



COUNTY OF PLACER
Community Development/Resource Agency

Michael J. Johnson, AICP
Agency Director

PLANNING SERVICES
DIVISION

Paul Thompson, Deputy Director

MEMORANDUM

TO: Honorable Board of Supervisors
FROM: Michael Johnson, Agency Director 
DATE: July 26, 2011
SUBJECT: UPDATE – EASTERN PLACER COUNTY BIOMASS PROJECT

ACTION REQUESTED:

The Planning Services Division is providing an update on the County's proposed Eastern Placer County Biomass Project. The update includes an overview of the various elements of the biomass program and a discussion on the status of the preparation of the environmental document for the proposed project. Additional information will be included as it becomes available.

BACKGROUND:

The Board of Supervisors adopted the Placer County Biomass Program in October 2007. As defined in the Executive Summary, the primary goals of the Program are to:

- Reduce the risk of catastrophic wildfires in Placer County.
- Protect Placer County citizens and visitors from the consequences of catastrophic wildfires.
- Find one or more beneficial uses for excess biomass in Placer County.
- Improve air quality in Placer County.

In addition, the Board has determined that a biomass energy facility has emerged as an essential component of the overall Placer County Biomass Program, and such a facility is being considered for eastern Placer County. To that end, staff has been working on preparing technology, economic, and environmental aspects of the project utilizing a Department of Energy (DOE) Congressional Award.

The project is currently broken into two phases. Phase I includes the preparation of environmental documents, preliminary design, land use entitlements, technology integration, power purchase agreements, leading up to permit approvals. Should a preferred site be

identified and approved as part of the Phase I process, Phase II will include detailed design, system purchase, test, and integration of a project on the selected site.

Collectively these studies will help determine if a woody biomass facility can be permitted, sustainably built, and operated in eastern Placer County through a public/private partnership.

As previously reported to the Board, Placer County has determined that an Environmental Impact Report (EIR) is required for this project. In addition, if the project is located in the Basin, the County would require subsequent approval of a Public Service Project application from the Tahoe Regional Planning Agency (TRPA), and an Environmental Impact Statement (EIS) is also required. In order to avoid additional cost and duplicate environmental analyses, Placer County and the TRPA are currently processing a joint EIR/EIS for the proposed biomass facility. TRPA and Placer County have contracted an environmental consultant to prepare the EIR/EIS for the project. Because the project is partly funded with a federal Department of Energy (DOE) grant, the EIR/EIS is also being prepared to satisfy DOE NEPA requirements.

The ongoing analysis of the environmental impacts will, in the end, identify thresholds of significance for all impacts. A co-equal analysis of the Kings Beach and Cabin Creek sites is being prepared for the EIR/EIS. Most of the required studies prepared by specialists have been submitted to the EIR/EIS consultant, but the analysis of those studies and the identification of sufficient mitigation measures for some impacts have yet to be completed.

Current Status:

The Administrative Draft EIR/EIS is being prepared by the County's environmental consultant, Ascent Environmental. It is anticipated that the document will be available for staff review in late summer 2011.

FISCAL IMPACT:

None.

ACTION REQUESTED:

Staff is providing an update on the proposed Eastern Placer County Biomass Project.

As additional information becomes available, a verbal report will be provided at the Board of Supervisors meeting on July 26, 2011.

cc: Holly Heinzen, Assistant CEO
Scott Finley, Supervising Deputy County Counsel

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JUN 24 2011

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*Brockway
Springs Resort*

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JUN 24 2011

Sup D1 _____ Sup D4 _____ Aide D1 _____ Aide D4 _____
Sup D2 _____ Sup D5 _____ Aide D2 _____ Aide D5 _____
Sup D3 _____ Aide D3 _____ *

June 20, 2011

Jim Holmes
Board of Supervisor, Placer County
175 Fulweller Avenue
Auburn, CA 95603

Hello,

This note is to advise you that the entire Board of Brockway Springs Property Owners Association, Kings Beach, has great apprehension regarding the possibility of a Biomass Plant in the Lake Tahoe Basin area.

Our concern is for a number of reasons, not the least is the environmental impact to the Lake Tahoe area. We understand that an EIR/EIS is still forth coming. It is fair to say we have concerns to the credibility and transparency of the report/statement.

There are other concerns in regard to a Biomass Plant in Kings Beach such as traffic, noise, & safety.

Please also be advised, we are in the process of notifying/educating our entire association membership of the impending possibility of a Biomass Plant in Kings Beach.

Respectfully,

The Board of Brockway Springs

May 18, 2011

MAY 23 2011

Jennifer Montgomery
Supervisor, District 5
County of Placer
175 Fulweiler Avenue
Auburn, CA 95603

Sup D1 Sup D4 Aide D1 Aide D4
Sup D2 Sup D5 Aide D2 Aide D5
Sup D3 Aide D3

Dear Ms. Montgomery:

I sincerely hope you take the time to read this letter. I am a concerned citizen and parent living in Kings Beach, California with my husband, baby boy, and two dogs. My home is less than a half-mile from the proposed Biomass site off of Speckled Avenue, Kings Beach.

I strongly OPPOSE the biomass energy facility proposed for construction within the Tahoe Basin at Kings Beach.

For more than 16 years forest waste has been trucked out of the Basin to Cabin Creek (near Truckee) for processing into biomass fuel grade material. It has then been trucked to Loyalton (north of Truckee) for burning in the biomass plant there. Green waste cannot be burned without being first processed. All this proposal does, is truck processed waste back into the Basin for burning in Kings Beach. Nothing else changes.

Contrary to common misperceptions, burning biomass in Kings Beach will neither reduce forest fuels thereby reducing wildfires nor reduce open burning. They are separate issues, and have nothing to do with the location of a biomass power plant.

Moreover, to build an industrial sized biomass burning power plant within 1,000 feet of an elementary school is **unconscionable**.

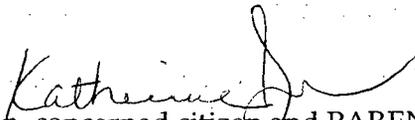
The BEST PLACE for a biomass burning power plant is CABIN CREEK where all forest waste is taken for processing into biomass fuel.

I invite you to put yourself in my shoes. How would you feel if a polluting power-plant was going to be built in your backyard? Would you want your children breathing the air, or being woke up in the middle of the night by the incessant noise of the tractor-trailers hauling trash to and from the plant?

Please vote against this plant; not just for my family, but for all families that call Tahoe home...and for all the people who come to Lake Tahoe, one of the few Outstanding National Resources Water (ONRW) in America, to enjoy its' beauty and serenity.

Thank you for your time.

Sincerely,



Katherine Breen, concerned citizen and PARENT

No
Biomass
for
me!



Mr. Robert Weygandt
Supv. Dist 2

20 May 2011
P.O. Box 1222
Kings Beach, Ca 96143
530-546-3086

Dear Mr. Weygandt

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BOARD OF SUPERVISORS
5 BOS Rec'd COB CoCo
TSI CEO Other

MAY 23 2011

Sup D1 Sup D4 Aide D1 Aide D4
Sup D2 Sup D5 Aide D2 Aide D5
Sup D3 Aide D3

My demand is short and simple:

Do NOT build a Bio Mass
Project in Kings Beach

Having lived here for 36 years, I thought I had experienced almost everything rotten that the TRPA and our Placer County people could throw at us. Now, you have "taken the cake"!

As of today, May 20, 2011 I had not seen information about such a project - things seem to be kept very quiet when it comes to something this stupid - where on earth are your combined common senses?>>

You will need to find a more acceptable place; you will need to assess even the need for such a project; you will need to put the money in a much better and more pragmatic genre. I will, in fact, be willing to help you with suggestions - many that the County has, to date, failed to complete!

Marian Jordan

R E C E I V E D
BOARD OF SUPERVISORS
5 BOS Rec'd COB CoCo
TSI _____ CEO Other

May 18, 2011

MAY 23 2011

Jack Duran
Supervisor, District 1
County of Placer
175 Fulweiler Avenue
Auburn, CA 95603

Sup D1 _____ Sup D4 _____ Aide D1 _____ Aide D4 _____
Sup D2 _____ Sup D5 _____ Aide D2 _____ Aide D5 _____
Sup D3 _____ Aide D3

Dear Mr. Duran:

Please take the time to read this letter. I am a concerned citizen and parent living in Kings Beach, California with my wife, one-year-old son, and two dogs. My home is less than a half-mile from the proposed Biomass site off of Speckled Avenue, Kings Beach.

I strongly OPPOSE the biomass energy facility proposed for construction within the Tahoe Basin at Kings Beach.

For more than 16 years forest waste has been trucked out of the Basin to Cabin Creek (near Truckee) for processing into biomass fuel grade material. It has then been trucked to Loyaltan (north of Truckee) for burning in the biomass plant there. Green waste cannot be burned without being first processed. All this proposal does, is truck processed waste back into the Basin for burning in Kings Beach. Nothing else changes.

Contrary to common misperceptions, burning biomass in Kings Beach will neither reduce forest fuels thereby reducing wildfires nor reduce open burning. They are separate issues, and have nothing to do with the location of a biomass power plant.

Moreover, to build an industrial sized biomass burning power plant within 1,000 feet of an elementary school is **unconscionable**.

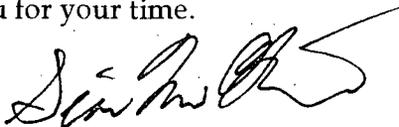
The BEST PLACE for a biomass burning power plant is CABIN CREEK where all forest waste is taken for processing into biomass fuel.

I invite you to put yourself in my shoes. How would you feel if a polluting power-plant was going to be built in your backyard? Would you want your children breathing the air, or being woke up in the middle of the night by the incessant noise of the tractor-trailers hauling trash to and from the plant?

Please vote against this plant; not just for my family, but for all families that call Tahoe home...and for all the people who come to Lake Tahoe, one of the few Outstanding National Resources Water (ONRW) in America, to enjoy its' beauty and serenity.

Thank you for your time.

Sincerely,



Sean O'Brien, concerned citizen and PARENT

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MAY 23 2011

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Sup D3 _____ Aide D3

Dear Mr. Duran,

Please

No Biomass Burning

Power Plant in

Kings Beach/Tahoe Basin

Please Strongly

Consider Cabin Creek as
the more logical choice

Sally Inayev
Retired R.B.E. Teacher
P.O. Box 451
Tahoe Vista, CA 96148

Thank you!

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MAY 20 2011

P.O. Box 76
Tahoe Vista
California, 96148
May 17, 2011

Sup D1 Sup D4 Aide D1 Aide D4
Sup D2 Sup D5 Aide D2 Aide D5
Sup D3 Aide D3

Jim Holmes
Supervisor District 3
County of Placer
175 Fulweiler Avenue
Auburn, CA 95603

Dear Mr. Holmes,

I am writing to address the proposed Kings Beach site for the biomass fuel plant project. The Speckled Avenue site, in my opinion, is a very poor choice due to the residential nature of the site. I realize that this has been zoned industrial, however within a block of the proposed plant site there are far more residences than industries. The industries located on Speckled Avenue are, in general, facilities for storage or small owner businesses unlike a factory industrial area. Also the Kings Beach Elementary School, the Wellness Center, and a new charter elementary school are located only 2-4 blocks from the proposed site.

There are very real concerns of air pollution and noise pollution that I feel would affect not only the Kings Beach Elementary School, the Wellness Center, and the new charter elementary school, but the many people living very close by. Kings Beach is a very densely populated community filled with full time residents unlike other areas around the Tahoe Basin. Concerns of air quality with a biomass plant running 24 hours a day, 365 days a year are very real to the people in the Kings Beach community. At the informational meeting held Monday August 8, 2010 at the Kings Beach Community Center there was a paper handed out and this included the following statement:

“...biomass power generation operations will significantly reduce the exposure of Kings Beach residents to air pollution. This is important because Kings Beach area residents historically have an abnormally high rate of respiratory incidents, likely resulting from the high level of air pollution coming from existing pile burning, prescribed burns, and wildfires.:

This statement is misleading; people will *not* experience a reduction of air pollution since there has been little prescribed burning in the area and few to no wildfires in recent past. The air quality will be negatively impacted as this plant smokestack spews out smoke 24 hours daily 365 days per year. Plant material will be gathered from not only the Tahoe Basin but other areas perhaps as far as 30 - 45 miles away to keep the plant operating. This material will be trucked in over Highway 267 bringing in more and more diesel truck exhaust further reducing air quality. Lake Tahoe Basin is exactly that: a basin with the inversion factor and the air will be trapped. Biomass plants were built in Massachusetts with the promise that it would not have adverse effects on the air quality. This is from Russell County, Massachusetts:

“Last March, a Country Journal advertisement introducing Russell Biomass (a biomass plant company) stated,
“The biomass plant will have no adverse effect on local air quality.” This was very reassuring to read, of course. Many months later, long after they had gotten their Town Special Permit, Russell Biomass submitted their MEPA application and projected the actual emissions numbers. According to the Expanded Environmental Notification Form (EENF) that Russell Biomass submitted to the Massachusetts Environmental Policy Act (MEPA) in September, the plant would release 1600 TONS of air pollutants daily, including DAILY emissions of:

- 1,332 pounds of carbon monoxide
- 178 pounds of volatile organic compounds, some of which are known to cause cancer in humans; also a component of deadly ozone
- 214 pounds of particulate matter that the EPA has found harmful to humans
- 631 pounds of sulfur dioxide, component of acid rain
- 1,339 pounds of nitrous oxide, a component of acid rain and deadly ozone
- 1,734 tons of carbon dioxide

To subject people living in the area, never mind the young children required to attend school breathing this type of emissions daily is clearly unacceptable.

Then there is the issue of noise pollution. The decibel level of 55db for day use and 45db for night use is also unacceptable. People move to Tahoe to enjoy the birds, the quiet, the wind rustling. According to scientific studies on noise, adverse affects of noise can cause:

- sleep disturbances
- general distractions
- speech interference
- severe annoyance which might induce stress

Once again, I am concerned, not only for all the people living nearby and their distress caused by this constant noise, but for the children in the 2 elementary school only blocks away who may become distractible and be unable to achieve to their potential.

The argument for a biomass fuel plant to reduce emissions caused by prescribed burns in the Tahoe Basin is a good one. But the site choice of Kings Beach is not. It is just too densely populated and is tucked in by mountain passes which create inversion factors.

The better choice is to look outside the basin, whether to re-open the Loyalton plant or to consider Cabin Creek. Cabin Creek already is the storage for the wood and there would not be a transportation issue (thus reducing the air pollution that would be caused by the diesel truck emission transporting the fuel to Kings Beach). Cabin Creek is also not a residential area and it is not an area subject to the inversion factor that Kings Beach is.

Thank you for your attention to my concerns,

Sincerely,



Molly Bleuel Mellor

P.O. Box 2133
Olympic Valley
California, 96146
May 17, 2011

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TSI _____ CEO Other

MAY 20 2011

Kirk Uhler
Supervisor District 4
County of Placer
175 Fulweiler Avenue
Auburn
California, 95603

Sup D1 _____ Sup D4 _____ Aide D1 _____ Aide D4 _____
Sup D2 _____ Sup D5 _____ Aide D2 _____ Aide D5 _____
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Dear Mr. Uhler,

I am writing to let you know my concerns regarding the placement of a Biomass Fuel facility in Kings Beach, Lake Tahoe. I love the idea of burning biomass material in a state of the art facility rather than open burn piles scattered throughout the Lake Tahoe Forest. My objection however is the location in Kings Beach.

Kings Beach is a densely populated area with an elementary school, a proposed new charter elementary school, the Boys and Girls Club, the Wellness Center and lots and lots of homes. And never mind that the proposed site would be located in the beautiful, pristine basin of Lake Tahoe which recently has seen huge federal expenditures to improve water quality. To impact the air quality with a 24/7 Biomass Smoke Stack in a basin area which has inversion effects seems contradictory.

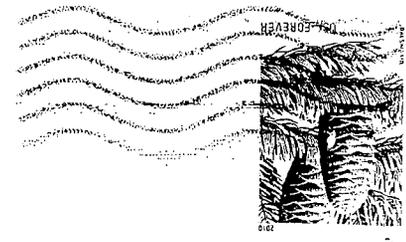
My other concern which seems so logical is why not locate the facility at the Cabin Creek site. All the biomass material goes there first, to be stored and dried. Why not burn it there as well? It is a major industrial hub: the noise, traffic, and disruption already exist there. There are no people living nearby, no schools with children attending.

Thank you for attending to my thoughts and opinion.

Respectfully,

Bernard James Mellor

Bernard James Mellor



As a registered voter and
3 parcel taxpayer in
Lake Tahoe I am
appalled you would
consider a biomass
power plant near the
lake and near a school!
Keep Tahoe Smokey?
Do not let this happen.
Dana Spencer

Jack Duran
Supervisor, D-1
175 Fulweiler Ave
Auburn, CA.

95603

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MAY 19 2011

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Sup D2 Sup D5 Aide D2 Aide D5
Sup D3 Aide D3

Fortunately, some areas of Lake Tahoe's shoreline have been left undeveloped. Much of the east shore still retains its natural beauty.

As a registered voter and
3 parcel taxpayer in UT
Placer Co. I am appalled
that you would consider
a biomass power plant so
close to the lake and
near a school! Keep Tahoe
Smokey? Do not build this
plant. It did not succeed
in Sierraville etc. Dana
Spencer

Robert M. Weygardt
Supervisor D2
175 Fulweiler Ave
Auburn CA

95603

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Jim Holmes
Supervisor, District 3
County of Placer
175 Fulweiler Avenue,
Auburn, CA 95603

Sup D1 Sup D4 Aide D1 Aide D4
Sup D2 Sup D5 Aide D2 Aide D5
Sup D3 Aide D3

May 16, 2011

Dear Supervisor Holmes,

I am writing in regards to the proposed Biomass Plant in Kings Beach, CA. Like thousands of other residents, I did not believe that this was worthy of a response given how absurd the idea. But the information is out, and with the entire community we are alarmed, so I write. We live less than a 1/4 mile from the proposed plant location, and our two children attend school less than 2 blocks from it. Please tell me how it is possible that you are considering burning forest waste 24/7 less than 2 blocks from an elementary school and several preschools? There is nothing that could convince me that this is not unhealthy, and that children's health will not suffer from the close proximity and constant exposure, as will larger proximity residents... not even a well financed EIS study, period.

In case you have not seen what happens when there is a fire in the area of the Tahoe basin as much as a hundred miles away... Smoke sits in a heavy haze over the lake for days, sometimes weeks, until the wind blows in a certain direction and it finally filters out. It is impossible for there not to be a smoke filled haze covering area and the basin from the constant burning of an incinerator. IT'S A BASIN. And to truck the forest waste out of the basin to dry, then back in the basin to burn... Highway 267 is single lane and narrow in both directions, and up & down a very steep grade. The vision of the daily commute between Truckee and Kings Beach is too upsetting to ponder, and the thought of what will be spent on transportation and fuel costs is salt in the wounds. This plant will bring traffic, pollution, and blight to Lake Tahoe, and monetary waste for all of Placer County... Lake Tahoe has an adored pristine setting that visitors abound and it also has full-time families and a struggling economy, everyone will feel this devastating impact.

You commented that responses should wait until the EIS study is disclosed, but the issue is so much more transparent, and I'm baffled that you don't recognize it. A biomass plant next door to an elementary school is ridiculous. The idea to put one in a populated basin is ridiculous. The fact that this much study was financed thus far is ridiculous. To see what is happening to the education budget as this is happening makes me furious and sad.

I watched the You-Tube clip regarding Biomass Plants from the Placer County website and I was particularly troubled by the enthusiasm for the economic benefit to the community surrounding a plant location. We will gladly sacrifice the potential for the 15 new jobs or any other "economic benefit" created by a plant for the sake of the children of this community... Just as you would if there were a vote for a plant location 2 blocks from your child's school.

I pray you to do the right thing. I hope that your interests are not being served in such a way that you will do this to children, community, visitors and serenity of Lake Tahoe. There must be far more conceivable plans that make more sense than destroy Lake Tahoe as we know it. Anywhere else qualifies, but if it must be constructed, Cabin Creek (or vicinity) is at least one, that makes far more sense as forest waste is already brought there to dry.

Please don't do this to our children!

Sincerely,


Lydia Carter
Kings Beach, CA

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MAY 19 2011

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Friends of Lake Tahoe

P.O. Box 1464

JUL 06 2011

Tahoe City, CA 96145

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www.friendsoflaketahoe.org

info@friendsoflaketahoe.org

FB: Friends of Lake Tahoe

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TSI CEO Other 45

July 1, 2011

JUL 06 2011

Dear Members of the Governing Board of the TRPA & Member of the BOS of Placer County

Please find enclosed the recently distributed **North Tahoe Citizen Action Alliance's June Newsletter**.
In it you will find a brief discussion of a couple of important aspects of the biomass issue:

- 1) the matter of open burning, which has been presented by biomass proponents as a major problem when it isn't;
- 2) the matter of the University of California at Berkeley already listing the plant as being located at Kings Beach (when both TRPA and Placer County proclaim that no decision has been made) and that it will be a 3 MW gasification plant.

Regarding the first issue, contrary to public misperceptions that we believe have been intentionally promoted, statistically there is **not** a major problem regarding open burning, as is demonstrated by the records of actual burning on the North Shore. Moreover, we all know that some open burning will always occur due to steep slopes, the lack of road access, and for other ecological reasons. Lastly, fuel reduction material from the West Shore is closer and more economically delivered to Cabin Creek than Kings Beach. Consequently, it would be folly for the DEIR to attempt to use as a baseline pollutants produced by open burning in Kings Beach in contrast to combustion as if a biomass plant will mitigate a problem when the problem doesn't exist. Such a red herring would not only cast disrepute on the report and its authors among members of the scientific community, it would also cast suspicion on both Placer County and the TRPA in terms of public trust – a matter I addressed earlier in my letter to the BOS. (Enclosed)

The second matter addressed by NTCAA reflects, one more time, that the selection of Kings Beach as the site for the plant has already been determined and the current DEIR is being drafted to simply justify it after the fact. As you know, as we expressed in our legal comment letter, there is a preponderance of evidence that a decision was made years ago to site the plant in Kings Beach and steps have been taken ever since to simply justify it as if the decision was the result of independent and objective analysis when the historical record shows the opposite.

For those of you at TRPA who have not had an opportunity to examine our letter to the BOS mailed

"Friends of Lake Tahoe" is a tax exempt, nonprofit, public benefit, 501 C4, corporation that promotes the common welfare of the Tahoe Region. Contributions are not tax deductible. Our success at representing your voice is dependent on your support. Please contribute generously.

last May regarding the matter of confusion concerning this plant proposal and how it is NOT a panacea to open burning, wildfires, and/or forest fuel reduction programs, it is enclosed. Additionally, if our legal comment mailed to your organization was not passed on to you for your review, it is also enclosed.

Lastly, there is simply not sufficient fuel available in the Basin to be processed at Cabin Creek for biomass burning at either Cabin Creek or Kings Beach to support a 3 MW plant. Material generated in South Lake Tahoe is not close enough for economic delivery to Cabin Creek or Kings Beach. A simple geographic and roadway examination of the facts reveals that. Consequently, the majority of feedstock for a plant in Kings Beach would originate outside the Basin for processing at Cabin Creek and then would have to be trucked into the Basin for burning.

Friends of Lake Tahoe is a friend of government and as such seeks incessantly to protect and maintain the public's trust in government. We believe that you share this objective and as a consequence understand that to do so means that often letters like this have to be written to policy makers to assist in the preservation of a government of citizens working cooperatively in the interest of the citizenry.

Locating a biomass plant in the Lake Tahoe Basin is factually unsupportable. It is particularly a bad idea when alternatives exist at both the Loyalton Biomass Plant and Cabin Creek.

Sincerely,



Roger Patching, President/CEO
Friends of Lake Tahoe

Enclosures

North Tahoe Citizen Action Alliance

PO Box 289, Tahoe Vista, CA 96148

Office: 530-546-8125

www.ntcaa.org

Jerry Wotel, Newsletter Editor

NTCAA Newsletter – June 2011

BB, LLC Kings Beach Town Center Project

A Notice of Preparation of a Draft Environmental Impact Report (EIR)/Environmental Impact Statement (EIS) for the Kings Beach Town Center Project has been released. The views of interested persons, organizations and agencies as to the scope and content of the information to be included and analyzed are requested. Responses should be submitted by July 26, 2011 to Theresa Avance, Project Manager, Tahoe Regional Planning Agency. Email to tavance@trpa.org.

From 2006 to 2008 BB, LLC acquired approximately four acres of commercial property in the center of Kings Beach and began work on a proposed mixed use project to establish a “Kings Beach Town Center”. The project proposes to include offices, commercial shops and restaurants, housing units including affordable workforce units, a parking structure, public plazas, streetscape and infrastructure improvements and an enhanced bus shelter. The Redevelopment Agency has entered into an Exclusive Negotiating Rights Agreement and a Pre-development Loan Agreement with BB, LLC and has also assisted the project by holding the Agency-owned parcel on Salmon Avenue for eventual inclusion in the project. In 2010, the Agency acquired all mortgage loans secured by the project site property for approximately \$4.3 million. The project is designated as a CEP by TRPA. The project is targeted to begin construction in 2013.



Kings Beach Biomass Plant Allegedly Reduces Open Burning

One of the most commonly repeated claims to justify a biomass power plant in Kings Beach is that by virtue of its location there will be a reduction of forest material that is openly burned. In fact, the air quality baseline they are proposing to use is openly burned forest material compared to the controlled combustion emissions of the power plant. Their intent is to show that the power plant reduces emissions and will therefore produce cleaner air. Make sense? The rhetoric sounds reasonable if the facts didn't get in the way.

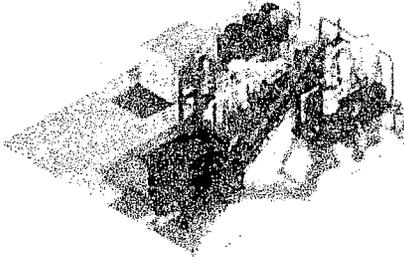
NTCAA has recently reviewed official records of all open burning in Placer County's portion in the Lake Tahoe Basin from 2005 through 2010 and discovered some startling facts. During this 6 year period the annual average that was openly burned was only 1585 green tons. And 70% of the burning was south of Tahoe City.

A quick calculation shows an annual average of only 475 green tons are burned openly between Burton Creek and the Nevada Stateline. Even if all this openly burned material were collected and processed into feedstock, it would supply fuel for a 3MW plant just over **THREE DAYS!** Yes, this is not a typo. It takes two green tons (GT) extracted from fuels reduction activity to produce one Bone Dry Ton (BDT) consumed at a biomass power plant.

So a power plant is justified in Kings Beach to displace open burning, but the amount of material each year (averaged over the last six years of records) that has been openly burned east of Tahoe City would only provide about three days of fuel for a power plant burning 365 days a year. Is Placer County planning on trucking into the Tahoe Basin for plant operation, forest material that is gathered outside the basin?

Is the Great Biomass Mystery Revealed - The Choice of Technology and Size?

Since Placer County issued the Notice of Preparation last year on the proposed Biomass Plant in Kings Beach there was no choice made on the type of technology or the size of the power plant. Placer County has continued this cloud of secrecy about whether the proposed plant would use direct combustion (like Loyaltan and Carson City) or gasification, and whether the plant would be 1MW (like the failed Carson City Plant), 2MW as has been bandied about, or possibly 3MW.



Recently, the University of California at Berkeley website for the Cooperative Extension published a list of all Biomass Plants in California. Anyone can check this out. The list includes Placer County's Kings Beach site as a 3MW gasification plant. NTCAA has not been able to confirm if this is an inadvertent leak or that Lake Tahoe residents are just the last ones to be officially informed.

If UC Berkeley has some reason to believe this is the plant technology and size, why not tell the residents living next to the power plant?

Placer County apparently prefers to not publicize their final choice until they have to in the Draft EIR as this allows less time for analysis of the technology and the fuel requirements of a particular scale. We'll soon see if the proposed biomass power plant in the Lake Tahoe Basin is a 3MW (utility scale) gasification technology.

Quake Tahoe? Researcher Studies Faults Under The Lake

Excerpted from National Public Radio, Monday June 27, 2011. For complete article, go to <http://www.npr.org/articles/2011/06/27/quake-tahoe-researcher-studies-faults-under-the-lake>

A lot of residents and visitors would have a hard time imagining a devastating earthquake churning up the placid Lake Tahoe waters. But as Graham Kent who heads up University of Nevada at Reno's seismological lab explains calm waters belie a violent past. Kent says "The west Tahoe fault ruptures about every four to five thousand years. Its last rupture was 4500 years ago. So obviously there's some concern because we're at the end of that earthquake cycle. Doesn't mean its gonna' happen tomorrow. But it wouldn't be a surprise if it did."



Friends of Lake Tahoe

P.O. Box 1464

Tahoe City, CA 96145

www.friendsoflaketahoe.org

info@friendsoflaketahoe.org FB: Friends of Lake Tahoe

May 11, 2011

To the Honorable Jack Duran, Robert M. Weygandt, Jim Holmes, Kirk Uhler, and Jennifer Montgomery

... a biomass energy facility may accomplish several goals. If it is found to reduce overall air pollution while reducing the threat of catastrophic wildfires, then an environmental benefit would be realized.

Placer BOS's Editorial, May 9, 2001

Hello,

First, I would like to express my thanks to the Board, particularly the Chair, for the gracious courtesy of allowing me time to complete my thoughts at your meeting a few weeks ago at Northstar. As a follow-up to that meeting and to provide greater clarity regarding my concerns about both the biomass burning power plant proposed for Kings Beach and my worries about governmental credibility and transparency, I hope you will grant me here a few additional moments *in writing* to review my primary concerns.

As I mentioned at that time, I am a retired political science professor. My entire adult life has been dedicated to public service in a conscientious effort to help people both understand and appreciate government at all levels. It is for this reason that this letter is **not** written as a complaint, but rather to explain a worrisome governmental systemic problem that revealed itself as I became involved with the biomass project. We all want good government and I can find no fault with the Board or its members; rather, I believe, there is a problem with the operational system that is causing problems of confusion and therefore governmental credibility and transparency.

You might recall at the Northstar meeting I mentioned that I believed each of you is, in my opinion, overworked, underpaid, and inadequately appreciated. While this is common for many governmental officials, it is still troubling in that it can contribute to the problem I want to review and hopefully explain. You are each very busy and have more on your respective governmental plates than most can imagine, and that is after all that you must do to make a living. You are short on time and I am not helping by writing this letter and stealing more time from you. (My hope, however, is that, upon its completion, you will feel it was a worthy read.)

What this means, in general, is that you must rely on quick briefings from multiple staff members in a

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variety of departments across the county for information upon which to make decisions. Often the topics are complicated. And, in spite of one's best efforts to be objective at all times, people bring preconceived notions about reality to any briefing and can suffer from a form of cognitive dissonance when information in the briefing clashes with those preconceived beliefs. The public's confusion with the issues that underlie the biomass project seems particularly to reflect such impediments to analysis. Consequently, you have the double task of understanding and explaining to the public these issues. And, if you fail on either account, you are held responsible. It is a tough and usually thankless job.

In this context, I worry that you, and, by extension, the County, have problems of credibility and transparency regarding the biomass project, not resulting from any particular failure on your part, but rather the circumstances surrounding the issue. And, I believe the problem is becoming exacerbated with the passage of time and the issues become clearer to more people.

Here, in a nutshell, as best I can present them, are the misunderstandings that plague this issue and cause the problem of credibility: There is a belief among many that having a biomass burning power plant in the Lake Tahoe Basin will solve some long standing environmental problems. *These include the problems of open burning, forest fuel reductions, and the threat of catastrophic wildfires.*

The reason for the belief that a plant will greatly mitigate, if not eliminate, these problems has to do partly with the way it has been presented by the spokespersons for the County both in writing and at public gatherings. While it has not *ipso facto* been stated that a plant in the Basin will greatly ameliorate these problems, it has been suggested by innuendos, thereby allowing the reader or listener to connect dots incorrectly about reality when reaching their own conclusions.

I worry about this not only because it promotes misperceptions that can result in approval of the plant for all the wrong reasons, but also because of the disillusionment that will follow upon the realization by the public down the road that they were "allowed" to misunderstand the situation. We already have enough problems of such disillusionment. Few will believe that you and the County simply erred unintentionally in allowing false hopes and expectations to become associated with the building of such a plant. The public will feel duped. There is already too much suspicion of government to add another layer. Allowing false beliefs to metastasize will harm your credibility with other issues and concerns.

Essentially, a biomass burning plant, regardless of its location, does little in and of itself to reduce open burning. There will always be some open burning due to the inaccessibility of forest waste for removal. The absence of roads, steep inclines, and other ecological reasons all mandate occasional open burning. Yet, the juxtaposition of information regarding open burning versus controlled combustion presented by the county both in its website and at public gatherings suggests otherwise. No one contests the fact that controlled combustion is cleaner than open burning but the seductive contrast is misleading and disingenuous. A biomass plant will not mitigate open burning. Indeed, we fully expect this issue to be a major theme in the EIS/EIR when it is factually irrelevant. Were, of course, Placer County to chip and haul to Cabin Creek for processing an occasional pile that they could actually access that otherwise might be burned would be delightful. And, while one might argue that sometimes they do exist, they are truly so few in number as to not warrant comment.

Similarly, forest fuel reduction activities have become central to the fear of catastrophic wildfires (and fear is a powerful motivator). The problem, however, which is well understood by fire fighting professionals, is that neither such activities nor wildfires have anything to do with biomass plants. Forest fuels removal is quite simply the result of the subsidies that finance them, such as the Lake Tahoe Restoration Act of 2011. More funding equals more removal, less open burning, and fewer wildfires. A biomass plant has nothing to do with such governmental subsidies and if it did, it would apply to Cabin Creek as well as Kings Beach.

Unfortunately, people are also being allowed to make judgments based upon incomplete information that leads them to conclude that green forest waste chipped in the field could then be taken *directly* to a biomass plant to be mixed with dry, processed biomass fuel and burned, when this is not the case. This is simply not true. Biomass fuel must be screened to rigid specifications in order to be burned in a state of the art controlled combustion plant. Moreover, the amount of screened green waste that can be mixed and burned is so miniscule as to be negligible. Not even your consultants, TSS, have either mentioned or supported such a concept as viable, yet it is suggested as a planned practice of substantial importance in public meetings. The screening and processing occurs at Cabin Creek. I am distressed when I see government agencies nurture false conclusions when one of their primary responsibilities is to explain reality rather than obfuscate it. It constitutes a violation of a public trust.

The reason that a location in the Basin was selected in the first place was because of the belief that permits could be obtained easier there than elsewhere in the County. The air is cleaner in the Basin and the TRPA can minimize the involvement of EPA, thereby lowering the bar. That's all. The rest is simply smoke and mirrors that offers false hopes for long standing problem solving that won't occur.

And, while I can't delineate the responsible party, but I suspect you can, the promotion of the Kings Beach location in association with supportive *partnerships* identified in the NOP that don't exist, is a reflection of this problem and constitutes a serious breach of governmental protocol and public trust. I mentioned at Northstar that it was this false claim expressed in a government document issued by two governmental agencies and ostensibly written by Ascent Environmental that prompted my involvement in this issue and the creation of Friends of Lake Tahoe as a 501 C4 non-profit, public benefit corporation. The staffs of both Placer and TRPA proofed that document and signed off on it. And, you must remember that they did that in your names and the leadership of the TRPA also. I find that very troubling and hope that you do as well.

In my quest to learn more about this topic and to assess public opinion, I found that many well educated, thoughtful, bright, and caring individuals harbored the very same misperceptions that I have related here about biomass plants and the issues of open burning, forest waste removal, and wildfires. And, part of this I am afraid is the result of an emphasis upon "sales" over "substance" in the "marketing" of the plant. I am an educator and political analyst. As such, I do not want to leave any confusion in anyone's about this. Consequently, I would be happy to discuss these matters at greater length with any of you at any time.

A biomass plant at Cabin Creek would be fine. A biomass plant at Kings Beach would be a disaster not

only for the environment but also for the matter of governmental trust. Trust, once lost, can be elusive. No one has the recipe for how to reestablish trust once lost in a marriage, family, business, or government. It is a very worrisome concern.

Respectfully,

Roger Patching, CEO/President
Friends of Lake Tahoe



A PROFESSIONAL CORPORATION

601 SOUTH FIGUEROA STREET SUITE 3700 LOS ANGELES, CA 90017
213.892.7900 800.563.1027 213.892.7999 FAX www.cozen.com

June 13, 2011

Daniel D. Harshman
dharshman@cozen.com
213-892-7900

VIA E-MAIL & U.S. Mail

Community Development Resource
Agency
Environmental Coordination Services
3091 County Center Drive, Suite 190
Auburn, CA 95603
Attn: Maywan Krach, Community Dev.
Tech.

Tahoe Regional Planning Agency
P.O. Box 5310
128 Market Street
Stateline, NV 89449
Attn: Jerry Wells, Deputy Director

Re: Lake Tahoe Basin Biomass Burning Facility
(PIER T20100194/ERS 2010-0837)

Gentlemen:

Please be advised that this law firm represents the non-profit organization Friends of Lake Tahoe ("FLT") concerning its opposition to the proposed construction and operation of a biomass burning plant in the Lake Tahoe basin.

This letter also provides notice that the agencies for this project have not complied with the statutory requirements under the California Environmental Quality Act ("CEQA") and pertinent regulations. Before elaborating, we recognize that several statutes and laws are implicated by this proposed project, including but not limited to CEQA, the Tahoe Regional Planning Compact ("Compact") as well as others. As you may know, CEQA is modeled after the National Environmental Policy Act ("NEPA"). The violations described herein may also be violations of corresponding NEPA rules or regulations. For brevity's sake and since the agencies purport to follow CEQA and its Guidelines, this letter is limited to obligations under CEQA and the Compact.

I. CONTRACTS BETWEEN TRPA AND PLACER COUNTY CREATE AN UNCONSTITUTIONAL ADMINISTRATIVE PROCESS

In May 2010, TRPA and Placer County entered into a Reimbursement Agreement stating that both agencies were "*involved in the development of a Biomass Project.*" By this contract, TRPA contractually committed itself to hire a contractor to "*approve*" the environmental documents and to complete the "*environmental certification process.*" In Section 3, TRPA also committed itself to "*finalization of a permit for biomass facility....*" [See, Attached Index No. FLT-2]

This Reimbursement Agreement between TRPA and Placer County creates a conflict that vitiates the administrative review process for this project. The Reimbursement Agreement acknowledges that TRPA is engaged in the development of the biomass project. [See, Attached Index No. FLT-2; page 1 of 10] Consequently, TRPA is developing the very project over which it has the legal duty to be an impartial judge. The Due Process clause forbids the decision maker from serving as a judge in his or her own case. *Caperton v. A.T. Massey Coal Co.*, (2009) 129 S. Ct. 2252. Consequently, TRPA cannot decide the fate of its own project.

The Due Process clause also mandates an impartial decision maker in both judicial and administrative proceedings. *Haas v. County of San Bernardino*, (2002) 27 Cal. 4th 1017, 1025. In the Reimbursement Agreement, TRPA contractually obligated itself¹ to approve the permit and certify the environmental documents in advance of their presentation. TRPA agreed in writing to "*finaliz[e] a permit for the biomass plant.*" [See, Attached Index No. FLT-2, page 3 of 10, Section 3 entitled "Services of TRPA"]. Hence, TRPA contractually committed itself to approve this project without an EIR and irrespective of the administrative record. Since TRPA and Placer County pre-ordained the outcome before the process has even begun, it is impossible for opponents of the biomass burning plant to receive a fair hearing before an impartial administrative agency.

There is an obvious bias shown by agreeing to the advanced approval of a project before it is lawfully presented. Consequently, neither TRPA, nor Placer County can lawfully serve as impartial decision-makers for this project.

¹ The Reimbursement Agreement set a fixed fee of \$150,000 to be paid by Placer County for hiring a consultant. TRPA's Rules of Procedure impose fees upon applicants for the cost of preparing environmental documents. See, TRPA Rules of Procedure Section 6.19. The Rule requires the applicants to reimburse TRPA for all costs. Here, by contrast, the Reimbursement Agreement allowed Placer County to pay a fixed fee regardless of actual cost. Further, the Agreement allowed Placer County to set up an escrow account from which fees approved by it would be paid as long as the project proceeded to its satisfaction. This financial arrangement is contrary to TRPA's Rules of Procedure.

Setting aside these very serious issues, there are additional violations of the CEQA process evident from the limited record available.

II. STATUTORY AND REGULATORY DEFECTS IN THE NOTICE OF PREPARATION

A lead agency must prepare an Environmental Impact Report ("EIR") whenever the project is expected to cause significant effects to the environment. Since Placer County and TRPA served notice that an EIR will be prepared, they have necessarily conceded that the biomass burning facility will cause significant environmental effects. To make that determination, the lead agency should have conducted an Initial Study. 14 C.C.R. §15063. While an Initial Study may not be required when environmental effects are *obvious and* the need for an EIR is unquestioned, the Guidelines state that an Initial Study is always desirable. 14 C.C.R. § 15063(a). Under TRPA's regulations, either an Initial Environmental Checklist ("IEC") or an Environmental Assessment ("EA") should have been prepared. See, TRPA Environmental Documentation §§ 5.2 & 5.3. Skipping regulatory steps may be consistent with having already committed to the project, and it may explain why information about probable environmental effects was omitted from the Notice (more on this below), but none of those things justify bypassing regulatory steps and jumping directly to an EIR.

A Notice of Preparation must contain the following information:

1. a description of the project
2. the location of the project, and
3. the probable environmental effects of the project.

14 C.C.R. § 15082(a)(1). A Notice of Preparation dated July 20, 2010, was circulated and publicly posted. The Notice of Preparation was addressed not only to interested agencies, but also to affected property owners and to members of the public. Hearings were scheduled to solicit public comment. Having sought public consultation in the scoping process, the lead agency must provide the public with the information specified by law. Public consultation is also required by the Tahoe Regional Planning Compact, Art. VII, Sec. (b).

Unfortunately, the Notice of Preparation does not comply with the law.

A. Project Decisions Were Made Before CEQA Review

CEQA mandates that a public agency must conduct an environmental review before it approves or carries out a project. Pub. Res. Code § 21080(c), 21151 & 21061; 14 C.C.R. § 15004(a). See also, Tahoe Regional Planning Compact, Art. VII, Sec. (a)(2). "Approval" is defined in the CEQA regulations as the decision by a public agency which commits to a definite course of action in regard to a project. 14 C.C.R. § 15352(a) & (b). Thus, an agency's assistance to a project can become a *de facto* approval where there is a sufficient

commitment to the project. For instance, the execution of a development agreement and the favoring of that applicant may constitute an "approval" that triggers an EIR. *Save Tara v. City of West Hollywood*, (2008) 45 Cal. 4th 116, 141-42. When such commitments occur before an EIR, any development agreements or action taken constitute an abuse of discretion by the agency and the actions or agreements are void. *Id.* At 143. We fear the agencies may have crossed this line.

(1). Improper Segmentation of CEQA Analysis - Failure to Perform EIR fore the Wildfire Protection and Biomass Utilization Program

Placer County was required to perform an EIR *before* adopting and embarking upon the Wildfire Protection and Biomass Utilization Program. The EIR should have studied the *entire project* in which the Lake Tahoe Biomass Burning facility is a part. According to Placer County's website, the Wildfire Protection and Biomass Utilization Program was adopted in October 2007. [See, Attached Index No. FLT-3]. Even though this program qualified as a project under CEQA, Placer County failed to perform an EIR for the entire project. Instead, Placer County improperly segmented the Biomass Burning Plant from the larger Wildfire Protection/Biomass program and attempted to prepare an EIR on less than the entire project. This violated CEQA which requires that the project be considered as a whole. *Sierra Club v. West Side Irrigation District*, (2005) 128 Cal. App. 4th 690, 698 (agency may not divide a single project into smaller pieces to avoid consideration of environmental effects of the project as a whole).

We know the Lake Tahoe Biomass Burning project is an integral part of the larger "Wildfire Protection and Biomass Utilization Program" because the Strategic Plan itself describes the biomass utilization as an essential step in the overall plan. Placer County's website refers to the Biomass Burning Facility as one part of the Wildfire/Biomass Program. [See, Attached Index No. FLT-4]. Indeed, the Biomass Burning Facility is wholly dependent upon large scale forest clearing as a source of biomass fuel supply. The Biomass Burning Facility is obviously one step in a much larger coordinated plan. Yet, Placer County never performed an EIR to study the environmental effects of the entire Wildfire/Biomass project before approving that program. In short, Placer County illegally embarked upon a large scale project without an EIR in violation of CEQA.

(2). Committing to a Course of Action in Lake Tahoe

Second, even if we were to narrowly focus on the Biomass Burning facility alone, the agencies committed to a definite course of action well before conducting an EIR and well before the Notice of Preparation. While many details about this project remain hidden from public view, the following factors fuel our concern:

♦ the Reimbursement Agreement between TRPA and Placer County committed TRPA to conduct an “*expedited review*,”² to hire a contractor to “*approve*” the environmental documents and to complete the “*environmental certification process*.” In Section 3, TRPA also committed itself to “*finalization of a permit for biomass facility*...” The biomass plant is a *fait accompli* because both agencies have already committed to the project’s approval [See, Attached Index Nos. FLT-1, FLT-2, FLT-5, FLT-6 & FLT-7];

♦ the agencies waived contracting regulations stating that *construction schedules* and *project deadlines* required the agencies to move ahead rapidly. [See, Loren Clark’s Memo referenced at Attached Index No. FLT-12; see also, Attached Index No. FLT-11]; the fact that construction schedules and project deadlines exist and were given priority over contracting regulations is evidence of a preexisting commitment;

♦ It appears there is a development agreement with the Kings Beach land owner pre-dating the Notice of Preparation. This seems obvious because the agencies propose to build the plant in Kings Beach on property the agencies *do not own or lease* and this would be impossible absent an agreement to lease, purchase or develop that land. Such an agreement demonstrates a commitment to the Kings Beach site;

♦ the Notice identified the fairly precise plant configuration including its square footage and general dimensions. This means that the agencies have already *commissioned drawings* for the project;

♦ Ms. Loren Clark’s memo also alludes to “*funding partners*,” suggesting that the agencies have financing in place for the project. A January 2010, presentation by Brett Storey acknowledged the existence of a private partnership and funding by NV Energy [See, Attached Index No. FLT-12];³

♦ the contract with the environmental consultant identified *Kings Beach as the prime site*. [See, Attached Index No. FLT-9 at p. 13 of 23]. The 5-18-10 memo from Mr. Johnson, a CDRA Director, to the Placer County Board of Supervisors referred to the “*Kings Beach Biomass Facility*”

² The “expedited review” process was not disclosed in the Notice of Preparation. Moreover, as far as we can determine, neither the Compact, nor TRPA’s Rules of Procedure authorize TRPA to conduct an expedited or truncated environmental review. The Rules allow TRPA’s Executive Director to issue an emergency permit, but the biomass project is not an emergency. Neither the Executive Director, nor anyone else at TRPA has ever described the biomass burning project as an emergency.

³ In contrast to these limited disclosures or private documents, the Placer County website entitled “Who are our Partners” is curiously blank. The Notice of Preparation does not disclose that NV Energy is involved in funding the project.

Project.” [See, Attached Index No. FLT-1 & FLT-3]. A presentation by Brett Storey in January 2010 described Kings Beach as the primary location. TRPA's contract with Jon-Paul Harries identifies the project as the *Kings Beach Biomass* project [See, Attached Index No. FLT-6 at p. 12 of 14]. The agencies' own documents demonstrate that they have already selected a site for the plant; and

♦ according to another memo from Mr. Johnson, dated April 12, 2011, Placer County was already *processing a conditional use permit* for the Kings Beach property to allow for construction of the biomass burning plant.

♦ Placer County's website under the tab “Programs and Projects” and the subheading “Lake Tahoe Basin Biomass to Electricity Project” states unequivocally that the “*most optimum location for the potential siting of the Biomass to Energy Facility [is] in the Northern Tahoe Basin, just north of the Community of Kings Beach.*” [See, <http://www.placer.ca.gov/Departments/CommunityDevelopment/Planning/Biomass/Programs.aspx>].

Clearly, the agencies committed to a definite course of action without an EIR and before serving the Notice of Preparation, *e.g.*, they each committed to building a biomass plant in Kings Beach. When these events occurred, they constituted a *de facto* “approval” whether or not further discretionary government decisions were required. *Save Tara v. City of West Hollywood, supra* at 134-35. Of course, such an approval process violates the procedures outlined in the Compact for project approval. See, Compact, Art. VI, Sec. (b) & Art. VII.

Accordingly, it appears that the agencies have violated CEQA and the Compact by approving a project without first obtaining an EIR. This failure to proceed in a manner required by law voids all prior agreements, notices and decisions related to the project.

B. Defects in the Project Description

CEQA contemplates that the agency will know the project that it proposes to carry out. In this case, however, the documents state that the agency does not yet know what kind of biomass burning plant it may construct, where it will construct it or the size of the facility that will be constructed.⁴ This is not an adequate project description because it is unfinished and incomplete. If a developer were to approach Placer County seeking a permit with such an indefinite plan, that developer would be told to return only after it

⁴ As more fully described above, it is disingenuous to suggest that the agencies remain undecided about this project. There is compelling evidence the agencies have already committed to building a plant in Kings Beach. But even if the agencies were truly undecided, that indecision completely vitiates the description of the project for the reasons stated herein.

had something concrete for the County to consider. Yet, TRPA and Placer County have published a Notice expecting the public to comprehend the potential effects of a project that has no concrete form, content or location.

While litigation over project descriptions most often arises in the context of an EIR, the analysis from those decisions is equally persuasive when considering a Notice of Preparation. In *County of Inyo v. City of Los Angeles*, (1977) 71 Cal. App. 3d 185, the court observed:

“A curtailed or distorted project description may stultify the objectives of the reporting process.”

Id. At 192.

“A curtailed, enigmatic or unstable project description draws a red herring across the path of public input.”

Id. at 198.

In *San Joaquin Raptor Rescue Center v. County of Merced*, (2007) 149 Cal. App. 4th 645, the court rejected an inadequate project description finding the failure to provide a stable and consistent project description was an abuse of discretion by the agency. *Id.* at 657. In the *County of Inyo*, the court concluded that the City's incessant shifts among project descriptions vitiated the EIR process. 71 Cal. App. 3d at 197. An analogous circumstance exists in this Notice. The project description is enigmatic because the agencies do not clearly state what they are going to do or where they are going to do it. These deficiencies stifled public understanding and comment. Such an ill-defined Notice of Preparation does not comply with regulatory requirements.

Equally important, the communities affected by the biomass burning plant include a minority population whose primary language is Spanish. Yet, no Spanish translation of the Notice of Preparation appears to have been circulated. This oversight could easily exclude large numbers of affected citizens from meaningful participation in the CEQA process.

C. Improper Baseline Comparisons

The Notice of Preparation also includes an incorrect baseline comparison in violation of 14 C.C.R. § 15125. The regulations require a lead agency to define the physical environmental conditions in the vicinity of the project at the time of the notice. This is the baseline condition against which environmental impacts are measured. *Communities for a Better Environment v. South Coast Air Quality Management Dist.*, (2010) 48 Cal. 4th 310, 320-21. The Notice of Preparation reveals that the agencies will “compare emissions from uncontrolled open burning of biomass with controlled emissions related to the power generating facility...” No uncontrolled open burning of biomass takes place in Kings Beach. Certainly, no uncontrolled burning was taking place at the time of

the Notice. In fact, TRPA's air quality regulations prohibit open burning of wood wastes, *see*, TRPA Air Quality Control § 91.4, and limit prescribed burning to specific areas, times and only under permit. *See*, TRPA Prescribed Burning § 72.3A. The North Tahoe Fire Protection District authorizes residential pile burning only by permit (at restricted times) and only in piles no larger than 4 feet in diameter. [*See*, Attached Index No. FLT-13]. It is preposterous to suggest that open, uncontrolled burning may serve as a baseline comparison for residential neighborhoods. The proposed baseline is an improper hypothetical and the use of such hypotheticals have consistently been rejected by the courts. The EIR cannot lawfully compare the biomass burning plant with open, uncontrolled burning.

D. Improper Description of Probable Environmental Effects

The Notice of Preparation does not comply with CEQA because it does not identify the probable environmental effects of the proposed biomass burning facility. While the Notice of Preparation contains a "heading" for "Probable Environmental Effects (*see*, page 13 of 16), the discussion beneath that heading is devoid of meaningful content. The law requires a meaningful disclosure, not an empty heading. Rather than identify the probable effects, the Notice of Preparation states that these issues will be dealt with at a later date in the EIR. That is not what the Guidelines require. TRPA and Placer County may not defer discussions of probable environmental impacts to a later document. Those effects must be identified in the Notice of Preparation itself. A few examples (which are not exhaustive) illustrate this problem.

The Notice concedes there will be "*long-term operational, and cumulative air quality changes.*" Later in the same paragraph, the Notice reports that there are "*potential emissions of odors and/or hazardous air pollutants.*" The air quality changes are not, however, identified. The hazardous air pollutants are never defined. Nowhere does the Notice inform the public *what* pollutants are expected, the *level* at which they are expected, the *probable effects* of those pollutants or whether the pollutants will *exceed existing thresholds*. As written, the Notice contains only hollow and uninformative statements. This hollow description does not comply with the regulations.

Lead agencies have a legal obligation to find out and disclose all that they reasonably can. 14 C.C.R. § 15144. By statute, documents prepared under CEQA must be written so that they are meaningful and useful to decision makers and to the public. Pub. Res. Code § 21003(b). By contrast, the incomplete Notice here ensures that the public will remain ignorant of the effects of the biomass burning plant.

E. There May Only be One Lead Agency

The Notice of Preparation purports to identify two lead agencies for the biomass burning project. It identifies both Placer County and TRPA. The Guidelines make it clear that the lead agency must be one public agency. 14 C.C.R. § 15050(a). The courts are equally clear that there shall be one lead agency. *Nelson v. County of Kern*, (2010) 190 Cal. App. 4th 252, 269-70. Consequently, this project may not proceed with two lead agencies. Where there is more than one agency involved with a project, the rules provide criteria for choosing one lead agency. 14 C.C.R. § 15051. If the competing agencies cannot decide which one of this is the lead agency, they must submit the dispute to the Office of Planning and Research. 14 C.C.R. § 15053.

Further, when an EIR is prepared by the wrong agency - as is the case here - the EIR may be defective thus compelling the preparation of a new EIR. *Planning and Conservation League v. Dept. of Water Resources*, (2000) 83 Cal. App. 4th 892, 907.

Setting aside legitimate concerns about TRPA's impartiality, should TRPA ultimately be chosen as the lead agency, it cannot delegate its responsibilities as attempted here. The lead agency must use its own independent judgment and may not defer to other agencies when preparing the EIR. TRPA Rules of Procedure, § 6.10. Among other things, this means that TRPA may not waive its contractor selection policies and allow Placer County to control or select the EIR contractor who will prepare the EIR. [see, Attached Index Nos. FLT-10, FLT-11 & FLT-12]. In the event TRPA is chosen as the lead agency, we question the validity of the selection of Ascent Environmental, Inc to prepare the EIR as that selection was clearly made in deference to Placer County and was not the independent judgment of TRPA.

F. The Scope of the Proposed EIR is Too Narrow - It Must Evaluate Amendments Required of the Regional Plan and TRPA Ordinances

As presently conceived, the proposed EIR omits a crucial component of this biomass burning project. It fails to consider the significant effects on the environment associated with required amendments to the Regional Plan and TRPA regulations. A project for CEQA purposes includes amendments to a general plan, *Muzzy Ranch Co. v. Solano County Airport Land Use Commission*, (2007) 41 Cal. 4th 372, 385, and amendments to zoning ordinances. *Citizens for Responsible Government v. City of Albany*, (1997) 56 Cal. App. 4th 1199, 1211. See also, Pub. Res. Code § 21080. Where, as here, amendments to the plan and ordinances are necessary, the EIR must evaluate the effects of those amendments.

The Compact clearly states that "no project may be approved unless it is found to comply with the regional plan and with the ordinances, rules and regulations enacted pursuant to subdivision (a) to effectuate the plan." TRPA Compact, Art. VI, Sec. (b). The biomass burning plant is inconsistent with numerous provisions of the Regional Plan. One prominent example is:

Goal #3 and Policy 3 of Chapter VI regarding Public Services and Facilities Element of the Regional Plan. It states:

2. All solid wastes shall be exported from the Region. Consolidation and transfer methods shall be developed to achieve a reduction in the volume of wastes being transported to landfills.

Because of their potentially harmful effects on water quality, solid wastes should be exported from the Region.

Similar sentiments are expressed in Chapter II, Goal #5, Policy #1. In contrast, the biomass burning plant is dependent upon the transportation of wood waste and construction waste into the region for disposal. The Notice of Preparation clearly states that the plant will utilize "untreated construction and demolition wood" [Notice at p. 9 of 16]. Further, that wood waste will be trucked into the region from a distance of at least 30 miles, a one-hour drive or perhaps farther if economics allow. [Notice at p. 10 of 16]. Once the wood waste is burned, a residue of polluting ash remains. [Notice at p. 11 of 16]. Though it is conspicuously absent from the Notice, this ash is not only a harmful airborne particulate, but it is also a solid waste containing metals and other harmful pollutants. Quite obviously, the biomass burning project transports both air and solid wastes into the basin inconsistent with the Regional Plan. Since the biomass burning plant requires amendments to the Regional Plan, the EIR must evaluate and discuss the environmental effects of those amendments.

Further, TRPA regulations treat a biomass burning plant as a new stationary source.⁵ New stationary sources that have a significant adverse environmental impact are prohibited. See, TRPA Air Quality Control, § 91.5B. Biomass burning plants are known sources of air pollution including but not limited to particulates, carbon monoxide, nitrogen oxides and volatile organic compounds. Consequently, the biomass burning project is dependent upon amendments of Air Quality regulations to create new threshold levels or new exemptions. These amendments must be evaluated and discussed in the EIR.

TRPA is undoubtedly aware that community plan and code amendments will be required because its contract with Jon-Paul Harris, the contractor retained to review and approve this EIR, requires Mr. Harris to process community plan amendments and code modifications. Further, Placer County

⁵ While TRPA Regulations exempt certain biofuel facilities, that exemption does not apply to a facility that accepts biofuel imported into the region. TRPA Air Quality Control, §91.5E (3)(c).

is aware that existing rules and regulations prevent construction and operation of a biomass burning plant. Placer County's Biomass Project Manager testified before a Working Group from California Energy Commission in September 2006. During his testimony, Mr. Storey admitted that air pollution guidelines prevent development of biomass burning plants as new stationary sources. One purpose of his testimony was to encourage changing the regulations. Accordingly, there can be no justification for omitting plan and code amendments from the proposed EIR.

We have listed but a few examples of the inconsistencies and amendments necessary. They illustrate that the planned EIR is incomplete and fails to consider the project as a whole.

Turning our attention back to the July 20, 2010, Notice of Preparation, there are additional problems.

III. PREJUDICE FROM NON-COMPLIANCE

While CEQA does not demand perfection, the defects here are far more than mere technicalities or casual oversights. First and foremost, by committing to the project before the environmental review was performed, the agencies appear to have done what they may not do -create an EIR process that merely generates paper to justify a predetermined result. *Save Tara v. City of West Hollywood*, supra at 135-36.

Second, although both TRPA and Placer County suggest that no site has been chosen for the biomass burning plant, their internal documents show that is not entirely true. There is compelling evidence that the agencies have already committed to build the plant in Kings Beach. Yet, neither Placer County, nor TRPA have informed the public of this commitment. The misleading Notice is further compounded by public statements indicating that no decisions have been made. Whether intended or not, such statements have misguided the public's attention and lulled them into inaction. By contractually agreeing to approve the project before the CEQA process was even begun, the agencies unequivocally demonstrated their bias toward approval and this completely eviscerates the CEQA hearing process of any pretense of fairness or impartiality. A greater prejudice is difficult to conceive.

But even if the agencies had yet to decide, the Notice of Preparation was nevertheless improper. Truncated and enigmatic project descriptions deprived affected property owners other concerned citizens of proper notice of the project, the type of project and its probable impacts. Those that oppose this plant have been kept in the dark and prevented from developing evidence to demonstrate the probable harms.

Although it was never disclosed in any public notice, documents prepared by TSS Consultants reveal that decisions about technology vendors

have already been made using an Evaluation Matrix.⁶ Advanced Recycling Equipment, Inc. was identified as the most promising biomass manufacturer. A test burn was ostensibly performed at its Pennsylvania facility⁷. Neither this vendor, nor a description of its technology, nor any of the steps taken to reach these conclusions appears in the Notice of Preparation or on TRPA's website. Had this information been disclosed, it would almost certainly have led to an immediate public outcry. That is so because Advanced Recycling Equipment filed a bankruptcy petition in November, 2009. The three largest creditors in that bankruptcy were entities asserting liability claims based upon biomass burning systems purchased from this manufacturer. Indeed, in a federal courthouse not far from Lake Tahoe, a local company sued Advanced Recycling Equipment for breach of warranty, breach of contract and fraud. [Case no. 2:05-cv-00642-LKK-JFM]. Among other things, the complaint alleged:

Defendants delivered and participated in the installation of equipment for a biomass/combustion/steam/electricity production system, which was defective, incomplete, out of conformity with the contract terms and provided untrained and incompetent staff to provide installation and training services. [See, Attached Index No. FLT-14, Complaint at ¶10].

After a trial on the merits, the jury awarded the plaintiff over \$6 million dollars in damages against Advanced Recycling Equipment. The verdict slip shows that the jury found the biomass burning facility was defective and that Advanced Recycling Equipment had intentionally misled the purchaser. [See, Attached Index No. FLT-15, Jury Verdict Form]. That judgment is final and not open to debate. This is the same biomass burning system promoted as the best choice for Lake Tahoe. If this is the best choice, then we have far more problems that any of us realize. Given this jury verdict, it is difficult to see how such a system could ever qualify as the "best available technology."

The lack of disclosure has made it difficult to challenge the candy-coated projections of the project applicant, contractors or vendors. Hypothetical comparisons are illusory and mislead the public contrary to CEQA's intent. If we knew what this project actually entailed, it is likely we could present even stronger evidence to document its shortcomings. We are entitled to fair notice of the project, to an understanding of its real environmental effects and to an impartial administrative process. We have received none of these things.

⁶ Absent selection of a particular technology, it would be nearly impossible to determine the square footage of the required structures. The size and configuration of the buildings is a function of the equipment placed inside. Since the agencies know the square footage of their planned structures, this suggests that technology decisions have already been made.

⁷ A precise test method was not disclosed, nor was the biomass material used during the test identified. There is no indication the tests were independently verified by qualified personnel using calibrated test equipment.

Community Development Resource Agency
Tahoe Regional Planning Agency
June 13, 2011
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We challenge this project as having been approved without an EIR in violation of CEQA. An after-the-fact EIR is useless, legally ineffective and should not move forward. To the extent this project is ever considered in the future, it cannot rest upon the tainted documents prepared here, nor can it be reviewed by an agency that has contractually obligated itself to approve the project sight-unseen. Should the agencies approve this project despite the these deficiencies, FLT will seek to vacate that approval on the grounds described herein as well as any other basis that our investigation may uncover. Accordingly, we request that this letter be made a part of the administrative record for this project.

Very truly yours,

COZEN O'CONNOR



Daniel D. Harshman

Enclosures:

Index of Documents Referenced

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INDEX OF DOCUMENT REFERENCES - FRIENDS OF LAKE TAHOE

EXHIBIT NO.	DESCRIPTION OF ATTACHMENT
FLT - 1	June 22, 2010 Memorandum from Michael J. Johnson, Placer County CDRA Director to Placer County Board of Supervisors [available online at http://www.placer.ca.gov/upload/bos/cob/documents/sumarchv/100622AA/bosd_100622_22b_p203_p230.pdf]
FLT - 2	Reimbursement Agreement for a Proposed Placer County Biomass Facility between County of Placer and Tahoe Regional Planning Agency, dated May 25, 2010 [attached to the June 22, 2010 memorandum show as Exhibit "FLT-1" above and available at the same web address]
FLT - 3	Placer County, Strategic Plan for the Wildfire Protection and Biomass Utilization Program [available at http://www.placer.ca.gov/Departments/CommunityDevelopment/Planning/~media/cdr/Planning/Biomass/biomass_strategic_plan.ashx]
FLT - 4	Placer County webpage entitled "Placer County Biomass" [available online at http://www.placer.ca.gov/Departments/CommunityDevelopment/Planning/Biomass.aspx]
FLT - 5	Request for Proposal Justification Memorandum from Charles Emmett to Joanne S. Marchetta, Executive Director, Tahoe Regional Planning Agency (undated) [attached to the June 22, 2010 memorandum show as Exhibit "FLT-1" above and available at the same web address]
FLT - 6	Consultant Services Agreement, AQ 2010-04 dated may 25, 2010 between Tahoe Regional Planning Agency and Jon-Paul Harries (14 pages) [attached to the June 22, 2010 memorandum show as Exhibit "FLT-1" above and available at the same web address]
FLT - 7	Placer County Board of Supervisors Minutes from June 22, 2010 authorizing Placer County Board Chairman to sign the Reimbursement Agreement with TRPA (see p. 69 at paragraph #22)
FLT - 8	May 18, 2010 Memorandum from Michael J. Johnson , Placer County CDRA Director to Placer County Board of Supervisors re Three Party consultant services

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Lake Tahoe Basin Biomass Burning Facility
(PIER T20100194/ERS 2010-0837)

EXHIBIT NO.	DESCRIPTION OF ATTACHMENT
	agreement <i>[available online at http://www.placer.ca.gov/upload/bos/cob/documents/sumarchv/100518A/bosd_100518_03c_p89_p116.pdf]</i>
FLT - 9	Consultant Services Agreement AQ 2010-02 between Tahoe Regional Planning Agency and ASCENT Environmental, dated April 30, 2010 <i>[attached to the May 18, 2010 memorandum show as Exhibit "FLT-6" above and available at the same web address]</i>
FLT - 10	Contract Justification Memorandum by Charles Emmett to Joanne S. Marchetta, Executive Director TRPA (undated) re request to authorize contract with Ascent Environmental <i>[attached to the May 18, 2010 memorandum show as Exhibit "FLT-6" above and available at the same web address]</i>
FLT - 11	TRPA Bidding Process Waiver AQ-2010-01 signed by Joanne S. Marchetta, TRPA Executive Director on April 23, 2010 <i>[attached to the May 18, 2010 memorandum show as Exhibit "FLT-6" above and available at the same web address]</i>
FLT - 12	Memorandum dated April 15, 2010 from Loren Clark, Placer County Assistant Director of Planning to Tahoe Regional Planning Agency re: Placer County Justification to Waive TRPA Bid Process <i>[attached to the May 18, 2010 memorandum show as Exhibit "FLT-6" above and available at the same web address]</i>
FLT - 13	North Tahoe Fire Protection District Residential Burn permit requirements <i>[Available online at http://www.ntfire.net/main_sublinks.asp?id=6&sid=20]</i>
FLT - 14	Complaint from the lawsuit captioned: <i>Pacific MDF Products, Inc. v. Biomass Energy Concepts, LLC, Advanced Recycling Equipment, Inc. and Donald Kunkel</i> , at Case no. 2:05-cv-00642 LKK-JFM.
FLT - 15	Jury Verdict Form dated, June 25, 2008 entered in the case captioned: <i>Pacific MDF Products, Inc. v. Biomass Energy Concepts, LLC, Advanced Recycling Equipment, Inc. and Donald Kunkel</i> , at Case no. 2:05-cv-00642 LKK-JFM.

