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Objection to Reach Code Approval - Part 2 of 10 pdf Santa Rosa

Letter to California Energy Commission with attachments re City of Santa Rosa Ordinance No. 2019-019.
Part 2 of 10- .pdf

Additional submitted attachment is included below.

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October 22, 2019

Via Email

City Council
City of Santa Rosa
City Hall
100 Santa Rosa Ave.
Santa Rosa, CA 95404
Email: citycouncil@srcity.org

Re: City of Santa Rosa Proposed Adoption of All-Electric Residential Reach Code (October 22, 2019 City Council Meeting Agenda Item No. 15.1)

Dear Mayor Schwedhelm, Vice Mayor Rogers, and City Councilmembers:

This firm represents William Gallaher in conjunction with the above-referenced matter. Our client is extremely concerned with the potentially adverse planning, and environmental and health and safety effects that may occur from adoption and implementation of the All Electric Reach Code/Natural Gas Ban currently being considered for adoption as a local ordinance by the City of Santa Rosa ("City").[1] We only just learned that the City has placed a proposed reach code ordinance on the City Council agenda for the October 22, 2019 meeting (agenda item no. 15.1) with an accompanying staff report ("Staff Report").

We write to emphasize that the City cannot lawfully enact this ordinance as it now stands, for several reasons. First, the ordinance is premised on information not made available in sufficient advance of the meeting for meaningful public review or comment. Moreover, that information consists of a "2019 Cost-effectiveness Study: Low-Rise Residential New Construction" dated August 1, 2019 ("Study"), which is insufficient to support the proposed findings in support of the ordinance.

Second, the City must comply with the California Environmental Quality Act ("CEQA"; Pub. Resources Code, § 21000 et seq.), which requires it in this case to prepare and certify a robust and legally-compliant Environmental Impact Report ("EIR") that fully analyzes and discloses all of the project's potentially significant

[1] A "reach" code is so called because it "reaches" beyond the State's Title 24 energy efficiency requirements by enacting different or more stringent regulations on energy efficiency related aspects of new residential and/or commercial construction.

environmental impacts and potentially feasible mitigation measures and project alternatives that could reduce such impacts to a less-than-significant level.

The Staff Report concludes, without analysis, that the ordinance is exempt from CEQA review under sections 15061, 15307, and 15308 of the CEQA Guidelines. Adoption of an all-electric reach code is clearly a discretionary "project" subject to CEQA; that substantial evidence supports a "fair argument" that this project may have one or more significant adverse environmental effects; and no exemption from CEQA applies; therefore, that an EIR must be prepared, certified and considered before such adoption may occur.

I. INSUFFICIENCY OF THE COST EFFECTIVENESS ANALYSIS

The requirements of section 10-106 of the state Building Energy Efficiency standards include the mandate that the City adopt "[a] determination that the [reach code] standards are cost effective," which require "findings and supporting analyses on the energy savings and cost-effectiveness of the proposed energy standards." (Cal. Code Regs., tit. 24, § 10-106.) The only material submitted in support of the proposed ordinance is the Study. This is insufficient, for several reasons.

First, the Study only dates to August 1, 2019, less than 90 days ago. It has also only recently been put forth by the City as the basis for its proposed action on the reach code. This does not allow for informed comment by the public or informed decisionmaking by the City Council. It is manifestly unfair to provide the public and interested stakeholders such a short amount of time to read, digest, and comment upon a technical document such as the Study. Basic fairness requires the City to withdraw the proposed ordinance and give the public time to fully digest the analysis proffered in its support.

Second, it is not clear that the Study satisfies the mandates of section 10-106. It purports to analyze the cost effectiveness of a reach code for the entire state. (Study, p. 1 & Ex. A.) Section 10-106 requires that a local agency make its own "findings and supporting analyses of the energy savings and cost effectiveness of the proposed energy standards." (Cal. Code Regs., tit. 24, § 10-106, subd. (b)(2).) Relying on a general statewide study does not satisfy this standard.

It is also not clear from the Study whether or not it accounts for tiered electricity pricing and how that would apply to all-electric construction under the proposed ordinance. It is also unclear as to whether all-electric construction would lead to residential units that cannot meet the requirements of the Building Energy Efficiency Standards in Part 6 of Title 24 of the California Code of Regulations, which would preclude building altogether.

Accordingly, the proposed ordinance is not supported by the requisite cost effectiveness analysis, and therefore does not satisfy the mandate of section 10-106. The City therefore cannot enact the reach code.

II. CEQA REQUIREMENTS

Under CEQA's well-established standards, an agency is required to prepare an Environmental Impact Report ("EIR"), rather than a Negative Declaration, whenever substantial evidence in the record supports a "fair argument" that a project *may* have a significant effect on the environment. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Quail Botanical Gardens Found. Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602; *Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002.) Courts apply the "fair argument" test as a standard of judicial review for agency decisions to adopt a Negative Declaration. (See, e.g., *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1399; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150; *Quail Botanical Gardens Found. Inc., supra*, 29 Cal.App.4th at 1602.) The "fair argument" standard of review applies to mitigated negative declarations. (*Sierra Club v. California Dept. of Forestry and Fire Protection* (2007) 150 Cal.App.4th 370, 382; *Citizens for Responsible and Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1331-1332; see also Pub. Resources Code, §21064.5 [defining "mitigated negative declaration"].)

In other words, if a non-exempt project ***may*** cause a significant effect on the environment, the lead agency ***must*** prepare an EIR. (Pub. Resources Code, §§ 21100, 21151; Cal. Code Regs., tit. 14, § 15064, subd. (a)(1)(f)(1).) An EIR may be avoided only if the lead agency properly finds no substantial evidence in the initial study or elsewhere in the record that the project may significantly affect the environment. A project "may" have a significant effect on the environment if there is a "reasonable possibility" that it will result in a significant impact. (*No Oil, Inc., supra*, 13 Cal.3d at 83, n.16; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 309.) A "significant effect upon the environment" is defined as "a substantial or potentially substantial adverse change in the environment." (Pub. Resources Code, § 21068; Cal. Code Regs., tit. 14, § 15382.) If *any* aspect of the project may result in a significant environmental impact, an EIR must be prepared even if the overall effect of the project is beneficial. (Cal. Code Regs., tit. 14, § 15063, subd. (b)(1); *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1580.)

As is evident from the above-cited legal authorities, CEQA sets a very "low threshold" for requiring preparation of an EIR (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928; *Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, 580; see also *Sundstrom v. County of* Mendocino, *supra*, 202 Cal.App.3d at p. 310), such that if any substantial evidence supports the requisite "fair argument" that a project may have a significant environmental effect, the lead agency must prepare an EIR – even if it is also presented with other substantial evidence indicating that the project will have no significant effect. (*No Oil, Inc. v. City of Los Angeles*, *supra*, 13 Cal.3d at p. 85; *Brentwood Association for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491, 503-504; *Friends of "B" Street*, *supra*, 106 Cal.App.3d at 1002; Cal. Code Regs., tit. 14, § 15064, subd.

(f)(1).) Under the "fair argument" test, the lead agency may not weigh the competing evidence to determine who has a better argument concerning the likelihood or extent of a potential environment impact, but must direct the preparation of an EIR to resolve the issue. (See, e.g., *Friends of "B" Street*, *supra*, 106 Cal.App.3d at 1002; *Architectural Heritage Association v. County of Monterey* (2004) 122 Cal.App.4th 1095, 1109, 1122.)

"Substantial evidence" is evidence that has ponderable legal significance, i.e., evidence that is reasonable, credible and of solid value (*Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 152; *Newman v. State Personnel Board* (1992) 10 Cal.App.4th 41, 47; *Pennell v. Pond Union School Dist.* (1973) 29 Cal.App.3d 832, 837), and has been defined in the CEQA context as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (Cal. Code Regs., tit. 14, § 15384(a); *see also*, Pub. Resources Code, §§ 21080(e), 21082.2(c); Cal. Code Regs., tit. 14, § 15064, subd. (f)(5).) "Substantial evidence" is defined by the CEQA Guidelines to include, inter alia, "expert opinion supported by facts." (Cal. Code Regs., tit. 14, § 15384, subd. (a); see *id.* at § 15064, subd. (f)(5).) Opinion evidence submitted by a qualified expert, showing that significant impacts may occur from a project, is normally conclusive, and requires preparation of an EIR under the "fair argument" standard. (See, e.g., *City of Livermore v. LAFCO* (1986) 184 Cal.App.3d 531, 541.) "Statements by members of the public may [also] constitute substantial evidence that a project may have a significant effect on the environment." (1 Kostka & Zischke, Practice Under the California Environmental Quality Act (Cont.Ed.Bar 2d ed. 2015), § 6.42, pp. 6-46.1 to 6-47, and cases cited; see also *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928 ["Relevant personal observations of area residents on nontechnical subjects may qualify as substantial evidence for a fair argument."].)

III. SUBSTANTIAL EVIDENCE SUPPORTS A "FAIR ARGUMENT" THAT AN ALL-ELECTRIC REACH CODE IS A DISCRETIONARY PROJECT THAT MAY HAVE SIGNIFICANT UNMITIGATED ADVERSE ENVIRONMENTAL IMPACTS IN A NUMBER OF AREAS, THUS REQUIRING PREPARATION OF AN EIR

A. The Proposed Ordinance Is a CEQA "Project."

There can be absolutely no doubt that a proposed local ordinance adopting a reach code, such as the one being proposed for consideration by the City, is a "project" that is subject to CEQA review. CEQA broadly defines "projects" to include any activities directly undertaken by public agencies which have the potential to ultimately culminate in physical change to the environment. (*City of Livermore v. Local Agency Formation Com.* (1986) 184 Cal.App.3d 531, 537; *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 277-278, & fn. 16.) The Supreme Court and Courts of Appeal "ha[ve] given the term "project" a broad interpretation

and application to maximize protection of the environment." (*Tuolumne County Citizens For Responsible Growth, Inc. v. City of Sonoma* (2007) 155 Cal.App.4th 1214, 1222-1223, and cases cited; see *Aptos Council v. County of Santa Cruz* (2017) 10 Cal.App.5th 266, 278; *McQueen v. Board of Directors* (1988) 202 Cal.App.3d 1136, 1143.)

The courts' broad definition of a CEQA "project" is compelled by the plain language of the CEQA statutes and Guidelines. Thus: ""Project" means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following: (1) An activity directly undertaken by any public agency." (Pub. Resources Code, § 21065, subd. (a).) "[T]his division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances . . . ." (Pub. Resources Code, § 21080(a).). While a reach code is not a classic "zoning ordinance," it operates like a zoning ordinance because it "ha[s] the effect of '[r]egulat[ing] the use of buildings, structures, and land'" (*People v. Optimal Global Healing, Inc.* (2015) 241 Cal.App.4th Supp. 1, 8), and as a local law regulating those areas it shares, for purposes of CEQA, the key attribute of zoning ordinances. (See *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 750 ["The purpose of a zoning law is to regulate the *use* of land."].)

Zoning ordinances and local ordinances akin to them are *categorically* CEQA "projects." The CEQA Guidelines, in relevant part, define "project" as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following: (1) An activity directly undertaken by any public agency including but not limited to... enactment and amendment of zoning ordinances...." (Cal. Code Regs., tit. 14, § 15378, subd. (a)(1).) Indeed, under CEQA's broad definition of a "project," ordinances, laws and regulations affecting the use of land or structures have consistently been held to be CEQA "projects" over the course of many decades. (See, e.g., *Apartment Assn. of Greater Los Angeles v. City of Los Angeles* (2001) 90 Cal.App.4th 1162, 1169 ["Ordinances passed by cities are clearly activities undertaken by a public agency and thus "projects" under CEQA."], citing 60 Ops.Cal.Atty.Gen. 335, 338 (1977); *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1558 [treating County ordinance restricting sewage sludge application on County lands as project under CEQA and further holding "CEQA requires the preparation of an EIR whenever substantial evidence supports a fair argument that an ordinance will cause potentially significant environmental impacts"]; *id.* at p. 1578 ["Amendment or adoption of an ordinance is a legislative act subject to review under section 21168.5"], citations omitted; *Plastic Pipe & Fittings Assn. v. California Building Standards Com.* (2004) 124 Cal.App.4th 1390, 1412 ["A regulation fitting the description of a discretionary project is a discretionary project under CEQA."]; *Rosenthal v. Board of Supervisors* (1975) 44 Cal.App.3d 815, 823 ["In view of the fact that city ordinances were the subject matter in the *No Oil* case, it appears that it

was held impliedly therein that adopting an ordinance was a project within the meaning of the Environmental Quality Act"], citing *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68 [impliedly holding adoption of zoning ordinance permitting drilling of oil test wells was project within meaning of CEQA].)

B. The Proposed Project Is Not Exempt.

There can further be no doubt that a project proposing adoption of an all-electric reach code is not subject to any exemption from CEQA. Yet the Staff Report for the proposed ordinance cites three CEQA exemptions – the so-called "common sense" exemption, and the class 7 and 8 exemptions for actions that are protective of the environment. None apply here.

CEQA's "common sense" exemption may properly be invoked *only* when the lead agency can declare "with certainty that there is no possibility that the activity in question may have a significant effect on the environment." (Cal. Code Regs., tit. 14, § 15061, subd. (b)(3).) "In the case of the commonsense exemption, the agency has the burden to "provide the support for its decision before the burden shifts to the challenger. Imposing the burden on members of the public in the first instance to prove a possibility for substantial adverse environmental impact would threaten CEQA's fundamental purpose of ensuring that government officials 'make decisions with environmental consequences in mind.'"" (*California Farm Bureau Federation v. California Wildlife Conservation Bd.* (2006) 143 Cal.App.4th 172, 186, citing *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 116, quoting *Bozung, supra,* 13 Cal.3d at 283.) "A remote or outlandish possibility of an environmental impact will not remove a project from the common sense exemption, but if legitimate reasonable questions can be raised about whether a project might have a significant impact, the agency cannot find with certainty the project is exempt." (*Id.* at p. 194, citing *Davidon Homes, supra,* 54 Cal.App.4th at pp. 117-118.) Thus: "[T]he agency's exemption determination must be supported by evidence in the record demonstrating that the agency considered possible environmental impacts in reaching its decision." (*Davidon Homes v. City of San Jose*, *supra*, 54 Cal.App.4th at p. 117.)

"[T]he primary duty to comply with CEQA's requirements must be placed on the public agency. 'To make faithful execution of the duty contingent upon the vigilance and diligence of particular environmental plaintiffs would encourage attempts by agencies to evade their important responsibilities. It is up to the agency, not the public, to ensure compliance with [CEQA] in the first instance.'" (*Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 939, citing *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 205.) "CEQA places the burden of environmental investigation on government rather than the public." (*Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1347 ["CEQA contemplates serious and not superficial or pro forma consideration of the potential environmental consequences of a project."].)

" [A] party challenging what is essentially a claim of the commonsense exemption under Guidelines section 15061, subdivision (b)(3), unlike a party asserting an exception to a categorical exemption, need only make a "slight" showing of a reasonable possibility of a significant environmental impact. (*Davidon Homes, supra,* 54 Cal.App.4th at p. 117.) It is the lead agency that has the burden of establishing the commonsense exemption, i.e., that there is *no* possibility the project may cause significant environmental impacts. "[T]he agency's exemption determination must be supported by evidence in the record demonstrating that the agency considered possible environmental impacts in reaching its decision." (*California Farm Bureau Federation, supra*, 143 Cal.App.4th at 195-196, citing *Davidon Homes, supra,* 54 Cal.App.4th at 117, *East Peninsula Ed. Council, Inc. v. Palos Verdes Peninsula Unified School Dist.* (1989) 210 Cal.App.3d 155, 171.)[2]

With respect to the class 7 and 8 exemptions under sections 15307 and 15308 of the Guidelines, such can only be used for an action that constitutes a preservation of the environment. (*Save Our Big Trees v. City of Santa Cruz* (2015) 241 Cal.App.4th 694, 707.) Here, the proposed reach code cannot be said to rise to this standard as it merely substitutes one source of energy for another, without any sufficient analysis as to whether that substitution will actually yield any benefit to the environment. As the Court of Appeal has aptly observed, "There may be environmental costs to an environmentally beneficial project, which must be considered and assessed." (*California Farm Bureau Federation v. California Wildlife Conservation Board*, *supra*, 143 Cal.App.4th at p. 186.)

In this context the case *of Dunn-Edwards Corp. v. Bay Area Air Quality Management Dist.* (1992) 9 Cal.App.4th 644 is instructive. There, the Bay Area Air Quality Management District sought to use the class 8 exemption for regulations reducing the solvent in architectural coatings. The Court of Appeal held that in spite of the fact that the regulations imposed more stringent standards there was not sufficient evidence in the record justifying the conclusion that it would actually protect the environment. The exact same analysis applies here, for the reasons discussed throughout this letter. There is simply no basis for the City to conclude that the reach code will not have a potentially significant impact on the environment. Thus, reliance on the class 8 exemption is not warranted. (See *International Longshoremen's & Warehousemen's Union v. Board of Supervisors* (1981) 116 Cal. App.3d 265.)

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[2] A lead agency intending to invoke the common sense exemption thus has the burden to consider the record and facts in the case before it prior to doing so. (*Muzzy Ranch, supra,* 41 Cal.4th at 386 ["Insofar as it failed to consider the record in determining that adopting the TALUP fell within the common sense exemption, the Commission erred."].) "An agency obviously cannot declare "with certainty that there is no possibility that the activity in question may have a significant effect on the environment" (Cal. Code Regs., tit. 14, § 15061, subd. (b)(3)) if it has not considered the facts of the matter." (*Id.* at p. 387, citing *Davidon Homes, supra,* 54 Cal.App.4th at 117.)

Note also in this context that section 10-106 of the Building Energy Efficiency Standards upon which the City relies requires the submission of materials in support of an application for a reach code. The specific submittals required do not extend to a notice of claimed exemption but a "negative declaration or environmental impact report, required pursuant to the California Environmental Quality Act, Public Resources Code Section 21000 et seq." (Cal. Code Regs., tit. 24, § 10-106, subd. (b)(4).) The provision clearly does not contemplate the use of an exemption because a reach code will invariably require environmental analysis under CEQA. Thus, the reliance on an exemption here is plainly in error.

Even if the ordinance were subject to a categorical exemption, it is clear that the unusual circumstances exception would apply, rendering the exemption inapplicable. (See Guidelines, § 15300.2, subd. (c).) Accordingly, substantial evidence supports a finding that the project presents unusual circumstances giving rise to the impacts discussed herein. These unusual circumstances include, but are not limited to, the following: PG&E's electricity service interruptions and/or blackouts that will potentially last for days in this and other Sonoma County areas, creating very serious health and safety problems if power is actually out that long and not resumed from a non-grid source; the jurisdiction and cumulative study area jurisdictions are in very high fire danger areas, increasing both the likelihood and seriousness of electricity blackouts; there are well-known serious traffic problems on Highway 101 making even longer commutes by displaced homebuyers and renters who want a choice other than all-electric more environmentally harmful. Accordingly, even assuming arguendo the categorical exemption applies, there is more than a fair argument that the adoption of the ordinance may have significant adverse environmental effects due to unusual circumstances which require actual analysis in a legally adequate initial study pursuant to CEQA.

This leads to another deficiency in the agenda report's CEQA discussion. What of cumulative impacts? (See Guidelines, § 15300.2, subd. (b).) If other jurisdictions in Sonoma County or Northern California more broadly enact similar ordinances, the increase in the demand for electricity will be potentially much greater than that from the City's alone, and so would the related impacts. What of increased generator usage? The impacts of battery purchases, which require the mining of elements such as lithium that comes with its own set of environmental problems? The potential for cumulative impacts is very real, and must be addressed.

Accordingly, it is abundantly clear that the ordinance is not subject to an exemption from CEQA review.

C. The City Must Conduct an Initial Study and Prepare an EIR Prior to Considering Adoption of an All-Electric Reach Code Ordinance.

Because proposed adoption of an all-electric reach code is a project that is subject to CEQA, and does not qualify for any exemption from CEQA review, the City is required to conduct an initial study to determine whether it may have any significant

environmental effects; if the initial study shows the project does not qualify for a negative declaration, the City must prepare an EIR. (*Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 380-381.) The City's good faith performance of such a study here will show that adoption of an all-electric reach code may have significant and adverse environmental effects in numerous areas, including, but not limited to, aesthetics, recreation, utilities/service systems, GHG emissions, land use/planning, population/housing, air quality, wildfire, public safety, energy, hazards and hazardous materials, and public services. A few of these numerous areas of potentially significant impact are discussed in further detail bellow.

- **Hazards/Public Safety.** Ironically, an all-electric reach code ordinance is being considered at a time when the supply of electrical power to the City and surrounding communities may be less reliable and subject to more and longer planned outages than ever before. (See attached August 15, 2019 Press Democrat article, "PG&E Map Sheds Light On Planned Power Outages In Sonoma County.")[3] As noted in the article, critics of the planned outages have "point[ed] to impacts on public safety, businesses and disabled people who rely on access to electricity." The article states "[a] prolonged, widespread outage… could have the potential to be very disruptive, officials acknowledged, posing problems ranging from cell phone service to storage of food." An announcement of the Petaluma Fire Department is quoted as stating: "ATM machines won't work, gas stations won't be able to pump gas, traffic signals will be out, garage doors will need to be opened manually…. Are you ready?" Without adequate battery storage of electricity, or an alternative power source, such as natural gas which powers backup generators and other appliances, "all-electric" homes and businesses will be subject to hazards and risks to public safety during outages when heat, lighting, water, refrigeration, food, and air conditioning may be unavailable.

  Given the risk of blackouts, some residents will rely on propane or gasoline generators or other combustible sources of power which are more prone to accident or spillage than fixed natural gas lines. There is no discussion of the risks or impacts associated with such increased usage, including air quality, GHG, and fire impacts.

  Note also that the 2018 Camp Fire, the deadliest in California history, was apparently caused by electrical transmission lines.[4] There is no

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[3] See https://www.pressdemocrat.com/news/9898428-181/pge-map-sheds-light-on. We have also attached other recent articles relating to the PG&E blackouts and impacts resulting from the same.

[4] See, e.g., https://www.fire.ca.gov/media/5038/campfire_cause.pdf.

analysis whatsoever in the Staff Report or any supporting materials as to any potential increase in fire risk from expanded electrical service facilities which the reach code would necessitate.

- **Utilities/Service Systems/Wildfire.** The CEQA Guidelines Appendix G checklist – a template for the initial study the City is required to conduct under CEQA – requires evaluation of the question of whether the project would "[r]equire or result in the relocation or construction of new or expanded … electric power, natural gas, or telecommunications facilities, the construction of which could cause significant environmental effects?" Projects requiring significant new construction to rely solely on electricity as a power source clearly have the potential to result in the installation, upgrading, and/or maintenance of associated infrastructure (e.g., roads, fuel breaks, power lines), and where such occurs in or near areas of high fire hazard the resulting environmental impacts must also be studied. (See Appendix G, Section XX WILDFIRE [listing potential impacts such as impairment of adopted emergency response and evacuation plans, exacerbation of wildfire risks, and other human safety and environmental risks and impacts].) And, as noted above, the most deadly fire in California history was started not by natural gas facilities, but by electrical lines. Moreover, also as noted above, increased generator use may give rise to its own increased risk of fire.

  Similarly, the Staff Report and Study do not analyze whether the existing electrical grid is sufficient to satisfy the demand of all new construction under a 100% electricity standard. Given PG&E's warnings about potential blackouts, the grid's ability to handle this new demand is questionable at best. Moreover, the Staff Report and Study do not sufficiently discuss the sources of the additional electricity required under the proposed reach code, nor the impacts related to those sources. Natural gas powered plants will naturally obviate most if not all of the supposed benefit of gas-free construction. Wind and solar have well-known impacts relating to wildlife, aesthetics, etc.[5] And hydroelectric power comes with its own suite of impacts as well, including harm to anadromous fish and other species[6] and the risk of failure and flood (as with the Oroville Dam

[5] See https://www.ucsusa.org/clean_energy/our-energy-choices/renewable-energy/environmental-impacts-solar-power.html; https://www.ucsusa.org/clean_energy/our-energy-choices/renewable-energy/environmental-impacts-solar-power.html.

[6] See https://www.fs.fed.us/psw/publications/lind/lind6.pdf; https://www.researchgate.net/profile/Liba_Pejchar/publication/11779066_A_River_Might_Run_Through_It_Again_Criteria_for_Consideration_of_Dam_Removal_and_I

crisis of 2017). In fact, hydroelectric facilities in California and the west are being removed, making this source of power uncertain for future electricity needs.[7]

- **GHG/Air Quality.** The cursory Staff Report undertakes no actual analysis of the proposed reach code's effect on GHG emissions or air quality. An all-electric reach code would eliminate gas-powered heaters, stoves, water heaters, built-in outdoor barbeques, gas burning fireplaces, fire pits, and, as noted above, gas-powered backup generators to protect against losses, disruptions and safety problems from blackouts of a fragile and overburdened electrical grid. Alternative fuel sources – such as wood, gasoline or charcoal – exist for many of these amenities, and could be substituted for the cleaner-burning natural gas that the proposal would eliminate, leading to greater GHG emissions and air quality impacts. Such unintended, but clearly reasonably foreseeable, adverse environmental consequences must be fully evaluated under CEQA. (See, e.g., *Rodeo Citizens Association v. County of Contra Costa* (2018) 22 Cal.App.5th 214 [recognizing that to extent captured butane and propane were used to displace use of other fuels such as coal, home heating fuel, fuel oil, diesel, kerosene, gasoline and ethanol, they would also displace GHG emissions otherwise resulting from use of those alternate fuels].) For example, propane barbeques produce only one-third of the GHG emissions of charcoal barbeques (*id.* at p. 226), and natural gas is similarly a much cleaner burning fuel than charcoal, wood or gasoline. Moreover, the increased use of diesel, gasoline, and/or propane generators may also give rise to air quality and/or GHG impacts that are completely unanalyzed in the Staff Report.

- **Population and Housing/Human Impacts.** Projects that would displace substantial numbers of people or housing, or render housing unaffordable, may have significant adverse impacts on the environment and human beings that require CEQA analysis and mitigation. (See CEQA Guidelines, Appdx. G, Section XIV.) To the extent an all-electric reach code could, for example, substantially increase the cost of new multi-family apartment dwelling construction and/or retrofitting, it could lead to increased rents, unaffordable housing, and tenant displacement from the same, with resulting adverse human impacts. Alternatively, renters or home buyers may

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nterim_Lessons_From_California/links/004635277e83e0f755000000/A-River-Might-Run-Through-It-Again-Criteria-for-Consideration-of-Dam-Removal-and-Interim-Lessons-From-California.pdf.

[7] See http://www.klamathrenewal.org/.

prefer residences with traditional gas appliances and therefore show a greater propensity to move outside of the City and commute. Tenant displacement, in and of itself, has been recognized as a significant adverse environmental impact subject to CEQA analysis and mitigation. (*Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425 [holding CEQA mitigation measures designed to mitigate tenant displacement impacts of project, contained in a vesting tentative map, were enforceable and did not conflict with Ellis Act].) Public entities possess the power under existing law "to mitigate adverse impacts on displaced tenants." (*San Francisco Apartment Assn. v. City and County of San Francisco* (2016) 3 Cal.App.5th 463, 484, citing *Pieri v. City and County of San Francisco* (2006) 137 Cal.App.4th 886, 892; see Gov. Code, § 7060.1.) As explained by the *Lincoln Place* Court of Appeal, "CEQA... is made relevant... by the Ellis Act's explicit exceptions for a public agency's power to regulate, among other things,... the mitigation of adverse impacts on persons displaced by reason of the withdrawal of rental accommodations. *Such items are the common focus and byproducts of the CEQA process....*" (*Lincoln Place Tenants Assn., supra,* 155 Cal.App.4th at 451, emph. added.) Indeed, the Supreme Court has recently reaffirmed "that CEQA addresses human health and safety" and "that public health and safety are of great importance in the statutory scheme." (*California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 386, citations omitted.) CEQA's "express language... requires a finding of a "significant effect on the environment" ([Pub. Resources Code,] § 21083(b)(3)) whenever the "environmental effects of a project will cause substantial effects *on human beings*, either directly or indirectly."" (*Id.* at p. 386, emphasis in original.)

- **Land Use/Planning**. Given the foregoing, the Staff Report's complete lack of analysis of the consistency of the proposed ordinance with the City's General Plan is impermissible. While the City has discretion in interpreting and applying its General Plan, it cannot do so in a way that frustrates the purpose of the General Plan. (*Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342, 378-381.) The absence of any analysis in the Staff Report is fatal to the ordinance. Accordingly, further analysis of this issue is required.

IV. CONCLUSION

While Mr. Gallaher reserves all rights to submit further comments, arguments, and evidence, it is evident for the reasons set forth above that (1) the City cannot lawfully make the findings required to enact the proposed reach code ordinance,

and (2) a full and robust EIR that complies with CEQA must be prepared and certified before any ordinance adopting an all-electric reach code can be considered by the City for approval.

Very truly yours,

MILLER STARR REGALIA

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