

Memorandum

To: Drew Bohan
Executive Director

Date: May 21, 2018
Telephone: (916) 654-5013

From: **Dave Ashuckian, P.E.**
Deputy Director, Efficiency Division
California Energy Commission
1516 Ninth Street
Sacramento CA 95814-5512

Subject: **EXECUTIVE DIRECTOR RECOMMENDATION THAT THE CALIFORNIA ENERGY COMMISSION FINDS THAT MARIN COUNTY'S LOCALLY ADOPTED ENERGY STANDARDS WILL REQUIRE REDUCTION OF ENERGY CONSUMPTION LEVELS PERMITTED BY THE 2016 BUILDING ENERGY EFFICIENCY STANDARDS**

Summary of Item

The California Public Resources Code and the *2016 Building Energy Efficiency Standards*¹ (2016 Energy Standards) establish a process that allows local governmental agencies, such as cities or counties, to adopt and enforce local energy standards for newly constructed buildings, additions, alterations, and repairs to existing buildings if the California Energy Commission finds that the local energy standards will require buildings to be designed to consume less energy than permitted by the 2016 Energy Standards. This process, described in Public Resources Code Section 25402.1(h)(2), and Section 10-106(b) of the 2016 Energy Standards, requires local governmental agencies to apply to the Energy Commission for this finding.

The local governmental agency must submit an application to the Executive Director of the Energy Commission, which must be approved before the local energy standards may be enforced. This application must contain:

- 1) The proposed energy standards.
- 2) The local governmental agency's findings and supporting analyses on the energy-savings and cost-effectiveness of the proposed energy standards.
- 3) A statement or finding by the local government agency that the local energy standards will require buildings to be designed to save energy when compared to levels permitted by the California Code of Regulations, Title 24, Part 6.
- 4) Any findings, determinations, declarations or reports, including any negative declaration or environmental impact report, required pursuant to the California Environmental Quality Act (CEQA), Public Resources Code, Section 21000 et seq. (2016 Energy Standards, § 10-106(b)).

¹ California Code of Regulations, Title 24, Part 1, Chapter 10, and Part 6.

The Executive Director must submit to the Energy Commission a written recommendation on the application after determining that the application is complete, making the complete application package available to interested parties, and providing a 60-day public comment period. (2016 Energy Standards, § 10-110(a) and (d).) The complete application package, any additional information considered by the Executive Director, and the Executive Director's recommendation shall be placed on the consent calendar and considered at the next business meeting after submission of the Executive Director's recommendation. (2016 Energy Standards, § 10-110(e).) The matter may be removed from the consent calendar at the request of any person. (*Ibid.*)

In reviewing the application, the Energy Commission must find whether the locally adopted energy standards will require a reduction of energy consumption beyond that permitted by the 2016 Energy Standards. (Public Resources Code § 25402.1(h)(2); 2016 Energy Standards, § 10-106(a).).

Marin County has submitted a complete application package with the following requirements.

1. All new single and two-family residences less than 4,000 square feet are either:
 - a. constructed to be 15 percent more energy efficient than required by the 2016 Building Energy Efficiency Standards (2016 Energy Standards);
 - b. or if a photovoltaic (PV) system is installed, constructed to be 20 percent more energy efficient than the 2016 Energy Standards;
 - c. or demonstrate that the proposed home will be all electric.
2. For new single and two-family residences greater than or equal to 4,000 square feet, the ordinance requires one of the following:
 - a. the proposed mixed-fuel home is 35 percent more efficient than the 2016 Energy Standards and will generate as much electricity on-site as it is expected to use in a year, which is estimated to be equivalent to an energy design rating (EDR) of 20 or less;
 - b. or the proposed all-electric home is 20 percent more efficient than the 2016 Energy Standards and includes at least 2.5 kW of solar;
 - c. or develop the proposed home to Passive House Institute US (PHIUS) Standards.
3. For new low-rise multifamily residential, the ordinance requires one of the following:
 - a. if a PV system is not installed, the energy use of the proposed home is 10 percent more efficient than the 2016 Energy Standards;
 - b. or if a PV system is installed, the energy use of the proposed home is 15 percent more efficient than the 2016 Energy Standards;
 - c. or the proposed project will be all electric.
4. For new high-rise multifamily residential and new nonresidential construction, the ordinance requires one of the following:
 - a. the energy use of the proposed building is 10 percent more efficient than the 2016 Energy Standards;
 - b. or the proposed building is all electric.

A proposed Executive Director Recommendation is attached.

Summary of Staff's Application Review

As detailed in the attached Executive Director Recommendation, staff reviewed Marin County's application for its proposed local energy standards in Ordinance 3685. Staff found that the application contains all of the application components required by Section 10-106(b) of the 2016 Energy Standards. Specifically, the county's application contains:

- 1) Proposed energy standards.
- 2) Findings and supported analysis on the energy savings and cost effectiveness of the proposed energy standards.
- 3) Finding that the local energy standards will require buildings to be designed to save energy when compared to levels permitted by the California Code of Regulations, Title 24, Part 6.
- 4) CEQA determination.

Staff made Marin County's complete application available to interested parties and provided a 60-day public comment period for the complete applications, including the local ordinance and cost effectiveness analysis. (2016 Energy Standards, § 10-110(a).) The applications were posted on the webpage for Local Ordinances Exceeding the *2016 Energy Standards*². The submitted application was also docketed on the Energy Commission's website under 16-BSTD-07 for a 60-day public comment period, which concluded on May 21, 2018. The complete application, including the local ordinance and cost effectiveness analysis, will also be made available on the Energy Commission website as part of the back-up materials for the proposed agenda item when presented to the Energy Commission for action.

In addition, staff reviewed the application to determine whether the standards will require the diminution of energy consumption levels permitted by the 2016 Energy Standards.

Project Manager

Ingrid Neumann, Building Standards Office

Staff Position

Staff recommends that the Energy Commission find that Marin County's proposed energy standards will require the reduction of energy consumption levels permitted by the 2016 Energy Standards. (Public Resources Code, § 25402.1(h)(2); 2016 Energy Standards, § 10-106(a).).

Marin County has been informed that the approved ordinance will be enforceable during the time that the 2016 Energy Standards are effective. If the statewide standards are subsequently revised or amended (as they are regularly on a three-year cycle) the Ordinance will no longer be enforceable. If the county wishes to enforce either of these local energy standards, or other local energy standards revised in response to the updated statewide standards, pursuant to Public Resources Code

² <http://www.energy.ca.gov/title24/2016standards/ordinances/>.

Section 25402.1(h)(2), and Section 10-106 of the 2016 Energy Standards, the county must submit a new application.

Oral Presentation Outline

Staff will be available at the June 13, 2017, Business Meeting to provide a brief summary if requested and to answer questions.

Business Meeting Participants

Ingrid Neumann, Building Standards Office

Executive Director Action Requested

Recommendation by the Executive Director that the Energy Commission find that Marin County's locally adopted energy standards will require the diminution of energy consumption levels permitted by the 2016 Energy Standards.

Commission Action Requested

Finding by the Energy Commission that Marin County's locally adopted energy standards will require the diminution of energy consumption levels permitted by the 2016 Energy Standards.

STATE OF CALIFORNIA

Energy Resources Conservation And Development Commission

In the matter of	)	RESOLUTION NO: 18-06-13-04
)	
<i>Marin County's Locally</i>	)	Executive Director's
<i>Adopted Energy Standards</i>	)	Recommendation that the
	)	California Energy Commission Find
	)	that Marin County's Locally
	)	Adopted Energy Standards Will
	)	Require the Diminution of Energy
	)	Consumption Levels Permitted by
	)	the 2016 Building Energy
	)	Efficiency Standards
)	
	)	May 21, 2018

I. **EXECUTIVE SUMMARY**

Local governmental agencies may adopt and enforce local energy standards provided the California Energy Commission finds that the standards will require buildings to be designed to consume less energy than permitted by the *2016 Building Energy Efficiency Standards*¹ (2016 Energy Standards). (2016 Energy Standards, § 10-106(a).) The local governmental agency must submit an application to the Executive Director of the Energy Commission, which must be approved before the local energy standards may be enforced. (2016 Energy Standards, § 10-106(b).) This application must contain:

- 1) The proposed energy standards.
- 2) The local governmental agency's findings and supporting analyses on the energy-savings and cost-effectiveness of the proposed energy standards.
- 3) A statement or finding by the local government agency that the local energy standards will require buildings to be designed to save energy when compared to levels permitted by the California Code of Regulations, Title 24, Part 6.
- 4) Any findings, determinations, declarations or reports, including any negative declaration or environmental impact report, required pursuant to the California Environmental Quality Act (CEQA), Public Resources Code, Section 21000 et seq. (2016 Energy Standards, § 10-106(b).).

Marin County has submitted a complete application package with the following requirements.

1. All new single and two-family residences less than 4,000 square feet are either:
 - a. constructed to be 15 percent more energy efficient than required by the 2016 Building Energy Efficiency Standards (2016 Energy Standards);
 - b. or if a photovoltaic (PV) system is installed, constructed to be 20 percent more energy efficient than the 2016 Energy Standards;
 - c. or demonstrate that the proposed home will be all electric.

¹ California Code of Regulations, Title 24, Part 1, Chapter 10, and Part 6.

2. For new single and two-family residences greater than or equal to 4,000 square feet, the ordinance requires one of the following:
 - a. the proposed mixed-fuel home is 35 percent more efficient than the 2016 Energy Standards and will generate as much electricity on-site as it is expected to use in a year, which is estimated to be equivalent to an energy design rating (EDR) of 20 or less;
 - b. or the proposed all-electric home is 20 percent more efficient than the 2016 Energy Standards and includes at least 2.5 kW of solar;
 - c. or develop the proposed home to Passive House Institute US (PHIUS) Standards.
3. For new low-rise multifamily residential, the ordinance requires one of the following:
 - a. if a PV system is not installed, the energy use of the proposed home is 10 percent more efficient than the 2016 Energy Standards;
 - b. or if a PV system is installed, the energy use of the proposed home is 15 percent more efficient than the 2016 Energy Standards;
 - c. or the proposed project will be all electric.
4. For new high-rise multifamily residential and new nonresidential construction, the ordinance requires one of the following:
 - a. the energy use of the proposed building is 10 percent more efficient than the 2016 Energy Standards;
 - b. or the proposed building is all electric.

Staff made Marin County's complete application available to interested parties, and provided a 60-day public comment period for the complete application, including the local ordinance and cost effectiveness analysis. (2016 Energy Standards, § 10-110(a).) The applications were posted on the Energy Commission webpage for Local Ordinances Exceeding the 2016 Energy Standards². The submitted applications were also docketed on the Energy Commission's website under 16-BSTD-07 for a 60-day public comment period, which concluded on May 21, 2018. The complete application, including the local ordinance and cost effectiveness analysis, will also be made available on the Energy Commission website as part of the back-up materials for the proposed agenda item when presented to the Energy Commission for action.

Marin County's applications contain the necessary components required by Section 10-106(b) of the 2016 Energy Standards. Also, Marin County's locally adopted energy standards will require the diminution of energy consumption levels permitted by the 2016 Energy Standards. (Public Resources Code, § 25402.1(h)(2); 2016 Energy Standards, § 10-106(a).).

Therefore, I recommend that the Energy Commission find that Marin County's locally adopted energy standards will require the diminution of energy consumption levels permitted by the 2016 Energy Standards.

² <http://www.energy.ca.gov/title24/2016standards/ordinances/>

II. MARIN COUNTY'S APPLICATION MEETS THE REQUIREMENTS OF SECTION 10-106(B) OF THE 2016 ENERGY STANDARDS

1. Proposed energy standards.

On March 13, 2018, the Marin County Board of Supervisors approved the adoption of Ordinance 3685, requiring the following:

1. All new single and two-family residences less than 4,000 square feet are either:
 - a. constructed to be 15 percent more energy efficient than required by the 2016 Building Energy Efficiency Standards (2016 Energy Standards);
 - b. or if a photovoltaic (PV) system is installed, constructed to be 20 percent more energy efficient than the 2016 Energy Standards;
 - c. or demonstrate that the proposed home will be all electric.
2. For new single and two-family residences greater than or equal to 4,000 square feet, the ordinance requires one of the following:
 - a. the proposed mixed-fuel home is 35 percent more efficient than the 2016 Energy Standards and will generate as much electricity on-site as it is expected to use in a year, which is estimated to be equivalent to an energy design rating (EDR) of 20 or less;
 - b. or the proposed all-electric home is 20 percent more efficient than the 2016 Energy Standards and includes at least 2.5 kW of solar;
 - c. or develop the proposed home to Passive House Institute US (PHIUS) Standards.
3. For new low-rise multifamily residential, the ordinance requires one of the following:
 - a. if a PV system is not installed, the energy use of the proposed home is 10 percent more efficient than the 2016 Energy Standards;
 - b. or if a PV system is installed, the energy use of the proposed home is 15 percent more efficient than the 2016 Energy Standards;
 - c. or the proposed project will be all electric.
4. For new high-rise multifamily residential and new nonresidential construction, the ordinance requires one of the following:
 - a. the energy use of the proposed building is 10 percent more efficient than the 2016 Energy Standards;
 - b. or the proposed building is all electric.

The cost effectiveness study was heard and approved on the same date.

Marin County is required to submit its proposed energy standards to the Energy Commission as part of its complete application. (Public Resources Code, § 25402.1(h)(2); 2016 Energy Standards, § 10-106(b)(1).) Marin County submitted a complete application to the Energy Commission, which was received on March 19, 2018, and posted for the 60-day public comment period on March 22, 2018, as required by Section 10-110(a) of the 2016 Energy Standards. The comment period ended on May 21, 2018, and one comment has been received and shared with the local jurisdiction.

Ordinance 3685, adopts amendments to Subchapter 2 of the Marin County Code Title 19 (Building Code) Chapter 19.04 (Green Building Requirements) as specified in items 1-4 above.

2. Applicant's energy-savings and cost-effectiveness determinations and supporting analyses.

Marin County submitted its determinations and supporting analysis on the energy savings and cost effectiveness of the proposed energy standards with its completed applications, as required by Section 10-106(b)(2) of the 2016 Energy Standards. Staff confirmed that these materials were made publicly available and were considered by the Marin County Board of Supervisors as a part of the adoption of the local ordinances. The Energy Commission does not independently re-analyze applicants' determinations of cost effectiveness where they have been subject to a public adoption process.

Marin County staff worked closely with the Bay Area Regional Energy Network (BayREN), Pacific Gas & Electric, Enercomp, Davis Energy Group, Misti Brucerri & Associates, and TRC to assess and adopt the four cost effectiveness study's that were submitted with the county's completed application. Marin County determined that the addition of additional efficiency measures as described in Ordinance 3685 provided a cost benefit ratio of up to 1.57 for new single family residences, 1.2 for low-rise multifamily buildings, and 1.2 for high-rise multifamily and nonresidential construction.

The county's determinations of cost effectiveness were adopted by the governing body of the county at a public meeting of the county council on March 13, 2018. (Public Resources Code, § 25402.1(h)(2).)

3. Applicant's finding that the local energy standards will require buildings to be designed to save energy when compared to levels permitted by Title 24, Part 6.

Section 10-106(b)(3) requires local governmental agencies to submit a statement or finding "that the local energy standards will require buildings to be designed to consume no more energy than permitted by Part 6." The statement of increased stringency was provided in cover letter dated March 13, 2018, by William Kelley, the chief building official of Marin County, submitted to the Energy Commission March 19, 2018.

4. California Environmental Quality Act Assessment.

The last requirement of Section 10-106(b) of the 2016 Energy Standards concerns the CEQA, Public Resources Code Section 21000 et seq. Section 10-106(b)(4) requires the county to submit, with its application, "any findings, determinations, declarations or reports, including any negative declaration or environmental impact report, required pursuant to [CEQA]."

In adopting local ordinances such as this one, the county is required to comply with CEQA. (See Public Resources Code, §§ 21080(a), 21063; California Code Regulations, Title 14, §§ 15020-15022, 15379.) Even though the Energy Commission has the authority to approve local energy standards under Section 25402.1(h)(2) of the Public Resources Code, and Section 10-106 of the 2016 Energy Standards, the lead agency for local energy standards is the county because it will implement and enforce these standards (California Code Regulations, Title 14, §§ 15050, 15051).

The Energy Commission staff has reviewed and considered Marin County's CEQA findings in the cover letter submitted with the approval application. Marin County found with certainty that implementation of the ordinance is intended for the protection of the environment by reducing resource consumption and waste generation, and therefore the adoption of the ordinance was categorically exempt from the CEQA codified in Public Resources Code Section 21000 et seq. CEQA, pursuant to Section 15061(b)(3) and 15308 of the CEQA Guidelines, codified in Title 14 of the California Code of Regulations. Marin County's Environmental Planning Manager also submitted a Notice of Exemption outlining the above, dated February 6, 2018, along with the approval application package.

The Energy Commission found, on June 10, 2015, that the 2016 revision of the Energy Standards would have no net adverse impact on the environment and therefore adopted a Negative Declaration for the 2016 Energy Standards. (See Notice of Determination at http://www.energy.ca.gov/title24/2016standards/rulemaking/documents/15-day_language/2015-06-11_Notice_of_Determination.pdf.)

Because all locally adopted standards must require the diminution of energy consumption levels permitted by the 2016 Energy Standards, there is no possibility that any ordinance that proposes to exceed such standards will have a significant effect on the environment. Therefore, approving Marin County's application to enforce its locally adopted energy standards is exempt under the "common sense" provision of CEQA. (California Code Regulations Title 14, § 15061(b)(3).). Also, a finding by the Energy Commission that Marin County's locally adopted energy standards will require the diminution of energy consumption levels permitted by the 2016 Energy Standards is a ministerial project and is therefore exempt from CEQA pursuant to Public Resources Code Section 21080(b)(1) and Section 15268 of Title 14 of the California Code of Regulations.

III. MARIN COUNTY'S LOCALLY ADOPTED ENERGY STANDARDS WILL REQUIRE THE DIMINUTION OF ENERGY CONSUMPTION LEVELS PERMITTED BY THE 2016 ENERGY STANDARDS

The Energy Commission is required to find whether the county's locally adopted energy standards will require the diminution of energy consumption levels permitted by the 2016 Energy Standards. (Public Resources Code, § 25402.1(h)(2); see also 2016 Energy Standards, § 10-106(a).)

Requiring increased energy efficiency, ensures a diminution of energy consumption. The proposed energy provisions do not otherwise modify any of the requirements in Title 24, Part 6. The modifications to the energy provisions proposed by the county therefore require buildings to be designed to consume no more energy than permitted by the 2016 Energy Standards.

IV. CONCLUSION

After considering the application, I determined that Marin County's application contains the necessary components required by Section 10-106(b) of the 2016 Energy Standards. I also determined that Marin County's locally adopted energy standards will require the diminution

of energy consumption levels permitted by the 2016 Energy Standards. (Public Resources Code, § 25402.1(h)(2); 2016 Energy Standards, § 10-106(a).)

Accordingly, I recommend that the Energy Commission find that Marin County's locally adopted energy standards will require the diminution of energy consumption levels permitted by the 2016 Energy Standards.

DREW BOHAN
Executive Director
California Energy Commission

Date

STATE OF CALIFORNIA

STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

RESOLUTION OF THE CALIFORNIA ENERGY COMMISSION FINDING THAT MARIN COUNTY'S LOCALLY ADOPTED ENERGY STANDARDS REQUIRE THE DIMINUTION OF ENERGY CONSUMPTION LEVELS PERMITTED BY THE *2016 BUILDING ENERGY EFFICIENCY STANDARDS*

WHEREAS, on March 13, 2018, Marin County adopted Ordinance 3685 to establish locally adopted energy standards; and

WHEREAS, Public Resources Code Section 25402.1(h)(2), and California Code of Regulations, Title 24, Section 10-106(b), establish a process for local governments to apply to the California Energy Commission if they wish to enforce locally adopted energy standards; and

WHEREAS, Marin County submitted an application to the Energy Commission for the Ordinance that met all of the documentation requirements pursuant to Public Resources Code Section 25402.1(h)(2), and California Code of Regulations, Title 24, Section 10-106(b), on March 19, 2018; and

WHEREAS, Marin County, in its application to the Energy Commission, indicated that implementation of the ordinance is intended for the protection of the environment by reducing resource consumption and waste generation, and therefore the adoption of the ordinance was exempt from the California Environmental Quality Act (CEQA) codified in California Public Resources Code Section 21000 et seq. CEQA, pursuant to Section 15061(b)(3) and 15308 of the CEQA Guidelines, codified in Title 14 of the California Code of Regulations; and

WHEREAS, the Energy Commission has analyzed whether the Ordinance will require the diminution of energy consumption levels permitted by the *2016 Building Energy Efficiency Standards* (2016 Energy Standards); and

WHEREAS, the Energy Commission has considered Marin County's application, the Executive Director's recommendation, and all comments submitted on the application.

THEREFORE BE IT RESOLVED, the Energy Commission finds that Marin County's Ordinance will require the diminution of energy consumption levels permitted by the 2016 Energy Standards; and

THEREFORE BE IT FURTHER RESOLVED that the Energy Commission finds:

- (1) That there is no possibility that approving Marin County's application to enforce its locally adopted energy standards will have a significant effect on the environment, and is therefore exempt from CEQA pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations; and
- (2) That its determination that Marin County's locally adopted energy standards will require buildings to be designed to consume less energy than permitted by the 2016 Energy Standards is a ministerial project and is therefore exempt from CEQA pursuant to Public Resources Code Section 21080(b)(1) and Section 15268 of Title 14 of the California Code of Regulations.

THEREFORE BE IT FURTHER RESOLVED, the Energy Commission applauds Marin County for seeking to achieve additional energy demand reductions, energy savings and other benefits exceeding those of the 2016 Energy Standards; and

THEREFORE BE IT FURTHER RESOLVED, that on June 13, 2018, the Energy Commission approves the Marin County' application to enforce its locally adopted energy standards; and

THEREFORE BE IT FURTHER RESOLVED, that the Energy Commission directs the Executive Director to take all actions necessary to implement this Resolution, including but not limited to filing the appropriate notices with the Office of Planning and Research. (See, e.g., California Code Regulations., Title 14, § 15062.)

CERTIFICATION

The undersigned Secretariat to the Commission does hereby certify that the foregoing is a full, true, and correct copy of a Resolution duly and regularly adopted at a meeting of the Energy Commission held on June 13, 2018.

AYE:

NAY:

ABSENT:

ABSTAIN:

Cody Goldthrite
Secretariat