RESOLUTION - ACTION REQUESTED 2018-357

MEETING: July 17, 2018

TO: The Board of Supervisors

FROM: Sarah Williams, Planning Director

RE: Appeal No. 2018-051 - Biomass

RECOMMENDATION AND JUSTIFICATION:

This appeal public hearing will be conducted according to the Mariposa County Appeals Procedure adopted by Resolution No. 97-3 and No. 10-92.

Staff recommends that the Board of Supervisors adopt a resolution:

1) Denying Appeal No. 2018-051 based on findings; and

2) Upholding the Planning Commission’s approval of Conditional Use Permit (CUP) No. 2017-117 Mariposa Biomass Project, as amended by the applicant, with findings, amended conditions and mitigation measures.

Recommended findings are included in the draft Resolution.

Justification - See Staff Report and Resolution.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
No Board Actions have occurred related to Conditional Use Permit (CUP) No. 2017-117.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Alternative: Uphold Appeal and Reverse Planning Commission’s action.

Alternative: Modify recommended findings.

Negative Action: Not taking action on this appeal would mean the Planning Commission’s action stands.

ATTACHMENTS:
Resolution - Action Requested 2018-357

Staff Memo - Continuance 7-17-18 (DOC)
Attachment A - Revised Draft Board Resolution 7-17-18 (DOC)
Staff Report (DOC)
Attachment 1 - Vicinity Map (PDF)
Attachment 2 - Appeal Submittals (PDF)
Attachment 3 - Planning Commission Resolution No. 2018-006 (PDF)
Attachment 4 - Public Comments (PDF)
Attachment 4A Input from Wilson (PDF)
Attachment 5 - Draft Board Resolution (DOC)
PUBLIC INPUT: Letter from Daniel Flaming 7-8-2018 (PDF)
PUBLIC INPUT: Email from Beverley Andalora 7-8-2018 (PDF)
PUBLIC INPUT: Email from Holly Warner 7-8-2018 (PDF)
PUBLIC INPUT: Letter from Ken Boche (DOCX)
PUBLIC INPUT: Email from Evie Wilson 7-5-2018 (PDF)
PUBLIC INPUT: Email from Melinda Barrett 7-6-2018 (PDF)
PUBLIC INPUT: Email from Len McKenzie 7-10-2018 (PDF)
PUBLIC INPUT: Letter from Kelly White and Michael Pieper 7-9-2018 (DOCX)
PUBLIC INPUT: Letter from Frank Balajadia, 7-10-18 (PDF)
List of Appeal Topics received from Planning Department (PDF)
Additional Information Received During 7-10-18 Public Hearing from Steve Sellers, Appellant (PDF)
Additional Information Received During 7-10-18 Public Hearing from Jay Johnson, Applicant (PNG)
Additional Information Received During 7-10-18 Public Hearing from Christinana Darlington, Applicant Team (PDF)
Additional Information Received During 7-10-18 Public Hearing from Steve Smallcombe (PNG)
Proposed changes received during hearing from Steve Engfer, Planning (PDF)
Staff Presentation 7-10-18 Public Hearing (PDF)

RESULT: ADOPTED [3 TO 1]
MOVER: Kevin Cann, District IV Supervisor
SECONDER: Marshall Long, District III Supervisor
AYES: Marshall Long, Kevin Cann, Miles Menetrey
NAYS: Merlin Jones
RECUSED: Rosemarie Smallcombe
A Resolution Denying Appeal No. 2018-051 with Findings and Upholding the Planning Commission’s Approval of the Mariposa Biomass Project Conditional Use Permit (CUP) No. 2017-117, as amended by the applicant, with Findings, Conditions and Mitigation Measures as amended by the Board of Supervisors. APNs 012-050-066 and 012-050-067.

WHEREAS, an application for a Conditional Use Permit was received on the 23rd day of June, 2017, for the Mariposa Biomass Project, Jay Johnson, applicant, for a project located within the Mariposa Industrial Park at 5673 and 5686 Copper Leaf Drive, Mariposa, CA, Mariposa County, also known as Assessor Parcel Numbers 012-050-066 and 012-050-067; and

WHEREAS, the application proposed a 2.4 MW Bioenergy Facility with support buildings, parking, access and a woodchip storage yard; and

WHEREAS, the Planning Department circulated the application among trustee and responsible agencies, interested public organizations, and others as appropriate; and

WHEREAS, an Initial Study and Subsequent Mitigated Negative Declaration, State Clearinghouse Number (SCH) 2018011038, were prepared for the Mariposa Biomass Project pursuant to the California Environmental Quality Act; and

WHEREAS, the Mariposa Biomass Project Notice of Intent to Adopt Subsequent Mitigated Negative Declaration was published on the 23rd day of January, 2018; and

WHEREAS, a Staff Report, Subsequent Mitigated Negative Declaration, public comments received, response to comments, findings, conditions and an environmental determination were prepared pursuant to the California Government Code, Mariposa County Code, Planned Development Zone (PDZ) 87-1, Mariposa County General Plan, the California Environmental Quality Act, and local administrative procedures; and

WHEREAS, a duly noticed Planning Commission public hearing for the project and Subsequent Mitigated Negative Declaration was scheduled for the 23rd day of February, 2018; and

WHEREAS, the Planning Commission did hold a public hearing on the noticed date and considered staff’s recommendations, all of the information in the public record, including the Staff Report, Initial Study and Subsequent Mitigated Negative Declaration, project findings, mitigation measures, conditions of approval, testimony presented by the public concerning the application, and the comments of the applicant; and
WHEREAS, on the 23rd day of February, 2018, the Mariposa County Planning Commission adopted Resolution No. 2018-006 approving the Mariposa Biomass Project, Conditional Use Permit (CUP) No. 2017-117 by:

- Finding the Subsequent Mitigated Negative Declaration to be adequate and complete (SCH 2018011038);
- Approving the project application with findings, conditions and mitigation measures; and

WHEREAS, an appeal of the Planning Commission’s action approving Conditional Use Permit Application No. 2017-117 was submitted by Ruth Sellers, et. al on the 12th day of March, 2018 (Appeal No. 2018-051); and

WHEREAS, Appeal No. 2018-051 was deemed sufficient for processing on the 12th day of March, 2018; and

WHEREAS, on the 20th day of March, 2018, a supplement to the appeal was submitted by appellant Ruth Sellers on behalf of Steve Sellers; and

WHEREAS, the processing of Appeal No. 2018-051 was conducted pursuant to Mariposa County Resolution No. 10-92, entitled the Mariposa County Appeals Procedure; and

WHEREAS, a duly noticed Board of Supervisors public hearing on Appeal No. 2018-051 was scheduled for the 10th day of July, 2018; and

WHEREAS, a Staff Report packet was prepared for the Board of Supervisors’ public hearing pursuant to the California Government Code, Mariposa County Code, and local administrative procedures; and

WHEREAS, the Board of Supervisors did hold a public hearing on the noticed date and considered all of the information in the public record, including the Notice of Appeal, the Supplement to the Notice of Appeal, the Staff Report, the testimony presented at the public hearing and correspondence submitted for the public hearing; and

WHEREAS, the Biomass Facility is a unique facility and unique operation; and

WHEREAS, if the Biomass operation were to fail in the future, the structures and equipment wouldn't be able to be modified to accommodate another use; and

WHEREAS, based on concerns expressed by the Supervisors regarding this during the appeal hearing, the applicant proposed to amend their project proposal to include bonding. If the project fails and the site is abandoned in the future, the bond would cover the costs of reclaiming the site to existing conditions; and

WHEREAS, in order to allow additional time for deliberation, the Board of Supervisors did continue the Appeal No. 2018-051 hearing to the 17th day of July, 2018 at 11:00 a.m.; and
WHEREAS, the Board of Supervisors did hold the continued hearing on the 17th day of July, 2018 and considered all of the information in the public record, including the Notice of Appeal, the Supplement to the Notice of Appeal, the Staff Report, the testimony presented at the public hearing, correspondence submitted for and at the public hearing, amendments to the project description (Condition of Approval No 1) and amendments to Condition of Approval No. 23.

NOW, THEREFORE BE IT RESOLVED THAT, the Board of Supervisors does hereby adopt a resolution:

1) Denying Appeal No. 2018-051 based on findings; and
2) Upholding the Planning Commission’s approval of Conditional Use Permit (CUP) No. 2017-117 for the Mariposa Biomass Project, as amended by the applicant, with findings, amended conditions and mitigation measures as shown in attached EXHIBIT 1,

BE IT FURTHER RESOLVED THAT, the Board of Supervisors has exercised its independent judgment and has determined that the Planning Commission Resolution No. 2018-006 adopting a Mitigated Negative Declaration (SCH 2018011038) and approving Conditional Use Permit (CUP) 2017-117, with findings, conditions and mitigation measures documented and established sufficient objective justification for approval of CUP 2017-117 with amendments to the project description (Condition of Approval No. 1) and Condition No. 23 in attached EXHIBIT 1,

BE IT FURTHER RESOLVED THAT, the Board of Supervisors’ actions, interpretations and determinations are based on the following findings:

1. The Board of Supervisors reviewed the Planning Commission’s approval of Conditional Use Permit 2017-117 for the Mariposa Biomass Project and its finding that the proposed use is similar to and consistent with the policies and standards of PDZ 87-1, the General Plan and any applicable specific plan. The Board finds the Planning Commission’s action was appropriate as stated in Commission Resolution No. 2018-006:

   The project parcels are within the PDZ 87-1 Mariposa Industrial Park with a General Plan Land Use classification of Natural Resources, Expanded Mariposa Town Plan Study area. The General Plan Land Use Element 5.3.05 Natural Resources states:

   'The Board of Supervisors has determined that parcels within the Natural Resource Land Use Classification on the Land Use Diagram, the existing zoning assigned to that parcel, as of December 1, 2006, is consistent with the Natural Resources land use classification.
PDZ 87-1 Mariposa Industrial Park zoning applicable to the Project site was assigned to the Project Parcels prior to December 1, 2006. The PDZ 87-1 zone allows for processing uses and the Project is therefore consistent with the Planned Development Zone and the General Plan.

There are no specific plans applicable to the project site.

and

The project has been reviewed in accordance with all use and development standards established by Planned Development Zone No. 87-1.

The Biomass processing use is consistent with the following PDZ 87-1 uses as outlined in the following excerpts from PDZ 87-1 Mariposa Industrial Park Section:

“VI. Use Standards, A. Permitted Uses:

... 3. Processing uses- to include, but not limited, to bottling plants, creameries, wineries, laboratories, tire retreading, and cleaning, laundry and dying plants.

... 7. Agricultural Product Processing

... 12. Other- manufacturing, processing, treatment, fabrication or assembly uses similar to those enumerated above.”

The project proposes an agriculture (forest) materials processing use and is similar to the other uses listed above and therefore a permitted use under PDZ-87-1.

2. The Board of Supervisors finds that the Planning Commission staff report for the project, the project Initial Study and project documents include a project description that indicates the project is an energy producing facility:

“The Biomass Project proposes to process woody biomass feedstock (woodchips) at the facility using Pyrolysis (thermal decomposition) creating syngas to be used for energy production...”

“... The construction of a 2.4 MW community based bioenergy facility and woodchip storage yard...”

“... The facility will utilize approximately 12,000 bdt (bone dry tons) per year of sustainably harvested forest biomass in a gasification process to produce a syngas. The syngas will be used to fuel two gas engine generators to produce electricity...”
3. The Board of Supervisors reviewed the Planning Commission’s approval and adopted Mitigated Negative Declaration that includes mitigation measures and conditions of approval relating to hydrology, water and wastewater for the project. The Initial Study included a hydrology study prepared by Kenneth D. Schmidt and Associates that determined impacts to ground water to be less than significant as is stated in the Hydrology and Water Quality section of the Initial Study. The Board of Supervisors finds the Planning Commission review and action to be appropriate based upon the objective documentation and evaluation prepared by an appropriately qualified professional.

4. The Board of Supervisors determines that the project requirement to obtain an “Authority to Construct” permit prior to building permit issuance from the Mariposa County Air Pollution Control District (MCAPCD) insuring all applicable MCAPCD requirements are met, is adequate to address potential air pollution impacts. There are existing requirements, permitting and inspection processes in place in the county.

5. The Board of Supervisors concludes that the Planning Commission’s Conditions 29-32 will insure all Mariposa County Health Department and Mariposa County Air Pollution Control District requirements are met by the project, including odor controls. The project Initial Study included an air quality study prepared for the project by TSS Consultants of Sacramento, CA. The conclusions of the study are summarized in the Air Quality section of the CEQA environmental checklist contained in the Initial Study. The Initial Study addresses air contaminant issues. The discussion on long term and cumulative impacts concludes with the statement: “In summary, the project has a less than significant impact related to air contaminates.”

6. The Board of Supervisors considered the Planning Commission’s requirements for the project to adhere to regulations governing hazardous materials. The conditions of approval require that all Completed Unified Program Consolidated Forms and Materials Release Response Plan (Business Plan) be submitted to the County Environmental Health Department for review and approval prior to the issuance of a Certificate of Occupancy for the project. These requirements will ensure the project operates in compliance with applicable hazardous materials regulations.

7. The Board of Supervisors reviewed Planning Commission Resolution No. 2018-006 CUP Finding 3, which found that adequate provisions have been made for sewage disposal and handling of solid waste. The Board finds this action to be appropriate and adequate:

The Project Initial Study evaluated the solid waste outputs and the project will comply with all solid waste laws. Two disposal outputs, non-hazardous ash and sludge will be taken to the Mariposa County Landfill or an appropriately permitted waste facility.

Conditions of approval require that an adequate waste handling plan be in place to serve the project site prior to operation. Enforcement of State Law and County Health standards
will insure that sewage disposal and solid waste disposal are adequately handled and will not generate a health hazard.

The Mariposa County Public Works Department, the agency which manages the Mariposa County Landfill, was afforded the opportunity to review and provide input on this project. Condition No. 23 ensures appropriate handling of the solid waste that includes oversight by the Environmental Health Division of the Health Department and Public Works Department.

A project solid waste/material output plan is required for submittal and review by the County Environmental Health Division-Local Enforcement Agent and the Public Works Department-Public Works Director prior to grading permit issuance and a final plan approval must occur prior to Certificate of Occupancy for the project.

8. The Board of Supervisors considers the Planning Commission action to be adequate as pertains to feedstock availability. The Initial Study Attachment G, Mariposa Tree Mortality Maps and Data; Attachment H, Mariposa Tree Removal Plan; and Attachment R, Woody Biomass Feedstock Assessment were considered by the Planning Commission in its review and approval of the conditional use permit. The conclusion of the Woody Biomass Feedstock Assessment analysis on page 33 states:

“This feedstock availability analysis confirms the long-term sustainable availability of sufficient volumes of forest, urban, and agricultural feedstocks to support a 2 MW bioenergy project at Mariposa.”

9. The Board of Supervisors finds the Planning Commission actions as pertains to potential noise impacts to be based on objective data and quantifiable standards. Additionally, the conclusions require the involvement of a professional in the future to ensure compliance with existing standards for the Mariposa Industrial Park. The Initial Study evaluated noise impacts including all aspects of the operation, the existing site noise conditions and both the policy and regulatory requirements applicable to the project contained in the General Plan, and PDZ 87-1 standards. The PDZ 87-1 Noise Standards are prescriptive and the project must comply with the standards as follows:

The project Initial Study evaluated noise impacts of the project that included all aspects of the operation, the existing site noise conditions and both the policy and regulatory requirements applicable to the project by the General Plan, and PDZ 87-1 standards. The PDZ 87-1 Noise Standards are prescriptive and the project must comply with the standards as follows:

“VII. Activity Standards.... A. Noise. Within the Mariposa Industrial Park the following regulations, regarding the production or generation of sound shall apply:

1. Noise Levels at any interior property line shall not exceed 70dBA level.
2. Noise Levels at the boundary of State Highway 49 North shall not exceed 55dBA.
3. Noise levels at all other external boundaries of the Mariposa Industrial Park shall not exceed the 70 dBA level.”

The Noise Study included in the Initial Study evaluated noise at the nearest residential receptors and also at the property lines of the project site. The results of those calculations indicate that the average noise levels generated by the project would not exceed 63 dB Leq at the nearest property line. This level is in compliance with the Mariposa Industrial Park standard of 70 dBA at the project site property line.

The noise generation of the proposed project is predicted to be satisfactory relative to both the noise standards of the Mariposa Industrial Park PDZ 87-1 and CEQA guidelines during both daytime and nighttime conditions, for both onsite operations and off-site traffic. As a result, no adverse noise impacts are identified for this project, and no noise mitigation measures would be warranted at this time.

However, the Noise Study recommends that follow-up noise testing be conducted upon commencement of normal site operations to verify the reference sound level data provided by the project applicant and to incorporate any additional noise control measures which may be determined to be warranted as a result of that testing. The Project applicant will follow up with noise testing to be conducted upon commencement of normal site operations to verify the reference sound level data and to incorporate any additional noise control measures which may be determined to be warranted as a result of that testing.

Application of the mitigation on the project insures that identified noise impacts from the project are mitigated to less than significant levels as follows:

Mitigation Measure 12d.1: Within the facility start up and operational testing period and prior to building permit certificate of occupancy, a noise monitoring report shall be submitted to the Planning Director for review and verification that project operating noise levels do not exceed the allowances pursuant to PDZ 87-1. If the monitoring report finds that the noise thresholds are in exceedance of PDZ 87-1 allowances, then the report shall provide recommendations for appropriate noise reduction measures that reduce noise levels to meet the PDZ 87-1 standards and those recommendations shall be incorporated into the project. A certificate of occupancy shall not be issued until the noise monitoring concludes. The report shall be prepared by an appropriately licensed professional.

10. The Board of Supervisors finds that, based on the record, Environmental Review for the biomass facility was carried out in full compliance with the requirements of the California Environmental Quality Act.

11. The traffic study, prepared by TJKM and included in the Initial Study as Attachment P, was prepared utilizing accepted and required professional protocols. The Transportation/Traffic checklist section on page 100 of the Initial Study states:
It should also be noted that the proposed Project would divert trucks from elsewhere on CA-49 and reduce their distance traveled. Currently, trucks hauling chips and other woody biomass from forest thinning operations must travel to Fresno, Sonora, or farther in order to access a willing recipient for the biomass. For trucks hauling chips from Sierra National Forest via CA-140 or CA-49, this is a reduction of 75 miles or more each way. This project could therefore result in downstream benefits at higher-volume segments and intersections along CA-49.

12. The Board of Supervisors finds the Planning Commission’s evaluation and conclusions for the project’s overall impact on fire protection services to be adequately documented. The Initial Study concluded there is a less than significant impact on fire protection services with incorporation of mitigation; however potential impacts requiring mitigation are related to placement of facilities at the time of project construction, not ongoing operations. The Planning Commission adopted the following mitigation measure to address impacts on fire protection services.

Mitigation Measure 14.a.1: Prior to grading or building permit issuance the Project plans shall include all details necessary to meet County Fire Department and CALFIRE requirements as applicable for fire protection including access, storage tank, hydrant location and a fire flow to meet applicable code requirements. Approval verification letters by County Fire and CALFIRE to Planning Director shall be required prior to grading and or building permit issuance.

Planning Commission Resolution No. 2018-066 included Conditions 17-20 which require County Fire Department and CALFIRE requirements are met. Any OSHA required confined space management required of the project through existing regulatory frameworks would be enforced by OSHA.

BE IT FURTHER RESOLVED THAT, the Board of Supervisors’ actions, interpretations and determinations are based on Mariposa Planning Commission Resolution No. 2018-006, which is hereby incorporated into this resolution by reference.

BE IT FURTHER RESOLVED THAT, this action on Appeal No. 2018-051 is based upon the discussion of Appeal Issues as contained in the Staff Report to the Board of Supervisors, which is hereby incorporated into this resolution by reference.

BE IT FURTHER RESOLVED THAT, the custodian of the record of the proceedings is the Clerk of the Board of Supervisors.

BE IT FINALLY RESOLVED THAT, if any section, subsection, sentence, clause, word, phrase or finding of this resolution is held to be unconstitutional or otherwise invalid for any reason, such decision shall not affect the validity of the remainder of this resolution. The Board of Supervisors hereby declares each section, subsection, sentence, clause, word, phrase or finding is severable.
ON MOTION BY Supervisor Cann, seconded by Supervisor Long, this resolution is duly passed and adopted this 17th day of July 2018 by the following vote:

AYES: LONG, CANN, MENETREY
NOES: JONES
EXCUSED: SMALLCOMBE

Miles Menetrey, Vice Chair
Mariposa County Board of Supervisors

Attest:

René LaRoche,
Clerk of the Board of Supervisors

Approved as to Form:

Steven W. Dahlem
County Counsel
EXHIBIT 1
PROJECT CONDITIONS AND MITIGATION MEASURES

Project Conditions and Mitigation Measures
Conditional Use Permit No. 2017-117.

General

1. The Use Permit is approved for development and operation of the Mariposa Biomass plans dated January 19, 2018 (Staff Report Attachment B- Project Plans) and the project description as follows:

   • The construction of a 2.4 MW community based bioenergy facility and woodchip storage yard.
   • The facility will include several new structures including a gasification plant, engine generator enclosure, fire water tank, ash storage bin, feed system, electrical equipment enclosure and control room (8,600 square feet of new structures).
   • Feedstock storage is proposed to occur on Parcel 3, while the biomass facilities will be located on Parcel 4.
   • Access is proposed from Highway 49 No. to Gold Leaf Road, onto Copper Leaf Drive and driveway encroachments on Copper Leaf Drive.
   • Access for the delivery trucks will be a new driveway on Parcel 3 six days a week.
   • Truck deliveries will be limited to 7am to 5pm, 6 days per week.
   • Estimated to receive 3-4 chip trailer deliveries in addition to 8 to 10 small dump truck deliveries per day. The site is not proposed to be a public dump site. There will be no residential drop off of materials at the site.
   • The facility will operate 24 hours a day, 7 days a week.
   • 8 employees are proposed, although up to 10 employees may be required.
   • Water for the project is proposed by a shared well that produced 20 gpm at time of installation. The project applicant states that the project’s water use will be 1.5 gpm.
   • 60 pounds per day of sludge will be generated by the facility which is proposed to be disposed of at the landfill.
   • 1.2 tons per day of dry ash will be generated by the facility and is proposed to be disposed of at the landfill.
   • The project will establish a bond for the life of the project that would cover the costs associated with the removal of all equipment and buildings, if those structures become a nuisance, are abandoned, or the project has failed. The bond amount will be based on the costs estimated for such removal, subject to County Counsel approval.
The facility will utilize approximately 12,000 bdt (bone dry tons) per year of sustainably harvested forest biomass in a gasification process to produce a syngas. The syngas will be used to fuel two gas engine generators to produce electricity. (Additional project details may also be found in the attached Initial Study).

After the effective date of the Planning Commission approval of Conditional Use Permit No. 2017-117, the Mariposa Biomass Project shall be constructed in substantial conformance with the approved site plan, building elevations and project description as approved by the Planning Commission. Minor changes in the site plan and increase in project square footages up to 10%, may be considered and approved by the Planning Director if a finding is made that the changes would not necessitate a change in the Project environmental determination. Any substantial modification of the site plan requires additional public review.

2. No changes to the approved site plan, exterior design, color, or materials of any structure or landscaping shall be permitted without review by and written approval of the Planning Director pursuant to applicable conditions for the project.

3. Any representations the public hearing by the applicant or agents speaking on the applicant’s behalf shall be reduced to writing and added as conditions of project approval.

4. The conditional use permit (CUP) shall be activated by the issuance of the first building or grading permit within 36 months from the effective date of Planning Commission approval of the project. Should activation of the permit(s) be delayed by any moratorium or excessive delays by a permitting agency over which the County of Mariposa does not exercise control, or should a lawsuit involving the approval of the CUP or related entitlements be pending in a court of competent jurisdiction, the 36 month clock shall be tolled until such time the court action or other delay has concluded. However, if the remaining time is less than 120 days, the permit shall be valid for 120 days following the termination of the moratorium or other event triggering the tolling of the period. The tolling period shall be initiated upon written notice by the applicant to the Planning Department setting forth the facts and circumstances justifying the tolling, and shall be immediately effective unless a written notice of rejection is issued by the Planning Director within 14 days of receipt of applicant’s notice.

5. The applicant may request of the Planning Commission one 18-month time extension of the CUP initial time frame (as identified in condition no. 4 above) between the effective date of the approval of the CUP and the start of construction (building permit or grading permit issuance). The application must be made at least 90 calendar days prior to the initial approval expiration date.
The Planning Commission may impose any conditions and/or requirements it finds necessary to guarantee compliance with the project approval findings.

Any tolling provisions provided for by conditions of approval for the use permit shall remain in full effect. Time extension request provisions of this condition do not change any approved applicable tolling provisions.

6. An updated project development schedule shall be submitted to the Planning Director prior to issuance of a grading and/or building permit for the project. The Project schedule shall at a minimum include:
   - Outside agency permitting application estimated submittal timeline
   - Projected overall construction schedule
   - Estimated completion

7. No site disturbance activities shall commence without the issuance of a building or grading permit. Should there be no code requirement for such a permit, a letter authorizing site disturbance activities shall be issued by the Planning Director upon request and upon proof of relevant condition completion.

8. Prior to the issuance of any site disturbance, building or grading permits, the permit holder shall submit final site and construction plans. The final plans shall clearly be labeled to match the approved site plans except as necessary to comply with the project conditions or as allowed by 1. All physical construction for the project shall be in substantial conformance with the approved plans.

**Botanical/Wildlife**

9. Prior to the commencement of site disturbance activities of any kind, the Planning Director shall receive a detailed preconstruction survey clearly identifying areas which are proposed to be retained in natural vegetation (e.g. grasses, shrubs, trees and riparian vegetation). Accompanying the preconstruction survey shall be a construction management plan identifying how “non-disturbance areas” are to be physically protected during construction activities. Physical protection measures shall be in place prior to site disturbance.

10. Mitigation Measure 4.a.1.: A pre-construction survey based on CDFW protocols and survey periods for special-status species shall be performed by a qualified biologist to ensure that special-status species are not present. If any listed species are detected, construction shall be delayed, and the appropriate wildlife agency (CDFW and/or USFWS) shall be consulted and project impacts and mitigation reassessed and applied in conformance with biologist, CDFW and/or USFWS protocols. A verification letter from the CDFW that the survey was completed and protocols met shall be submitted to the Mariposa County Planning Department and
approved by the Planning Director prior to grading or building permit issuance.

11. Mitigation Measure 4.c.1: A 10 foot setback shall be in place from the centerline of the onsite ephemeral drainage channel identified within the project Biological Study for protection during construction and operation: there will be no modification of stream banks or adjoining vegetation within the 10 foot setback either during construction or during operation. The construction site and grading plans prepared by a licensed engineer shall show the setback. Setback areas shall be flagged in the field and physically protected prior to and during construction activities.

12. Mitigation Measure 4.d.1.: If construction activities will occur during the nesting season (usually March to September), pre-construction surveys for the presence of special-status bird species or any nesting bird species should be conducted by a qualified biologist within 500 feet of proposed construction areas. If active nests are identified in these areas, CDFW should be consulted to develop measures to avoid “take” of active nests prior to the initiation of any construction activities. Avoidance measures may include establishment of a buffer zone using construction fencing or the postponement of vegetation removal until after the nesting season, or until after a qualified biologist has determined the young have fledged and are independent of the nest site.

13. Mitigation Measure 4.e.1.: There shall be no grading, leveling, soil compaction from the use of heavy equipment, or digging within the root zone of oaks identified in a pre-construction oak tree survey. During construction of onsite improvements, all such oaks located in the area of construction activity identified as not to be removed, shall have erected around the root zone-which is 1 ½ times the drip line of the oak tree crown or 15’ whichever is greater-environmentally sensitive area fencing. This fencing shall remain installed, visible, and in good condition until all road construction, grading activities and other soil disturbance activities are completed. At the time of inspection of the completed improvements by the Building Department, Planning Director authorization for removal of the environmentally sensitive area fencing may be granted.

14. Prior to the commencement of construction activities, a tree removal and replacement plan for mature trees shall be prepared by a licensed landscape architect based upon accepted industry practice for approval by the Planning Director. The Plan shall incorporate appropriate measures to be taken to minimize the spread of non-native vegetation.

15. Conceptual landscaping plans are required prior to grading permit issuance and final landscape plans are required prior to building permit issuance; both of which require Planning Director approval. Landscaping plans shall provide vegetative screening of the site from streets, Hwy 49 and adjacent properties where possible as determined by the County. The applicant/operator shall plant a visual screen
that effectively screens the visibility of the site improvements from streets, Hwy 49 and adjacent properties where possible in conformance with PDZ 87-1 standards. A planting plan shall be prepared by a landscape architect and be approved by the County; it shall use low water use trees and vegetation and shall identify the sizes of plantings. Plantings shall be irrigated and monitored for establishment for five (5) years, or as recommended by the landscape architect. If plantings die, they shall be replaced on a one-to-one ratio until established. Irrigation shall meet the 2015 Model Water Efficient Landscape Ordinance (CCR Title 23, Chapter 2.7), as certified by the project landscape architect.

16. Prior to the issuance of any building or grading permits, the permit holder shall submit to the Mariposa County Agricultural Commissioner copies of the construction management plan identifying how the permit holder will take steps to prevent the transport of noxious weeds to the site. Approval by the Agricultural Commissioner of such program shall be transmitted to the Planning Director.

Public Services

17. Prior to the issuance of any building or grading permits, the County Fire Chief and CALFIRE shall provide the Planning Director with a letter certifying that the design of the onsite accesses are of adequate width, grade, surfacing, and construction design to meet the requirements of the fire protection agencies.

18. The Project will construct a 110,000 gallon tank and achieve all fire flow requirements. Fire hydrants will be placed on the property as required by the local Fire agencies. The project will comply with state law relating to the storage of wood chips. All applicable CALFIRE FireSafe standards must be met and will be reviewed by County Fire and CALFIRE at the time of construction permit review and prior to Certificate of Occupancy.

19. Mitigation Measure 14.a.1: Prior to grading or building permit issuance the Project plans shall include all details necessary to show compliance with County Fire Department and CALFIRE requirements for fire protection including access, storage tank, hydrant location and fire flow. Approval letters by County Fire and CALFIRE to Planning Director shall be required prior to grading and or building permit issuance.

20. Prior to the issuance of any building or grading permits, the Planning Director shall receive a letter from the CALFIRE indicating the final project design meets the requirements for the Fire Protection State Responsibility Area Firesafe Requirements for driveway standards, gate standards, road standards, emergency water supply standards, fire hydrant standards, defensible space standards, as may be applicable and as otherwise specified in 14 CCR§1270 et. seq.
21. Prior to the issuance of any grading permits, the permit holder shall submit restoration surety in a form satisfactory to the County Counsel. The amount of surety shall be equal to an engineer’s estimate of the cost of site preparation and grading, whichever is greater plus a 50% contingency. This amount of the surety is to be confirmed by the Department of Public Works and guaranteed by an appropriate agreement with the County. Upon completion of the grading final approval by the County, the required security shall be returned to the permit holder.

22. All Completed Unified Program Consolidated Forms and Materials Release Response Plan (Business Plan) shall be submitted to the County Environmental Health Department for review approval prior to the final Certificate of Occupancy of the project. (Ongoing compliance shall be required or conditional use permit revocation may occur). A Letter from the Health Department to the Planning Director Confirming that this condition has been met shall be required prior to Planning approval of the final Certificate of Occupancy for the project.

23. A project solid waste/material output plan is required for submittal, review and approval by the County Environmental Health Division-Local Enforcement Agent and the Public Works Director prior to grading permit issuance and a final plan approval must occur prior to Certificate of Occupancy for the project. The County shall have the authority to disallow disposal of solid waste from this project at the landfill at any time.

24. Based on its proximity to the Mariposa-Yosemite Airport, the project shall be designed in compliance with all applicable Federal Aviation Administration (FAA) and State Division of Aeronautics requirements. The applicant shall submit plans to the Public Works Department for review and approval pursuant to this condition. Written confirmation that this condition has been met shall be submitted to the Planning Department by the Public Works Department prior to grading and/or building permit issuance.

Hydrology, Water and Wastewater

25. Mitigation Measure 18 e.1.: Prior to grading or building permit issuance, the relocation of the septic easement as shown on the grading plan and site plan must be completed and recorded to the satisfaction of the County Health Department-Environmental Health Division, County Surveyor and Planning Director.

26. The Project water well system shall meet all applicable local and state requirements including but not limited to State Division of Drinking Water requirements. The Planning Director shall receive verification from the County Health Department and State Water Resources Control Board, Division of Drinking Water that this condition has been met prior to the Certificate of Occupancy for the project.
27. The project shall install and maintain onsite pollutant control measures during project construction and operation as required ensuring NPDES compliance. The permit holder shall provide the Planning Director with a copy of its approved State Water Resources Control Board Construction Activity Storm Water Permit and or any operational storm water permit for industrial activities prior to grading and/or building permit issuance.

28. The project shall install and maintain onsite runoff attenuation facilities with sufficient capacity to reduce 100-year project stormwater runoff rates to those currently generated by the project site. The project engineered grading plans shall include these facilities. County Engineer approval the plan is required prior to grading permit issuance.

Air Quality/Greenhouse Gas Emissions

29. Project shall be designed to meet all County Air Pollution Control District (APCD) requirements and the Air Pollution Control Officer shall approve the project plans and contract specifications prior to the issuance building or grading permits as applicable.

30. All facilities operations, collection and transmission facilities shall incorporate appropriate equipment and design so that odors cannot be detected and that dust control protocols are in place. The Environmental Health Division Director shall approve the project plans prior to the issuance of construction permits, occupancy or facility operation as deemed appropriate by the Environmental Health Division Director.

31. Mitigation Measure Air Quality 3 (e) 1: An operational management plan that includes 1) odor control activities and 2) methods for the project operations that demonstrate industry standard protocols for any nuisance odor and 3) best management practices shall be prepared by an appropriately licensed air quality professional and approved by the MCAPCO prior to building permit issuance.

32. The project must obtain an “Authority to Construct” permit prior to building permit issuance for the project from the Mariposa County Air Pollution Control District (MCAPCD). Mariposa County Air Pollution Control District (MCAPCD) verification that this condition has been met shall be required prior to building permit issuance.

Traffic, Access and Circulation

33. Mitigation Measure 16.b.1.: Gold Leaf Drive approach improvements shall be improved to meet minimum road surface requirements for the intersection approach prior to Certificate of Occupancy for the project. CALTRANS and/or County
Encroachment Permits shall be required as applicable prior to grading or building permit issuance.

34. Mitigation Measure 16.d.1.: Gold Leaf Drive shall be improved to meet CALTRANS radius requirements for the intersection approach prior to Certificate of Occupancy for the project. A CALTRANS Encroachment Permit shall be required prior to grading or building permit issuance. All encroachment improvements shall be completed prior to issuance of a Certificate of Occupancy for the facility.

35. The proposed Copper Leaf Drive driveway encroachments shall meet County standards. County Engineer approval of the encroachment design shall be required prior to grading permit issuance and improvements shall be approved prior to building permit final.

36. Proposed internal driveways, operational roads, truck turnaround and employee parking area shall be designed by the project engineer. Paving shall be required for dust and erosion control.

37. The Project access road from Copper Leaf Drive shall be completely on Parcel 4 unless an easement on the adjacent parcel (APN 012-050-068) for a portion of the access is obtained. If easement is not obtained, all driveway improvements shall be on the Project Parcel 4 in the same general location as proposed, with increased width all encompassed on the project Parcel 4. Public Works Department, County Surveyor and/or County Engineer approval is required prior to grading permit issuance.

38. The County Engineer may require engineered improvement plans prepared by a Registered Civil Engineer for any improvements required as a condition of approval for this project. If engineered improvement plans are required, the plans shall be approved by the County Engineer prior to commencement of construction work on the required road improvements.

39. A parking plan that meets PDZ 87-1 Section V. On-site Parking Standards must be submitted to, and approved by, the County Planning Director prior to grading and/or building permit issuance.

**Aesthetics**

40. All on-site lighting fixtures shall be designed to be in compliance with the model lighting code developed by the International Dark Sky Association and shall be shown on the building permit plans and approved by the Planning Director prior to the installation of any fixtures. The Director may require plan review by a lighting specialist to ensure condition compliance. Applicant shall pay all costs associated with this review.
41. Plans shall be designed to be in compliance with PDZ 87-1 Section III. Improvement Standards, Section IV. Signs and Advertising Displays, Section V. On-site Parking Standards, Section VII. Activity Standards, Section VIII. Design Standards. Elements including, but not limited to, architectural elevations, material types and paint colors shall be included. Planning Director approval of the plans is required prior to grading permit, building permit and/or occupancy, permit issuance determined by the Planning Director.

42. A site security and signage program shall be required. Elements shall maintain compliance with PDZ 87-1 Section IV. Signs and Advertising Displays standards including but not limited to fencing, signage. Program shall be approved by the Planning Director prior to grading or building permit issuance.

**Cultural and Historical Resources**

43. Mitigation Cultural Resources 5.d.1 A Native American monitor shall be on-site for the duration of ground disturbance. During road grading, soil testing and/or construction, or any activity that involves ground disturbance necessary to implement project conditions of approval, if any signs of prehistoric, historic, archaeological, paleontological resources are evident, all work activity within fifty feet of the find shall stop and the Mariposa County Planning Department shall be notified immediately. No work shall be done within fifty feet of the find until Planning has identified appropriate measures to protect the find and those measures have been implemented by the applicant. Protection measures for the site may include, but not be limited to, requiring the applicant to hire a qualified archaeologist who shall conduct necessary inspections and research, and who may supervise all further ground disturbance activities and make any such recommendations as necessary to ensure compliance with applicable regulations. In addition to the Planning Department, the Mariposa County Coroner and the Native American Heritage Commission shall be notified should human remains be discovered. If the remains are determined by the Native American Heritage Commission to be Native American, the NAHC guidelines shall be adhered to in treatment and disposition of the remains. Representatives of the Most Likely Descendant shall be requested to be on-site during disturbance and/or removal of human remains.

**Noise**

44. Mitigation Measure 12d.1: Within the facility start up and operational testing period and prior to building permit certificate of occupancy, noise testing shall be conducted and a noise monitoring report shall be submitted to the Planning Director for review and verification that project operating noise levels do not exceed limits established by PDZ 87-1 Section VII. Activity Standards, A. Noise. If the monitoring report finds that the noise thresholds are in exceedance of PDZ 87-1 allowances, then the report shall provide recommendations for appropriate noise reduction
measures that reduce noise levels to meet the PDZ 87-1 standards and those recommendations shall be incorporated into the project. A certificate of occupancy shall not be issued until the noise monitoring concludes that the noise is below the PDZ 87-1 limits. The report shall be prepared by an appropriately licensed or qualified professional.

Additional Conditions

45. The Property Owner (Owner) shall indemnify, protect, defend, and hold harmless the County, and any agency or instrumentality thereof, and officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the County, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, any approval of the County, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the County, concerning the project and the approvals granted herein. Actions concerning the project and approvals granted shall include, but not be limited to, the environmental determination made pursuant to the California Environmental Quality Act (CEQA). Furthermore, Owner shall indemnify, protect, defend, and hold harmless the County, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against another governmental entity in which Owner’s project is subject to that other governmental entity’s approval and a condition of such approval is that the County indemnify and defend such governmental entity. County shall promptly notify the Owner of any claim, action, or proceeding. County will further cooperate in the defense of the action.

An agreement on a form approved by Mariposa County Counsel shall be executed within twenty (20) working days of the date of project action. Non-compliance with this condition may result in revocation of project approval by the county.

46. Prior to issuance of permits, all fees associated with the County’s processing of the map and filing of associated CEQA documents (applicable to the conditional use permit) shall be paid. The Department of Fish and Wildlife CEQA filing fee ($2,280.75 as of January 1, 2018) and County Clerk fee ($50 as of January 1, 2018) shall be paid by the applicant within five (5) working days of the approval of the application (by Friday, March 2, 2018, because if the fee is not paid within 5 working days, and the Notice of Determination is not filed with the County Clerk prior to close of business on Friday, March 2, 2018 the environmental determination is not operative, vested, or final. (Section 21089(b) Public Resources Code).

The County Clerk requires that one check be submitted to cover both of these fees, for a total of $2330.75 (effective January 1, 2018), and that it be in the form of a cashier’s check or money order payable to “Mariposa County,” The County Clerk
will not accept a personal check for these fees. Submit the check to Mariposa Planning who will file this fee and other required documents with the County Clerk.

NOTE: The filing fees are adjusted annually, effective January 1st of each year, pursuant to Fish and Game Code.