LAW OFFICE OF DONALD B. MOONEY
417 Mace Boulevard, Suite J-334
Davis, CA 95618
530-304-2424
dbmooney@dcn.org

RECEIVED
AUG 16 2024
NEVADA COUNTY
BOARD OF SUPERVISORS

August 14, 2024

VIA FEDERAL EXPRESS

Clerk of the Board
Nevada County Board of Supervisors
950 Maidu Avenue, Suite 200
Nevada City, CA 95959

Re: Appeal of Planning Commission's Approval of Alpenglow Timber Use Permit , PLN23-0054; CUP23-0004; EIS24-0004

Dear Clerk of the Board:

Enclosed is Friends of Prosser Truckee's appeal to the County of Nevada Board of Supervisors of the Planning Commission's August 8, 2024 approval of the Mitigated Negative Declaration for the Alpenglow Timber Use Permit, PLN23-0054; CUP23-0004; EIS24-0004 ("Project") and approval of the Project (CUP23-0004). Also enclosed is check number 9192 in the amount $1,803.61 as filing fee for the appeal.

I have also enclosed a copy of the appeal and a self-addressed stamped envelope for return of a time-stamped copy.

Please do not hesitate for to call me if you have any questions regarding this matter.

Sincerely,

Donald B. Mooney
Attorney for Friends
of Prosser Truckee

cc: Client

RECEIVED
AUG 16 2024
NEVADA COUNTY
BOARD OF SUPERVISORS

COUNTY OF NEVADA (Attach pages if needed)

APPEAL TO BOARD OF SUPERVISORS
(Per Article 5.12 of Chapter II of the Land Use and Development Code)

Any applicant or interested party may file an appeal with the Board of Supervisors requesting review of any final action taken by Various County Agencies. Such appeal shall be filed with the Clerk of the Board of Supervisors within **ten (10) calendar days** from the date of the Agency's Action, except amendments to the General Plan or Zoning Ordinance, which shall be filed within **five (5) calendar days**. (If the final calendar day falls on a weekend or holiday, then the deadline is extended to the next working day.) Filing shall include all information requested herein and shall be accompanied by the appropriate filing fee. The statements (required below) must contain sufficient explanation of the reasons for and matters being appealed in order to facilitate the Board of Supervisors initial determination as to the propriety and merit of the appeal. Any appeal which fails to provide an adequate statement may be summarily denied. The filing of such an appeal within the above stated time limit shall stay the effective date of the action until the Board of Supervisors has acted upon the appeal.

I. APPEAL: I/We, the undersigned, hereby appeal the decision/recommendation of the

Planning Commission
Agency Name

PLN23-0054; CUP23-0004; EIS24-0004 8/8/24
Agency File No. Date of Decision

PLANNING AGENCY DECISIONS:

_____ Environmental Impact Report
L-XIII California Environmental Quality Act; County CEQA Guidelines and Procedures, 1.20 Appeals of the Adequacy of the EIR

_____ Floodplain Management Regulations (Floodplain Administrator)
L-XII Floodplain Management Regulations; 1.4 Administration

_____ Historic Preservation Combining District
L-II Zoning Regulations; Zoning Districts; 2.7.2 HP Combining District

_____ Inoperable Vehicles
L-II Zoning Regulations; Administration and Enforcement, 5.20 Abatement and Removal of Inoperable Vehicles

X Land Use Applications
L-II Zoning Regulations; 5.12 Administration and Enforcement

X Negative Declaration
L-XIII California Environmental Quality Act; County CEQA Guidelines and Procedures, 1.12 Negative Declaration

_____ Rules of Interpretation
L-II Zoning Regulations; 1.4 Rules of Interpretation

PUBLIC WORKS DECISIONS:

_____ Roadway Encroachment Permit
G-IV General Regulations; 4.A Regulating Roadway Encroachments; 15.1 Appeals

CDA DECISIONS:

_____ Outdoor Events
G-V Revenue; 2 Outdoor Events; 2.14 Appeal Process

FIRE AGENCY DECISIONS:

_____ Fee Assessments (Fire Protection District)
L-IX Mitigation and Development Fees; Fire Protection Development Fees; 2.6 Appeal from Fee Assessment

_____ Fire Safety Regulations; General Requirements (Fire Safety Reg. Hearing Body)
L-XVI Fire Safety Regulations; General Requirements; 2.7 Appeals

_____ Hazardous Vegetation Abatement (Lodal Fire Official)
G-IV General Regulations; 7.9 Appeals Process (No Fee to File Appeal)

ENVIRONMENTAL HEALTH DECISIONS:

_____ Sewage Disposal (Sewage Disposal Technical Advisory Group)
L-VI Sewage Disposal; 1.18 Appeals

_____ Water Supply and Resources (Health Officer)
L-X Water Supply and Resources; 5.1 Appeal Procedures

List All Agency Action(s) Taken That Are Being Appealed: 1) Approval of Mitigated Negative Declaration and Mitigation ~~and~~ Monitoring and Reporting Program; and 2) Approval of Conditional Use Permit (CUP23-0004)

II. STATEMENT OF THE REASONS FOR THE APPEAL:

The MND fails to satisfy the requirements of the California Environmental Quality Act as substantial evidence in the administrative record supports a fair argument that the project may have a significant environmental ~~fm~~ impacts. See attached letters.

III. STATEMENT OF THE SPECIFIC PROVISIONS WHICH ARE BEING APPEALED:

Appealing the entire MND and Conditional Use Permit as the MND fails to comply with the California Environmental Quality Act. See attached letter.

IV. STATEMENT OF THE CHANGES OR ACTION REQUESTED OF THE BOARD OF SUPERVISORS: Rescind approval of MND (EIS 24-0004) and CUP23-0004 and direct County staff to prepare an environmental impact statment as required by California Environmental Quality Act, Public Resources Code § 21000 et seq.

V. SUMMATION OF THE ARGUMENTS TO BE RAISED BY THE APPELLANT(S):

Substantial evidence in the administrative record supports a fair argument that the Project may have significant environmental impacts.

VI. IDENTIFICATION OF THE APPELLANT(S):

(Name)	(Mailing Address)	(Telephone)
Friends of Prosser Truckee	~~1550~~ 15030 Klondike Flat Road Truckee, CA 96161	

VII. NOTICE: (Multiple appellants should select one representative for purposes of notice.

All notices to appellant(s) should be mailed to: (Please Print)

530-304-2424

Donald B Mooney 417 Mace Blvd, Ste J-334, Davis, CA 95618
(Name/Representative) (Mailing Address) (Telephone)

Appellant: Friends of Prosser Truckee

Donald B Mooney
(Sign)

Dated: August 14, 2024

Donald B. Mooney
(Print)

FOR OFFICE USE ONLY

$1,803.60	8/16/2024	Jeffrey Thorsby
Filing Fee	Date Filed	Received By

Appeal form to be returned to: Nevada County Board of Supervisors Office, Eric Rood Administrative Center, 950 Maidu Avenue, Nevada City, CA 95959-8617. (530) 265-1480

LAW OFFICE OF DONALD B. MOONEY
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August 8, 2024

VIA ELECTRONIC MAIL
kyle.smith@nevadacountyca.gov

Nevada County Planning Commission
950 Maidu Avenue, Suite 170
Nevada City, CA 95959

Re: Alpenglow Timber Use Permit , PLN23-0054; CUP23-0004; EIS24-0004

Dear Commissioners:

This letter supplements Friends of Prosser Truckee's June 24, 2024 and July 29, 2024 comment letters on the proposed Alpenglow Timber Use Permit, PLN23-0054; CUP23-0004; EIS24-0004 ("Project"). Friends of Prosser Truckee continues to object to the Project and objects to the approval of the Mitigated Negative Declaration ("MND") for the Project on the grounds that the MND fails to comply with the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 *et seq*. Friends of Prosser Truckee respectfully request that the County not approve the Project and that County prepare an Environmental Impact Report ("EIR") prior to any further consideration of the Project.

I. THE IS/MND CONTAINS AN INADEQUATE PROJECT DESCRIPTION

"An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient [CEQA document]." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.) CEQA requires a complete project description to ensure that all of the project's environmental impacts are considered. (*City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1450, 1454; *see CBE, supra,* 184 Cal.App.4th at 82.) A curtailed, enigmatic or unstable project description draws a red herring across the path of public input." (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 656; *quoting County of Inyo, supra*, 71 Cal.App.3d at 197-198.) The adequacy of a project description is closely linked to the adequacy of the impact analyses. If the description is inadequate because it fails to discuss an aspect of the project, the environmental analysis will probably reflect the same mistake. (*See San Joaquin Raptor/ Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.3d 713, 722-723.) "An accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity. (*McQueen v. Board of Directors* (1998) 202 Cal.App.3d 1136, 1143.) A narrow view of a project could result in the fallacy of division, that is, overlooking its cumulative impact by separately focusing on isolated parts of the whole. (*Id.* at 1144.)" (*Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592.)

The IS/MND contains an inadequate Project Description as it omits a planned Phase 3 of the Project. The proposed Project purportedly includes three phases: Phase 1 includes establishment of a facility to produce dried and planed pine, saw rough timber and seasoned firewood. Residual material and potentially biomass residuals will fuel the wood fired boiler system and produce thermal energy supplied to the operation; Phase 2 consists of the planning and construction of six on-site residential duplexes supplied with hot water by the boiler and a hydronic distribution system; and Phase 3 of the project will establish a production line to manufacture cross laminated timber panels glulam and truss beams. The Project Description, however, fails to describe and discuss Phase 3.

The Project Description also fails to discusses the source of the timber, the location of the timber being harvested for the sawmill or the impacts associated with the timber harvesting for the sawmill. While some of the timber would have gone to the Hobart Mill, it appears that the Project will increase capacity and thus harvesting of timber in the area. The Project Description must address the source of timber for the Project and the potential for increased timber harvesting in the geographical region.

II. THE IS/MND FAILS TO CONSIDER THE WHOLE OF THE ACTION

CEQA requires that all foreseeable uses of a project, the "whole of the action", be analyzed in the same environmental review document in order to preclude impermissible "piecemealing" of environmental review. (CEQA Guidelines § 15378; *Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 369-370.) Thus, a CEQA project must include "the whole of an action" that has a potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment, and encompasses the activity being approved. (CEQA Guidelines, § 15378.) A project is not each separate governmental approval when there are several approvals by one agency or review by several agencies. (Guidelines, §15378.) Guidelines section 15126 provides that "[a]ll phases of a project must be considered when evaluating its impact on the environment..." All phases of a project must be considered as the "whole of the action," so that "environmental considerations do not become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences." (*Bozung v. Local Agency Formation Commission of Ventura County* (1975) 13 Cal.3d 263, 283–284, *Burbank-Glendale-Pasadena Airport Authority v. Hensler, supra,* 233 Cal.App.3d at 592.) It has been a longstanding principle that the project description must include future activities. *Laurel Heights Improvement Association v. Regents of the University of California (Laurel Heights I)* (1988) 47 Cal.3d 376, 396, held that "an EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.

CEQA avoids such a result by defining the term "project" broadly. (CEQA Guidelines, §15002(d).) "`Project' means the whole of an action, which has a potential for resulting in a physical change in the environment, directly or ultimately, . . ." (Cal. Admin. Code, tit. 14, § 14:15378, subd. (a).) *Citizens Association for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 165.). "The term `project' refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term `project' does not mean each separate governmental approval. [¶] . . . Where the lead agency could describe the project as either the adoption of a particular regulation . . . or as a development proposal which will be subject to several governmental approvals . . . the lead agency shall describe the project as the development proposal for the purpose of environmental analysis." (*Id. citing* CEQA Guidelines § 14:15378(c)-(d).)

By failing to include the development of Phase 3, the IS//MND seeks to segment environmental review of the whole action planned for the Project site. This effects the impact analysis to traffic, air quality, wildfire, noise and other areas.

The IS/MND's failure to discuss the source of the timber, the location of the timber being harvested for the sawmill or the impacts associated with the timber harvesting for the sawmill also results in a failure to consider the whole of the action and essentially segments environmental review. The Project will increase capacity and thus harvesting of timber in the area. Nothing in the IS/MND addresses the whole of the action regarding the source of timber and any potentially significant impacts associated with any increase in timber harvesting.

III. NOISE

Saxelby Acoustic's July 17, 2024 letter acknowledges that Environmental Noise Assessment modelled the project with open bay doors and the planar structure within the main structure was modeled with doors closed. Nothing in the conditions of approval or mitigation measures require the planar structure to be closed during operations. Thus, the Environmental Noise Assessment fails to adequately study and identify the potential noise generated by the Project.

Mitigation Measure 13B limits heavy truck trips to daylight hours only which is defined as 7am to 7pm. As daylight hours vary during year, this mitigation measure is confusing and difficult to enforce. Is it daylight hours that is being enforced or 7am to 7pm?

Mitigation Measure 13B also requires that all trucks belonging to the operator and used on public roadway have mufflers that meet the standards of the California Highway Patrol. This mitigation measure should be modified to require all trucks entering the project site should have the required mufflers, or that only trucks that belong to the operator shall have access to the Project site. Otherwise, the operator can easily avoid this requirement by subcontracting with a trucking company or by relying upon

independent truck owners. As a result, it is uncertain that the mitigation measure would reduce the impact to less than significant.

IV. WILDFIRE

With respect to wildfire, the Staff Report states that "As a result, the project impacts related to wildfire risk would be less than significant with the implementation of project conditions of approval and mitigation measures." (Staff Report at 29.) The IS/MND, however, does not identify any mitigation measures for wildfire.

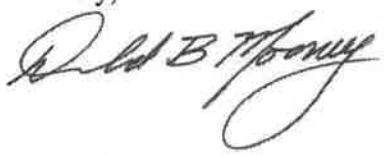
Also, given the destructive nature of wildfire, the IS/MND fails to adequately address the potential risk to the neighboring community from a wildfire being resulting from the operation of the Project. The record contains numerous instances of significant fire events resulting from sawmills. A fire resulting from the operation of the sawmill would be devastating to the nearby community with little to no time to evacuate.

V. CONDITIONS OF APPROVAL

1. COA 2 should be amended by replacing "July 22, 2024" with "August 8, 2024."

2. A condition of approval should be added to require the planar doors to be closed during operations as this was assumed in the Environmental Noise Assessment. Without this condition of approval the Environmental Noise Assessment.

Sincerely,



Donald B. Mooney
Attorney

cc: Client

LAW OFFICE OF DONALD B. MOONEY
417 Mace Boulevard, Suite J-334
Davis, CA 95618
530-304-2424
dbmooney@dcn.org

July 29, 2024

VIA ELECTRONIC MAIL
kyle.smith@nevadacountyca.gov

Kyle Smith
Nevada County Planning Department
950 Maidu Avenue, Suite 170
Nevada City, CA 95959

Re: Alpenglow Timber Use Permit , PLN23-0054; CUP23-0004; EIS24-0004

Dear Mr. Smith:

This letter supplements Friends of Prosser Truckee's June 24, 2024 comment letter on the proposed Alpenglow Timber Use Permit, PLN23-0054; CUP23-0004; EIS24-0004 ("Project"). Friends of Prosser Truckee continues to object to the Project and objects to the approval of the Mitigated Negative Declaration ("MND") for the Project on the grounds that the MND fails to comply with the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 *et seq*. Friends of Prosser Truckee respectfully request that the County not approve the Project and that County prepare an Environmental Impact Report ("EIR") prior to any further consideration of the Project.

As discussed in the June 24, 2024 comment letter, the record contains substantial evidence that the Project will have significant impact in a number of these areas, including aesthetics (light pollution), land use, noise, and traffic safety. These comments constitute substantial evidence that supports a fair argument that the Project may have a significant impacts. As such, CEQA mandates the preparation of an environmental impact report.

The attached June 24, 2024 memorandum from Michael S. Thill, an acoustics expert with Illingworth & Rodkin, constitutes substantial evidence that supports a fair argument that the Project may have significant noise impacts. The memorandum identifies flaws in the Environmental Noise Assessment noise study regarding ambient noise levels and that the measured noise levels may have been skewed in such a way that impacted the baseline to judge the significance of the noise impacts. The memorandum also found that the traffic noise modeling inputs are inconsistent and underestimated. The result is that the Environmental Noise Assessment fails to fully disclose the impact of project-generated traffic along Klondike Flat Road.

The Environmental Noise Assessment assumed that there would be no openings in the building and that doors or windows would not be open during the operation of the sawmill. Thus, assessment failed to take into account that openings in the building would allow additional noise to escape into the community. The noise study also failed to apply a proper noise standard and failed to identify that the Project would change the character of the existing ambient noise environment from traffic noise and natural sounds to sawmill operational noise.

Finally, as discussed in the Memorandum, the Environmental Noise Assessment failed to assess the potential noise impact of the project with respect to existing noise levels. This approach is inconsistent with the court's decision in *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814 *as modified on denial of reh'g* (Mar. 20, 2020), the court held that "as to the project's noise impacts, the County determined the significance of those impacts based solely on whether the estimated ambient noise level with the project would exceed the 65 decibels threshold set forth in the County's general plan." (*Id.* at 830.) Based on prior case law, the court further concluded that the magnitude of the noise increase must be addressed to determine the significance of change in noise levels. (*Id.*) In *King & Gardiner,* the EIR did not include such an analysis, supported by substantial evidence, explaining why the magnitude of an increase in ambient noise need not be addressed to determine the significance of the project's noise impact. (*Id.*; *see also Berkeley Jets, supra,* 91 Cal.app.4th at 1373; *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 732.) The Court also concluded that "it is not reasonable to assume or infer from the terms of the general plan that only noise increases that result in cumulative noise levels exceeding the maximum specified are significant." (45 Cal.App.5th at 830; *see* CEQA Guidelines, § 15064(f)(5) [what constitutes substantial evidence to support a finding on significance].)

The record contains expert comments that supports a fair argument that the Project may have significant noise impacts. The County's task is to determine whether the record contains substantial evidence that supports a fair argument that a significant impact may occur and not to weigh the evidence. (Pub. Resources Code, § 21080(c), (d); CEQA Guidelines, § 15064(f).) When qualified experts present conflicting evidence on the nature or extent of a project's impacts, the agency must accept the evidence tending to show that the impact might occur. Evidence to the contrary is usually irrelevant, because the agency cannot weigh competing evidence. (*Rominger v. County of Colusa, supra, 229* Cal.App.4th 690 [opinion by traffic expert conflicted with negative declaration's trip generation assumptions]; *City of Carmel-by-the-Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229, 249 [conflicting opinions by multiple experts on definition and extent of wetlands].) As such a disagreement exists in this matter CEQA mandates, as a matter of law, the preparation of an environmental impact report.

Sincerely,

Donald B. Mooney
Attorney

cc: Client

ILLINGWORTH & RODKIN, INC.
Acoustics • Air Quality
429 E. Cotati Avenue
Cotati, CA 94931
Tel: 707-794-0400 *Fax: 707-794-0405*
www.illingworthrodkin.com *illro@illingworthrodkin.com*

MEMO

Date: June 24, 2024

To: Mike Geary
friendsofprossertruckee@outlook.com

From: Michael S. Thill
Illingworth & Rodkin, Inc.

SUBJECT: Alpenglow Timber Use Permit, Nevada County, California – Peer Review Comments - Noise

This memo presents Illingworth & Rodkin, Inc.'s (I&R) peer review of the Initial Study/Mitigated Negative Declaration (IS/MND)[1] and Environmental Noise Assessment[2] prepared for the Alpenglow Timber Use Permit in Nevada County, California. The project would allow for the construction and operation of a mixed-use development including a forestry management and material processing facility supported by a wood fired boiler and associated structures (facility), and six residential dwelling units for State-Regulated Employee Housing in three duplexes located on an approximately 124-acre subject property at 10375 Silverado Way in Truckee, California.

The documents have been reviewed for approach, accuracy, and completeness. The key issues for the peer review were to confirm that the correct significance criteria were used and that key issues have been properly evaluated. The following are our specific comments and recommendations:

Comment 1. The Environmental Noise Assessment describes the existing ambient noise environment in the project vicinity as being, "…primarily defined by traffic on Highway 89 to the east of the project site and natural sounds such as wind, birds, and insects."

Noise measurement locations selected as part of the August 2022 Environmental Noise Assessment were close to Klondike Flat Road and measured noise levels may have been skewed such that they would not accurately represent the noise levels at noise-sensitive residential areas in the project vicinity. Site LT-1 (Near Entry Gate) appears to have been approximately 30 feet from the centerline of Klondike Flat Road and immediately adjacent to the site entrance. It is likely

1 Alpenglow Timber Use Permit, May 24, 2024.
2 Saxelby Acoustics. Environmental Noise Assessment for the Mercer Sawmill Project. November 14, 2023.

that local vehicle traffic generated maximum instantaneous noise levels that regularly exceeded 75 dBA L_{max} at this location, with several events producing noise levels reaching 80 dBA L_{max}. At Site LT-2 (Eastern Project Boundary), the measurement location appears to have been approximately 110 feet south of Klondike Flat Road. Maximum instantaneous noise levels measured at this position (further from the roadway) also regularly exceeded 75 dBA L_{max}, with three events producing noise levels ranging from 80 to 92 dBA L_{max}. The sources of these high maximum instantaneous noise levels were not described or disclosed. It is unusual that maximum noise levels at a location further from the local road would have been higher, and it is reasonable to infer that some other source likely contaminated the measurement.

Recommendation – Additional noise measurements should be made to adequately describe ambient noise conditions at receptors in the area, particularly those that are northwest of the project site. The noise environment away from local roadways may be found to be substantially quieter. Sites should be selected in areas away from Klondike Flat Road to document ambient noise levels in areas not subject to such high noise events. These data should also be used as the baseline to judge the significance of permanent noise increases resulting from the project as discussed in Comment 4.

Comment 2. The existing and existing plus project traffic noise modeling inputs and results indicate that the project would result in no additional daily trips along SR 89, north of Klondike Flat Road (Existing ADT = 453, Existing Plus Project ADT = 453), one additional daily trip along SR 89, north of Klondike Flat Road (Existing ADT = 466, Existing Plus Project ADT = 467), and seven additional daily trips along Klondike Flat Road, west of SR 89 (Existing ADT = 19, Existing Plus Project ADT = 26). It is unclear how the vehicle trips disperse from the site as the seven trips along Klondike Flat Road are reduced one trip along SR 89, north of Klondike Flat Road.

In addition, the existing and existing plus project traffic noise levels modeled as part of the analysis do match the peak hour vehicle trips estimates described in the Environmental Noise Assessment (Page 9):

> ***Site Circulation**: The project is projected to generate 3 auto trips and 4 heavy truck trips in the peak hour (LSC Transportation Associates). Typical automobile movements are predicted to generate a sound exposure level (SEL) of 71 dBA SEL at 50 feet for cars and 85 dBA SEL at 50 feet for trucks. Saxelby Acoustics data. Truck deliveries would not occur during evening hours.*

Similarly, it is noted on Page 24 of the Air Quality Technical Report[3] that, "The proposed project would generate approximately 31 daily vehicle trips from employees/residences (11 miles per one-way trip, 341 vehicle miles traveled [VMT] per day)." Also, the Air Quality Technical Report states that, "Approximately eight new haul truck trips are proposed per day, which would equate to 120 VMT per day."

The traffic noise modeling inputs are not consistent and appear to be underestimated.

Recommendation – The traffic volume inputs to the noise model should be confirmed and

3 RCH Group. Air Quality Technical Report for Mercer Sawmill. November 16, 2023.

updated to include the correct number of daily project trips. Given the rural environment, it is also recommended that the noise of individual truck movements be given proper consideration as it is the maximum noise of each truck trip that would be most disturbing to residents. The averaging of this noise, particularly into a daily average, minimizes the potential effect and does not fully disclose the impact of project-generated traffic along Klondike Flat Road.

Comment 3. The assumptions used in the operational noise modeling state that the sawmill will be located inside a structure with 26-gauge aluminum walls and the planer will be located in its own structure within the same building as the sawmill. It is not clear whether or not doors to these structures would be maintained closed at all times during sawmill operations. The noise contour data do not indicate that an open door condition was modeled in SoundPLAN.

Recommendation – The SoundPLAN model should be revised to account for openings in the building that may allow additional noise to escape into the community.

Comment 3. The Nevada County General Plan Stationary Noise Limits contain a provision that allows the County to, "…provide for a more restrictive standard than shown in the Exterior Noise Limits table contained in this policy. The maximum adjustment shall be limited to be not less than the current ambient noise levels and shall not exceed the standards of this policy or as they may be further adjusted by Policy 9.1b. Imposition of a noise level adjustment shall only be considered if one or more of the following conditions are found to exist:

1. Unique characteristics of the noise source:
   (a) The noise contains a very high or low frequency, is of a pure tone (a steady, audible tone such as a whine, screech, or hum), or contains a wide divergence in frequency spectra between the noise source and ambient level.
   (b) The noise is impulsive in nature (such as hammering, riveting, or explosions), or contains music or speech.
   (c) The noise source is of a long duration.

2. Unique characteristics of the noise receptor when the ambient noise level is determined to be 5 dBA or more below the Policy 9.1 standard for those projects requiring a General Plan amendment, rezoning, and/or conditional use permit. In such instances, the new standard shall not exceed 10 dBA above the ambient or the Policy 9.1 standard, whichever is more restrictive."

Without a proper noise standard, the operation of the project would change the character of the existing ambient noise environment from traffic noise and natural sounds to sawmill operational noise.

Recommendation – A more restrictive noise standard should be used to assess project impacts because sawmill noise is typically characterized by a whine, screech, or hum. Further, these noise sources would be expected to continue over a long duration. This more restrictive standard should be established based on new noise data collected to represent noise levels at residential areas away from Klondike Road. In these areas, the ambient noise levels are expected to be low. A review of the L_{90} noise data collected at Sites LT-1 and LT2 show that noise levels during the vast majority

of the time are typically below 40 dBA.

Comment 4. With the exception of the traffic noise assessment (with noted deficiencies), the Environmental Noise Assessment does not assesses the potential noise impact of the project with respect existing noise levels. The operational noise assessment is based solely on whether the operational noise level would exceed the Nevada County daytime L_{eq} and L_{max} noise level standards. In *King and Gardiner Farms LLC. v. County of Kern* (2020) 45 Cal.App.5th 814, 893, the California Supreme Court concluded that the magnitude of the noise increase must be addressed to determine the significance of the change in noise levels and that the EIR did not include an analysis, supported by substantial evidence, explaining why the magnitude of an increase in ambient noise need not be addressed to determine the significance of the project's noise impact.

Recommendation – The Environmental Noise Assessment should be revised to assesses the potential noise impact of the project with respect existing noise levels. Per earlier comments, existing noise levels should be measured at new locations that are representative of all of the residences in the area, not just those located close to roadways serving the area. All operational noise sources should be aggregated to determine the change to existing noise levels caused by the project and mitigation measures should be required if a susbtantial permanent noise increase would occur.

(24-090)

LAW OFFICE OF DONALD B. MOONEY
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June 24, 2024

VIA ELECTRONIC MAIL
kyle.smith@nevadacountyca.gov

Kyle Smith
Nevada County Planning Department
950 Maidu Avenue, Suite 170
Nevada City, CA 95959

Re: Alpenglow Timber Use Permit , PLN23-0054; CUP23-0004; EIS24-0004

Dear Mr. Smith:

This office represents Friends of Prosser Truckee regarding the proposed Alpenglow Timber Use Permit, PLN23-0054; CUP23-0004; EIS24-0004 ("Project"). Friends of Prosser Truckee objects to the Project and objects to the approval of the Mitigated Negative Declaration ("MND") for the Project on the grounds that the MND fails to comply with the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 *et seq*. Friends of Prosser Truckee respectfully request that the Zoning Administrator not approve the Project and that County of Sacramento prepare an Environmental Impact Report ("EIR") prior to any further consideration of the Project.

A. THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

"CEQA is a comprehensive scheme designed to provide long-term protection to the environment. [Citation.] In enacting CEQA, the Legislature declared its intention that all public agencies responsible for regulating activities affecting the environment give prime consideration to preventing environmental damage when carrying out their duties. [Citations.] CEQA is to be interpreted 'to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. [Citation.]" (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 112.)

In evaluating proposed projects, a public agency must evaluate whether a possibility exists that the project may have a significant environmental effect. (Pub. Resources Code, §§ 21100(a), 21151(a).) If so, then the agency must conduct an initial threshold study. (Pub. Resources Code, § 21080.1; CEQA Guidelines, § 15063.) If the initial study reveals that the project will not have any significant effect, then the agency may complete a negative declaration that describes the reasons supporting the determination. (CEQA Guidelines, §§ 15063(f)(2); 15070(b).) If the initial study determines that any aspect of the project may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial, the agency must prepare

an EIR. (*Id.*; see *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 86; see also *Sundstrom v. County of Mendocino* (1982) 202 Cal.App.3d 296, 304-305.)

The EIR, with all its specificity and complexity, is the mechanism prescribed by CEQA to force informed decision-making and to expose the decision-making process to public scrutiny. (*Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 910; citing *No Oil, Inc., supra,* 13 Cal.3d at p. 86.) The central purpose of an EIR is to identify the significant environmental effects of the proposed project, and to identify ways of avoiding or minimizing those effects through the imposition of feasible mitigation measures or the selection of feasible alternatives. (Pub. Resources Code, § 21002, 21002.1(a), 21061.) "An EIR provides the public and responsible government agencies with detailed information on the potential environmental consequences of an agency's proposed decision." (*Mountain Lion Foundation v. Fish & Game Com., supra,* 16 Cal.4th at p.113.) The EIR is "the heart of CEQA" and "an environmental alarm bell whose purpose is to alert the public and its responsible officials to environmental changes before they have reached the ecological point of no return." (*Laurel Heights Improvement Ass'n v. Regents of the Univ. of California ("Laurel Heights I")* (1988) 47 Cal.3d 376, 392.) The EIR is the "primary means" of ensuring that public agencies "take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state." (*Id.*, quoting Pub. Resources Code, § 21001(a).) The EIR is also a "document of accountability," intended "to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its actions." (*Laurel Heights I, supra,* 47 Cal.3d at 392 (quoting *No Oil, Inc., supra,* 13 Cal.3d at p. 86.)

B. THE FAIR ARGUMENT STANDARD

"In reviewing an agency's decision to adopt a negative declaration, a trial court applies the 'fair argument' test." (*City of Redlands v. County of San Bernardino* ("*City of Redlands*") (2002) 96 Cal.App.4th 398, 405; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1399; see also *Pala Band of Mission Indians v. County of San Diego* (1998) 68 Cal.App.4th 556, 571.) The fair argument test requires that an agency "prepare an EIR whenever substantial evidence in the record supports a fair argument that a proposed project may have a significant effect on the environment." (*City of Redlands,* 96 Cal.App.4th at 405: quoting *Gentry v. City of Murrieta, supra,* 36 Cal.App.4th at 1399-1400; see *Laurel Heights Improvement Ass'n v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123; *No Oil, Inc., supra,* 13 Cal.3d at 75, 82,118.) "If there is substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment, an environmental impact report shall be prepared." (Pub. Resources Code, §§ 21080(d), 21151(a).) If such evidence exists, the court must set aside the agency's decision to adopt a negative declaration as an abuse of discretion in failing to proceed in a manner as required by law. (*City of Redlands, supra,* 36 Cal.App.4th at 406; *Pala Band of Mission Indians v. County of San Diego, supra,* 68 Cal.App.4th at 571.) Thus, an EIR must be prepared "whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental

impact" (*No Oil, Inc., supra,* 13 Cal.3d at 75) even if there is substantial evidence to the contrary. (*Arviv Enterprises, Inc. v. South Valley Area Planning Com.* (2002) 101 Cal.App.4th 1333, 1346; *Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002).

Based upon the fair argument standard of review, the County must prepare an EIR instead of a mitigated negative declaration if any substantial evidence in the record supports a fair argument that the Project may have a significant effect on the environment, even if other substantial evidence supports the opposite conclusion. (Pub. Resources Code § 21151(a); Guidelines §15064(f)(1)-(2); *No Oil, Inc., supra*, 13 Cal.3d at 75; *Architectural Heritage Ass'n v. County of Monterey* (2004) 122 Cal.App.4th 1095, 1109.) It is the function of an EIR, not a negative declaration, to resolve these conflicting claims. (See *No Oil, Inc., supra,* 13 Cal.3d at 85.) It is well-established that CEQA creates "a low threshold requirement" for the initial preparation of an EIR and reflects a preference for resolving doubts in favor of environmental review when the question is whether any such review is warranted. (See *No Oil, Inc., supra,* 13 Cal.3d at 84; *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 880-881.)

CEQA and the CEQA Guidelines provide assistance in evaluating what constitutes substantial evidence to support a "fair argument". (See Guidelines § 15384(a) ("'substantial evidence' means enough relevant information and reasonable inferences…that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.").) Substantial evidence consists of "fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact." (Pub. Resources Code § 21080(e)(1); see also Guidelines § 15384(b).) It does not include "argument, speculation, unsubstantial opinion or narrative, evidence that is clearly inaccurate …or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment." (Pub. Resources Code § 21080(e)(2).) Comments that present evidence of facts and reasonable assumptions from those facts may constitute substantial evidence to support fair argument that the project may have a significant effect on the environment. (See *City of Redlands, supra,* 96 Cal.App.4th at 590; see also *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 152-153.) Relevant personal observations of area residents on nontechnical subjects, such as aesthetics, qualify as substantial evidence to support a fair argument. (*Ocean View Estates Homeowner's Assn., Inc. v. Montecito Water District* (2004) 116 Cal.App.4th 396, 402.)

Input from non-experts, lay testimony, can be substantial evidence when such testimony is credible and does not purport to embody analysis that would require special training. Thus, "statements of area residents who are not environmental experts may qualify as substantial evidence if they are based on relevant person observations or involve 'nontechnical issues." (*Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, 583 (aesthetics); *Ocean View Estates Homeowners Association, Inc. v. Montecito Water District* (2004) 116 Cal.App.4th 396, 402 (aesthetics); *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322 (traffic and biology); *The Pocket Protectors v. City of*

*Sacram*ento (2004) 124 Cal.App.4th 903, 932 (land use); *Oro Fino Gold Mining Corp v. County of El Dorado* (1990) 225 Cal.App.3d 872, 882 (noise); *Citizens Association for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 172 (traffic).)

C. INADEQUATE NOTICE

The County has provided inadequate notice for public review and comment. The Notice of Availability (NOA) noticed a 31-day public review and comment period between May 24, 2024 to June 24, 2024 at 5:00 p.m. The NOA, however, was not posted on the website provided in the NOA until May 31, 2024. Given the County's failure to make the IS/MND available consistent with release of the NOA, this matter should be re-noticed.

D. SUBSTANTIAL EVIDENCE SUPPORTS A FAIR ARGUMENT THAT THE PROJECT MAY HAVE SIGNIFICANT ENVIRONMENTAL IMPACTS

In the present matter, the record contains substantial evidence that the Project will have significant impact in a number of these areas, including aesthetics (light pollution), land use, noise, and traffic safety. These comments constitute substantial evidence that supports a fair argument that the Project may have a significant impacts. As such, CEQA mandates the preparation of an environmental impact report.

The record demonstrates that the development and operation of this industrial complex will significantly impact Truckee residents, particularly those living north on Highway 89 in the Klondike Flat, the500-plus homes in Prosser Lakeview Estates, as well as by Tahoe Donner residents using Alder Creek Road, and residents in Russell Valley and Gray's Crossing.

Lay testimony demonstrates that the increased truck traffic, 61 per day—resulting in a logging truck passing through Highway 89 and Klondike Flat Road approximately every 7 minutes - will have significant impacts to traffic safety. This lay testimony constitutes substantial evidence supporting a fair argument that the Project may have impacts associated with traffic safety. (*See Citizens Association for Sensible Development of Bishop Area v. County of Inyo*, *supra,* 172 Cal.App.3d at 172).)

The operation of the sawmill and associated machinery would introduce considerable noise pollution into the quiet residential neighborhood, disrupting the tranquility. As the record contains expert comments indicating the Project's potential for noise impacts substantial evidence that supports a fair argument that the Project may have significant noise impacts. The County's task is not to weigh the competing evidence and determine whether, in fact a significant impact on the environment will occur. Rather, the County's task is to determine whether the record contains substantial evidence that supports a fair argument that a significant impact may occur. (Pub. Resources Code, §

21080(c), (d); CEQA Guidelines, § 15064(f).) When qualified experts present conflicting evidence on the nature or extent of a project's impacts, the agency must accept the evidence tending to show that the impact might occur. Evidence to the contrary is usually irrelevant, because the agency cannot weigh competing evidence. (*Rominger v. County of Colusa, supra, 229* Cal.App.4th 690 [opinion by traffic expert conflicted with negative declaration's trip generation assumptions]; *City of Carmel-by-the-Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229, 249 [conflicting opinions by multiple experts on definition and extent of wetlands].) A disagreement between experts regarding the significance of one or more environmental effects can require an EIR in "marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment...." (CEQA Guidelines, § 15064(g).) Therefore, as a matter of law, CEQA mandates the preparation of an environmental impact report.

The record also indicates that the project will introduce significant light pollution into the neighborhood's dark skies, affecting wildlife and detracting from the natural beauty of the area. Substantial evidence in the form of lay testimony from community members with personal knowledge of the area supports a fair argument that the Project may have significant impacts regarding light pollution.

The proposed project, an industrial complex, is inconsistent with the existing residential character of Klondike Flat and its surroundings. Moreover, the IS/MND failed to address the Project's inconsistencies with the Truckee 2040 General Plan. The Project would cause significant and unavoidable impacts due to conflicts with Town of Truckee Goal LU-12 for regional land use coordination between Nevada County and the Town of Truckee. Goal LU-12 calls for coordination between the Town of Truckee and Nevada County for development projects and is intended to avoid environmental effects to the region. The General Plan provides that open space and natural resources adjacent to the Town of Truckee are to be protected from development, new development outside of Truckee that adds additional traffic to the circulation system is to be limited, and development in areas in unincorporated Nevada County that are within the Truckee sphere of influence, like the Klondike Flat neighborhood, are to remain consistent with the Truckee General Plan. Thus, the record supports a fair argument that the Project may be inconsistent with the General Plan and result in significant impacts to land use, CEQA mandates the preparation of an EIR.

E. CONCLUSION

As set forth above, it is clear that substantial evidence supports a fair argument that the Project may have significant environmental impacts. As such, CEQA mandates that the County prepare a legally adequate EIR for the Project. Approval of the Project based upon this IS/MND would constitute an abuse of discretion and be contrary to law.

Sincerely,

Donald B. Mooney
Attorney

cc: Client

OFFICIAL RECEIPT
COUNTY of NEVADA

680432

RECEIVED FROM Donald B. Mooney DATE 8/16/2024 2024

ADDRESS 417 Mace Blvd., Ste J-334 Davis, CA 95618

FOR One thousand Eighty Hundred and 61/100 cents mace and DOLLARS $ 1,803.61

AMOUNT		HOW PAID	
AMT OF ACCOUNT		CASH	
AMT PAID	1,803.61	CHECK	9192
BALANCE DUE		MONEY ORDER	
		EFT	

DEPARTMENT Board of Sups

BY Jeffrey Thorsby