File #: 20-722, **Version:** 1

Memorandum

Date: **August 18, 2020**

To: **The Honorable Moke Simon, Chair, Lake County Board of Supervisors**

From: **Scott De Leon, Interim Community Development Director**
Toccarra Thomas, Deputy Director
Mark Roberts, Principal Planner
Victor Fernandez, Assistant Planner

Subject: **Appeal to Board of Supervisors, AB 20-01 of Major Use Permit, UP 19-05 and Initial Study, IS 19-09 (APN 009-021-07)**

Exhibits:
A. Vicinity Map
B. AB 20-01 Application including Appellant's Attachments
C. Planning Commission Staff Report with Attachments (February 24, 2020)
D. Planning Commission Minutes from April 23, 2020 Public Hearing
E. Letters of Support
F. Letters of Concern
G. Applicant's (Scotts Valley Band of Pomo) Response to Appeal AB 20-01
H. Project Description Packet
I. Lake County Chamber of Commerce (LCCC) Letter (August 5, 2020)

Executive Summary: (include fiscal and staffing impact narrative):

The Appellant, Clint Nelson, is appealing the Planning Commission's April 23, 2020 decision to adopt a Mitigated Negative Declaration and approve a Major Use Permit (Files No. UP 19-05 and IS 19-09), which if approved would allow for the development of a small-scale bioenergy production facility using the Artis system at 7130 Red Hills Rd., Kelseyville (APN 009-021-07).

Background

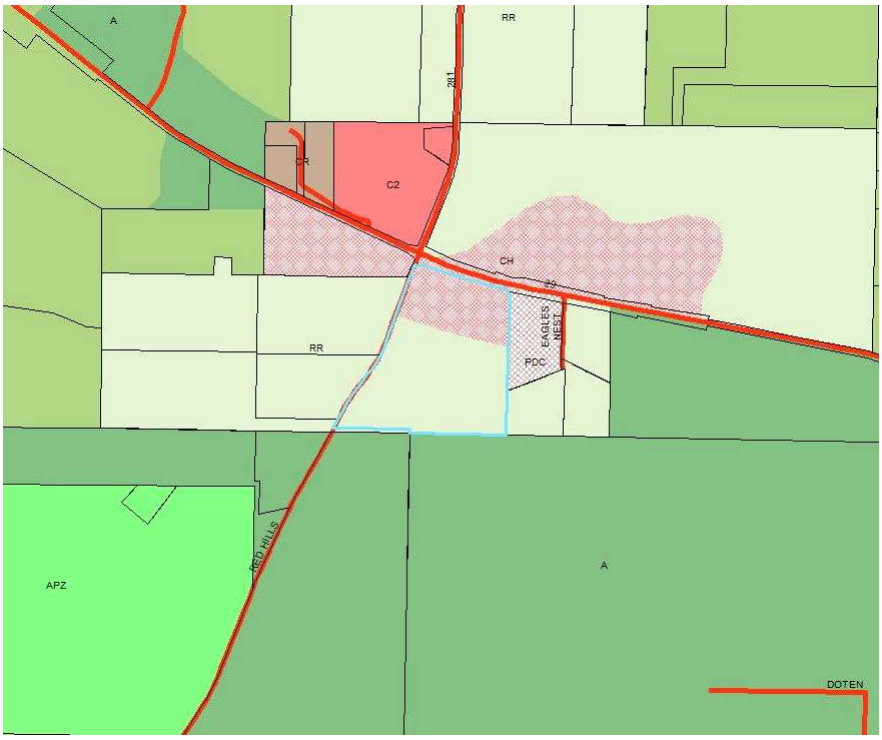
On February 11, 2019 Thomas Jordan (Tribal Administrator for Scotts Valley Band of Pomo Indians) submitted a Major Use Permit application for a Power Generation Facility located at 7130 Red Hills Rd., Kelseyville.

On April 23, 2020, the Planning Commission approved Major Use Permit (UP 19-05) located at 7130 Red Hills Rd., Kelseyville, CA. The Planning Commission found that the Initial Study (IS 19-09) for the project parcel would not have a significant impact on the environment with the incorporated

mitigation measures and adopted a Mitigated Negative Declaration. The project proposes the development of a small-scale bioenergy facility using the Artis System. The system contains no open flame components and is a sealed system which uses programmable electric heaters to achieve optimal temperatures.

The operation would occur within a 2,000-square foot enclosed structure on a 40' x 50' six-inch thick concrete pad. The sides of the metal building will be 10' high with 18' wide roll-up doors and one pedestrian entrance. Additionally, a 28,000 square foot storage area that will be used to process and house the production plant's feedstock would be allowed. The storage area will consist of a 6" pad of wood chips used for surfacing to ensure that soil erosion will not occur in the winter season as well as ensure that rock and related material will not be carried to the production plant. All operation facilities are located approximately 900 feet from Highway 29 and approximately 140 feet from Red Hills Road.

According to the applicant, the plant will operate 24 hours per day, seven days per week except when it is shut down for scheduled maintenance, on average, one day per week. Additionally, the operation is highly automated with system safeguards in place to shut the operation down in the event of a malfunction. Employees will be working 5.5 hours per day, seven days a week on a split-shift schedule. The operator will be responsible for chipping feedstock, feeding the hopper, packaging biochar and monitoring the plant's operation. (***Refer to Exhibit H - Project Description Packet for further details***.)



Zoning of Subject Site and Vicinity

Basis of the Appeal

The appeal to the above noted approval of Major Use Permit (UP 19-05) was filed on April 29, 2020 with the Community Development Department (CDD). Clint Nelson on behalf of the Red Hills AVA Stakeholders (The Appellant) submitted a written statement dated April 29, 2020 detailing the reasoning of the appeal. According to the appellant's statements, the reasons for the appeal includes but is not limited to the following: (***Refer to Exhibit B for details.***)

1. According to the applicant's submittal, "It is fair to say that issues discussed were either nonchalantly declared 'mitigated' without the ability to enforce or quickly dismissed as this project appeared to be fast-tracked through the approval process."

Response: *The Major Use Permit UP 19-05, was submitted to the CDD on February 11, 2019. During the review process, the application was sent to various Federal, State and local agencies for commenting in February 2019 and July 2019. During the course of the review period, agency comments were received, and an incomplete letter was sent out on March 14, 2019, requesting additional information. In April 2019, the applicant met with the (CDD), and indicated they are reducing the project size and will be submitting revised plans. Additionally, the applicant decided to hire an environmental consultant to prepare an Initial Study to comply with all California Environmental Quality Act (CEQA) requirements. The CDD worked closely with the environmental consultant in preparing the environmental document. Once the CDD made the necessary corrections to the Initial Study, it was sent out to the State Clearing House in accordance with CEQA and the required 30 day review. During the 30 day review period the CDD sent out the Notice of Intent to various Federal, State and local agencies for commenting including the surrounding property owners within 725 feet of the project parcel.*

2. According to the appellant's submittal, "this project is deliberately abusing the zoning system that is currently in-place while simultaneously setting a precedent which should be considered unacceptable."

Response: *Pursuant to Article 8 "Rural Residential" of the Lake County Zoning Ordinance Section 8.5(l), "Those uses permitted in the 'RR' district with a major use permit in Table B, Article 27." Pursuant to Article 27, section 27.11, Table B, Item X, "Power Generation Facility" is an allowable use within the Rural Residential zoning district upon securing a Major Use Permit. On February 11, 2019, the applicant submitted a Major Use Permit Application (UP 19-05) to the Community Development Department.*

3. According to the appellant's submittal, "The chipping, grinding, generator usage, trucking, overall noise, dust impacts and visuals for all intents and purposes turn a quaint rural residential area into an industrial complex."

Response: *The project parcel is surrounded by commercial-agricultural uses which includes vineyards and orchards. The project parcel is zoned Rural Residential (RR), which in accordance to Article 27, section 27.11, Table B, Item X, permits "Power Generation Facility" as an allowable use within the Rural Residential zoning district upon securing a major use permit. On February 11, 2019, the applicant submitted a Major Use Permit Application (UP 19-05) to the Community Development Department.*

4. According to the appellant's submittal, "Ultra-premium wines are incredibly sensitive to odors and smoke which cause foul tastes and smells termed taint."

Additionally, "the trucking, grinding, chipping, and unloading of woody debris all create serious threats to the wellbeing of surrounding vineyards as dust is known to transport both pests and diseases into vineyards."

Response: *According to the Property Management Plan, all chipping and the processing of wood and/or byproducts will be enclosed within a structure. Additionally, the Community Development Department has completed an environmental analysis (IS 19-09) and mitigation measures and conditions of approval have been incorporated to reduce dust and odors which includes but is not limited to:*

- **Prior to operation, the primary access roads and parking area shall be constructed, surfaced and maintained with an all-weather surface of asphaltic concrete or concrete unless another all-weather surface is approved by the review authority to minimize dust impacts to the public, visitors and road traffic. All areas subject to semi-truck/trailer traffic shall require asphaltic concrete paving or equivalent to prevent fugitive dust generation. Gravel surfacing may be adequate for low use/overflow driveways and parking areas if it receives regular palliative treatment. The use of white rock for surfacing is prohibited. (Mitigation Measure AIR-2)**

- **Dust control measures shall be implemented to minimize fugitive dust emissions from the Project Site. Dust control measures may consist of approved chemical, structural, or mechanical methods and shall be reapplied at the necessary intervals to prevent wind erosion. (Mitigation Measure AIR-2)**

- **Prior to any ground disturbance, the permittee shall submit a Dust Mitigation Plan to the Lake County Air Quality Management District for review and approval and submit a copy of the approved plan to the Community Development Department. Said plan shall detail proposed dust control methods during and post constructions, including the source of water, equipment to be used. Applicant shall contact the Lake County Air Quality Management District for details.**

- **The applicant shall submit an Asbestos Notification Form to the Lake County Air Quality Management District (LCAQMD) for any remodeling and/or demolition. Applicant shall contact the LCAQMD for details.**

    - **The National Emissions Standards for Hazardous Air Pollutants (NESHAP) for asbestos in buildings requires asbestos inspections by a Certified Asbestos Consultant for major renovations and all demolitions. A complete survey includes inspection of attic spaces, crawl spaces, areas with pipes or heating ducts and equipment.**

    - **An Asbestos Notification (with complete survey and lab report) must be**

submitted to the Lake County Air Quality Management District at least fourteen (14) days prior to beginning any renovations or demolition work. If regulated asbestos is found, the facility must be abated prior to demolition or renovation (where asbestos may be disturbed).

- **Base rock shall be placed on existing roadways during any initial grading to help minimize dust generation from vehicle traffic and development. Regular palliative treatment may be considered as an alternative to paving while being developed.**

- **Construction and/or work practices that involved masonry, gravel, grading activities, vehicular and fugitive dust shall be management by use of water or other acceptable dust palliatives to maintain two inches of visibly-moist soil in the project area and to ensure that dust does not leave the property.**

- **All roads, trails and access routes shall be paved and/or adequately surfaced/managed to prevent dust generation. Surfacing/management shall occur prior to the construction and occupancy to minimize dust generation and track out issues. The LCAQMD shall approve of management practices.**

5. According to the appellant's submittal, "The noise associated with trucking, chipping, grinding and generator usage will not only decrease adjacent homeowner's quality of life, but also potentially impact the ability for tasting rooms to deliver invaluable experiences needed to bring tourists and customers back to the area."

Response: *According to the Property Management Plan, the proposed use will be conducted within an enclosed structure which will help reduce noise to the surrounding area. All chipping and the processing of wood and/or byproducts will be enclosed within a structure. Additionally, the CDD has completed an environmental analysis (IS 19-09) and mitigation measures and conditions of approval have been incorporated to help mitigate noise which includes but is not limited to:*

- **All construction activities including engine warm-up shall be limited to Monday through Friday, between the hours of 7:00 a.m. and 7:00 p.m. to minimize noise impacts on nearby residents. Back-up beepers shall be adjusted to the lowest allowable levels. Contractors shall implement noise-reducing measures during construction when occupied residences or other sensitive receptors are located within 500 feet. (Mitigation Measure NOI-1)**

- **The Project shall comply with the noise standards identified in Section 41.11 of the Zoning Ordinance, including, but not limited to: maximum non-construction project-related noise levels shall not exceed: (a) 55 dBA between the hours of 7:00 a.m. to 10:00 p.m. and 45 dBA between the hours of 10:00 p.m. to 7:00 a.m. adjacent to residential districts; and (b) 60 dBA between the hours of 7:00 a.m. to 10:00 p.m. and 55 dBA between the hours of 10:00 p.m. to 7:00 a.m. adjacent to commercial districts at the property lines as outlined in Table 11.1. Should the Project exceed these noise standards during construction or operational phases, noise-generating activities shall cease until noise attenuation measures are implemented such that the Project is compliant with noise standards. (Mitigation**

Measure NOI-1)

- **If the Community Development Department receives substantial noise complaints, the permit holder shall have an Acoustical (Noise) Analysis performed by a qualified professional. Said study shall include mitigation measures to reduce such sounds to acceptable levels and to conform to all Federal, State and local agency requirements.**

- **No use shall generate ground vibration which is perceptible without instruments beyond the lot line. Ground vibrations caused by motor vehicles, aircraft, temporary construction work, or agricultural equipment are exempt from these standards.**

- **Devices which generate electromagnetic interference shall be so operated as not to cause interference with any activity carried on beyond the boundary line of the property upon which the device is located. Public utilities shall comply with all applicable state and federal regulations.**

Project Description

Applicant: Thomas Jordan (Tribal Administrator)
Owner: Scotts Valley Band of Pomo Indians
Location: 7130 Red Hills Rd, Kelseyville, CA
APN: 009-021-07
Parcel Size: +34.58
General Plan: Rural Residential and Community Commercial
Zoning: Rural Residential (24.5+ ac.); Highway Commercial (10.5+ ac.), Scenic Combining District, Design Review Combining District
Flood Zone: Not within a known Flood Zone
Fire Zone: High Fire Severity Zone
Earthquake Failure Zones: Not within a known fault zone
Dam Failure Inundation Zone: Not within a dam failure zone

II. PROJECT ANALYSIS

General Plan Conformance

The land use designation on this site is Rural Residential and Community Commercial:

Rural Residential: This land use category is designed to provide single-family residential development in a semirural setting with small scale agriculture activities. This land use category is designed to act as a buffer between the urban residential development and the agricultural area of the County.

Community Commercial: This land use category is to provide a full range of commercial retail and service commercial establishments serving multiple neighborhoods or the entire community.

County of Lake General Plan (2008) - Chapter 3.8 9 Industrial Development

Goal LU -5: To designate adequate land for and promote development of industrial uses to meet the present and future needs of the Lake County residents for jobs and able to maintain economic viability.

Policy LU 5.1 (Industrial Development): "The County shall encourage a wide range of industrial development activities in appropriate locations to promote economic development, employment opportunities and provide a sound tax base.

General Plan Response: The proposed commercial/industrial use is located in an appropriately zoned area of the County as the proposed use is permitted in accordance to Article 27, section 27.11, Table B, Item X, "Power Generation Facility" upon securing a Major Use Permit. Additionally, the surrounding parcels range in size from approximately five (5) acres to greater than 400 acres in size and are developed with commercial/agricultural uses, and ranchette/single family dwellings. The proposed use would create employment opportunities in the form of one full time position to maintain a 24-hour operation and help improve a tax base through commercial improvements on the project parcel.

Kelseyville Area Plan

The purpose of the Kelseyville Area Plan is to provide guidance regarding the long-term growth and development of the Kelseyville, Finley and Big Valley areas and other surrounding rural lands. The Area Plan is a tool by which greater planning detail is provided for the Kelseyville area.

Objective 5.1(b): "To designate appropriate amounts of land for uses to accommodate projected growth rates in the Kelseyville area for the next 20 years. The land use map shall designate sufficient lands to accommodate a balance of land uses subject to environmental and public service constraints.

Policy 5.1b-1: "A high priority shall be given to providing services and employment opportunities locally in the Kelseyville Planning Area in order to boost economic development and reduce travel time".

Kelseyville Area Plan Response: *The proposed commercial/industrial use is located in an appropriately zoned area of the County as the surrounding parcels range in size from approximately five (5) acres to greater than 400 acres in size and are developed with commercial/agricultural uses, and ranchette style single family dwellings. The proposed use would create employment opportunities in the form of one full time position to maintain a 24-hour operation and help improve a tax base of the Kelseyville Area through commercial improvements on the project parcel.*

This project is consistent with the Lake County General Plan, Kelseyville Area Plan and the Lake County Zoning Ordinance as a "Power Generation Facility" is a permitted use in the "RR" Rural Residential upon issuance Major Use Permit pursuant to Article 27, Table B(x) of the Lake County Zoning Ordinance. On September 11, 2019 the Scotts Valley Band of Pomo Indians submitted a major use permit to the Community Development for review and approval.

Zoning Ordinance Conformance

The proposal must meet the applicable requirements found within Lake County Zoning Ordinance for the following Articles:

Article 8 - Rural "RR Residential Zoning District: The purpose of Rural Residential is to provide single-family residential development in a semi-rural setting along with limited agriculture.

- **Response**: *Pursuant to Article 27 of the Lake County Zoning Ordinance, there are a variety of commercial and/or industrial uses permitted in the "RR" Zoning District upon securing a minor and/or major use permit, including a "Power Generation facility" [Article 27, Table B(x)].*

Article 53 Design "DR" Review Combining District: The purpose of the Design Review Combining District is to insure aesthetic compatibility between uses, protect and enhance property values, protect scenic qualities, and promote community character through use of community design manuals.

- **Response**: *The project is located approximately 900 feet from the intersection of State Highway 29 and Red Hills Road. The proposed infrastructure would be designed, including the use of earth tones colors, and situated in manner, to help minimize the visual impacts with using the natural topography.*

Article 34 "SC" "To protect and enhance the views of scenic areas …. The monitoring of the public and recreational base of the county.

Highway 29 is in the Scenic Corridor, however, staff has analyzed the distance from the intersection of Red Hills Road and Highway 29 and determined the proposed project is approximately 900 feet from the roadway of Highway 29 and approximately 145 feet from Red Hills Road.

III. APPEAL SUBMITTAL

The Appellant submitted an application for appeal to the Board, along with the required fee and narrative providing the Appellant's basis for appeal.

If not budgeted, fill in the blanks below only:
Estimated Cost: _____ Amount Budgeted: _____ Additional Requested: _____ Future Annual Cost: _____

Consistency with Vision 2028 and/or *Fiscal Crisis Management Plan* (check all that apply): ☐ Not applicable

☐ Well-being of Residents	☒ Public Safety	☐ Infrastructure	☐ *Technology Upgrades*
☒ Economic Development	☐ Disaster Recovery	☐ County Workforce	☐ *Revenue Generation*
☐ Community Collaboration	☐ Business Process Efficiency	☐ Clear Lake	☐ *Cost Savings*

If request for exemption from competitive bid in accordance with County Code Chapter 2 Sec. 2-38, fill in blanks below:

Which exemption is being requested?
How long has Agreement been in place?
When was purchase last rebid?
Reason for request to waive bid?

Recommended Action:

Staff recommends that the Board of Supervisors take the following actions:

A. Deny appeal AB 20-01.

B. Adopt mitigated negative declaration (IS 19-09) for Major Use Permit (UP 19-05) with the following findings:

1. Potential environmental impacts related to Aesthetics have been mitigated to less than significant levels by mitigation measures AES-1, AES-2, and AES-3.

2. Potential environmental impacts related to Air Quality have been mitigated to less than significant levels by mitigation measures AIR-1, AIR-2, AIR-3, and AIR-4.

3. Potential environmental impacts related to Cultural and Tribal resources have been mitigated to less than significant levels by Mitigation Measures CUL-1 and CUL-2.

4. Potential environmental impacts related to Geology and Soils have been mitigated to less than significant levels by Mitigation Measures GEO-1, GEO-2, GEO-3, and GEO-4.

5. Potential environmental impacts related to Hazards and Hazardous Materials have been mitigated to less than significant levels by mitigation measure HAZ-1, HAZ-2, HAZ-3, and HAZ -4

6. Potential environmental impacts related to Hydrology and Water Quality have been mitigated to less than significant levels by Mitigation Measure HYD-1.

7. Potential environmental impacts related to Noise have been mitigated to less than significant levels by Mitigation Measures NOI-1 and NOI-2.

8. Potential environmental impacts related to Wildfire have been mitigated to less than significant levels by Mitigation Measures FIRE-1.

9. The project is consistent with land uses in the vicinity.

10. This project is consistent with the Lake County Zoning Ordinance, Lake County General Plan, Kelseyville Area Plan, and Zoning Ordinance.

11. As mitigated, this project will not result in any significant adverse environmental impacts.

C. Approve Major Use Permit, UP 19-05 with the following findings:

1. That the establishment, maintenance, or operation of the use applied for will not under the circumstances of the particular case, be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, or be detrimental to property and improvements in the neighborhood or the general welfare of the County.

2. That the site for the project is adequate in size, shape, location, and physical characteristics to accommodate the type of use and level of development proposed.

3. That the streets, highways and pedestrian facilities are reasonably adequate to safely

accommodate the specific proposed use.

4. That there are adequate public or private services, including but not limited to fire protection, water supply, sewage disposal, and police protection to serve the project.

5. That the project is in conformance with the applicable provisions and policies of this Code, the General Plan and any approved zoning or land use plan.

6. That no violation of Chapters 5, 17, 21, 23 or 26 of the Lake County Code currently exists on the property, unless the purpose of the permit is to correct the violation, or the permit relates to a portion of the property which is sufficiently separate and apart from the portion of the property in violation so as not to be affected by the violation from public health, safety or general welfare basis.

Sample motion:

Appeal Denial

I move that the Board of Supervisors make an intended decision to deny the Appeal AB 20-01 and uphold the Planning Commission's decision to adopt Initial Study IS 19-09 and approve Major Use Permit 19-05 as applied for by Thomas Jordan for property located at 7130 Red Hills Road, Kelseyville, CA 95451; APN number 009-021-07, and direct County Counsel to prepare findings of fact.