



CALAVERAS COUNTY PLANNING DEPARTMENT  
891 Mountain Ranch Road,  
San Andreas, California 95249  
(209) 754-6394

**Planning Commission Staff Report**

<b>Hearing Date</b>	March 9, 2023
<b>Project Number/Name</b>	2022-055 EOT of CUP for Blue Mountain Electric Co.
<b>Supervisory District Number</b>	District 2, Jack Garamendi
<b>Assessor's Parcel Number(s)</b>	012-011-014
<b>Planner</b>	Madeleine Flandreau, Planner III

**Date:** January 30, 2023

**PROJECT DESCRIPTION:** Blue Mountain Electric Company is requesting a 24-month Extension of Time (EOT) for Conditional Use Permit (CUP) 2020-074, approved by the Planning Commission on November 10, 2021. The CUP was for the construction and operation of a community-scale, 3-megawatt biomass combined heat and power facility located off of Rail Road Flat Road in Wilseyville. Since no changes are being proposed to the approved project, the Commission's scope of review is subject to Calaveras County Municipal Code (CCMC) Section 17.90.020 - extension of time.

**APPLICANT:**

Blue Mountain Electric Company, LLC  
P.O. Box 30032  
Walnut Creek, CA 94598

**LANDOWNER:**

Calaveras County Water District  
120 Toma Court  
San Andreas, CA 95249

**PROJECT LOCATION:** The subject property, APN 012-011-014, is located off Rail Road Flat Road in Wilseyville. The 13-acre parcel is in Section 15, T6N, R13E, MDM.

**ANALYSIS:** During a noticed public hearing on November 10, 2021, the Calaveras County Planning Commission conditionally approved CUP 2020-074 for the construction and operation of a community-scale, 3-megawatt biomass combined heat and power facility, located in the unincorporated community of Wilseyville. The CUP includes conditions from the Planning Department, Environmental Management Agency (regulating hazardous materials and on-site wastewater), Public Works, and the Building Department, to protect the public health, safety, and welfare.

The CUP was conditionally approved allowing the applicant 18 months to activate the use permit before expiring on December 31, 2022. A timely application for a time extension was made prior to this expiration date.

### **County Code Section 17.90.010 – Permit Validation:**

- A. To be valid, a permit issued under the provisions of this title shall be activated prior to 11:59 p.m. on December 31st of the calendar year following the year in which the permit is issued. For example, a permit approved on July 5, 1986, must be activated by 11:59 p.m. on December 31, 1987.
1. To activate permit:
    - a. For permits requiring a building permit, the building permit shall be obtained, and construction commenced by the expiration date;
    - b. For permits not requiring a building permit, the use or activity shall have commenced with either the majority of inventory or stock being available for sale or purchase, or such activities which in the findings of the planning director indicate such use or activity has been activated.

For reasons expressed by the applicant's extension request dated October 26, 2022, and supplemental findings information dated December 12, 2022 (see Attachment 2), the CUP was not activated prior to its expiration on December 31, 2022. Therefore, to allow additional time to activate the CUP, the applicants filed a request to extend the expiration date. Pursuant to CCMC Section 17.90.020, three mandatory findings must be made in order to approve the extension of time. Evidence to support these findings is listed below each finding:

### **County Code Section 17.90.020 – Extension of Time:**

- A. Upon application to the Planning Commission, a permit holder may seek an extension of the activation date.
1. A maximum of two extensions of time may be requested.
  2. The total length of all extensions of time, excluding subdivisions, shall not exceed twenty-four months.
- B. The Planning Commission shall not approve an extension of time unless it makes all of the following findings. *(Supporting evidence has been provided below and is duplicated in the attached resolution.)*
1. The extension of time is necessary to secure needed approvals from other agencies; and

**Evidence:** The permit process for this project is extensive requiring several agreements and permits from multiple agencies. Permits and/or approvals consist of Public Works improvement plans, county building permits, and Storm Water Pollution Prevention Plan (SWPPP) approval (see Attachment 3 for

conditions of approval). Some of these permits can be issued/approved concurrently, while others may be issued/approved sequentially. In order to validate the CUP, County Code indicates that the building permit must be obtained and construction commenced by the expiration date. In this case, the applicant must obtain approval of all the other permits prior to the issuance of a building permit. Other than the building permit, none of the other permits set forth in the CUP approval qualifies to activate the use permit. Therefore, the project must be near completion before the use permit can be activated.

The construction of the project required removal of commercial tree species, and the applicant has to comply with CalFire's less than 3-acre conversion process which required the services of a Registered Professional Forester and licensed timber operator to complete. This process took additional time to arrange and complete.

2. The extension of time is necessary to comply with conditions of project approval; and

**Evidence:** The applicant needs additional time to secure funding to complete all the outstanding conditions required prior to obtaining a building permit to complete the project. In addition, the applicant was asked by lenders to provide additional engineering work to support the application prior to completion of financing. A contract to provide the additional engineering work was completed on August 20, 2022 and final civil engineering drawings which will enable submission of the grading permit are currently in process.

3. The permit holder has demonstrated a good-faith effort to initiate the use for which the permit has been issued.

**Evidence:** The applicant signed a lease agreement with the Calaveras County Water Department (CCWD) on September 16, 2022 because CCWD recently purchased the subject parcel. Since their purchase, CCWD has been working on the subject parcel to construct the sewer connection between Wilseyville and West Point, which is affecting the applicant's ability to move forward.

The work necessary to complete the conditions of approval is extensive and the time frame in which the work had to be completed was limited. The applicants worked diligently toward the completion of the conditions until unforeseen circumstances resulted in delays due to funding and the purchase of the parcel by CCWD. The Planning Department sees no detriment to the County in granting an extension pursuant to County Code.

In summary, this project remains viable as approved and the applicants have demonstrated that they are committed to completing this project. They simply need additional time to secure their funding, meet outside agency compliance requirements, and meet all necessary permit conditions before they will be able to obtain the necessary

building permits to validate their use permit. The applicants are only requesting a twenty-four-month extension and are not proposing any changes to the project. Allowing the applicants two more years will not be detrimental to the County.

**ENVIRONMENTAL REVIEW:** The proposed EOT is exempt from the provision of the California Environmental Quality Act (CEQA) pursuant to Section 15061 (b) (3) – the project is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

**RECOMMENDATION:** Staff recommends the Planning Commission approve Resolution 2023-001 approving Extension of Time 2022-055 for approved Conditional Use Permit 2020-074 for Blue Mountain Electric, extending the activation date 24 months (to expire December 31, 2024) for the construction and operation a community-scale, 3-megawatt biomass combined heat and power facility based on the findings and conditions contained therein.

**ATTACHMENTS:**

1. Resolution 2023-001
2. EOT Application
3. Request from Applicant
4. Supplemental Findings Information from Applicant
5. PC Resolution Approving CUP 2020-074

Attachment #1

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Planning Commission Resolution 2023-001

COUNTY OF CALAVERAS, STATE OF CALIFORNIA  
PLANNING COMMISSION

**RESOLUTION NO. 2023-001**

>>A RESOLUTION APPROVING A TWENTY-FOUR (24) MONTH EXTENSION OF TIME FOR APPROVED CONDITIONAL USE PERMIT 2020-074 FOR BLUE MOUNTAIN ELECTRIC CO.

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WHEREAS, the Planning Commission of the County of Calaveras approved Conditional Use Permit 2020-074 on November 10, 2021, for the construction and operation of a community-scale 3-megawatt biomass combined heat and power facility, located in the unincorporated community of Wilseyville; and

WHEREAS, the proposed project is located on real property in the unincorporated portions of the County of Calaveras, Wilseyville, California, and more particularly described as APN 012-011-014 which is a portion of Section 15, T.6N, R.13E, MDM; and

WHEREAS, a Mitigated Negative Declaration was adopted on June 23, 2017, pursuant to the California Environmental Quality Act (CEQA) for Administrative Use Permit 2015-011, which was held by the current applicant's predecessor-in-interest for a nearly identical project located on the same site blueprint on the same parcel; and

WHEREAS, staff prepared an addendum to the Mitigated Negative Declaration to approve the Conditional use Permit, which was adopted by the Planning Commission with approval of CUP 2020-074; and

WHEREAS, the Conditional Use Permit was approved with an expiration date of December 31, 2022, for validation under County Code 17.90.010; and

WHEREAS, on October 26, 2022, the Planning Department of the County of Calaveras received an application from Blue Mountain Electric Co. requesting a twenty-four-month extension of time for approved Conditional Use Permit 2020-074; and

WHEREAS, by timely filing the application, the permit is automatically extended until action is taken on it; and

WHEREAS, during a noticed public hearing on March 9, 2023, the Planning Commission considered all of the information presented to it, including but not limited to its staff report and attachments, information presented by the project proponent, and public comment, which are incorporated by reference herein; and

BE IT THEREFORE RESOLVED, that the Planning Commission approves the twenty-four month Extension of Time based upon the following findings:

1. The request for a 24-month extension of time is exempt from CEQA pursuant to Guideline 15061(b)(3), as it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. Also, on the basis of the whole record, there is no substantial evidence that granting a 24-month extension to validate the project as designed and conditioned will have a significant effect on the environment. A Mitigated Negative Declaration was adopted with the original project approval (AUP 2015-011) and completed in accordance with the California Environmental Quality Act (CEQA). An addendum to the MND was adopted by the Planning Commission with approval of CUP 2020-074. The Mitigated Negative Declaration and addendum reflected the independent judgment and analysis of the preparer.

**Evidence:** The scope of CEQA review is limited to whether or not to grant the time extension for permit validation under County Code 17.90.020, the findings for which are based on factual information that is unrelated to the project's impact on the environment. The project is not allowed to operate until the permit is validated. Furthermore, a Mitigated Negative Declaration was adopted with the original project approval (AUP 2015-011) and completed in accordance with the California Environmental Quality Act (CEQA). An addendum to the MND was adopted by the Planning Commission with approval of CUP 2020-074. The Mitigated Negative Declaration and addendum reflected the independent judgment and analysis of the preparer. No changes are proposed to the project, and there are no changes in circumstance or new information suggesting that any potentially significant impacts on the environment could result from granting the requested extension of time.

- 2 The extension of time is necessary to secure needed approvals from other agencies.

**Evidence:** The permit process for this manufacturing project is extensive, requiring several agreements and permits from multiple agencies. Delays resulted from additional financing requirements to conduct additional engineering and a change in the parcel's ownership—which required the negotiation of a new lease. Permits and/or approvals consist of multiple plans and permits through Public Works (grading plans, storm water pollution prevention plan, improvement plans, etc.) and county building permits (see Attachment 3 to the staff report for conditions of approval). Some of these permits can be issued/approved concurrently, while others may be issued/approved sequentially. In order to validate the use permit, County Code indicates that the building permit must be obtained and construction commenced by the expiration date. In this case, the applicant must obtain approval of all the other permits prior to the issuance of a building permit, and, without the Building permit, the use cannot commence,

and the permit cannot be activated. The project must be near completion before the use permit is considered to be valid, and—given the number and sequence of approvals required to get to this point—additional time is necessary.

In addition, as the construction of the project required commercial tree species removal, the applicant has had to comply with CalFire’s less than 3-acre conversion process which required a Registered Professional Forester and licensed timber operator to complete, adding further delay.

3. The extension of time is necessary to comply with conditions of project approval.

**Evidence:** For similar reasons to those described above, additional time is necessary to allow the applicant sufficient time to secure funding and complete all the outstanding conditions required before obtaining a building permit to complete the project. In addition, the applicant was asked by lenders to provide additional engineering to support completion of financing. A contract to provide this engineering was completed on August 20, 2022. Final civil engineering drawings which will enable submission of the grading permit are in process.

4. The permit holder has demonstrated a good-faith effort to initiate the use for which the permit has been issued.

**Evidence:** The applicant signed a lease agreement with CCWD on September 16, 2022, owing to CCWD’s purchase of the subject parcel from CHIPS. Following their purchase, CCWD has been working on the subject parcel to construct the sewer connection between Wilseyville and West Point, which is affecting the applicant’s ability to move forward.

The work necessary to complete the conditions of approval is extensive and the time frame in which the work had to be completed was limited. The applicants worked diligently toward the completion of the conditions until unforeseen funding and lease-related delays occurred. The applicant has invested significantly in project tasks, and the Planning Department sees no detriment to the County resulting from granting an extension pursuant to County Code.

BE IT FURTHER RESOLVED, that the Planning Commission approves the extension of time based on the following conditions:

## **I GENERAL CONDITIONS**

- I-1 The Applicant(s) and Owner(s); and their Heirs, Successors, and Assigns shall abide by all terms of the Indemnification Agreement, dated December 9, 2022,



and on file in the Planning Department's records for 2022-055.

I-2 All conditions set forth in Conditional Use Permit 2020-074 approved November 10, 2021, still apply to this project and must be completed as such.

I-3 The project must be validated no later than December 31, 2024.

PASSED AND ADOPTED by the Planning Commission of the County of Calaveras, at a regular meeting of the Planning Commission held on March 9, 2023 on a motion by Commissioner \_\_\_\_\_ and seconded by Commissioner \_\_\_\_\_.

AYES:

NOES

ABSTAIN:

ABSENT:

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Chair, Planning Commission

ATTEST:

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Madeleine Flandreau, Planner III

The project files are available for public review in the Planning Department, County of Calaveras, Government Center, 891 Mountain Ranch Road, San Andreas, CA. 95249, between the hours of 8:00 a.m. and 4:00 p.m.

Attachment #2

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Project Application

Project No. Previous \_\_\_\_\_ Project No. Current CUP 2020-74



# Calaveras County Planning Department

Phone (209) 754-6394

Fax (209) 754-6540

www.planning.calaverasgov.us

## APPLICATION FOR MODIFICATION TO PLANNING PERMIT

- Extension of Time (EOT)       Modification of Conditions (MOC)  
 Modification to Existing Permit (MEP)

**NOTE: FAILURE TO FULLY COMPLETE APPLICABLE FIELDS AND PROVIDE REQUIRED ATTACHMENTS COULD DELAY THE PROCESSING OF YOUR APPLICATION.**

### Applicant (s):

Name Blue Mountain Electric Company, LLC  
Project Address 13 Blizzard Mine Road City Wilseyville, CA 95257  
Mailing Address PO Box 30032 City/ZIP Walnut Creek, CA 94598  
Phone (Business) 415.286.7822 (Home) \_\_\_\_\_  
Email stangl@phoenixenergy.net, micheau@phoenixenergy.net, machado@phoenixenergy.net

### Landowner (s):

Name Calaveras County Water District  
Mailing Address 120 Toma Court City/ZIP San Andreas, CA 95249  
Phone (Business) 209.754.3543 (Home) \_\_\_\_\_  
Email michaelm@ccwd.org

Name and address of property owner's duly authorized Agent who is to be furnished with notice of hearing. (Section 65091 – Calif. Govt. Code):

### Authorized Agent:

Name Gregory John Stangl  
Mailing Address PO Box 30032 City/ZIP Walnut Creek, CA 94598  
Phone (Business) 415.286.7822 (Home) \_\_\_\_\_  
Email stangl@phoenixenergy.net, micheau@phoenixenergy.net, machado@phoenixenergy.net



Project No. Previous \_\_\_\_\_ Project No. Current CUP 2020-74

**ACKNOWLEDGMENT / AUTHORIZATION / VERIFICATION PAGE<sup>1</sup>**

**Calaveras County Agriculture Disclosure Statement**

*Real property within or adjacent to areas zoned for agricultural operations or areas in zones which permit agricultural operations may be subject to inconveniences or discomfort arising from such operations. Calaveras County has determined that the use of real property for agricultural operations, as defined by County Code, is a high priority and a proper and necessary use, and will not consider the inconveniences or discomforts arising from agricultural operations to be a nuisance if such operations are consistent with accepted agricultural practices and standards.*

By our signatures below, I (We), as applicant(s) and property owner(s), hereby acknowledge having read and understood this disclosure.

**Right of Entry**

By our signatures below, I (We), as applicant(s) and property owner(s), hereby acknowledge that by making this application, and under the authority of Government Code Section 65105, County agency personnel, in the performance of their functions, may enter upon the subject property and make examinations and surveys, provided that the entries, examinations and surveys do not interfere with the use of the land by those persons lawfully entitled to the possession thereof.

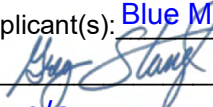
**Verification of Application / Declaration Under Penalty of Perjury**

*NOTE: If someone other than an individual applicant or landowner signs below (e.g. business entity representatives, agents) satisfactory documentation of signature authority must be provided [see application instructions]. Each record title property owner must sign the application.*

**APPLICANT(S):**

By my signature(s) below, I (we) provide the acknowledgment and consent described above and furthermore declare under penalty of perjury that I am (we are) the applicant(s) for the project described in this application, and I (we) have completed and verified the truthfulness and accuracy of this application and all other documents required for its submittal.

Printed Name(s) of Applicant(s): Blue Mountain Electric Company, LLC


Authorized Signature:  Date: 1/23/23

Authorized Signature: n/a Date: \_\_\_\_\_

**LANDOWNER(S):**

By my signature(s) below, I (we) provide the acknowledgment and consent described above and furthermore declare under penalty of perjury that I am (we are) the record title owner(s) of the property on which the project described in this application will be located and I (we) consent to the applicant's(applicants') preparation and submission of this application.

Printed Name(s) of Property Owner(s): Calaveras County Water District

Authorized Signature:  Date: 1/23/2023

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**FOR OFFICIAL USE ONLY**

Receipt Number \_\_\_\_\_  
Application Number \_\_\_\_\_  
Method of Payment [ ] Cash [ ] Check # \_\_\_\_\_  
Amount \_\_\_\_\_

Date Stamp

(Created December 8, 2022)

<sup>1</sup> May be signed in counterparts.

Attachment #3

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Extension Request from Applicant



13 Blizzard Mine Road, Wilseyville, CA 95257  
PO Box 30032, Walnut Creek, CA 94598

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October 26, 2022

Calaveras County Planning Department  
Gabriel Elliott, Director of Planning  
891 Mountain Ranch Road  
San Andreas, CA 95249

**RE: Request for Extension of Conditional Use Permit CUP 22-74**

Dear Director Elliott,

CUP 22-74 will expire on December 31, 2022. I am writing to request an extension of the CUP for a period of 24 months for the following reasons:

- It has taken longer than expected to close on the financing for the project owing to our Banks and USDA requiring additional steps to be completed which are not typical for us. Our loans still have an extended process to go through at USDA and we have been warned that the Agency is backlogged.
- The current dramatic inflation has caused us to seek additional funding over and above the capital committed by our lenders and investors. This has included the recent receipt of a \$1MM CalFire grant.
- An opportunity for coordination with the currently on-going work being done by Calaveras County Water Agency has significant potential benefit for the project but has necessitated both additional engineering coordination with CCWD as well as planning and engineering on our part. If successful we expect these additional avenues for cooperation on water reuse and other matters to be significantly beneficial to the project which allow us to withstand some of the obvious negative effects of the significant cost inflation we are seeing.

Enclosed is our check for the filing fee of \$2,525.00. Please accept this letter as BMEC's formal request for said extension, processing the request and scheduling review before the Planning Commission at their next Board meeting.

Thank you for your consideration. Please do not hesitate to contact me at 415.286.7822 should you require additional information.

Sincerely,

Gregory John Stangl  
Managing Member  
Blue Mountain Electric Company

Attachment #4

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Supplemental Findings Information from Applicant





13 Blizzard Mine Road, Wilseyville, CA 95257  
PO Box 30032, Walnut Creek, CA 94598

RECEIVED

12 December 2022

Calaveras County Planning Department  
Gina Kathan  
Planner IV  
891 Mountain Ranch Road  
San Andreas, CA 95249

DEC 12 2022

Calaveras County  
Planning Department

**RE: Supplemental Informaion to our Request for Extension of Conditional Use Permit CUP 22-74**

Dear Ms. Kathan:


Further to my email of 5 December I am writing to provide you with further information to supplement your record for Finding 3 of Chapter 17 90.020.B which demonstrated continued good faith effort to initiate the permitted use on the property. The Blue Mountain Electric Company (BMEC) has worked continuously since the final receipt of the CUP to advance the project to completion. In particular as a sample we offer the following facts:

- ❑ Per the County's request we signed an indemnification agreement in favor of CCWD December 9<sup>th</sup>. 20222
- ❑ BMEC signed a contract with a local contractor to prepare the site by clearing it of federal logs and piled up wood chips which had not been cleared when we acquired the land. These items are required to be removed before any work may begin on the site. This contract was signed on November 14<sup>th</sup> 2022.
- ❑ BMEC signed a new lease with Calaveras County Water District September 16<sup>th</sup>, 2022 owing to the fact that CHIPS sold the property.
- ❑ Owing to continuing market concerns post COVID/supply chain crisis BMEC was asked by its lenders to provide additional engineering to support completion of the financing. The Limited Notice to Proceed contract to provide this engineering was signed with our Contractor of record on August 20, 2022 for \$250,000.
  - We received the first draft of this engineering work October 17, 2022
  - We anticipate receiving the final draft of the civil drawings which will enable the submission of the grading permit in December 2022.
- ❑ We have attended numerous planning meetings with CCWD to coordinate its sewer connection work which is currently taking place on the property to link Wilseyville with the West Point wastewater treatment plant. While this work is ongoing it is not possible for us to being work on the property. This county work will also provide utilities to our project site.
- ❑ BMEC was awarded a \$1,000,000 CalFire grant which was It has taken longer than expected to close on the financing for the project owing to our Banks and USDA requiring additional steps to be completed which are not typical for us. Our loans still have an extended process to go through at USDA and we have been warned that the Agency is backlogged.

We believe this should suffice to demonstrate continuing good faith efforts and expense in a very challenging financial environment.

Please do not hesitate to contact me at 415.286.7822 should you require additional information.

Sincerely,



Gregory John Stangl

Managing Member

Blue Mountain Electric Company

Attachment #5

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PC Resolution Approving CUP 2020-074

COUNTY OF CALAVERAS, STATE OF CALIFORNIA  
PLANNING COMMISSION

**RESOLUTION NO. 2021-020**

>>A RESOLUTION APPROVING A CONDITIONAL USE PERMIT FOR PROJECT 2020-074 FOR THE CONSTRUCTION AND OPERATION OF A COMMUNITY-SCALE 3 MEGAWATT BIOMASS COMBINED HEAT AND POWER FACILITY FOR BLUE MOUNTAIN ELECTRIC, LLC.

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WHEREAS, the Planning Department of the County of Calaveras received an application from Blue Mountain Electric, LLC, requesting a Conditional Use Permit for the construction and operation of a community-scale 3 megawatt biomass combined heat and power facility, located in the unincorporated community of Wilseyville; and

WHEREAS, the proposed project is located on real property in the unincorporated portions of the County of Calaveras, Wilseyville, California, and more particularly described as APN 012-011-014 which is a portion of Section 15, T.6N, R.13E, MDM; and

WHEREAS, a Mitigated Negative Declaration was adopted on June 23, 2017 pursuant to the California Environmental Quality Act (CEQA) for Administrative Use Permit 2015-011, which was held by the current applicant's predecessor-in-interest for a nearly identical project located on the same site blueprint on the same parcel; and

WHEREAS, staff prepared an addendum to the Mitigated Negative Declaration which was considered by the Planning Commission; and

WHEREAS, during a noticed public hearing on November 10, 2021, the Planning Commission considered all of the information presented to it, including but not limited to its staff report and attachments, information presented by the project proponent, and public comment; and

BE IT THEREFORE RESOLVED that the Planning Commission approves the addendum to the June 23, 2017 Mitigated Negative Declaration, adopts the Mitigation Monitoring and Reporting Program and approves the Conditional Use Permit based upon the following findings:

1. The addendum to the 2017 Initial Study/Mitigated Negative Declaration (IS/MND) for Project 2020-074 complies with the requirements of CEQA. Having considered the prior adopted negative declaration along with the addendum, the Planning Commission finds that there is substantial evidence in the record supporting the Planning Department's determination that an addendum is appropriate, that all potential project impacts were studied in the 2017 IS/MND, use of the addendum prepared by the Planning Department is sufficient, and that none of the factors

described in CEQA Guideline 15162 is present that would trigger a requirement to prepare a subsequent EIR or subsequent negative declaration.

Evidence: An Initial Study was prepared in 2017 for a nearly identical project proposed on the same project by the applicant's predecessor-in-interest, and it was determined that, as mitigated, this project would not have a significant impact to the environment. A Mitigated Negative Declaration was prepared and circulated for 30 days, and a mitigation monitoring and reporting program based on it was developed for the project. The Mitigation Negative Declaration is included with the staff report prepared for this item, and it is incorporated by reference into this resolution. The Mitigation Monitoring and Reporting Program and Site Plan for the project are attached as Exhibits A and B respectively and incorporating by reference into this resolution.

Pursuant to Section 15164 of the State CEQA Guidelines, an addendum to an adopted negative declaration may be prepared if only minor technical changes or additions are necessary or none of the conditions described in Section 15162 calling for preparation of a subsequent EIR or negative declaration have occurred. The following are the provisions from Guidelines Section 15162 referenced above describing when a subsequent EIR must be prepared:

- (a) When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:*
- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;*
  - (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or*
  - (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:*
    - (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;*

- (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;*
- (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or*
- (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.*

The overall proposed project description for the CUP 2020-074 has not changed from the previously approved project AUP No. 2015-011. Both proposals involve the construction of a community-scale 3 megawatt (MW) biomass combined heat and power facility located within the same development footprint on APN 012-011-014 in Wilseyville. Both proposals were designed to create electricity, heat, and biochar through gasification of woody biomass feedstock primarily collected from forest-sourced biomass. For both proposals, biomass feedstock was to be converted to a conditioned producer gas in the gasifier, and the gas was to be used in an internal combustion engine to run a generator to make electricity, which was intended to be sold to Pacific Gas & Electric (PG&E) on their distribution-level circuit. The equipment in both proposals would be operated on the same days and at the same hours. The only difference between the former and current project proposal is that the proposed locations of the facility structures and the stored wood chips on the project site would be switched. However, the footprint for the project remains the same, the project has not changed in size or scope, and this reconfiguration of the facility structures and storage area within the footprint would not increase the project's potential impacts. The nature of the equipment being used and the amount of power being generated on the site remains the same. No new information or substantial changes have been identified in the addendum that would require a subsequent IS/MND. In analyzing whether or not an addendum would be the appropriate environmental document for the revised project, Planning Staff compared the project analyzed in the 2017 IS/MND to the currently proposed project, utilized the State's *current* Appendix G criteria for assessing potential impacts as a tool in conducting the Guideline 15162 analysis, and reviewed data from a 2021 engineer's report of air impacts based on the actual equipment proposed to be used by the applicant. No new information or substantial changes have been identified in the addendum that would require a subsequent IS/MND, and the change to the project would not result in a new potentially significant impact or worsen the severity of a previously identified significant impact.

2. The proposed use is consistent with the Calaveras County General Plan, any applicable community or special plan, and the provisions of Title 17.

Evidence: The subject parcel is zoned PS (Public Service) and is designated as Public/Institutional (P/I) in the County General Plan. Pursuant to 17.48.030(A) and (J), a power facility is permitted in the PS zone upon approval and validation of a CUP. The CUP is a discretionary permit and shall be reviewed consistent with Title 17. The purpose of a CUP is to provide the general public with an opportunity to review a proposed land use that is generally consistent with the purpose of a base zoning district, but has the potential to cause conflicts with neighboring land use and zoning. The PS zone is a consistent zone in the P/I land use designation.

The facility will generate electricity to be sold to Pacific Gas & Electric (PG&E) on their distribution-level circuit. The facility will also serve a public purpose by supporting local wildfire protection efforts through consumption of biomass from timber harvest residuals and fuels treatment activities on regional private and public lands by the U.S. Forest Service, Amador and Calaveras Ranger Districts, the Amador and Calaveras Foothills Fire Safe Councils, the Bureau of Land Management, Natural Resource Conservation Service, CHIPS and private forestland owners. This use is consistent with the PS zone.

The proposed project is consistent with the goals and policies of the General Plan including Goal COS-1 (healthy forests, woodlands, and rangelands free from unnatural accumulation of trees and brush, close to their historic, natural (pre-fire-suppression) condition, thereby decreasing the risk of catastrophic wildfires and increasing water supply and quality, wildlife habitat and forage, air quality, scenic resources, and recreational opportunities), Policy COS-1.3 (encourage initiatives to utilize vegetation removed from forests, oak woodlands, and brush lands for energy production and greenhouse gas reduction), and Policy COS 4.8 (encourage the use and installation of alternative energy generating systems, including solar, wind, bio fuel, and other systems, in new development and in retrofitting existing structures). The parcel is not within any community or special plan area.

3. The subject property is adequate in land area to accommodate the proposed project, the required parking area, access, landscaping, and site improvements.

Evidence: The subject property is 13 acres in size. The project will encumber less than half the overall parcel. Project access is via an easement off Rail Road Flat Road which is classified a minor collector with a level of service of B. An encroachment permit was received and an access road was improved with access onto Rail Road Flat Road via an easement through the adjacent CCWD parcels. The project as designed meets the performance standards for the PS zone as required by Chapter 17.48.060 of County Code. Parking in the PS zone is per approved development plan, with a minimum of two parking spaces. The proposed site plan includes 8 parking spaces (including 1 ADA) for employees. A minimum area equal to five percent of the land area devoted to structures and parking shall be planted with new landscaping.

4. The proposed land use is compatible with neighboring land uses and zoning.

Evidence: The subject parcel is surrounded by parcels pertaining to the West Point and Wilseyville Wastewater Treatment Plant, which are also zoned PS. There are no adjacent residential parcels that would be affected by exterior lighting of the facility, as the surrounding parcels are owned by CCWD.

5. The public and private roads providing access to the subject property meet necessary standards to provide safe and adequate access, or have been amended by conditions of project approval to satisfy the access requirements.

Evidence: An encroachment permit was successfully received from the Public Works Department, and, pursuant to the prior approved AUP, an access road was improved with access onto Rail Road Flat Road via an easement through the adjacent CCWD parcels.

6. Conditions of project approval are necessary for protection of the public health, safety and welfare, and to reduce or eliminate potential environmental effects.

Evidence: The project has been circulated through County Departments, Local Public Agencies, State Agencies and Federal Agencies and property owners within 300 feet of the subject parcel. Comments were received from the Environmental Management Agency and the Public Works Department with conditions to protect the public health, safety and welfare. No comments were received from adjacent landowners.

BE IT FURTHER RESOLVED that the Planning Commission approves the addendum to the June 23, 2017 Mitigated Negative Declaration, adopts the Mitigation Monitoring and Reporting Program and approves the Conditional Use Permit based upon the following conditions:

## **I GENERAL CONDITIONS**

- I-1 The Applicant(s) and Owner(s); and their Heirs, Successors, and Assigns shall abide by all terms of the Indemnification Agreement, dated November 12, 2020 and on file in the Planning Department's records for 2020-074.
- I-2 This Conditional Use Permit will expire if not validated prior to December 31, 2022. To activate this permit, the building permit shall be obtained and construction commenced by the expiration date.
- I-3 This Conditional Use Permit is subject to all applicable county regulations or plans whether or not such requirements are specified as a condition of project.



## **II PLANNING DEPARTMENT**

- II-1 Within five (5) calendar days from the date of approval, the applicant shall pay all applicable County Administrative fees (\$50) and State Department of Fish and Wildlife fees (\$2,480.25) to the County Recorder's Office in order to facilitate the filing of the Notice of Determination.
- II-2 The applicant shall comply with the Mitigation Monitoring and Reporting Program (MMRP) included as Exhibit A of this resolution for project 2020-074.
- II-3 The development shall be in substantial conformance to the submitted site plan included as Exhibit B of this resolution for project 2020-017.

## **III ENVIRONMENTAL MANAGEMENT AGENCY**

### **Environmental Health Department**

- III-1 If hazardous materials are stored or handled in quantities that equal or exceed 55 gallons for liquid, 500 pounds for solids, or 200 cubic feet for gases, a Hazardous Material Business Plan (HMBP) will be required by Environmental Health.

### **Onsite Wastewater Department**

- III-2 The applicant shall submit information that an adequate liquid waste disposal method can be completed by one of the following;
- A written statement from a sanitation district indicating sewer service will be provided to the project and the terms for the same, **or**
  - A written approval from the Onsite Wastewater Department that the waste disposal requirement of "acceptable individual waste disposal systems" has been completed pursuant to Ordinance 2921 & Resolution 10-147. The applicant should contact the Onsite Wastewater Department (209-754-6400) regarding the land use approval process for individual waste disposal systems.

## **IV PUBLIC WORKS**

- IV-1 The applicant shall meet all applicable requirements of the County Road Ordinance (Chapter 12.02), the Encroachment Ordinance (Chapter 12.08), the Storm Water Quality Ordinance (Chapter 13.01), the Grading and Drainage Ordinance (Chapter 15.05), the Road Impact Mitigation Ordinance (Chapter 12.10), and the requirements of other agencies having jurisdiction.

- IV-2 A grading permit is required for any grading work on the site. Consistent with the Grading Drainage, and Erosion control manual, the applicant must show evidence of ongoing maintenance of Best Management Practices.
- IV-3 New development is responsible for all off-site circulation improvements necessary to mitigate a project's transportation impacts (including safety, pedestrian and bicycle mobility, public transit, and level of service-related impacts.) RIM fees are due prior to commencement of operations. As these fees are based on traffic impact, additional information such as number of employees onsite will be needed to calculate the fees.

PASSED AND ADOPTED by the Planning Commission of the County of Calaveras, at a regular meeting of the Planning Commission held on November 10, 2021 on a motion by Commissioner Wooster and seconded by Commissioner Laddish.

AYES:  
NOES  
ABSTAIN:  
ABSENT:

ATTEST:

  
\_\_\_\_\_  
Madeleine Flandreau, Planner II

  
\_\_\_\_\_  
Chair, Planning Commission

The project files are available for public review in the Planning Department, County of Calaveras, Government Center, 891 Mountain Ranch Road, San Andreas, CA. 95249, between the hours of 8:00 a.m. and 4:00 p.m.

## EXHIBIT A

### 2020-074 CONDITIONAL USE PERMIT FOR BLUE MOUNTAIN ELECTRIC MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measure	Timing	Responsibility	Verification
<u>Mitigation I-1:</u> Per Calaveras County Code of Ordinances Section 17.48.060, a minimum area equal to five percent of the land area devoted to structures and parking shall be planted with new landscaping. The landscaping shall be installed prior to use or occupancy and shall be maintained in a vigorous and healthy condition in perpetuity. The project will install landscaping, fencing and lighting consistent with the County code.	Construction	Owner	Planning
<u>Mitigation I-2:</u> Exterior lighting shall be shielded and directed in such a manner that it does not directly shine off site onto adjoining parcels or roads.	Construction	Owner	Planning
<u>Mitigation Measure IV-1</u> In order to avoid take of protected raptors and migratory birds, vegetation removal shall be scheduled between September 1 and January 31. If vegetation removal must be conducted between February 1 and August 31, a pre-construction nesting bird survey shall be conducted by a qualified biologist canvassing the site and a 250-foot buffer area around the site with binoculars. The survey shall be conducted within two weeks prior to the beginning of vegetation removal in order to identify active nests within 250 feet of the reclamation area. If active nests are found within the survey area, vegetation removal shall be delayed until the qualified biologist determines nesting is complete.	Pre-construction	Owner	Planning
<u>Mitigation Measure IV-2</u> To prevent potential impacts to special-status bats that may roost in trees on the site, tree removal shall occur only during the months of November through March and when temperatures are above 50° F.	Pre-construction	Owner	Planning
<u>Mitigation Measures V-1</u> If any prehistoric resources or human remains are uncovered during construction, work shall stop immediately and a qualified archaeologist	Construction	Owner	Planning

shall be contacted to determine further mitigation which may be needed.			
<u>Mitigation Measures V-2</u> No disturbances shall be allowed within 50 feet of any future identified cultural resources, pending further assessment by a qualified archaeologist.	Construction	Owner	Planning
<u>Mitigation Measure IX-1:</u> If any water onsite contains any oil or tar, it shall be trucked from the site to a properly licensed waste disposal facility.	Construction	Owner	Planning
<u>Mitigation Measure IX-2</u> A storm drain inlet protection will be used where necessary to pond runoff before it enters the storm drain and remove sediment. Hydraulic mulch (page 71, EXHIBIT 5) will be used to protect exposed soil from erosion by rain impact. Hydroseeding (page 74, EXHIBIT 5) will be applied to protect exposed soil from entering stormwater flow. Velocity dissipation devices (page 79, EXHIBIT 5) will be used where necessary to prevent scour of the soil from entering stormwater flow. Earth dikes and drainage swales (page 93, EXHIBIT 5) will be used to divert off site runoff around the construction site, divert runoff from stabilized areas and disturbed areas, and direct runoff into sediment basins or traps. A silt fence (page 100, EXHIBIT 5) will be used where necessary to limit sediment-laden water from entering stormwater flow. Fiber rolls (page 108, EXHIBIT 5), straw bale barriers (page 112, EXHIBIT 5) and a storm drain inlet protection (page 118, EXHIBIT 5) will also be used to prevent sediment from entering stormwater. Additionally, solid (page 144, EXHIBIT 5) and hazardous (pg. 148) waste management techniques will be implemented to prevent potential materials from entering the stormwater flows.	Construction	Owner	Planning
<u>Mitigation Measure XII-1:</u> In order to reduce ambient noise levels the gasifier and associated equipment will be enclosed inside a suitable building to house such projects.	Construction	Owner	Planning

# EXHIBIT B Site Development Plan and Building Elevations

