



MT. DIABLO UNIFIED SCHOOL DISTRICT
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Dr. Lisa Gonzales
Chief Business Officer

To: City of Pittsburg
From: Dr. Lisa Gonzales, Chief Business Officer
Re: EIR for Harbor View Project
Date: August 22, 2022

This memo is in response to the proposed EIR for the Harbor View Project in Pittsburg, and this response is on behalf of the Mt Diablo Unified School District (MDUSD).

Leaders in MDUSD have notable concerns about housing that will create increased need for student housing/seats in the form of schools. MDUSD does not have capacity for additional students at this time in its current school sites, and the growth in Pittsburg cannot be accommodated in current schools, particularly elementary schools.

Any additional housing will result in significant financial and substantial adverse physical hardships for the Mt. Diablo Unified School District.

Any approval of EIR's will need to address the concerns, as well as be subject to mitigation agreements with Mt. Diablo Unified. The agreements will need to be resolved and funded prior to permitting in order for the school district to get ahead of the necessary student housing that will need to be built prior to students moving into the proposed homes. The City/developers will need to satisfy the financial burden created with new housing. We are currently in the process of completing a new Developer Fee Study that should be ready in the next month after drafts and public hearings. I will ensure you receive that information once it has been completed and updated.

Please reach out if you have any other questions or need more information as you move forward in the development of the Harbor View EIR.

cc. Dr. Adam Clark, Superintendent
Melanie Koslow, Director of Maintenance & Operations
Esau Joya, Davis Demographics



September 9, 2022

Kelsey Gunter
City of Pittsburg
65 Civic Ave
Pittsburg, CA 94565

Ref: Gas and Electric Transmission and Distribution

Dear Kelsey Gunter,

Thank you for submitting the Harbor View Project plans for our review. PG&E will review the submitted plans in relationship to any existing Gas and Electric facilities within the project area. If the proposed project is adjacent/or within PG&E owned property and/or easements, we will be working with you to ensure compatible uses and activities near our facilities.

Attached you will find information and requirements as it relates to Gas facilities (Attachment 1) and Electric facilities (Attachment 2). Please review these in detail, as it is critical to ensure your safety and to protect PG&E's facilities and its existing rights.

Below is additional information for your review:

1. This plan review process does not replace the application process for PG&E gas or electric service your project may require. For these requests, please continue to work with PG&E Service Planning: https://www.pge.com/en_US/business/services/building-and-renovation/overview/overview.page.
2. If the project being submitted is part of a larger project, please include the entire scope of your project, and not just a portion of it. PG&E's facilities are to be incorporated within any CEQA document. PG&E needs to verify that the CEQA document will identify any required future PG&E services.
3. An engineering deposit may be required to review plans for a project depending on the size, scope, and location of the project and as it relates to any rearrangement or new installation of PG&E facilities.

Any proposed uses within the PG&E fee strip and/or easement, may include a California Public Utility Commission (CPUC) Section 851 filing. This requires the CPUC to render approval for a conveyance of rights for specific uses on PG&E's fee strip or easement. PG&E will advise if the necessity to incorporate a CPUC Section 851 filing is required.

This letter does not constitute PG&E's consent to use any portion of its easement for any purpose not previously conveyed. PG&E will provide a project specific response as required.

Sincerely,

Plan Review Team
Land Management

Attachment 1 – Gas Facilities

There could be gas transmission pipelines in this area which would be considered critical facilities for PG&E and a high priority subsurface installation under California law. Care must be taken to ensure safety and accessibility. So, please ensure that if PG&E approves work near gas transmission pipelines it is done in adherence with the below stipulations. Additionally, the following link provides additional information regarding legal requirements under California excavation laws: <https://www.usanorth811.org/images/pdfs/CA-LAW-2018.pdf>

1. **Standby Inspection:** A PG&E Gas Transmission Standby Inspector must be present during any demolition or construction activity that comes within 10 feet of the gas pipeline. This includes all grading, trenching, substructure depth verifications (potholes), asphalt or concrete demolition/removal, removal of trees, signs, light poles, etc. This inspection can be coordinated through the Underground Service Alert (USA) service at 811. A minimum notice of 48 hours is required. Ensure the USA markings and notifications are maintained throughout the duration of your work.
2. **Access:** At any time, PG&E may need to access, excavate, and perform work on the gas pipeline. Any construction equipment, materials, or spoils may need to be removed upon notice. Any temporary construction fencing installed within PG&E's easement would also need to be capable of being removed at any time upon notice. Any plans to cut temporary slopes exceeding a 1:4 grade within 10 feet of a gas transmission pipeline need to be approved by PG&E Pipeline Services in writing PRIOR to performing the work.
3. **Wheel Loads:** To prevent damage to the buried gas pipeline, there are weight limits that must be enforced whenever any equipment gets within 10 feet of traversing the pipe.

Ensure a list of the axle weights of all equipment being used is available for PG&E's Standby Inspector. To confirm the depth of cover, the pipeline may need to be potholed by hand in a few areas.

Due to the complex variability of tracked equipment, vibratory compaction equipment, and cranes, PG&E must evaluate those items on a case-by-case basis prior to use over the gas pipeline (provide a list of any proposed equipment of this type noting model numbers and specific attachments).

No equipment may be set up over the gas pipeline while operating. Ensure crane outriggers are at least 10 feet from the centerline of the gas pipeline. Transport trucks must not be parked over the gas pipeline while being loaded or unloaded.

4. **Grading:** PG&E requires a minimum of 36 inches of cover over gas pipelines (or existing grade if less) and a maximum of 7 feet of cover at all locations. The graded surface cannot exceed a cross slope of 1:4.
5. **Excavating:** Any digging within 2 feet of a gas pipeline must be dug by hand. Note that while the minimum clearance is only 12 inches, any excavation work within 24 inches of the edge of a pipeline must be done with hand tools. So to avoid having to dig a trench entirely with hand tools, the edge of the trench must be over 24 inches away. (Doing the math for a 24 inch



wide trench being dug along a 36 inch pipeline, the centerline of the trench would need to be at least 54 inches [$24/2 + 24 + 36/2 = 54$] away, or be entirely dug by hand.)

Water jetting to assist vacuum excavating must be limited to 1000 psig and directed at a 40° angle to the pipe. All pile driving must be kept a minimum of 3 feet away.

Any plans to expose and support a PG&E gas transmission pipeline across an open excavation need to be approved by PG&E Pipeline Services in writing PRIOR to performing the work.

6. Boring/Trenchless Installations: PG&E Pipeline Services must review and approve all plans to bore across or parallel to (within 10 feet) a gas transmission pipeline. There are stringent criteria to pothole the gas transmission facility at regular intervals for all parallel bore installations.

For bore paths that cross gas transmission pipelines perpendicularly, the pipeline must be potholed a minimum of 2 feet in the horizontal direction of the bore path and a minimum of 12 inches in the vertical direction from the bottom of the pipe with minimum clearances measured from the edge of the pipe in both directions. Standby personnel must watch the locator trace (and every ream pass) the path of the bore as it approaches the pipeline and visually monitor the pothole (with the exposed transmission pipe) as the bore traverses the pipeline to ensure adequate clearance with the pipeline. The pothole width must account for the inaccuracy of the locating equipment.

7. Substructures: All utility crossings of a gas pipeline should be made as close to perpendicular as feasible ($90^\circ \pm 15^\circ$). All utility lines crossing the gas pipeline must have a minimum of 12 inches of separation from the gas pipeline. Parallel utilities, pole bases, water line 'kicker blocks', storm drain inlets, water meters, valves, back pressure devices or other utility substructures are not allowed in the PG&E gas pipeline easement.

If previously retired PG&E facilities are in conflict with proposed substructures, PG&E must verify they are safe prior to removal. This includes verification testing of the contents of the facilities, as well as environmental testing of the coating and internal surfaces. Timelines for PG&E completion of this verification will vary depending on the type and location of facilities in conflict.

8. Structures: No structures are to be built within the PG&E gas pipeline easement. This includes buildings, retaining walls, fences, decks, patios, carports, septic tanks, storage sheds, tanks, loading ramps, or any structure that could limit PG&E's ability to access its facilities.

9. Fencing: Permanent fencing is not allowed within PG&E easements except for perpendicular crossings which must include a 16 foot wide gate for vehicular access. Gates will be secured with PG&E corporation locks.

10. Landscaping: Landscaping must be designed to allow PG&E to access the pipeline for maintenance and not interfere with pipeline coatings or other cathodic protection systems. No trees, shrubs, brush, vines, and other vegetation may be planted within the easement area. Only those plants, ground covers, grasses, flowers, and low-growing plants that grow unsupported to a maximum of four feet (4') in height at maturity may be planted within the easement area.



11. Cathodic Protection: PG&E pipelines are protected from corrosion with an “Impressed Current” cathodic protection system. Any proposed facilities, such as metal conduit, pipes, service lines, ground rods, anodes, wires, etc. that might affect the pipeline cathodic protection system must be reviewed and approved by PG&E Corrosion Engineering.

12. Pipeline Marker Signs: PG&E needs to maintain pipeline marker signs for gas transmission pipelines in order to ensure public awareness of the presence of the pipelines. With prior written approval from PG&E Pipeline Services, an existing PG&E pipeline marker sign that is in direct conflict with proposed developments may be temporarily relocated to accommodate construction work. The pipeline marker must be moved back once construction is complete.

13. PG&E is also the provider of distribution facilities throughout many of the areas within the state of California. Therefore, any plans that impact PG&E’s facilities must be reviewed and approved by PG&E to ensure that no impact occurs which may endanger the safe operation of its facilities.

Attachment 2 – Electric Facilities

It is PG&E's policy to permit certain uses on a case by case basis within its electric transmission fee strip(s) and/or easement(s) provided such uses and manner in which they are exercised, will not interfere with PG&E's rights or endanger its facilities. Some examples/restrictions are as follows:

1. Buildings and Other Structures: No buildings or other structures including the foot print and eave of any buildings, swimming pools, wells or similar structures will be permitted within fee strip(s) and/or easement(s) areas. PG&E's transmission easement shall be designated on subdivision/parcel maps as **"RESTRICTED USE AREA – NO BUILDING."**
2. Grading: Cuts, trenches or excavations may not be made within 25 feet of our towers. Developers must submit grading plans and site development plans (including geotechnical reports if applicable), signed and dated, for PG&E's review. PG&E engineers must review grade changes in the vicinity of our towers. No fills will be allowed which would impair ground-to-conductor clearances. Towers shall not be left on mounds without adequate road access to base of tower or structure.
3. Fences: Walls, fences, and other structures must be installed at locations that do not affect the safe operation of PG&E's facilities. Heavy equipment access to our facilities must be maintained at all times. Metal fences are to be grounded to PG&E specifications. No wall, fence or other like structure is to be installed within 10 feet of tower footings and unrestricted access must be maintained from a tower structure to the nearest street. Walls, fences and other structures proposed along or within the fee strip(s) and/or easement(s) will require PG&E review; submit plans to PG&E Centralized Review Team for review and comment.
4. Landscaping: Vegetation may be allowed; subject to review of plans. On overhead electric transmission fee strip(s) and/or easement(s), trees and shrubs are limited to those varieties that do not exceed 10 feet in height at maturity. PG&E must have access to its facilities at all times, including access by heavy equipment. No planting is to occur within the footprint of the tower legs. Greenbelts are encouraged.
5. Reservoirs, Sumps, Drainage Basins, and Ponds: Prohibited within PG&E's fee strip(s) and/or easement(s) for electric transmission lines.
6. Automobile Parking: Short term parking of movable passenger vehicles and light trucks (pickups, vans, etc.) is allowed. The lighting within these parking areas will need to be reviewed by PG&E; approval will be on a case by case basis. Heavy equipment access to PG&E facilities is to be maintained at all times. Parking is to clear PG&E structures by at least 10 feet. Protection of PG&E facilities from vehicular traffic is to be provided at developer's expense AND to PG&E specifications. Blocked-up vehicles are not allowed. Carports, canopies, or awnings are not allowed.
7. Storage of Flammable, Explosive or Corrosive Materials: There shall be no storage of fuel or combustibles and no fueling of vehicles within PG&E's easement. No trash bins or incinerators are allowed.



8. Streets and Roads: Access to facilities must be maintained at all times. Street lights may be allowed in the fee strip(s) and/or easement(s) but in all cases must be reviewed by PG&E for proper clearance. Roads and utilities should cross the transmission easement as nearly at right angles as possible. Road intersections will not be allowed within the transmission easement.

9. Pipelines: Pipelines may be allowed provided crossings are held to a minimum and to be as nearly perpendicular as possible. Pipelines within 25 feet of PG&E structures require review by PG&E. Sprinklers systems may be allowed; subject to review. Leach fields and septic tanks are not allowed. Construction plans must be submitted to PG&E for review and approval prior to the commencement of any construction.

10. Signs: Signs are not allowed except in rare cases subject to individual review by PG&E.

11. Recreation Areas: Playgrounds, parks, tennis courts, basketball courts, barbecue and light trucks (pickups, vans, etc.) may be allowed; subject to review of plans. Heavy equipment access to PG&E facilities is to be maintained at all times. Parking is to clear PG&E structures by at least 10 feet. Protection of PG&E facilities from vehicular traffic is to be provided at developer's expense AND to PG&E specifications.

12. Construction Activity: Since construction activity will take place near PG&E's overhead electric lines, please be advised it is the contractor's responsibility to be aware of, and observe the minimum clearances for both workers and equipment operating near high voltage electric lines set out in the High-Voltage Electrical Safety Orders of the California Division of Industrial Safety (<https://www.dir.ca.gov/Title8/sb5g2.html>), as well as any other safety regulations. Contractors shall comply with California Public Utilities Commission General Order 95 (http://www.cpuc.ca.gov/gos/GO95/go_95_startup_page.html) and all other safety rules. No construction may occur within 25 feet of PG&E's towers. All excavation activities may only commence after 811 protocols has been followed.

Contractor shall ensure the protection of PG&E's towers and poles from vehicular damage by (installing protective barriers) Plans for protection barriers must be approved by PG&E prior to construction.

13. PG&E is also the owner of distribution facilities throughout many of the areas within the state of California. Therefore, any plans that impact PG&E's facilities must be reviewed and approved by PG&E to ensure that no impact occurs that may endanger the safe and reliable operation of its facilities.

NATIVE AMERICAN HERITAGE COMMISSION

August 24, 2022

Governor's Office of Planning & Research

Kelsey Gunter, Assistant Planner
City of Pittsburg, Planning Department
65 Civic Avenue
Pittsburg, CA 94565

Aug 26 2022

STATE CLEARINGHOUSE

Re: 2022080303, Harbor View Project, Contra Costa County

Dear Ms. Gunter:

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, §15064.5 (b) (CEQA Guidelines §15064.5 (b))). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines §15064 (a)(1))). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.



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AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

- 1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project:** Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:

 - a.** A brief description of the project.
 - b.** The lead agency contact information.
 - c.** Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
 - d.** A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).
- 2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report:** A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subs. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1 (b)).

 - a.** For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).
- 3. Mandatory Topics of Consultation If Requested by a Tribe:** The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:

 - a.** Alternatives to the project.
 - b.** Recommended mitigation measures.
 - c.** Significant effects. (Pub. Resources Code §21080.3.2 (a)).
- 4. Discretionary Topics of Consultation:** The following topics are discretionary topics of consultation:

 - a.** Type of environmental review necessary.
 - b.** Significance of the tribal cultural resources.
 - c.** Significance of the project's impacts on tribal cultural resources.
 - d.** If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).
- 5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process:** With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).
- 6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document:** If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:

 - a.** Whether the proposed project has a significant impact on an identified tribal cultural resource.
 - b.** Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

- 7. Conclusion of Consultation:** Consultation with a tribe shall be considered concluded when either of the following occurs:
- a.** The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
 - b.** A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).
- 8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document:** Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).
- 9. Required Consideration of Feasible Mitigation:** If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).
- 10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:**
- a.** Avoidance and preservation of the resources in place, including, but not limited to:
 - i.** Planning and construction to avoid the resources and protect the cultural and natural context.
 - ii.** Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
 - b.** Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
 - i.** Protecting the cultural character and integrity of the resource.
 - ii.** Protecting the traditional use of the resource.
 - iii.** Protecting the confidentiality of the resource.
 - c.** Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
 - d.** Protecting the resource. (Pub. Resource Code §21084.3 (b)).
 - e.** Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
 - f.** Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).
- 11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource:** An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:
- a.** The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
 - b.** The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
 - c.** The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf

SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf.

Some of SB 18's provisions include:

1. **Tribal Consultation**: If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code §65352.3 (a)(2)).
2. **No Statutory Time Limit on SB 18 Tribal Consultation**. There is no statutory time limit on SB 18 tribal consultation.
3. **Confidentiality**: Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).
4. **Conclusion of SB 18 Tribal Consultation**: Consultation should be concluded at the point in which:
 - a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
 - b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>.

NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center (https://ohp.parks.ca.gov/?page_id=30331) for an archaeological records search. The records search will determine:
 - a. If part or all of the APE has been previously surveyed for cultural resources.
 - b. If any known cultural resources have already been recorded on or adjacent to the APE.
 - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
 - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
 - a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
 - b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

3. Contact the NAHC for:
 - a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
 - b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.

4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.
 - a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, §15064.5(f) (CEQA Guidelines §15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
 - b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
 - c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code §7050.5, Public Resources Code §5097.98, and Cal. Code Regs., tit. 14, §15064.5, subdivisions (d) and (e) (CEQA Guidelines §15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email address:
Cody.Campagne@nahc.ca.gov.

Sincerely,



Cody Campagne
Cultural Resources Analyst

cc: State Clearinghouse



Via Electronic Mail

September 1, 2022

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Re: Earthjustice Comments on the Notice of Preparation of a Draft Environmental Impact Report for the Harbor View Project

Earthjustice appreciates the opportunity to comment on the Notice of Preparation of a Draft Environmental Impact Report (“DEIR”) for the Harbor View Project (“Project”), which contemplates construction of 20 mixed-use residential/commercial duplexes and 207 single-family homes that would be connected to the gas system. Our initial comments focus on the importance of incorporating building electrification requirements into the Project. New construction that relies on burning gas for end uses such as cooking and space and water heating has significant greenhouse gas (“GHG”), energy, and health impacts under the California Environmental Quality Act (“CEQA”). All-electric buildings avoid these impacts. Moreover, all-electric buildings are typically less costly to due to avoided costs of gas infrastructure. With the California Public Utilities Commission (“CPUC”) now ending subsidies for gas lines to new development, cost savings from all-electric construction will further increase. Accordingly, to comply with CEQA’s obligation to adopt all feasible mitigation to reduce significant environmental impacts, the City must require an all-electric Project design that is not connected to the gas system.

I. Projects Connecting to the Gas System Have Significant GHG, Energy and Public Health Impacts.

A. The GHG Impacts of Projects Connecting to the Gas System Are Significant.

CEQA requires a DEIR to identify all the significant impacts of a proposed project, including impacts from the project’s GHG emissions.¹ One option to determine the significance of the Project’s GHG impacts is to apply a net-zero emissions threshold. In addition to being CEQA-compliant, a net-zero threshold is also consistent with the severity of the climate crisis and the recognition that any increase in GHG emissions exacerbates the cumulative impacts of climate change.

¹ CEQA Guidelines § 15126.2; Appendix F.

Another option is to apply the approach recently adopted by the Bay Area Quality Management District (“BAAQMD”). In determining the significance of project impacts, a lead agency “must ensure that CEQA analysis stays in step with evolving scientific knowledge and state regulatory schemes.” *Cleveland National Forest Foundation v. San Diego Assn. of Gov’ts* (2017) 3 Cal.5th 497, 519. To stay in step with evolving scientific knowledge and state policy, the Bay Area Quality Management District (“BAAQMD”) updated its previous CEQA GHG guidance for buildings this year to require all new projects to be built without natural gas and with no inefficient or wasteful energy usage in order to receive a finding of no significant impact.² BAAQMD’s previous 1,100 MT GHG significance threshold was derived from Assembly Bill (“AB”) 32’s 2020 GHG reduction targets, but did not reflect later developments, such as Senate Bill (“SB”) 32’s requirement to reduce GHGs to 40 percent below 1990 levels by 2030, nor Executive Order B-55-18’s requirement to achieve carbon neutrality by 2045.³ As BAAQMD properly noted in its justifications for its updated GHG threshold, “[f]or California to successfully eliminate natural gas usage by 2045, it will need to focus available resources on retrofitting existing natural gas infrastructure. This task will become virtually impossible if we continue to build more natural gas infrastructure that will also need to be retrofit within the next few years.”⁴

Even outside of BAAQMD’s jurisdiction, the analysis supporting its zero-gas threshold provides substantial evidence to support an EIR’s finding of significance, particularly where, as here, GHGs are a globally dispersed pollutant. Indeed, state agencies have made similar findings regarding the incompatibility of gas in new construction with achievement of state climate requirements. As the California Energy Commission (“CEC”) determined in its 2018 Integrated Energy Policy Report (“IEPR”) Update:

New construction projects, retrofitting existing buildings, and replacing appliances and other energy-consuming equipment essentially lock in energy system infrastructure for many years. As a result, each new opportunity for truly impactful investment in energy efficiency and fuel choice is precious. If the decisions made for new buildings result in new and continued fossil fuel use, it will be that much more difficult for California to meet its GHG emission reduction goals. Parties planning new construction have

² See BAAQMD, *Justification Report: CEQA Thresholds for Evaluating the Significance of Climate Impacts from Land Use Projects and Plans*, at 11 (Apr. 2022) (“BAAQMD 2022 Update”), <https://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa-thresholds-2022/justification-report-pdf.pdf?la=en>.

³ See BAAQMD, *CEQA Guidelines Update, Proposed Thresholds of Significance* at 10-22 (Dec 7, 2009), <http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/proposed-thresholds-of-significance-dec-7-09.pdf?la=en> (explaining methodology for previous project-level GHG threshold).

⁴ Justification Report at 12.

the opportunity instead to lock in a zero- or low-carbon emission outcome that will persist for decades.⁵

Consistent with the CEC’s findings, the California Public Utilities Commission (“CPUC”) recently issued a Proposed Decision that would end gas line extension allowances, finding that “gas line subsidies encourage gas use by providing incentives to builders to install more gas appliances, perpetuating a continued reliance on the gas system both now and over the life of the appliance, and offsetting if not reversing any GHG emission reduction benefits secured through other decarbonization measures.”⁶ Accordingly, the CPUC found, subsidies for these new gas connections “work against today’s climate goals and conflict[] with SB 32 and 1477.”⁷ This reflects the growing consensus that aggressive electrification will be needed to achieve the state’s climate goals. Indeed, the 2022 Title 24 update already requires heat pumps as a baseline for either space or water heating in single-family homes, as well as a heat pump space heating standard for new multi-family homes and businesses.⁸ In addition, any new mixed-fuel single-family homes must already be electric-ready so they can “easily convert from natural gas to electric in the future.”⁹

Earthjustice strongly cautions against using approaches to determine the significance of Project GHG impacts that involve comparisons against “business-as-usual” emissions or a per capita emissions metric. In *Center for Biological Diversity v. Cal. Dept of Fish & Wildlife* (2015) 62 Cal.4th 204, the California Supreme Court held that determining the significance of project GHG impacts by comparing project emissions with emissions under a business-as-usual scenario derived from statewide emissions reduction goals under AB 32 lacked substantial evidence. For similar reasons, use of statewide per capita emissions metrics to determine the significance of project emissions has also been rejected for the purpose of determining project GHG impacts under CEQA. As the court held in *Golden Door Properties LLC*, “using a statewide criterion requires substantial evidence and reasoned explanation to close the analytical gap left by the assumption that the ‘level of effort required in one [statewide] context . . . will suffice in the other, a specific land use development.’” *Golden Door Properties LLC v. County of San Diego* (2018) 27 Cal.App.5th 892, 904 (quoting *Center for Biological Diversity*, 62 Cal.4th at 227). While use of a statewide per capita metric to determine the significance of GHG impacts may be useful for a General Plan, which examines collective community emissions of

⁵ CEC, *2018 Integrated Energy Policy Report Update, Vol. II* at 18 (Jan. 2019) (“2018 IEPR Update”), <https://efiling.energy.ca.gov/getdocument.aspx?tn=226392>

⁶ R. 19-01-011, Phase III Decision Eliminating Gas Line Extension Allowances, Ten-Year Refundable Payment Option, and Fifty Percent Discount Payment Option Under Gas Line Extension Rules, at 27 (Aug. 8, 2022), <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M496/K415/496415627.PDF>.

⁷ *Id.*

⁸ See CEC, 2022 Building Energy Efficiency Standards Summary, at 9 (Aug. 2021), https://www.energy.ca.gov/sites/default/files/2021-08/CEC_2022_EnergyCodeUpdateSummary_ADA.pdf.

⁹ *Id.*

existing and proposed new development, it is not appropriate for projects that only govern new development.

B. The Energy Impacts of Projects Connecting to the Gas System are Significant.

A key purpose of the evaluation of project energy impacts under CEQA is “decreasing reliance on fossil fuels, such as coal, natural gas and oil.”¹⁰ Addressing energy impacts of proposed projects requires more than mere compliance with Title 24 Building Energy Efficiency Standards.¹¹ Including gas hook-ups in new projects, and thereby perpetuating reliance on fossil fuels, is contrary to California’s energy objectives and should be considered a significant impact under CEQA.

In addition to the lock-in effect discussed above and its perpetuation of reliance on fossil fuel infrastructure, gas appliances are also inherently wasteful because they are significantly less efficient than their electric alternatives. Heat pumps for space and water heating are substantially more efficient than their gas counterparts. Because heat pumps use electricity to move heat around rather than creating heat, their efficiency is far greater than 100 percent (energy services delivered are much greater than energy input). For example, gas water heaters advertised by Rheem, a major water heating manufacturer, have uniform efficiency factor (“UEF”) of 0.58 – 0.83.¹² In contrast, Rheem’s heat pump water heaters have UEFs between 3.7 and 4.0, making them roughly four to seven times more efficient than gas alternatives.¹³ As recognized by the CEC, “[u]sing heat pumps for space and water heating, as well as other uses, is cost-effective in the long run simply because electrification technologies can be significantly more efficient than natural gas technologies.”¹⁴ Given the low inherent efficiencies of gas space and water heating as compared to heat pump options, homes that continue to rely on gas cannot be reasonably construed as “the wise and efficient use of energy” and therefore result in significant energy impacts under CEQA.

C. The Health/Air Quality Impacts of Projects Connecting to the Gas System are Significant.

CEQA also requires consideration of “health and safety problems” that may result from a project’s emissions.¹⁵ Indeed, Section III.(d) of Appendix G of the CEQA Guidelines

¹⁰ CEQA Guidelines, Appendix F, Sec. I.

¹¹ See *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 211.

¹² Rheem, *Gas Water Heaters*, https://www.rheem.com/products/residential/water-heating/tank/residential_gas/.

¹³ Rheem, *Professional Prestige Series ProTerra Hybrid Electric Water Heater with LeakGuard*, <https://www.rheem.com/group/rheem-hybrid-electric-water-heater-professional-prestige-series-hybrid-electric-water-heater>.

¹⁴ 2018 IEPR Update at 32.

¹⁵ CEQA Guidelines § 15126.2; see also *Sierra Club v. County of Fresno* (2018) 6 Cal. 5th 502, 520 (requiring an EIR to not only discuss air quality impacts and human health impacts separately, but to draw a connection between the two segments of information, to “meet CEQA’s requirements.”).

specifically asks a lead agency to evaluate if the project would “[e]xpose sensitive receptors to substantial pollutant concentrations.”¹⁶ The health and safety hazards of gas-burning appliances in buildings are well-documented by the California Air Resources Board (“CARB”), the CEC, and numerous peer-reviewed academic studies. In a Board-adopted resolution, CARB determined that that “cooking emissions, especially from gas stoves, are associated with increased respiratory disease.”¹⁷ Children in homes with gas stoves are particularly at risk. A meta-analysis examining the association between gas stoves and childhood asthma found that “children in homes with gas stoves have a 42 percent increased risk of experiencing asthma symptoms (current asthma)” and “a 24 percent increased risk of ever being diagnosed with asthma by a doctor (lifetime asthma).”¹⁸ Other health effects observed in children from exposure to nitrogen dioxide (“NO_x”), which is a byproduct of gas combustion, include cardiovascular effects, increased susceptibility to allergens and lung infections, irritated airways and other aggravated respiratory symptoms, and learning deficits.¹⁹ As found repeatedly by peer-reviewed studies, combustion of gas in household appliances produces harmful indoor air pollution, including carbon monoxide, nitric oxide and nitrogen dioxide, formaldehyde, acetaldehyde, and ultrafine particles, often in excess of the levels set out by the California Ambient Air Quality Standards and the National Ambient Air Quality Standards.²⁰ CARB has therefore recognized “the conclusion of recent studies that 100 percent electrification of natural gas appliances in

¹⁶ CEQA Guidelines, Appendix G, Sec. III(d).

¹⁷ CARB, *Combustion Pollutants & Indoor Air Quality*, <https://perma.cc/J6YH-VVZH> (as of March 30, 2022).

¹⁸ Brady Seals & Andee Krasner, *Gas Stoves: Health and Air Quality Impacts and Solutions*, Rocky Mountain Institute, Physicians for Social Responsibility, and Sierra Club, at 13 (2020), <https://rmi.org/insight/gas-stoves-pollution-health/>.

¹⁹ *Id.*

²⁰ See, e.g., Jennifer M. Logue et al., *Pollutant Exposures from Natural Gas Cooking Burners: A Simulation-Based Assessment for Southern California*, 122 *Env’t Health Perspectives* 43, 43–50 (2014), <http://dx.doi.org/10.1289/ehp.1306673> (modeling exposure rates for gas stove pollutants and finding that “62%, 9%, and 53% of occupants are routinely exposed to NO₂, CO, and HCHO levels that exceed acute health-based standards and guidelines” and that “reducing pollutant exposures from [gas stoves] should be a public health priority.”); John Manuel, *A Healthy Home Environment?*, 107 *Env’tl. Health Perspectives* 352, 352–57 (1999), <https://doi.org/10.1289/ehp.99107a352> (finding that gas furnaces and other gas appliances can be sources of unsafe indoor carbon monoxide concentrations); Nasim A. Mullen et al., *Impact of Natural Gas Appliances on Pollutant Levels in California Homes*, Lawrence Berkeley Nat’l Lab’y (Dec. 2012), https://eta-publications.lbl.gov/sites/default/files/impact_of_natural_gas_appliances.pdf (finding that concentrations of NO₂, NO_x, and carbon monoxide were associated with use of gas appliances); Dr. Zhu et al., *Effects of Residential Gas Appliances on Indoor and Outdoor Air Quality and Public Health in California*, UCLA Fielding School of Pub. Health, (Apr. 2020), <https://ucla.app.box.com/s/xyzt8jclixnetiv0269qe704wu0ihif7> (finding that gas combustion appliances are associated with higher concentrations of NO₂, NO_x, CO, fine particulate matter, and formaldehyde in indoor air, and discussing the health impacts of acute and chronic exposure to each pollutant).

California would result in significant health benefits.”²¹ Accordingly, projects that permit gas appliances such as stoves have significant air quality impacts under CEQA.

Gas appliances contribute to indoor air pollution even when they are not turned on. A recent study sampling the gas supply to home appliances also found additional harmful pollutants present, including the Hazardous Air Pollutants benzene and hexane in 95% and 98% of samples, respectively, among others.²² These pollutants have serious health impacts, particularly given that residential appliances can last for upwards of ten years, and residents may be repeatedly exposed to their pollution multiple times daily. For example, in addition to being a known carcinogen, non-cancer long-term health effects of exposure to benzene include “harmful effects on the bone marrow,” “excessive bleeding,” and can compromise the immune system.²³ Similarly, “[c]hronic inhalation exposure to hexane is associated with sensorimotor polyneuropathy in humans, with numbness in the extremities, muscular weakness, blurred vision, headache, and fatigue,” and animal studies have shown “pulmonary lesions” as well as damage to reproductive organs following chronic inhalation exposure.²⁴ These pollutants were present in the gas supplied to home appliances prior to combustion, and a 2022 study also found that most gas stoves leak supply gas “continuously” even while turned off.²⁵

II. Building Electrification is Feasible and Effective Mitigation to Reduce Project GHG, Energy, and Health Impacts.

A lead agency may not lawfully approve a project where “there are feasible alternatives or feasible mitigation measures available which would substantially lessen [its] significant environmental effects.”²⁶ Only when feasible mitigation measures have been exhausted may an agency find that overriding considerations exist that outweigh the significant environmental effects.²⁷ This mandate—to avoid, minimize and mitigate significant adverse effects where feasible—has been described as the “most important” provision of the law.²⁸

²¹ CARB Resolution 20-32, *California Indoor Air Quality Program Update*, at 2 (Nov. 19, 2020), <https://ww3.arb.ca.gov/board/res/2020/res20-32.pdf>.

²² Drew R. Michanowicz et al., *Home is Where the Pipeline Ends: Characterization of Volatile Organic Compounds Present in Natural Gas at the Point of the Residential End User*, *Environ. Sci. Technol.* 2022, 56, 10258–10268 at 10262 (Jun. 2022), <https://pubs.acs.org/doi/pdf/10.1021/acs.est.1c08298>.

²³ See Centers for Disease Control and Prevention, *Facts about Benzene*, [https://emergency.cdc.gov/agent/benzene/basics/facts.asp#:~:text=\(Long%2Dterm%20exposure%20mean%20exposure,increasing%20the%20chance%20for%20infection](https://emergency.cdc.gov/agent/benzene/basics/facts.asp#:~:text=(Long%2Dterm%20exposure%20mean%20exposure,increasing%20the%20chance%20for%20infection).

²⁴ U.S. Env. Prot. Agency, *Hexane*, <https://www.epa.gov/sites/default/files/2016-09/documents/hexane.pdf>.

²⁵ Eric D. Lebel, et al., *Methane and NO_x Emissions from Natural Gas Stoves, Cooktops, and Ovens in Residential Homes*, *Environ. Sci. Technol.* 2022, 56, 4, at 2534 (Jan. 27, 2022), <https://doi.org/10.1021/acs.est.1c04707>.

²⁶ Pub. Res. Code § 21002.

²⁷ *Id.* § 21081; see also CEQA Guidelines 15091(a).

²⁸ *Sierra Club v. Gilroy City Council*, 222 Cal. App. 3d 30, 41 (1990).

Eliminating natural gas use in new buildings is feasible mitigation that will substantially lessen the Project’s GHG, energy, and air quality/health impacts. For example, in *Residential Building Electrification in California*, Energy and Environmental Economics (“E3”) determined that “electrification is found to reduce total greenhouse gas emissions in single family homes by approximately 30 to 60 percent in 2020, relative to a natural gas-fueled home.”²⁹ Moreover, “[a]s the carbon intensity of the grid decreases over time, these savings are estimated to increase to approximately 80 to 90 percent by 2050, including the impacts of upstream methane leakage and refrigerant gas leakage from air conditioners and heat pumps.”³⁰ As shown in the graph below, the GHG savings from heat pumps are substantial today and will only increase as California continues to decarbonize its grid as required under SB 100.

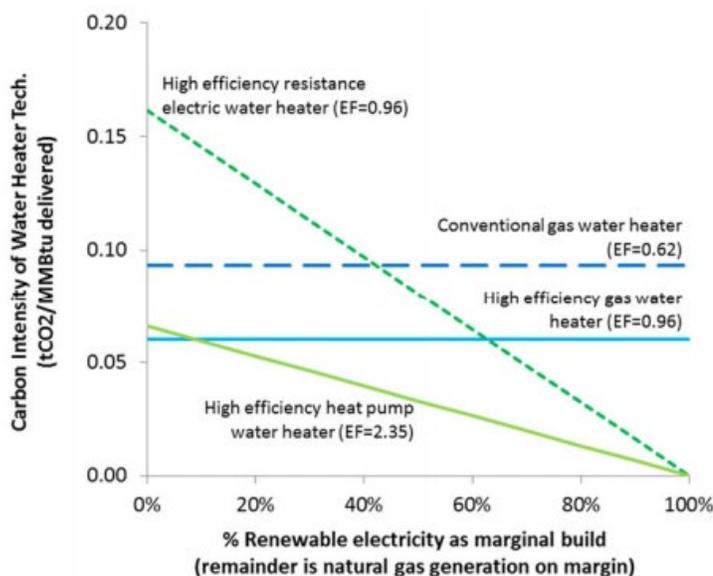


Figure 3. Carbon intensity of water heater technologies, as a function of renewable electricity percentage.
Source: Author’s calculations

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In contrast, because gas appliance will generate the same level of pollution over their lifetime, their emissions relative to electric alternatives will increase over time and increasingly interfere with achievement of California’s climate objectives.

Numerous local jurisdictions have also adopted all-electric building policies for a variety of building types, demonstrating the feasibility of all-electric new construction. For example, San Francisco adopted an ordinance effective June 2021 prohibiting gas in new construction for

²⁹ E3, *Residential Building Electrification in California*, at iv (Apr. 2019), https://www.ethree.com/wp-content/uploads/2019/04/E3_Residential_Building_Electrification_in_California_April_2019.pdf.

³⁰ *Id.*

³¹ Amber Mahone et al., *What If Efficiency Goals Were Carbon Goals*, at 9-7, American Council for an Energy-Efficient Economy (2016), https://aceee.org/files/proceedings/2016/data/papers/9_284.pdf.

all building types, with narrow exceptions.³² Several other California municipalities have adopted similar legislation, including Berkeley, San Luis Obispo, and Half Moon Bay, and the City of Los Angeles is close behind.³³

All-electric new construction is also a feasible mitigation measure to avoid the health impacts of gas, particularly the indoor air pollution impacts in residential buildings. For example, Marin Clean Energy developed its Low-Income Families and Tenants (“LIFT”) Pilot Program to reduce energy burdens and improve quality of life for residents in income-qualified multifamily properties through energy efficiency, electrification, and health, safety, and comfort upgrades.³⁴ An evaluation of the LIFT Pilot found that on a per dwelling basis, participants who received heat pump replacements for gas or propane heating equipment saw reductions of greenhouse gases by over one ton of CO₂ per dwelling, NO_x reductions of close to 1 pound, and carbon monoxide reductions of more than 2 pounds.³⁵ Notably, because the national health and safety limit for carbon monoxide is 1 pound annually, residents had been living with unsafe carbon monoxide levels. Heat pump installation virtually eliminated this pollution source.³⁶ In addition to direct health benefits from reduced pollution, tenants reported increased comfort, with “indoor air temperature being just right even on very hot days,” better air quality and reduced noise.³⁷ Electrifying gas end uses in buildings demonstrably mitigates not only building emissions but their associated health and safety impacts.

All-electric building design is also economically feasible under CEQA. When considering economic feasibility of alternatives under CEQA, courts consider “whether the marginal costs of the alternative as compared to the cost of the proposed project are so great that

³² San Francisco Building Code § 106A.1.17.1, https://codelibrary.amlegal.com/codes/san_francisco/latest/sf_building/0-0-0-92027.

³³ See, e.g., San Luis Obispo Ordinance No. 1717, <http://opengov.slocity.org/WebLink/DocView.aspx?id=162695&dbid=0&repo=CityClerk>, (prohibiting natural gas in new construction effective January 1, 2023, with narrow commercial availability and viability exceptions); Los Angeles City Council Motion, https://drive.google.com/file/d/1KLRBqAT2sj2sQJd2NKGtME8WX5ZEn_9/view, (directing Los Angeles city agencies to develop a plan within six months that will “require all new residential and commercial buildings in Los Angeles to be built so that they will achieve zero-carbon emissions,” to be effective January 1, 2023); Half Moon Bay Municipal Code § 14.06.030, <https://www.codepublishing.com/CA/HalfMoonBay/#!/HalfMoonBay14/HalfMoonBay1406.html#14.06.030>, (requiring all-electric construction for all new buildings, effective March 17, 2022). See also Sierra Club, *California’s Cities Lead the Way on Pollution-Free Homes and Buildings*, <https://www.sierraclub.org/articles/2021/07/californias-cities-lead-way-pollution-free-homes-and-buildings>, (running list of California municipalities with gas-free buildings commitments and electrification building codes).

³⁴ DNV, MCE Low-Income Families and Tenants Pilot Program Evaluation at 1 (Aug 5. 2021) <https://www.mcecleanenergy.org/wp-content/uploads/2021/07/MCE-Low-Income-Families-and-Tenants-Pilot-Program-Evaluation.pdf>.

³⁵ *Id.* at 28.

³⁶ *Id.* at 29.

³⁷ *Id.* at 4, 35 (Aug 5. 2021) <https://www.mcecleanenergy.org/wp-content/uploads/2021/07/MCE-Low-Income-Families-and-Tenants-Pilot-Program-Evaluation.pdf>.

a reasonably prudent [person] would not proceed with the [altered project].”³⁸ That is, even if an alternative is *more* expensive than the original plan, “[t]he fact that an alternative may be more expensive or less profitable is not sufficient to show that the alternative is financially infeasible.”³⁹

All-electric building design for new construction indisputably financially feasible because it is now cheaper than mixed-fuel construction.⁴⁰ The CEC has found that capital costs for all-electric single family homes are “several thousand dollars less expensive than mixed-fuel homes.”⁴¹ For mid-rise multi-family homes, “[a]n average reduction of \$3,300 per unit was found” by avoiding the costs of gas piping, venting, and trenching to connect to the gas system.⁴² Indeed, as noted in Redwood Energy’s A Zero Emissions All-Electric Multifamily Construction Guide, “[i]n the downtown of a city like Los Angeles, just trenching and piping gas to an apartment building in a busy street can cost \$140,000.”⁴³ Moreover, there are additional embedded savings from faster build-out (related to not having to install gas plumbing and piping inside of the home), and by installing one heat pump instead of a separate furnace and air conditioning. As the CPUC has proposed to eliminate gas line extension allowances for all customer classes starting in July 2023, the infrastructure buildout to support gas hookups will raise costs of projects connecting to the gas system even more than before, when line extensions were subsidized.⁴⁴ Additionally, as discussed above, the 2022 update to the Title 24 Building Code already requires heat pumps as a baseline for space or water heating, and requires panel upgrades and other space modifications in any new mixed-fuel homes to ensure they are electric-ready when they inevitably convert to all-electric.⁴⁵ As a result, mixed-fuel design in new

³⁸ *SPRAWLDEF v. San Francisco Bay Conservation and Development Comm’n* (2014) 226 Cal. App. 4th 905, 918 (citing *Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal. App. 4th 587, 600).

³⁹ *Id.* (citing *Center for Biological Diversity v. Cty. of San Bernardino* (2010) 185 Cal. App. 4th 866, 833).

⁴⁰ See CARB, Draft 2022 Scoping Plan, Appendix F: Building Decarbonization, at 14–15 (May 2022) (finding that “all-electric new construction is one of the most cost-effective near-term applications for building decarbonization efforts,” and that all-electric new construction is crucial in particular because “it is less costly to build, avoids new pipeline costs to ratepayers, and avoids expensive retrofits later.”), <https://ww2.arb.ca.gov/sites/default/files/2022-05/2022-draft-sp-appendix-f-building-decarbonization.pdf>.

⁴¹ See CEC, Final 2021 Integrated Energy Policy Report Volume I: Building Decarbonization at 89 (Feb. 2022), <https://efiling.energy.ca.gov/GetDocument.aspx?tn=241599>, (citing E3, *Residential Building Electrification in California: Consumer Economics, Greenhouse Gases and Grid Impacts*, https://www.ethree.com/wp-content/uploads/2019/04/E3_Residential_Building_Electrification_in_California_April_2019.pdf).

⁴² CEC, *California Building Decarbonization Assessment*, at 83 (Aug. 13, 2021) (“CEC Building Decarbonization Assessment”), <https://efiling.energy.ca.gov/GetDocument.aspx?tn=239311>.

⁴³ Redwood Energy, A Zero Emissions All-Electric Multifamily Construction Guide at 2 (2019), <https://fossilfreebuildings.org/ElectricMFGuide.pdf>

⁴⁴ R. 19-01-011, Phase III Decision Eliminating Gas Line Extension Allowances, Ten-Year Refundable Payment Option, and Fifty Percent Discount Payment Option Under Gas Line Extension Rules, (Aug. 8, 2022), <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M496/K415/496415627.PDF>.

⁴⁵ See CEC, 2022 Building Energy Efficiency Standards Summary, at 9 (Aug. 2021), https://www.energy.ca.gov/sites/default/files/2021-08/CEC_2022_EnergyCodeUpdateSummary_ADA.pdf.

construction is likely *less* financially feasible than all-electric design, in addition to imposing significant GHG, energy, and health impacts.

Now is the critical window for the City to jump-start this transition away from gas to clean energy buildings. CEQA is an essential vehicle to take all feasible action to reduce GHGs and limit further expansion of gas infrastructure. To comply with CEQA, we urge incorporation of all-electric building design into the Project.

Please contact Rebecca Barker at rbarker@earthjustice.org, and Matt Vespa at mvespa@earthjustice.org with any questions or concerns, and please include each of us in future notifications on the Project's development.

Sincerely,

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