

October 4, 2024

VIA E-MAIL TO CLERK OF THE BOARD

The Honorable Nevada County Board of Supervisors
950 Maidu Avenue, Suite 200
Nevada City, CA 95959

Re: Response to appeal of Planning Commission approval of the Alpenglow Timber Project
(PLN23-0054; EIS24-0004; CUP23-0004)

Dear Chair Bullock & Members of the Board:

Our law firm represents Hundred Acre Wood LLC ("Applicant"), the applicant for the Alpenglow Timber project (the "Project") located in the County's unincorporated area at 10375 Silverado Way, just north of the City of Truckee. The Planning Commission unanimously approved the Use Permit and Initial Study/Mitigated Negative Declaration ("IS/MND") for the Project on August 8, 2024; however, the Project was subsequently appealed by a group known as Friends of Prosser Truckee and its legal counsel, Donald Mooney (collectively, "Appellants"). To supplement the record of evidence before the Board, this letter responds to the arguments raised in Mr. Mooney's August 8, 2024 letter attached to the appeal which he submitted less than 3 hours before the Planning Commission hearing. It also responds to a letter recently submitted by Appellants' legal counsel on October 2, 2024, and its attachment, a September 28, 2004 letter from Dr. Chad Hanson regarding wildfire issues.

As explained in detail below, none of the arguments in Appellant's August 8, 2024 letter are supported by the facts or the law. Appellants have not demonstrated the existence of a fair argument supported by "substantial evidence" that the Project may have significant environmental impacts or that the IS/MND was inadequate in any respect. CEQA Guidelines Section 15384 defines "substantial evidence" to "include facts, reasonable assumptions predicated upon facts, and expert opinion predicated upon facts, and expert opinion supported by facts." Similarly, courts have held that "substantial evidence" is evidence that is of ponderable legal significance, reasonable in nature, credible, and of solid value. Nothing that Appellants have submitted meets that standard.

Based on our close review of the record before the Board, the County has fully complied with the California Environmental Quality Act ("CEQA") in conducting its environmental analysis for the Project, and there is no substantial evidence in the record compelling the preparation of an EIR.

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I. The IS/MND's Project Description Is Adequate and Considers the Whole of the Proposed Action.

Appellants' arguments related to the Project description boil down to two claims: (1) that the IS/MND should have analyzed a "Phase 3" of the Project consisting of a manufacturing production line and (2) that the Project description should have discussed and analyzed the sources and locations of the timber that would be sent to the Project's sawmill after harvesting, the impacts of such harvesting, and the potential for the Project to result in increased harvesting.

A. The Proposed Project Is Not a Multi-Phased Project, and All Components of the Project Have Been Adequately Analyzed in the IS/MND.

With respect to the "Phase 3" manufacturing production use, the original Project application materials submitted to the County did include the term "phases." Those materials identified a two-phased operational activity within the proposed main sawmill building, involving lumber and cross laminated timber products. This detail was included in the materials to clarify the timing of internal operations within the sawmill building, and was not proposed as part of an application for construction and entitlement of a phased development pursuant to Zoning Regulations Section 12.05.100.C *et seq.* (i.e., the Project's Use Permit is not one "for which phased development or phased occupancy is [proposed to be] approved"). The entirety of the Project, including the sawmill facility, worker housing, and its manufacturing and production component, is being approved and will be constructed together within the prescribed timelines of the Alpenglow Timber Use Permit and County Code, pursuant to Conditional of Approval #4. Accordingly, all of the Project's proposed impacts related to operations, including noise and air quality and greenhouse gas ("GHG") emissions from mechanical equipment are fully reflected in the IS/MND.

Appellants also state that the Project would include the manufacture of glulam, but that is not contemplated. Instead, the cross laminated timber products manufactured at the facility would use a more modern process with non-formaldehyde-based glue that does not produce off-gassing or odor. Emissions from the use of glue in the production of cross laminated timber products were not estimated as part of the IS/MND's analysis of air quality and GHG emissions, because such emissions are negligible. As shown in the supplemental memorandum from RHG Group dated September 16, 2024, regarding air quality emissions from the proposed production of cross laminated timber products, the VOC emissions from glue use increases such emissions, previously determined to be 35.2 lbs/day, by 0.3 lbs/day (less than one percent), which would not change the IS/MND's conclusions that the Project's air quality and GHG emissions impacts would be less than significant.

B. The Project Description and IS/MND Were Not Required to Include and Analyze Independent Timber Harvesting Projects.

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Contrary to the Appellants' arguments, under the CEQA statute, the CEQA Guidelines and the applicable case law, the IS/MND did not need to include as part of the Project Description or to analyze the impacts of the timber harvesting projects that could potentially serve as a source of timber for the Project.

Courts have established that a CEQA document does not need to examine the impacts of facilities that are planned independently of the project. For example, an environmental impact report ("EIR") for a regional solid waste landfill was not required to include future solid waste transfer stations that would process solid waste before it was sent to the proposed landfill. *National Parks & Conserv. Ass'n v. County of Riverside* (1996) 42 Cal.App.4th 1505 ("*National Parks*"). The court explained that meaningful environmental information about the transfer stations was not available because their locations were not yet known, they would be independently approved by other agencies, and they would be needed for solid waste processing whether or not the landfill was approved. See also *Towards Responsibility in Planning v. City Council* (1988) 200 Cal.App.3d 671 (EIR did not need to evaluate the environmental impacts of a wastewater treatment plant designed to serve the project area because it would be unreasonable to expect the EIR to produce detailed information about the environmental impacts of a future regional facility whose scope was uncertain, and which will be subject to its own environmental review); *Banning Ranch Conservancy v City of Newport Beach* (2012) 211 Cal.App.4th 1209 (CEQA analysis of park access road project did not need to include separately proposed residential project that would also use the road, as the residential project could not be viewed as a "consequence" of the access road, the two proposals would serve different purposes, and the projects were not dependent on one another).

The relationship between the Project and future sources of timber that may be delivered to it are directly analogous to the landfill and the solid waste processing stations in the *National Parks* case. Meaningful environmental information about future timber harvesting projects is not available because we simply do not know their locations and scopes, as well as the timing of each. They would be approved independently by other agencies (e.g., CAL FIRE, the USFS), and they may very well be needed (for thinning of fire fuel, business purposes, etc.) whether or not the Project is approved. Further, and similar to the several of the cases listed above, the separate permitting efforts for any future timber harvesting projects that might provide a source of timber for the Project would be subject to their own environmental review. The Project and any future timber harvesting projects that may occur in the future are not dependent upon one another and serve different purposes.

Finally, it is entirely speculative whether the Project would increase in timber harvesting activities in the region. Appellants have provided no evidence indicating that increased timber harvesting or any specific new harvesting projects would occur solely because of the Project, or that these activities or projects would be a reasonably foreseeable consequence of this Project.

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II. The IS/MND Adequately Analyzed the Project's Noise Impacts and Identified Adequate Mitigation Measures to Reduce Them to Less Than Significant Levels.

A. There Was No Need to Analyze Operation of the Planar with Doors Open Because It Cannot Be Operated Unless Its Doors Are Closed.

Appellants argue that, because there were no mitigation measures or conditions of approval requiring that the sawmill facility's planar be operated with its doors closed, the IS/MND's analysis of noise impacts failed to account for impacts of potential operation of the planar with the doors open. No such mitigation measure, condition of approval, or analysis of operation of the planar with its doors open for a simple reason: the planar is an enclosed structure that for safety reasons must be closed in order to operate. The planar's doors must be closed in order for it to run. There is no requirement under CEQA to analyze the impacts of a scenario that could never occur.

B. Mitigation Measure 13B Is Enforceable and Not Confusing.

Appellants complain that Mitigation Measure 13B is confusing because it limits heavy truck trips to daylight hours only which is defined as 7:00 AM to 7:00 PM, stating that "daylight hours vary throughout the year." Our understanding has always been that intent of this measure is to impose an *hours* restriction on heavy truck trips from 7:00 AM to 7:00 PM. The Applicant would not object to any revisions to the language of Mitigation Measure 13B that would further clarify that this is a restriction to specific hours, regardless of variations in daylight times.

C. Mitigation Measure 13B Does Not Need to Be Modified to Require Mufflers on All Trucks Entering the Project Site.

Mitigation Measure 13B provides that "[t]he operation is required to provide mufflers which meet the standards of the California Highway Patrol on all trucks belonging to the operator and used on public roadways." Appellants claim that it is uncertain that this mitigation measure would reduce noise impacts from trucks to less than significant because the operator could avoid this requirement by subcontracting with or relying with other owners of trucks. However, there is certainty that the measure would be effective, because State Law already requires adequate mufflers for all vehicles.

For example, California Vehicle Code 27150(a) provides:

Every motor vehicle equipped with an internal combustion engine and subject to registration shall at all times be equipped with an adequate muffler in constant operation and properly maintained to prevent any excessive or unusual noise,

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and no muffler or exhaust system shall be equipped with a cutout, bypass, or similar device.

Similarly, all on-highway trucks operating in California must meet California Air Resources Board rules, including exhaust emissions standards. Those standards and rules require all trucks operating on highways to have certified exhaust systems, including exhaust filters and mufflers, with very few exceptions. Because all owners of trucks that potentially could travel to or from the Project would be required to provide adequate mufflers in order to comply with applicable law and regulatory standards and rules, Mitigation Measure 13B does not need to be modified in order to reduce impacts to less than significant levels.

III. The Project's Wildfire Impacts Would Be Less Than Significant.

Appellants complain that the Staff Report for the Planning Commission hearing stated that the Project's impacts related to wildfire risk would be less than significant with the implementation of the Project conditions of approval and mitigation measures, whereas the IS/MND did not identify any mitigation measures for wildfire. As explained on pages 74-76 of the IS/MND, wildfire risk impacts would be less than significant without the need for mitigation. Therefore, there was no reason for the IS/MND to identify any mitigation measures. The Staff Report simply acknowledged that mitigation measures for other impacts (e.g., some mitigation measures affecting construction activities) and some of the Conditions of Approval would further reduce the Project's already less-than-significant impacts related to wildfire risk.

Appellants have not supplied any substantial evidence that indicates that the Project may have significant impacts related to wildfire. Appellants' August 8, 2024 letter refers only to non-Project specific examples of fire events involving or affecting other sawmills, but does not identify any causation between the wildfires and the existence of sawmills. More importantly, Appellants do not explain or substantiate any connection between the referenced events and the features of this specific Project. In other words, Appellants have not provided any evidence of a direct causal link, or any connection whatsoever, between the Project and increased risk of fires and/or wildfires.

As Dr. Hanson's letter acknowledges, wildfire risks associated with development of the Project at the project site are analyzed in the IS/MND (at pp. 75-76), which concluded that such impacts would be less than significant. Dr. Hanson's letter does not contest that conclusion. As explained in the IS/MND, the Project includes components that would reduce the risk of wildfire on the project site compared to under existing conditions, including (1) water for fire suppression would be provided by the existing on-site well supported by a new 200,000-gallon water tank to be located on an existing graded pad; (2) reduction of existing vegetation (e.g., pine tree removal in the area of the proposed sawmill facility and worker residences; (3) a fuels management plan which would include vegetation management and defensible space requirements. Despite the inclusion of these project components, Appellants have not provided any substantial evidence that the Project would increase, rather than decrease, the potential

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wildfire risk at the project site. Dr. Hanson's letter does not address these issues at all, other than acknowledging that defensible space indeed is an effective method of reducing wildfire risk.

Appellants' October 2, 2024 letter and the accompanying letter from Dr. Hanson also do not provide any substantial evidence that the Project would result in significant impacts related to wildfire risk, because they are irrelevant as to whether the Project would have any potentially significant impacts. Dr. Hanson's opinion rests on an unsubstantiated assumption that the Project would result in an approximately 35 percent increase in timber harvesting projects in the Project's vicinity, where there is no evidence that the Project would increase timber harvesting at all. To the contrary, for example, page 68 of the IS/MND clarifies that vehicle miles travel associated with the sawmill "is not necessarily 'generated' by the proposed project but is actually necessitated by the forest thinning projects in the area. *Without the proposed project, these forest thinning projects would still occur.*" As discussed extensively above, there is no evidence that the Project would directly result in new or increased timber harvesting activities, and such activities are independent of the Project and subject to their own approval and environmental review processes. Dr. Hanson's opinions are entirely about speculative *other* projects that are not before the Board of Supervisors.

Unsurprisingly, there is ample case law holding that expert opinion that is not directly relevant to the project's environmental impacts may be disregarded. See, e.g., *Clews Land & Livestock v City of San Diego* (2017) 19 Cal.App.5th 161, 194 (expert's general observations about fire hazards, questions about project, and criticisms of negative declaration did not amount to evidence of potentially significant impact); *Citizens for Responsible Dev. v City of W. Hollywood* (1995) 39 Cal.App.4th 490, 502 (letters from state historic preservation officer relating to different site were not relevant to project before agency); *Newberry Springs Water Ass'n v County of San Bernardino* (1984) 150 Cal.App.3d 740, 750 (letter from expert commenting generally about excess nitrate loading of groundwater was irrelevant to project before agency).

Dr. Hanson's expert opinion is not directly relevant to the environmental impacts of *this* project, as the Project is not a wildfire management or fire fuel reduction program, but a sawmill facility, and as explained above in response to Appellants' Project Description arguments, there is no substantial evidence that there would be an increase in timber harvesting activities, or that specific timber harvesting activities would occur, as a reasonably foreseeable consequence of the Project. Similar to the *Newberry Springs Water Association* case, Dr. Hanson's letter consists of generalized concerns about forestry management and wildfires, for activities that are not part of the proposed Project. Therefore, it is not substantial evidence regarding potentially significant impacts of the Project and can and should be disregarded as irrelevant.

Even if Dr. Hanson's opinion were relevant, it is not credible, and therefore is also not substantial evidence for that reason. Forest thinning is widely practiced in order to make forests more fire adaptive, reduce fuel loads and ladder fuel, making forests less likely to have

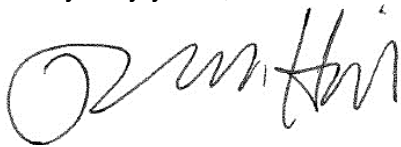
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catastrophic fires that pose severe dangers to nearby communities. It is no coincidence that both CalFire and the U.S. Department of Forestry are public supporters of the Project.

* * *

In conclusion, the appeal is baseless, and there is ample evidence in the record before the Board to support the legal adequacy of the County's CEQA analysis. We urge you to deny the appeal and affirm the Planning Commission's approval of the Mitigated Negative Declaration and the Use Permit for this important Project.

Very truly yours,

A handwritten signature in black ink, appearing to read "R. B. Hodil", written in a cursive style.

Robert B. Hodil

cc: David Mercer, Hundred Acre Wood LLC
Gavin Ball
Jeff Dodd, Coblentz Patch Duffy & Bass