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17 October 2010

Revised for readability/formatting & date correction

The Honorable Miguel Ucovich, Chairperson
The Board of Directors,
Placer County Air Pollution Control District
c/o Ms. Margie Koltun, Clerk of the Board
3091 County Center Drive, Suite 240
Auburn, CA 95603

Delivered electronically, hard-copy to follow by U.S. Mail

Re: Rule 225 "Wood Burning Appliances", as amended –
Request for reconsideration and rescission of Subsection 303,
"Sale or Transfer of Real Property" provisions.

Dear Chairperson Ucovich:

Preamble – Organizational Mindset

I represent the Tahoe Sierra Board of Realtors® (TSBOR), with well over 1,000 members and affiliates. Many of our members and staff have devoted a significant amount of time and resources to aid in the development of the optimal set of Ordinances, Regulations, and Guidelines for our region [1] (Please refer to endnotes). When TSBOR finds fault with a given policy or proposed course of action it does more than simply tear down the flawed proposal, there is a conscientious effort to come to the table with alternatives/solutions to replace the flawed position. We do not seek to confound governmental operations; rather, we pursue clarity of purpose in combination with an efficient and effective implementation strategy, offering up solutions that better address the need [2].

The amendment of Rule 225, as seen in Section 300, specifically Subsection 303, is of grave concern.

Objective – Desired Outcome

The Tahoe Sierra Board of Realtors® urges you to formally reconsider Subsection 303 of Rule 225 "Wood Burning Appliances". Upon completion of your Board's review of the issue, objective, and methodology to achieve said objective, given the new and expanded information provided herein, it is respectfully requested that Subsection 303 of Rule 225 (as amended on the 13th day of December, 2007; but yet-to-be implemented) be rescinded.

In its place, we offer up two procedural pathways for your consideration:
(1) Refer the matter and its Countywide policy level implications to the Placer County Board of Supervisors. In doing so, requesting that they take up the issue as soon as possible, with the intention that the Board of Supervisors establish, by ordinance, the policies to address extant non-compliant woodstoves and the necessity to achieve their change-out. Or,
(2) Once the APCD Board has formally reconsidered and rescinded the 303 provisions, you might deem it expedient to retain the issue in-house. If so, the amended framework we promote is embodied in a program that incorporates a Universal Compliance Mandate, setting a Date-Certain, at which point all residential structures in the County are expected to be in compliance. Procedures for homeowner outreach, public information dissemination, early-adopter incentives, and disclosure at time of sale are all reflected in our comprehensive program.

Policy Positioning in Relation to Point-of-Sale (p-o-s) Retrofit Mandates

As presently written, Rule 225's subsection 303 imposes a point-of-sale retrofit mandate. Our organization, as well as its state-level (California Association of

Realtors®) and federal-level (National Association of Realtors®) partners have long standing concerns with p-o-s measures, as reflected in long standing policies in opposition to point-of-sale retrofit mandates [3]. Yes, one can cite examples of existing p-o-s requirements; however, the mere fact that point-of-sale mandates are already in use is *never* justification to impose yet another ill-conceived and ill-informed p-o-s burden. In fact, we continue to actively work to get such onerous provisions removed where they exist [4].

Exposing the Fatal Flaws in a Point-of-Sale Retrofit Strategy

(A) *TIME LAG* - The logic that drives our argument against p-o-s retrofits is clear and compelling. With the stipulation that real and pressing public health & safety concerns must be dealt with in a comprehensive and timely fashion, and that inefficient older woodstoves introduce unacceptably large quantities of particulate matter (i.e., PM_{10} and $PM_{2.5}$) into the atmosphere causing breathing difficulties and loss of ambient visibility/clarity, then utilizing a change-out program which takes some thirty-to-forty years or more to realize widespread compliance is therefore unacceptable, indeed intolerable. This situation is made all the worse when considering that some of the older homes that have been continuously owned by one family for many years are most likely to have first generation woodstoves on-site, yet in an ironic twist, under p-o-s provisions are least likely to transfer title which would then have triggered compliance. Considering current regional home sales activity, historical data, emerging trends, as well as economic forecasts from state and federal industry experts, it would literally take decades to achieve substantial compliance utilizing a point-of-sale retrofit approach [5]. The information, expert opinions, and set of facts noted directly above demonstrate rather conclusively that there is sufficient reason to reject the p-o-s retrofit methodology based on implementation-to-objective aging alone. If you have a known health & safety concern, a way to remediate it (i.e., change-out), but choose to defer securing meaningful

protective measures by opting to use the inefficient and ineffective p-o-s retrofit methodology, the citizenry is not well served. Upon your review and reconsideration of the issue and how best to address it, we are confident that you too will deem p-o-s retrofits to be an unacceptable and wholly unnecessary liability.

(B) *CAPRICIOUS ENFORCEMENT* - Adding to the compelling reasoning to reject point-of-sale retrofit mandates, such an approach is not only inefficient, which renders it ineffective, it is also inequitable. Rule 225, Section 300, Subsection 303 calls out one class of citizen, namely those who are selling their home, for differential and burdensome treatment. What is the nexus between the act of transferring title and the mandate to perform on a woodstove compliance matter? There simply isn't a logical connection between the sale of a home and the need to improve and protect air quality. Reason dictates that important air quality protections be put into place at the earliest opportunity, not the easiest (for government). It would be galling to have spent thousands of dollars in woodstove upgrades/replacement upon purchase, only to find that one's neighbors on either side of your home are free to belch out smoke unfettered by the onerous provision that was imposed upon you at-sale [6]. So why would anyone find the p-o-s retrofit approach attractive? On one level, it's seen as an 'easy' fix for government to impose such mandates [7]. However, in reviewing the facts it becomes apparent that this 'fix' is an illusion. Regulators might feel that they are "addressing" the problem, and can even demonstrate this to others by referencing their code provisions, rules, or regulations that they have imposed. However, precious little is accomplished on-the-ground (or in the air if you will) where it really matters, for such a p-o-s dependant change-out is tortuously slow.

(C) *FINANCIAL CONSTRAINTS* - Others suggest that with large amounts of money being exchanged in a real property transaction, it shouldn't even be missed if government sticks in its hands (metaphorically, via retrofit mandate) to pull out "a few dollars" to accomplish this task. This financial malleability is factually inaccurate. The misperception of significant yet undedicated funds available for use or redirection during a transaction leads many an agency to errantly believe that becoming entangled in the escrow process provides them a relatively painless opportunity to tap into these resources. This alleged pool of resources to be tapped into to perform the demanded retrofit at-sale simply does not exist. Call it what you will, the mandate to perform before escrow is allowed to close becomes a de-facto transfer tax upon one or more of the parties involved in the transaction. Worse still, it's a regressive tax, in that those who can least afford to comply with these mandates are hit the hardest.

(D) *DAMAGES HOUSING MARKET* – Escrow is a time-sensitive process. By adding time-consuming mandates to such a process, government's action hinders, indeed endangers the transaction's successful completion. When the point-of-sale provision goes beyond information disclosure, requiring physical alterations to the dwelling, the elongated timeframe to comply impedes commerce [8]. These impediments to a successful real estate transaction are felt all the more acutely by the first-time or lower-income homebuyer. Affordable housing is challenging enough in our high cost region, with many folks who qualify for a mortgage at this price point being unable to absorb any added financial liability. Adding such burdens to the purchase process can and will cause some affordable housing transactions to fall through. Distressed properties face an equally grim fate; with short-sales, REO's, bank owned properties and the like representing a precarious market segment that will be unable or unwilling to take on another financial burden. Even market rate home sales with well-qualified buyers can go awry when retrofit mandates are

attached to the time-sensitive escrow process. Such capricious provisions attached to escrow can do untold damage to individual's lives, family stability, community vitality, the housing market's recovery, and the innumerable jobs and dollars lost that would otherwise ripple throughout the region's economy as the housing market rebounds [9].

(E) *MISALLOCATION OF RESOURCES* - It can also be reasonably argued that point-of-sale imposed retrofits are in many ways a misallocation of resources [10]. With all that goes into information dissemination, training, inspections, certification, tracking, enforcement, and cross-referencing these efforts to future sales of the same property (to avoid duplication), using the "hit and miss" approach that is point-of-sale seems out of step with both the importance of the objective and the limited resources available to local government to provide adequate stewardship over such a scattered "shotgun" approach. County staff is best deployed in a strategic manner that emphasizes compliance assistance, not aimless travel between pending sales. This discussion of misallocation of resources does not even begin to touch upon the inappropriate burdens such p-o-s retrofit provisions place directly into the lap of the real estate practitioner; burdens that do not rightly belong to, but are nonetheless foisted upon the real estate professional. Real estate professionals should not be compelled to act as an arm of the County's enforcement program; in short, Realtors® shouldn't be forced to act as your "woodstove police". Real estate professionals are not expert in this area, yet are in many ways forced to act as such to ensure that a transaction is successfully completed in good faith with all applicable requirements met. This industry-specific burden can also be confounded by those who elect to utilize out-of-area brokers, agents, mortgage lenders, and title insurance companies. The "FSBO" (for sale by owner) properties are also less likely to be aware of this compliance requirement. Real estate professionals serve their clients, for which they are compensated (*if* a successful transaction

can be completed). The county does not offer compensation to the RE professional while he or she is being tasked to act on their behalf, much less indemnify or bond the real estate practitioner against errors, omissions, or lost income due to the p-o-s retrofit impeding sales. Not only is this well outside the scope of the State of California's real estate licensing requirements, as administered by the Department of Real Estate (DRE), it is antithetical to fostering the agent-client relationship that is so important in successful real estate sales. Information dissemination, marketing, disclosure, insight into the unique features of a given area, encouraging buyers and seller's to perform their due diligence; these are value-added services the real estate professional can bring to the transaction. When a point-of-sale retrofit mandate encumbers residential transactions, such as Rule 225, Section 300, Subsection 303 does, it expands the liability exposure for all involved in such matters (e.g., brokers, agents, mortgage lenders, title companies, insurance agents, appraisers...). County government need not and should not deflect authority, responsibility, and the accompanying liability to the escrow process and those involved.

(F) *BOTTOM LINE* - Governmental use of point-of-sale retrofit mandates to correct a deficiency on or in existing improved properties is environmentally, economically, and logistically unsound. The more important the issue in need of corrective action, the more egregious a p-o-s retrofit approach becomes. Public health and safety issues deserve, indeed demand, more timely attention than a point-of-sale retrofit mandate could ever hope to offer. Please cast off the inefficient, ineffective, and inequitable provisions of Rule 225 as found in subsection 303.

Solution: Universal Compliance Mandate with Date-Certain Established

As alluded to in this correspondence's opening paragraph, while it may be necessary to tear down a fatally flawed proposal to ensure it is cast aside, this

achievement is not sufficient to "close the loop" on the underlying issue of concern. TSBOR is committed to taking this extra step, seeking out and offering up tenable policy options and implementation alternatives to better address the matter at hand. We have identified five tracks worthy of consideration:

(I) For the least pressing matters, the deployment of an information outreach campaign and voluntary compliance might be sufficient. This type of program operates under the assumption that once the general public has been made aware of the issue and how to address it, most folks will attempt to comply in good faith. (Ia) The addition of an incentives program can serve to motivate and accelerate compliance.

(II) In the case of less pressing matters, using the 'cleaner fleet' automobile analogy to air quality improvement over time, government sets the standard for new units entering the market. Then as older units are replaced with new appliances, these stoves will comply with current emissions standards. Homes without a woodstove, and new construction projects would be allowed to install units that meet or exceed the present emissions standards.

(III) When the case can be made for more/increased regulatory involvement, in addition to articulating the emissions standard for new appliances, the Code or Rule should also forbid the sale, resale, installation, or repair of non-compliant stoves. This set of proscriptions serves to accelerate the rate at which older non-compliant stoves are traded out for newer compliant models.

(IV) If the provisions as set out in track two or three are not producing across-the-board improvements in air quality, the establishment of 'no burn' provisions in the code could serve to forestall exceedances when meteorological conditions merit (e.g., inversion layer). A number of

jurisdictions in this state and neighboring states have reportedly had great success in securing compliance from the local population, once such a program has been well-publicized. Media outlets have been ready and willing to assist in "getting the word out" during news broadcasts and as Public Service Announcements (PSAs) throughout the duration of the event. Commonly, this "spare the air" type program utilizes the color designations found on traffic control lights to communicate the jurisdiction's ambient weather/air quality conditions and associated wood burning constraints, if any. This "Green-no restrictions, Yellow-reduce or curtail use, and Red-no burning allowed" system can be used to inform and, if necessary, enforce compliance.

(V) For those most pressing concerns, in which significant environmental degradation or risk to human life or health exists, then the response by government must be broad, inclusive, and decisive. In short, imposing a Universal Retrofit requirement, with a Date-Certain for compliance attached. Such a forceful approach does not preclude the adoption of components outlined in other tracks towards compliance (e.g., incentives, burn restriction days...); in fact, we would encourage the incorporation of as many forms of assistance and outreach as resources allow.

Given the research findings that have been presented by public health experts regarding the adverse impacts of inhaling fine particulate matter suspended in the air [11], and the negative environmental effects of this situation [12], it appears that track five, or some hybrid of that approach, is warranted in this instance.

Reference location within the County structure

This section speaks to the confusion associated with the fragmented approach to addressing the woodstove/woodsmoke issue. At present, the matter of woodstove

standards and compliance measures are found in part within County Code, and in part within APCD Rules. Quizzically, the fine-grained treatment of the topic, relating to a specific sub-region within the county (Martis Valley), is to be found in County Code as set by the Board of Supervisors [13] (ref. Code section 15.26.010, A-D). Yet, the broader countywide treatment of the topic can be found only in a relatively obscure stand-alone set of Rules [14] (ref. Placer County Air Pollution Control District, Rule 225, as revised). To further confuse matters, a second sub-region's (Squaw Valley) treatment of extant non-compliant woodstoves is addressed in a previous iteration of the APCD Rules [15]. There is little sense of logic, purpose, direction, or consistency in the placement of these various woodstove provisions. Perhaps this is why the 2007 Rule 225 revisions were enacted without much debate? We are now informed that two public hearings were held by the APCD prior to adoption of the revisions, but both events were in Auburn and proceeded "under our radar". One might reasonably expect that a proposed Countywide Rule would be subject to at least one Eastern County / High Sierra hearing, but apparently such was not the case. Furthermore, we have come to expect that such countywide policy-level land use discussions and decisions would be taken up by our elected Board of Supervisors, not the appointed APCD Board. Nevertheless, a set of rules, regulations, or standards such as that seen in PCAPCD's Rule 225 is indeed within the scope of their mission. We are not forwarding the argument that the imposition is beyond their purview, only to suggest that some sense of continuity be established and maintained.

Had we known that the onerous point-of-sale retrofit provision (ref. subsect 303) was under consideration in 2007, the Tahoe Sierra Board would have most assuredly protested. To bolster this claim one need only reference TSBOR's vigorous opposition to the 2003 Martis Valley Code provisions [16]. In fact, our organization was petitioning Placer County to adopt the woodstove change-out

provisions that are in-force in the neighboring jurisdiction, the Town of Truckee. The proposition was based on the fact that particulate matter does not respect artificial governmental borders. Combined with the fact that an air quality plan best serves the people if it is consistent from one jurisdiction to the next, provided that the template being replicated is an effective one. We worked extensively with Town staff to develop just such a template.

Title 7 "AIR QUALITY" of the current Town of Truckee code states, in pertinent part:

> "7.06.030 Removal of Non-Town Approved Solid Fuel Burning Appliances by July 15, 2007
>
> (a) All solid fuel burning appliances within the Town of Truckee that are not Town Approved Solid Fuel Burning Appliances as defined by Section 7.06.020 shall be removed from all properties by July 15, 2007 or rendered permanently inoperable by July 15, 2007 unless an extension of time to comply with this Chapter is granted by the Community Development Director in accordance with Section 7.06.040. (ORD 2006-02 04-20-06) [17]

In recently reviewing the 2007 County staff report to the APCD Board on the proposed Rule 225 revisions, there are many points of concern [18]. In an ironic twist of fate, the only reason this issue surfaced in 2010 was in regard to the TRPA's vague reference of Placer County's intentions in the Basin regarding non-compliant woodstoves as it relates to their pending 2027 Regional Plan Update [19]. During the Land Use Milestones series of policy discussions and direction, TRPA "FactSheet # 3" on Air Quality spurred our organization to dig deeper into the County's intentions; obviously, we were surprised and disappointed with what we uncovered. The overarching purpose of this contemporary effort to urge ACPD's reconsideration, and ultimately rescission of the 303 provisions, is to put Placer County ahead of the curve in its otherwise laudable effort to obtain and then maintain superior air quality.

Implementation

Universal Compliance is the appropriate standard/Policy; with a Date-Certain established by Ordinance (or by Rule if authority is retained by the APCD) to set the bar for when the homeowner is expected to be able to demonstrate compliance. This policy framework is both necessary and sufficient (i.e., you needn't do more, you mustn't do less) to effect real change in a timely manner. To deploy a Universal Compliance mandate (by Ordinance or by Rule) that all woodstoves must meet or exceed the County standard, with conformance to this standard being obligatory on or before a specific date in time (Date-Certain), still leaves the jurisdiction with a number of implementation options/decisions.

The less intensive approach towards compliance would be "complaint based" initiation of action. In this scenario, when a gross polluting appliance is either reported to you, or directly observed by your duly authorized agents, then a notice of potential non-compliance letter would be sent to the property owner. The property owner would then be afforded a prescribed period of time to either demonstrate that a compliant device is already in place (at which point the jurisdiction can respond with a fact sheet on appropriate combustible materials and their use), or in recognizing that the appliance on-site is non-compliant, the owner demonstrates to the jurisdiction's satisfaction that the situation has been remediated (e.g., compliant stove installed, non-compliant stove permanently removed / rendered inoperable....).

A more intensive approach would involve phasing in the compliance trigger date over a number of years; in so doing, generating an overlay map of the County that divides the jurisdiction into geographic subareas or grids. Then, employing a "worst first" strategy, make contact with every improved property owner in that year's grid to ascertain appliance status. Conceptually, the objective is first

to inform, then to provide assistance in determining compliance or the need to perform to come into compliance, offering up any options the non-compliant owner might pursue to defray some of the costs associated with the mandate (e.g., purchase of compliant stoves in bulk at a discount, passing along the savings to individuals as they make use of one of these units; collaborating with a scrap, salvage, or refuse company to provide for disposal of non-conforming units at little or no cost to the individual removing the offending appliance; fast-tracking permitting requirements, or reducing the level of review to a ministerial matter...), and if all else fails, imposing an escalating fine structure for bad actors. Using this grid pattern outreach and enforcement structure, it is reasonable to believe that the County will achieve widespread compliance in seven-to-ten years time. This is far and away superior to reliance on the overly burdensome and under-performing point-of-sale escrow encumbrance.

In either the 'less intensive' or 'more intensive' implementation strategy, there is a role that the real property transaction can play to move the process forward. Namely, disclosure of the law, code, or rule, and its applicability to that individual's property. This information dissemination at-sale approach informs all involved of the compelling reason/need for compliance, puts the owner (current and prospective) on notice of the fact that this mandate is in full force and effect at present, and that willful non-compliance may result in stiff fines and penalties.

Cross-jurisdictional ordinance similarities – Addressing a range of needed upgrades to existing properties

The real estate transaction model outlined here is not unique to Truckee, nor solely applicable to woodstoves. Northstar Community Service District has a Universal Compliance mandate with date-certain implementation standards, but in this instance, the programmatic approach to affect real change is directed

towards broad-based Defensible Space objectives. The Northstar CSD Ordinance (approved on 21 October 2009) example references the role real property sales will play in their compliance effort.

> Entitled "Dissemination of Information Regarding Real Property Defensible Space Requirements Prior to Close of Escrow", it states in full: "Prior to the sale and close of escrow ("Close of Escrow") of any real property subject to the requirements of this Ordinance, the selling property owner shall deliver to the buyer a 'Northstar Community Service District Defensible Space Requirements' pamphlet ('Pamphlet'), as published by the District. Delivery of the informational Pamphlet to the potential buyer shall be demonstrated by affixing the signatures of the seller and buyer to a Notice of Defensible Space Requirements form ('Notice'), as created and made available by the District to the general public. Submission of this Notice to the District, signed by the buyer and seller attesting to and affirming the delivery of the Pamphlet, is a condition precedent to Close of Escrow for all real property subject to this Ordinance. Delivery shall be recognized as timely so long as the Notice is postmarked on or before the date of transfer of title by the County Clerk of Records. The delivery of said Pamphlet shall be deemed to represent full and complete compliance with the provisions of this disclosure requirement".

TSBOR supported this effort, and would embrace such an approach or like-minded derivations on this theme, were it to be applied to woodstove change-out in Placer County. There are longer-standing universal compliance mandates that our organization was involved in developing, and have proven to be quite effective and expeditious in securing widespread compliance [20].

Thank you for your time, effort, and understanding as we attempt to present our case for reconsideration of Rule 225 as amended, subsection 303; ultimately in

the hope that our input might affect its formal rescission. The Tahoe Sierra Board of Realtors® respects the work that has gone into your program to-date, and regrets that circumstances have precipitated our late, but wholly necessary, call for reconsideration. In the near-term, please formally suspend implementation of subsection 303, pending your Board's consideration of these new facts and the alternatives that have been put before you. We appreciate your consideration, and look forward to working with you to recast the woodstove compliance mandate in such a fashion that it best serves all interests and adequately addresses all concerns. This is our commitment to you.

Sincerely,

s/ *John R. Falk*

John R. Falk, Legislative Advocate
Governmental & Public Affairs Consultant
Tahoe Sierra Board of Realtors®

cc: The Honorable Kirk Uhler, Chairman, Placer Co. Board of Supervisors
The Honorable Jennifer Montgomery, 5th Dist. Supervisor, Placer County
Placer County Association of Realtors®
California Association of Realtors®
The Contractors' Association of Truckee Tahoe

Endnotes

1. Throughout my nearly two decades of service to TSBOR as their professional legislative advocate, a common thread that can be found in all of our dealings with governmental entities is a good faith commitment to identify and promote the best possible course of action to meet a given need. Oftentimes, the optimal policy and implementation plan is in accord with our industry's interests. However, when the clearly superior plan/approach to address an issue of import is suboptimal from a real estate practitioner's business/operations perspective, TSBOR has shown an uncommon willingness to "bite the bullet" and accept the proposal that best addresses the problem. Achieving a fair, functional, and

balanced approach to accomplish Placer County's stewardship objectives has been, and continues to be, one of our top priorities.

2. This overarching philosophy is offered up to serve both as background, and to reinforce the fact that when our organization calls out a policy as ill-conceived and ill-advised it is done so only after extensive research, careful consideration of all the options and their projected outcomes, identifying any unintended consequences, and vetting various approaches as to their efficiency, effectiveness, and equity in application.

3. a.k.a. prior-to-sale, before close of escrow, at-sale, upon change of ownership, when real property transfers fee title...

4. It is our great hope that we will not be faced with such an adversarial scenario in regard to Rule 225 when the January 1st, 2011, implementation trigger is scheduled to take effect. Our industry would much rather be your ally than your adversary; working together we can accomplish much. This one contentious provision serves no one, dilutes resources, and adversely impacts progress towards the objective with which we all concur (i.e., clean & clear air).

5. As illustrated in the body of the paragraph, even with its deployment, some of the homes in greatest need of upgrade will remain untouched for twenty-plus years post-implementation, due to the retrofit having never been triggered because of their longstanding ownership.

6. As this new homeowner is being choked out of their clean-burning residence by extant neighboring non-compliant appliances, it is reasonable to anticipate that their opinion of county government is likely to become less-than-favorable as well.

7. P-o-s retrofit mandates encumber two groups that are oftentimes on the margin of political relevance- those who are selling their homes and moving away, along with those who are purchasing a home and are new to the area. Thus, government's "action" hits but a few folks at a time, softening the blow. Unfortunately, this same softened blow is the inherent weakness of the

approach. Few are burdened at any one time, and little is accomplished. It's truly a lose-lose proposition.

8. The innumerable pitfalls related to physical alteration of a structure during the home sale process include, but are in no means limited to: County permitting requirements, post-construction on-site inspections, availability, and cost of materials at that point in time, availability, and reliability of those retained to perform the required work...
9. The long-term loss of tax revenue (property, sales...) when homes fail to sell, and the overarching impact such adverse conditions convey to the larger region's economic viability.
10. Will you assure folks that qualified/certified inspectors will be readily available throughout the county to provide this service in a timely fashion? Can you ensure that you have adequate counter and field staff support in the building department to expedite all the permitting requirements that are associated with the installation of a woodburning appliance? Might you be in a position to guarantee that sufficient numbers of the type of stove to be required (e.g., EPA Phase II or better, Oregon compliant, San Luis Obispo approved...) will be available for purchase? Of course, it would be anticipated that the unit of government that imposes such a burden would also make every effort to protect the consumer from price gouging. In answering all of the above personnel, resource, documentation, and equipment allocation questions, please keep in mind that under the point-of-sale approach as slated to take effect on the first of next year, your answers will literally determine if transactions can be completed within the time-sensitive escrow parameters. Is this a position county government wants to find itself entangled in and responsible for? We think not.
11. Short-term adverse health impacts are seen in the very young, older individuals, and most acutely by those of any age with asthma. In the longer-term, fine particulate matter inhalation has been implicated in a range of illnesses and impaired functioning, such as COPD (chronic obstructive pulmonary disease) to cancer.

12. Short-term environmental concerns revolve around loss of visual clarity (haze or smog). Long-term impacts to the environment are associated with particles settling onto plant life or into bodies of water. Reportedly, these longer-range impacts can result in loss of plant life (failure to thrive), water clarity degradation, and water quality degradation as these same particles often carry constituents such as nitrogen and/or phosphorous, pathogens, and other substances of concern.

13. The Placer County board of supervisors finds that:

A. The particulate matter pollution in the Martis Valley and its environs at times exceeds health based ambient air quality standards; and

B. There are adverse health, economic and environmental effects that particulate matter has on residents and visitors of the Martis Valley

C. Key control strategies are (1) Limit emissions from solid fuel burning appliances and total emissions from residential units, such that emission limits from appliances should not exceed the emission requirements for an EPA-certified Phase II woodstove, and total emissions of PM10 from a residential unit should not exceed 7.5 grams per hour; (2) Facilitate the removal or replacement of non-certified woodstoves and fireplace inserts, thereby reducing PM10 and PM2.5 emissions from these gross-polluting appliances.

D. Accordingly, the Placer County board of supervisors finds that the health, safety, and general welfare of the residents of, persons employed in, and persons who frequent this portion of Placer County would be benefited by the regulation of emissions from solid fuel burning appliances; and by the removal of non-county approved appliances prior to the sale or transfer of real property that contains such appliances. (Ord. 5255-B (Exh. 1-A) (part), 2003)

14. 303 SALE OR TRANSFER OF REAL PROPERTY

303.1 Effective January 1, 2012;

303.1.1 No person shall sell or transfer any real property which contains an operable free standing wood stove which is not EPA Phase II certified.

303.1.2 Prior to the sale or transfer of improved real property, the seller shall provide to the recipient of the real property, and the Placer County Air

Pollution Control Officer, documentation of compliance with section 303.1.1 of this Rule. The Placer County Air Pollution Control District Board will approve a procedure to implement this Rule to become effective January 1, 2012.

303.1.3 Each property which contains a free standing wood burning stove may be subject to an inspection prior to sale or transfer by the District or other District approved agency, in order to verify compliance with this rule.

15. As initially adopted on June 17, 1987, Placer County's APCD Rule 225 applied solely to Squaw Valley. It required that all installed wood burning appliances be EPA Certified or equivalent.

16. ref. oral testimony provided at two 1993 public hearings in front of the Board of Supervisors; a letter from TSBOR in opposition to the p-o-s proposal directed to the Board of Supervisors, dated 14 Aug. 2003; a follow-up letter to the Town of Truckee, with copy sent to then Chairman of the Board Bloomfield, dated 22 September 2003, in which we call out the incomplete information provided to the Supervisors by select Council members – the nature of which would have radically altered the County's approach to the issue. Specifically, that the Town's intention was to utilize p-o-s as a temporary bridge to provide the time needed to develop and implement a comprehensive Universal Change-out requirement. The Town's Mayor spoke of the temporary band-aid (i.e., p-o-s) as if it were to be the long-term solution, which it was not. By design, the p-o-s provision had a "sunset" clause in it, which was honored. That same Resolution which set aside /repealed the p-o-s provision, concurrently introduced the trigger for a universal compliance mandate, which became part of the Town's Municipal Code.

17. Other Title 7 Muni Code Sections that might be of interest to the reader:

7.06.050 Implementation and Enforcement

The Community Development Director may grant an extension of time not

exceeding six months from July 15, 2007 to comply with the requirements of this Chapter if the Director finds that there are extenuating circumstances warranting an extension. Any decision by the Director on an extension of time may be appealed to the Town Council in accordance with Section 2.04.100 et seq. of the Municipal Code. (ORD 2006-02 04-20-06)

7.06.060 Violations and Enforcement

In addition to the penalties and punishments as set forth in Chapter 1.02 of this Municipal Code, the Director shall have the authority to issue an administrative citation in accordance with Chapter 1.03 of this Municipal Code for a violation of any provision of this Chapter. The amount of the fine for a first conviction shall be not more than One Thousand Dollars ($1,000), for a second conviction within a period of one year shall not be more than Two Thousand, Five Hundred Dollars ($2,500), and for a third or any subsequent conviction within a period of one year shall not be more than Five Thousand Dollars ($5,000). (ORD 2003-06 12-4-03)

18 Three points within that document are worth a brief discussion. *First*, it should have been more prominently called out that the vast majority of the other California APCDs with wood burning appliance Rules, as referenced in the staff report, utilized a VOLUNTARY INCENTIVE-BASED approach to address existing non-compliant stoves, with the mandate to install compliant units applying only to new construction projects. *Second*, the considerations of economic impacts related to the proposed amendments were woefully inadequate.

The December 13, 2007 staff report asserts, in pertinent part,

"Cost to the Public: The cost of the additional equipment required by a builder, of a new home, is likely to be passed on to home buyers. The additional cost is less than 0.6% of the median price of a home in Placer County, and is not expected to have a large impact on the affordability of new houses or the housing market in general. In residences undergoing a point of property sale or transfer, any additional costs could be shared by both the seller and the buyer or by either party. To eliminate any additional costs, the appliance could simply be rendered inoperable."

A number of these assertions were debatable in 2007, but are more closely characterized as errant in 2010. The Socioeconomic Analysis contained within that same document is incomplete at best in its review, inadequate and inaccurate in its assertions when reflected against the 2011 implementation date backdrop. (ref. "Impact of Rule 225 on employment and the economy in the District: *This rule is expected to have minimal impact on employment and the economy.*) Italics added.

Third, this Report suggests that the Rule as amended provides a cost efficient and effective method to achieve significant PM load reductions. Yet, in considering alternatives to the proposed approach, the document's treatment falls far short of an in-depth, even cursory appraisal, of other options and their potential to deliver equal or superior load reductions at a similar or reduced cost. The fact that as of 1992 EPA Phase II compliant stoves were available and oftentimes installed in new construction projects is discounted, for if it were fully weighted then the cost-to-benefit ratio of a point-of-sale provision becomes a significant impediment to its implementation. Any number of additional items could be brought to bear on this discussion, for example, previously appropriately installed (i.e., following all applicable building code provisions at the time) EPA Phase I and Phase II certified woodstoves and fireplace inserts, zero clearance fireplaces, and open masonry fireplaces should be explicitly exempted from this ordinance. For the purposes of this discussion, suffice it to say that Rule 225 as amended should be, at a minimum, suspended until these issues are adequately addressed.

19 TRPA Regional Plan Update, FactSheet #3: Land Use, 5/26/2010 - Air Quality (AQ) Subsection "Staff does not propose to amend Implementation Measure AQ.IMP-16, which states: 'Clean Wood Stoves – All wood stoves not certified to emit less than 4.5g/hr of PM for a non-catalyst and 2.5 g/hr of PM for a catalyst-equipped stove must be removed by 2020'." (p. 35)

"Beginning in 2011, Placer County will implement a wood stove certification program similar to the existing TRPA program." (p. 37) see above.

20 Illustrative of this productive working relationship we have fostered with various units of government over the years, the Truckee Fire Protection District's

LPG regulator upgrade is a case in point. In brief, some ten-to-twelve years ago they became aware of a flawed component in a particular part or component that is used to regulate propane gas releases. This defective design was unfortunately commonly used throughout the State, Truckee included. The Fire District had initially considered instituting a point-of-sale inspection and remediation / retrofit mandate to address this issue. Our organization looked into the matter, and found that the LPG regulator change-out was indeed desperately needed. Alarmingly, when these flawed regulators failed they precipitated a catastrophic explosion and fire. Once the nature of the issue became clear, TSBOR pressed the TFPD to discard any point-of-sale inspection and remediation program under consideration, for it placed everyone at great risk. Risk to life, property, and environmental destruction if such an event were to result in a catastrophic wildfire, were clear and compelling reasons to invoke a more aggressive and comprehensive approach to address the matter as soon as humanly possible. If allowed to move ahead in its initial form, it would have taken decades to secure compliance. Knowing this, the liability associated with the District's inaction (perhaps better characterized as its initial slow-moving compliance concept) was readily acknowledged by one and all as unacceptable. To their great credit, the District was not married to the p-o-s approach, not defensive of its initial idea, but rather openly embraced the alternative proposal we outlined – a Universal Compliance Mandate, with a Date-Certain established to become compliant, followed up with a grid pattern outreach, inspection, and remediation program. Net result, it was reported to us that in some five year's time the entire District was compliant with the LPG regulator change-out. Disaster averted, positive perception by the public that the District cared and was working diligently to ensure their safety, and home sales were not encumbered by a p-o-s mandate. They used their PR outreach to best effect, deployed their qualified inspectors in a logical, systematic (programmatic) manner, obtained replacement regulators at reduced cost, and passed along these savings to the grateful customer, and accomplished the objective in a matter of years, not decades.

~END~