

1 BOARD OF SUPERVISORS, COUNTY OF LAKE, STATE OF CALIFORNIA

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3 In the Matter of the Appeal )  
4 of Clint Nelson/Red Hills AVA )  
5 Stakeholders Alliance )  
6 [AB 20-01] )  
7 \_\_\_\_\_ )

FINDINGS OF FACT AND DECISION

8 These proceedings were commenced by virtue of an appeal of the Planning  
9 Commission's determination on April 23, 2020, to adopt a mitigated negative declaration  
10 and to approve a major use permit (UP 19-05), for the development of a small-scale  
11 bio-energy facility located at 7130 Red Hills Road in Kelseyville, California (hereinafter, the  
12 "Project").

13 A duly noticed public hearing on the appeal scheduled before this Board was heard  
14 on August 18, 2020 and continued for further hearing on September 15, 2020, at which  
15 times, evidence, both oral and documentary, was presented. Based upon the evidence and  
16 applicable law, we find the following:

17 1. That the Lake County Planning Commission held noticed public hearings on April 9  
18 and April 23, 2020, to consider the adoption of a mitigated negative declaration and a major  
19 use permit (UP 19-05) which, if approved, would allow the development of a small-scale  
20 bio-energy production facility using the Artis System. The system has no open flame  
21 components and is a sealed system. The Project location is 7130 Red Hills Road in  
22 Kelseyville, California.

23 2. That on April 23, 2020, the Planning Commission adopted Initial Study 19-09 and  
24 mitigated negative declaration and approved Major Use Permit UP 19-05.

25 3. That the Project applicant and property owner is the Scotts Valley Band of Pomo  
26 Indians. Thomas Jordan is the Tribal Administrator for the Scotts Valley Band of Pomo  
27 Indians.  
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1       4.       That the Appellant is Clint Nelson of Beckstoffer Vineyards/Red Hills AVA  
2 Stakeholders Alliance. The grounds provided as the basis for the appeal are summarized as  
3 follows: (1)The issues before the Planning Commission were nonchalantly declared issues  
4 to be mitigated in order to facilitate a fast-track approach; (2) The Project is deliberately  
5 abusing the zoning system currently in place by turning a quaint residential area, with  
6 businesses and homes appropriate for the Highway 29 Scenic Corridor, into an industrial  
7 complex and fails to take into account chipping, grinding, generator usage, trucking, overall  
8 noise, dust impacts, and visuals; (3) An industrial facility adjacent to vineyards and wineries  
9 creates both perceived and actual negative impacts to those vineyards and wineries because  
10 of effects of chipping, grinding, generator usage, trucking, overall noise, dust impacts, pests,  
11 diseases, smoke, and emissions.

12       5.       That the Board of Supervisors has conducted a de novo hearing in this matter as  
13 required by Section 58.34 of the Lake County Zoning Ordinance.

14       6.       That the Appellant presented evidence and argument both documentary and  
15 testimonial in support of this appeal. Clint Nelson's testimony included: That he is a  
16 viticulture expert; that the damaging effects of dust on vineyards as well as the aesthetic  
17 impacts of this Project will significantly undermine the vineyards and wineries in the Project  
18 area; and that no mitigation measures will adequately lessen the impacts of dust, noise, and  
19 the aesthetic issues created by this Project. Additionally, the day before the first Board  
20 hearing on August 18, John Kinsey, the Appellant's legal counsel, provided comments of  
21 109 pages. Contained within said comments were expert reports from Dale La Forest &  
22 Associates (noise), Greg Gilbert of Autumn Wind Associates (Air Quality) and Clint Nelson  
23 (Agriculture). Mr. Gilbert also offered testimony during these proceedings and concluded  
24 the Project does not belong at the proposed location. Mr. Kinsey additionally provided oral  
25 comments to this Board on both hearing dates. Mr. Kinsey argued that substantial evidence  
26 supported a fair argument than an environmental impact report is necessary for the Project.

1 He stated that for each of the reasons provided in his written comments of August 17, 2020,  
2 the County should not adopt the initial study/mitigated negative declaration for the Project  
3 and should decline to approve the Project.

4 7. That persons testifying in support of the appeal included Clay Shannon and Matthew  
5 Walter.

6 8. That the Community Development Department presented testimony and  
7 documentary evidence relevant to these proceedings including, but not limited to, the staff  
8 report dated August 18, 2020, Exhibits A through H thereto and letters of support and  
9 public comments, and the staff report dated September 15, 2020 with Exhibits A through I  
10 thereto. Toccarra Thomas, the Deputy Director of Community Development presented the  
11 Department's case. Community Development Director Scott DeLeon also testified. Mr.  
12 DeLeon's testimony included that the conditions of approval for this Project consist of nine  
13 (9) pages; that he recommended the inclusion of three (3) additional conditions of approval  
14 to further address concerns of aesthetics and noise; that he disagrees that an environmental  
15 impact report is required; and that he stands by his staff report. Lake County Pollution  
16 Control Officer Doug Gearhart testified as to the role of the Lake County Air Quality  
17 Management District in ensuring the Project meets air quality standards.

18 9. That the Project Applicant presented testimony and documentary evidence  
19 and specifically responded to the grounds offered for this appeal. Thomas Jordan, the  
20 Tribal Administrator for the Applicant, offered testimony. That testimony included that all  
21 impacts of this Project are mitigated through the use permit conditions of approval; that the  
22 system itself is enclosed within a structure; that there are no emissions; and that, in response  
23 to concerns about dust, the chipping on-site will be restricted to secondary chipping of  
24 materials. Mr. Jordan further testified there was a tremendous misconception as to the size  
25 of this Project. It is not a five (5) megawatt system using a burning technique. Such a  
26 system would create smoke, heat, and pathogens. The Project system is 200 kilowatts, much  
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1 smaller, and it operates within a 2000 square foot building. It is a sealed system. Gabriel  
2 Ray, a member of the Scotts Valley Band of Pomo Indians and a tribal councilman, testified  
3 that the concerns about the Project have been addressed and he asked that the appeal be  
4 denied.

5 10. Persons who testified in support of the Project, included Terri Logsdon and Bobby  
6 Dutcher.

7 11. That the evidence presented by the Community Development Department included  
8 the following:

9 (a) In response to the Appellant's assertion that the issues before the Planning  
10 Commission were nonchalantly declared issues to be mitigated in order to facilitate a  
11 fast-track approach, the Community Development Department presented evidence  
12 that the major use permit application for this Project, UP 19-05, was submitted to the  
13 Community Development Department on February 11, 2019. In April of 2019, the  
14 Applicant met with the Community Development Department and determined to  
15 reduce the Project size and submit revised plans. The Applicant hired an  
16 environmental consultant to prepare the Initial Study and, subsequent to corrections  
17 to the Initial Study by the Community Development Department, the document was  
18 sent to the State Clearing House for the required thirty-day review. During that  
19 period, Notice of Intent was issued to various, federal, state, and local agencies for  
20 comment, including all property owners within 725 feet of the Project parcel. No  
21 public comment was submitted by the Red Hills AVA Stakeholders Alliance during  
22 that time. Neither Mr. Nelson nor the Red Hills AVA Stakeholders Alliance  
23 attended the April 9, 2020 meeting, but issues of noise, dust, and aesthetic concerns  
24 were discussed. The matter was put over to April 23, 2020 to allow time for  
25 Appellant to submit a supplemental report addressing those concerns.

26 (b) In response to the Appellant's assertion that the Project is deliberately abusing the  
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1 zoning system currently in place by turning a quaint residential area, with  
2 surrounding businesses and homes appropriate for the Highway 29 Scenic Corridor,  
3 into an industrial complex and fails to take into account the impacts and visuals  
4 associated with chipping, grinding, generator usage, trucking, overall noise, and dust  
5 associated with this Project, the Community Development Department presented  
6 evidence that a power generation facility is an allowable use within the rural  
7 residential zoning district upon securing a major use permit. The Project parcel is  
8 surrounded by commercial-agricultural uses which include vineyards and orchards.

9 (c) In response to the Appellant's assertion that an industrial facility adjacent to  
10 vineyards and wineries creates both perceived and actual negative impacts to those  
11 vineyards and wineries because of effects of chipping, grinding, generator usage,  
12 trucking, overall noise, dust impacts, pests, diseases, smoke, odors, emissions and the  
13 aesthetic impacts, the Community Development Department presented evidence that  
14 the mitigation measures and permit conditions of approval have been developed to  
15 reduce dust and odors as more specifically described in pages 4 and 5 of the  
16 September 15, 2020 staff report. Measures taken to reduce the volume of dust to  
17 below significant levels include bringing in only pre-chipped materials that will be  
18 processed a second time to meet the small size standard. Noise associated with  
19 trucking, chipping, grinding, and generator usage is addressed through mitigation  
20 measures and the permit conditions of approval which will mitigate noise issues as  
21 described in pages 5 and 6 of the September 15, 2020 staff report. Additionally, the  
22 acceptance of forest material has been changed to limit said acceptance to materials  
23 already in a pre-chipped state, thereby eliminating the primary chipping process.  
24 Further the hours for chipping have been reduced to no more than four hours per day,  
25 with no chipping on Sunday. Further, the small size of the bio-energy plant proposed  
26 by this Project does not meet the standards of an industrial complex. The main  
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operation occurs fully contained within an enclosed building, the size of a medium-size house. The Artis system has no open flames and no atmospheric emissions.

12. That this Board finds, based on the evidence and facts presented in this matter as follows:

(a) That all the findings required for the issuance of a major use permit as described in Section 51.4 of the Lake County Zoning Ordinance are hereby made by this Board. This Board adopts the analysis and factual determinations of the Community Development Department staff report dated September 15, 2020, on pages 6 through 8 regarding the findings required for the issuance of this major use permit.

(b) That this Board finds that sufficient information exists in the record of this matter to support the adoption of the mitigated negative declaration. This Board adopts those CEQA findings enumerated in the September 15, 2020 staff report at page 9.

(c) This Board hereby adopts the mitigated negative declaration for this Project and grants Major Use Permit 19-05 based upon the findings enumerated on page 10 of the staff report dated September 15, 2020.

(d) That the Appellant has provided insufficient evidence to support the grounds for his appeal.

(e) That this Board finds there is no substantial evidence in the record as a whole to support a fair argument that the Project as revised and mitigated may have a significant effect on the environment.

(f) That notwithstanding the insufficiency of the evidence offered by Appellant, this Board finds and determines that three additional conditions should, and hereby are, added to the Project Conditions of Approval as enumerated in Paragraph 13 hereinbelow.

(g) That this Board has considered and incorporates by reference the Community Development staff memoranda and exhibits thereto submitted to this Board for the

1 hearing, as well as other documentation, evidence, and comments submitted to this  
2 Board.

3 13. Based upon all the foregoing and for the reasons set forth hereinabove, this  
4 Board denies the appeal of the Appellant Clint Nelson and Red Hills AVA Stakeholders  
5 Alliance. This Board does order the inclusion of three (3) additional conditions of approval  
6 for Major Use Permit UP 19-05 as follows:

7 (a) Landscaping in the form of trees will be planted along the Red Hills Road side to  
8 create a tasteful screening over time of the plant's building. The planting will extend  
9 from the existing line of Walnut trees on the North side of the entrance to a distance  
10 on the south side of the entrance that will achieve the desired screened effect.

11 (b) A wood slatted chain link fence will be placed between the proposed landscape  
12 screen and the building. The fence will set 21' feet from the building, which places it  
13 approximately 140 feet from Red Hills Road. It will surround the north and south  
14 side of the building and continues for 100 feet to the east thereby enclosing the  
15 reduced chip storage area. The reduction in the storage area will be 50% or a  
16 reduction in area from the original 28,000 square feet to 14,000 square feet.

17 (c) In the event of future substantiated noise or dust complaints related to the  
18 facility's operation, the Applicant agrees to implement additional mitigation  
19 measures that may include the placement of the offending operation within an  
20 enclosure in order to meet or exceed County requirements.

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1 NOTICE TO APPELLANT: You are hereby given notice that the time within which any  
2 judicial review of the decision herein may be sought is governed by the provisions of the  
3 Code of Civil Procedure Section 1094.5.

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5 Dated: \_\_\_\_\_  
6 CHAIR, Board of Supervisors

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8 ATTEST: CAROL J. HUCHINGSON APPROVED AS TO FORM:  
9 Clerk to the Board  
of Supervisors

10  
11 By: \_\_\_\_\_ ANITA L. GRANT  
12 Deputy County Counsel