin with a return of the revised document concurrently with hearings on project entitlements.

If there are any questions please contact me.