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Objection to Reach Code Approval - Part 7 of 10 pdf

Letter to California Energy Commission with attachments re City of Santa Rosa Ordinance No. 2019-019.
Part 7 of 10- .pdf

Additional submitted attachment is included below.

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Town of Windsor Town Council
Town Civic Center
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September 18, 2019

Re: Town Ordinance Adopting All-Electric Reach Code – Second Reading before the City Council (9.18.19)

Dear Town Council:

I am again writing to express our concerns that the Town of Windsor's implementation of an All-Electric code will result in significant unstudied and unmitigated negative impacts to the environment, result in added threats to the health and safety of the community, and will have substantial negative impacts to the economic viability of constructing new homes which will further exacerbate the current housing crisis. As with our previous letter dated September 4, 2019, please include this correspondence (including the attached April 2019 study) in the administrative record for this matter.

Accordingly, we do not agree with the Town's position that the ordinance is exempt under Section 15308 of the CEQA Guidelines and requires further review and study. Moreover, we note the Town's cursory attempt in the staff report for this evening's Council hearing to address the CEQA concerns raised during this process does not substantively respond to these significant issues. To the contrary, the Town's continued insistence on exempting the All-Electric Code from consideration of potential environmental impacts under CEQA impairs its fundamental purpose of facilitating thoughtful decision making after full disclosure of such impacts.

Furthermore, *approval of the All-Electric Reach Code may have significant negative financial impacts to the Town as it is apparent that many individuals and companies within the real estate development community will oppose its implementation, and thus the Town is at risk of substantial potential legal exposure and all costs associated therewith*. *These significant, negative financial impacts can be avoided if the Town would not proceed at this time with adopting the All-Electric Code and instead work collaboratively with the relevant stakeholders (including developers and the broader community) to design alternative solutions* that can achieve the Town's goals with respect to energy efficiency, GHG reduction and climate change adaptation without substantially impacting the development communities ability to construct new homes for future Windsor families.

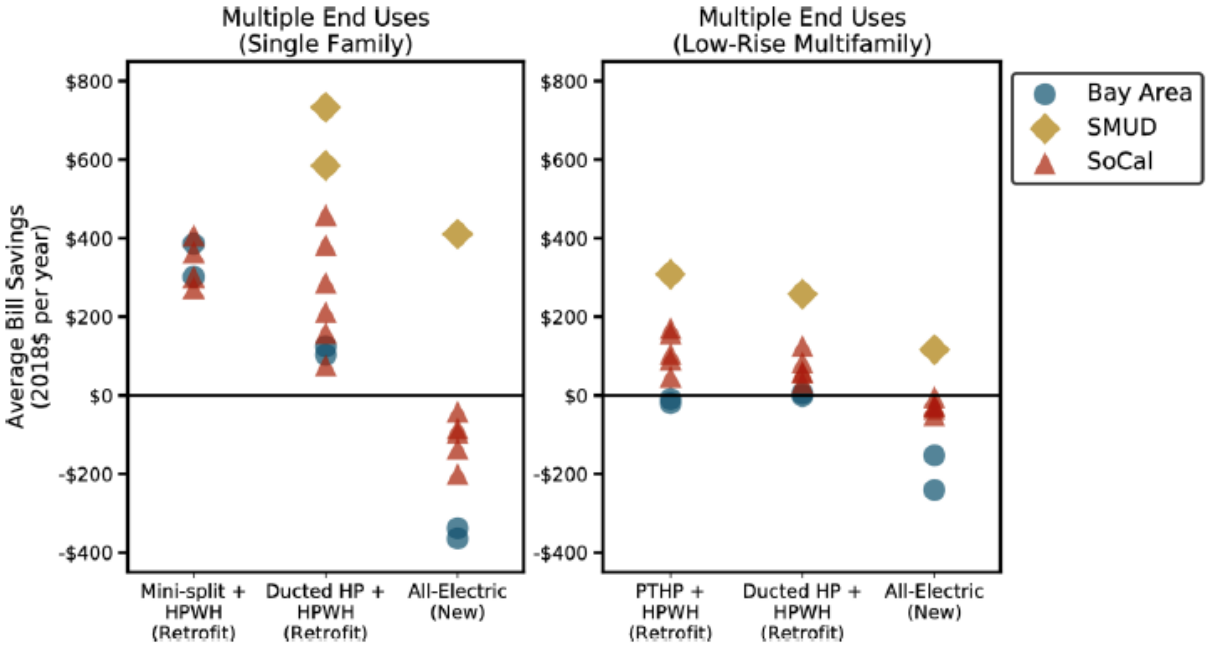
Finally, we would like to again point out that *Frontier Energy, Inc.'s ("Frontier) findings contained within the "2019 Cost-effectiveness Study: Low-Rise residential New Construction" (the "July 2019 Study"), which the Town had relied on to justify the all-electric code as "cost effective", appear to be contradicted within*

a study on that can be found on Frontier's website entitled "Residential Building Electrification in California" and dated April 2019 (the "April 2019 Study"; Attachment 1).

Although, the July 2019 Study indicated a cost savings with respect to consumer bills and lifecycle costs, the April 2019 Study clearly shows an increase in costs for "Bay Area" consumers purchasing new homes (see tables below).

"Residential Building Electrification in California" (April 2019)

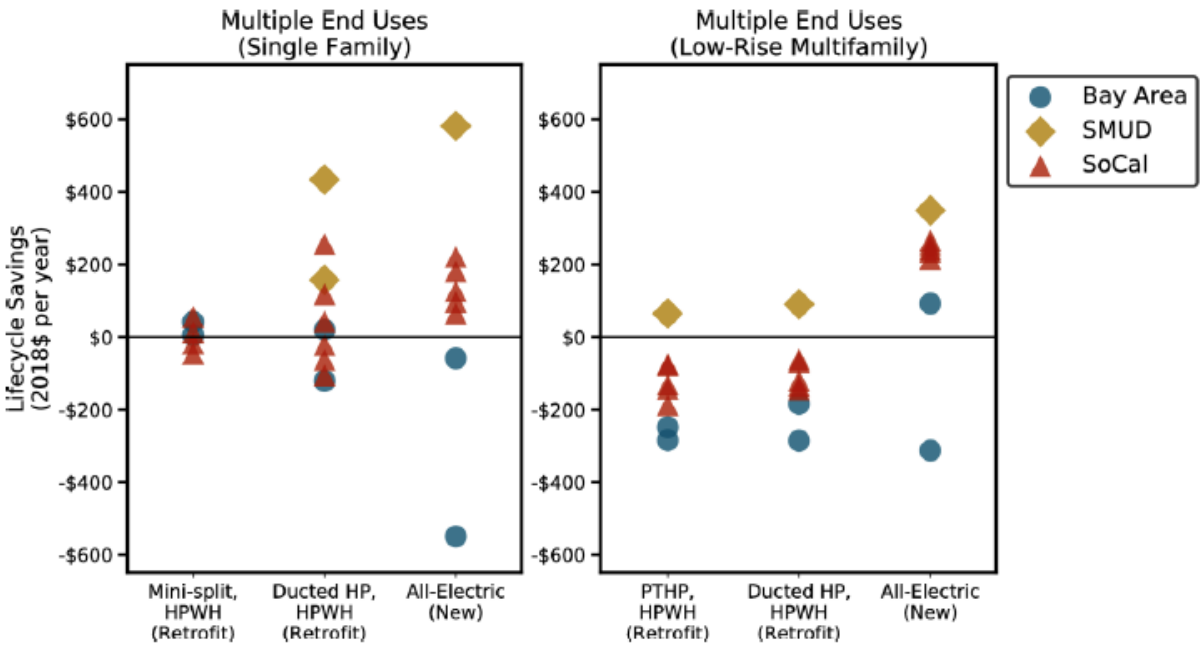
Figure 3-19. Average consumer bill impacts of electrifying multiple end uses, electric rate sensitivity



The multiple data points for each color represent the different climate zones in each area. Colors of the dots show the location of the modeled homes: the San Francisco Bay Area including CZ03 and CZ04 (Bay Area), Sacramento including CZ12 (SMUD), and Southern California including CZ06, CZ09 and CZ10 (SoCal). Savings are relative to gas end uses. For retrofit homes, bill impacts reflect electrifying both HVAC and water heating systems. For new construction homes, bill impacts of electrifying an entire home are shown including electric air source heat pump, heat pump water heater, cookstove and clothes dryer.

"Residential Building Electrification in California" (April 2019)

Figure 3-28. Lifecycle savings of electrifying multiple end uses, electric rate sensitivity



The multiple data points for each color represent the different climate zones in each area. Colors of the dots show the location of the modeled homes: the San Francisco Bay Area including CZ03 and CZ04 (Bay Area), Sacramento including CZ12 (SMUD), and Southern California including CZ06, CZ09 and CZ10 (SoCal). Electrification of HVAC and water heating only is assumed for retrofit homes, and electrification of all end uses is assumed for new construction homes. Savings are relative to gas alternatives. Single family new construction homes have electric induction stoves and electric heat pump clothes dryers in addition to HVAC heat pumps and HPWHs. LRMF new construction homes have electric resistance cookstoves and electric resistance clothes dryers in addition to HVAC heat pumps and HPWHs. Positive values represent savings in both capital and operating costs throughout the lifetime of all appliances over the gas counterpart; negative values indicate lifecycle costs. Heat pump technologies here are the same as modeled for individual appliances above. The new construction blue dot (Bay Area) is an outlier here because in the gas baseline there is no air conditioning assumed.

Further, Frontier also states in the April 2019 study that:

"PG&E's electric rates are assumed to increase faster than the natural gas rates due to wildfire risk and liability, while SCE's, SMUD and LADWP's rates are assumed to increase at the same pace at the gas utility in their service territory."

However, the July 2019 Study assumed a "Statewide Electric Residential Average Rate" of 2% per year from 2020 to 2025 and 1% thereafter. It appears that Frontier used a lower rate escalation in their July 2019 Study versus their own, publicly available April 2019 Study. Therefore, we believe the positive cost benefits of the implementation of an all-electric code in Windsor are misstated.

"2019 Cost-effectiveness Study: Low-rise Residential Construction" (July 17, 2019)

Table 24: Real Utility Rate Escalation Rate Assumptions

	Statewide Electric Residential Average Rate (%/year, real)	Natural Gas Residential Core Rate (%/yr escalation, real)		
		PG&E	SoCalGas	SDG&E
2020	2.0%	1.48%	6.37%	5.00%
2021	2.0%	5.69%	4.12%	3.14%
2022	2.0%	1.11%	4.12%	2.94%
2023	2.0%	4.0%	4.0%	4.0%
2024	2.0%	4.0%	4.0%	4.0%
2025	2.0%	4.0%	4.0%	4.0%
2026	1.0%	1.0%	1.0%	1.0%
2027	1.0%	1.0%	1.0%	1.0%
2028	1.0%	1.0%	1.0%	1.0%
2029	1.0%	1.0%	1.0%	1.0%
2030	1.0%	1.0%	1.0%	1.0%
2031	1.0%	1.0%	1.0%	1.0%

In closing, in addition to the above concerns, we reiterate our concerns expressed in our previous letter dated August 21, 2019 (Attachment 2), and we are also in agreement with the letter from Miller Starr Regalia in re: Proposal by Town of Windsor to Adopt All-Electric Residential Reach Code/Natural Gas Ban dated September 4, 2019 (Attachment 3).

Respectfully, we request that the City Council not adopt the Ordinance approving the All-Electric Code and instead work collaboratively with the relevant stakeholders to develop alternative means to achieve the common goals of reducing emissions and related environmental impacts without sacrificing critically-needed housing stock. At the very least, the City Council must evaluate and disclose all potentially significant environmental impacts before moving forward with this action, as is its duty under CEQA and reflects its obligation to the community at large.

Regards,

Tom Micheletti

Attachment 1

Study: “Residential Building Electrification in California” dated April 2019

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September 4, 2019

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Re: Proposal by Town of Windsor to Adopt All-Electric Residential Reach Code/Natural Gas Ban

Dear Town 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 Town of Windsor ("Town").[1] Based on an Agenda Report prepared by Interim Town Manager Ken MacNab for the Town's April 17, 2019 Town Council meeting, the Town is exploring possible incorporation of all-electric reach code provisions into its 2019 California Building Code Update, assertedly in order to achieve energy and cost savings and reductions in local GHG emissions. The Town has also placed a proposed reach code ordinance on the Town Council agenda for the September 4, 2019 meeting (agenda item no. 10.1) with an accompanying staff report ("Staff Report").

We write to emphasize that the Town 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 July 17, 2019 ("Study"), which is insufficient to support the proposed findings in support of the ordinance.

Second, the Town 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

[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.

("EIR") that fully analyzes and discloses all of the project's potentially significant environmental impacts and potentially feasible mitigation measures and project alternatives that could reduce such impacts to a less-than-significant level.

The April 17 Agenda Report acknowledges that "[f]uture actions related to the potential adoption of an all-electric reach code will be subject to Environmental Review, at which time the appropriate environmental documents, prepared in accordance with the requirements of the California Environmental Quality Act (CEQA), will be presented to the Council for consideration prior to any action being taken." (April 17 Agenda Report, p. 3.) The Staff Report for the September 4 meeting then concludes that the ordinance is exempt from CEQA review under section 15061 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

As the Staff Report recognizes, the requirements of section 10-106 of the state Building Energy Efficiency standards include the mandate that the Town 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 was only provided to the public on August 29, 2019, less than a week before the ordinance goes before you for a decision. This does not allow for informed comment by the public or informed decisionmaking by the Town Council. It is manifestly unfair to provide the public and interested stakeholders less than one week to read, digest, and comment upon a technical document such as the Study. Basic fairness requires the Town 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 Town 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 Town, 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. <u>The Proposed Project Is Not Exempt</u>.

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 two CEQA exemptions – the so-called "common sense" exemption, and the class 8 exemption for actions that are protective of the environment. Neither applies 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.)

"[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 8 exemption under section 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.

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

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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.)

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 Town 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.)

Finally, note also in this context that section 10-106 of the Building Energy Efficiency Standards upon which the Town 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.

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 Town 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 Town must prepare an EIR. (*Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 380-381.) The Town'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 Town 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, the "unprecedented" planned power outages are

[3] See https://www.pressdemocrat.com/news/9898428-181/pge-map-sheds-light-on.

expected to "cover all of Cloverdale, Cotati, Healdsburg, Sebastopol and Windsor" and 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 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. Instead, the Staff Report claims, without supporting evidence, that "natural gas infrastructure is a potentially significant source of fire." (Staff Report, p. 4.) Suffice it to say the Town cannot accuse natural gas of providing a wildfire risk without supporting evidence while ignoring the fact that electricity lines gave rise to the most lethal California wildfire ever less than a year ago.

- **Utilities/Service Systems/Wildfire.** The CEQA Guidelines Appendix G checklist – a template for the initial study the Town 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,

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