M e m o r a n d u m

To: Docket 24-BTSD-02 **Date:** August 27, 2024

From: **Chief Counsel's Office**
California Energy Commission

Subject: Basis for Finding the 2025 CALGreen Rulemaking is Exempt from the California Environmental Quality Act under the Common Sense Exemption

I. CEQA

The California Environmental Quality Act (CEQA) (Pub. Resources Code (PRC), §21000 et seq.; see also CEQA Guidelines, Cal. Code Regs. (CCR), tit. 14, §15000 et seq.) requires that state agencies consider the environmental impact of their discretionary decisions. CEQA allows for certain projects to be exempted from its requirements. Of relevance here is the common sense exemption (CCR, tit. 14, §15061(b)(3)).

II. CALGreen, Title 24, Part 11

The Warren-Alquist Act establishes the California Energy Commission (CEC) as California's primary energy policy and planning agency. Most, if not all, actions taken by the CEC are intended to protect the environment and natural resources, either in the near term with, for example, specific regulatory actions or the long term with, for example, long-term planning and investments in research. The Legislature over the years has made specific findings concluding that the CEC's work in regulating the electricity sector is imperative for environmental protection. Notably, the Legislature has found the following: "it is the responsibility of state government to ensure that a reliable supply of electrical energy is maintained at a level consistent with the need for such energy for protection of public health and safety, for promotion of general welfare, and for environmental quality protection" (PRC, §25001); "the present rapid rate of growth in demand for electric energy is in part due to wasteful, uneconomic, inefficient, and unnecessary uses of power and a continuation of this trend will result in serious depletion or irreversible commitment of energy, land and water resources, and potential threats to the state's environmental quality (PRC, §25002); and "[i]t is further the policy of the state and the intent of the Legislature to employ a range of measures to reduce wasteful, uneconomical, and unnecessary uses of energy, thereby reducing the rate of growth of energy consumption, prudently conserve energy resources, and assure statewide environmental, public safety, and land use goals." (PRC, §25007).

With regard to this specific project, Section 25402 of the PRC authorizes and mandates that the CEC adopt rules and regulations, as necessary, "to reduce the wasteful, uneconomic, inefficient, or unnecessary consumption of energy and water" in new residential and nonresidential buildings.

One of the ways the CEC satisfies this requirement is through the California Green Building Standards Code (CALGreen) (CCR, Title 24, Part 11) found in the California Building Standards Code, which are adopted pursuant to Health and Safety Code Sections 18930, 18934, and 18935. As a part of the California Building Standards Code, CALGreen follows the same three-year update cycle.

III. The Proposed Action

The changes proposed in this rulemaking are updates to the voluntary energy efficiency provisions of CALGreen. These voluntary guidelines, contained in Title 24, Part 11 of the California Code of Regulations, go beyond the mandatory building energy efficiency standards in Title 24, Part 6 of the California Code of Regulations (California Energy Code). Because they are voluntary, it is unknown which jurisdictions will choose to adopt standards that exceed the minimum efficiency requirements contained in the California Energy Code and, if so, to what extent those local jurisdictions may utilize the voluntary provisions in CALGreen.

To facilitate the adoption of reach codes at the local level, the CEC proposes to update the voluntary energy efficiency provisions of CALGreen. Local jurisdictions are not compelled to use or follow these examples. The CEC proposes to adopt the following amendments:

- Introduce new sections for alterations to existing residential buildings and nonresidential buildings.
- Introduce new standards for altered space conditioning systems in existing single-family homes.
- Introduce new standards for altered pool and/or spa heating equipment in both multifamily and nonresidential existing buildings.
- Update performance compliance margins for newly constructed single-family homes.
- Introduce outdoor lighting standards for newly constructed residential buildings and residential additions.
- Update outdoor lighting standards for newly constructed nonresidential buildings and nonresidential additions.
- Remove Renewable Energy Section from the nonresidential appendix A5.
- Rename Energy Efficient Steel Framing section to Energy Efficient Framing.

Reducing energy demand via energy efficiency, if adopted by local jurisdictions, benefits the state by slowing demand growth, reducing depletion of resources, improving reliability, minimizing costs, and mitigating threats to the state's environmental quality – that is, by directly addressing the problems the legislature observed when creating the CEC. Based on the evidence in the record, the CEC has determined that the proposed changes are necessary to provide these benefits by establishing or improving standards, including voluntary and model standards, for building energy efficiency and improving the likelihood of successful deployment of building design and construction measures that directly cause or indirectly enable improved efficiency during occupancy and operation.

IV. Common Sense Exemption

The development and adoption of these amendments to the CEC's portions of CALGreen are exempt from CEQA under the common sense exemption. CEQA only applies to projects that have the potential for causing a significant effect on the environment. (CCR, tit. 14, §15061(b)(3)). A significant effect on the environment is defined as a substantial, or a

potentially substantial, adverse change in the environment, and does not include an economic change by itself. (Pub. Resources Code, §21068; CCR, tit. 14, §15382) The goal of the proposed amendments to CALGreen is to provide voluntary model provisions for local jurisdictions to adopt reach codes that save more energy than the mandatory California Energy Code. Adoption of these model provisions by local jurisdictions will not result in any significant adverse effects because these are energy-saving measures with no significant negative side effects.

Upon CEC adoption of CALGreen, local jurisdictions may decide not to adopt these voluntary provisions, or they may adopt one, all, or a unique combination of CALGreen's provisions. If adopted by local jurisdictions as a local ordinance, these energy-saving standards would apply to newly constructed buildings as well as alterations and additions in existing buildings (see details in bullet points above). These standards do not, however, trigger the construction or alteration activities themselves, and thus would not have a foreseeable significant effect on the environment for CEQA purposes.

As provided in detail above, the CALGreen provisions proposed are clarifications of existing voluntary measures, updated efficiency standards for certain nonresidential buildings, and updated performance compliance margins for specific buildings that reflect industry best practices. New provisions introduced, such as those for pool and/or spa heating equipment and altered space conditioning systems seek to replace old equipment with more efficient technology. No foreseeable significant adverse effects to the environment have been identified resulting from a local jurisdiction's adoption of any, or all, of these voluntary provisions. Additionally, if a local jurisdiction does adopt an ordinance that requires any of the CALGreen provisions, it would be responsible for complying with any applicable CEQA requirements at that time.

VI. Conclusion

The provisions are voluntary energy-saving measures with no identifiable significant effects on the environment. If adopted by local jurisdictions, the measures would be applied to already contemplated new construction or alteration activities; the measures themselves do not incentivize these activities or make them more likely to occur. For these reasons, and those identified above, it can be seen with certainty that there is no possibility that adoption of these model provisions may have a significant effect on the environment, therefore, this project is exempt from CEQA, pursuant to the common sense exemption under Section 15061(b)(3) of the CEQA Guidelines.