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*Docket Number: 19-BSTD-06*

**Objection to Reach Code Approval - Part 7 of 12 pdf**

Letter to California Energy Commission with attachments re City of Santa Rosa Ordinance No. ORD-2019-019. Part 7 of 12.

*Additional submitted attachment is included below.*



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September 18, 2019

**VIA E-MAIL AND U.S. MAIL**

Kenneth MacNab  
Town Manager  
Town of Windsor  
9291 Old Redwood Highway  
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Re: Town of Windsor Proposed Adoption of All-Electric Residential Reach Code  
(September 18, 2019 Town Council Meeting Agenda Item No. 10.1)

Dear Mr. MacNab:

This letter is sent on behalf of our client William Gallaher with respect to the above-referenced matter. Thank you for providing the link to the agenda item and staff report and confirming that my prior letter is part of the administrative record for the Town's consideration of the proposed reach code ordinance.

This letter is sent to briefly respond to the agenda report's summary discussion of the proposed ordinance's claimed exemption under the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq. More specifically, that abbreviated discussion does not substitute for the robust environmental analysis required under CEQA, and does not support the application of the categorical exemptions under sections 15061(b)(3) and 15308 of the CEQA Guidelines.

The first point that bears mentioning is that none of the CEQA discussion set forth in the agenda report was provided before the first reading of the proposed ordinance. This has precluded the opportunity for meaningful public review, comment, and participation in the Town's consideration of the ordinance.

More fundamentally with respect to the exemption under Guidelines section 15308, the Town has the burden of establishing that there is substantial evidence in the record that the exemption applies. (*California Farm Bureau Federation v. California Wildlife Conservation Board* (2006) 143 Cal.App.4th 173, 178.) As for the common sense exemption under section 15061(b)(3):

In the case of the common sense exemption, the agency has the burden to provide the support for its decision before the burden shifts to the challenger. Imposing the burden on members of the public in the first instance to prove a possibility for substantial adverse environmental impact would frustrate CEQA's fundamental purpose of ensuring that government officials make decisions with environmental consequences in mind.

(*Id.* at p. 179, quoting *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 116, internal quotation marks omitted.) Thus: “[T]he agency’s exemption determination must be supported by evidence in the record demonstrating that the agency considered possible environmental impacts in reaching its decision.” (*Davidon Homes v. City of San Jose*, *supra*, 54 Cal.App.4th at p. 117.) The cursory discussion in the agenda report provided only shortly before the ordinance’s second reading falls far short of this standard. There is simply no evidence in the record that the Town has taken any of the myriad potential serious environmental impacts from the ordinance into account in its decisionmaking. The burden to overcome the commonsense exemption is “slight.” (*Ibid.*) Between additional impacts from alternative sources of electricity (wind, solar, hydroelectric), fire risk, land use impacts, blackouts (and associated health and safety impacts), generator usage, etc., there is more than sufficient cause to believe the ordinance may have environmental impacts that take it out of the commonsense exemption.

In a related vein, much of the discussion of the claimed exemptions for the ordinance rests on the speculative premise that it will have an overall beneficial effect on the environment. For instance, the agenda report states, “[T]he all-electric code requirement is expected to have a net benefit to the environment through the reduction of GHG emissions.” (Agenda Report, p. 5.) Even assuming the truth of this premise, such an approach is improper under CEQA, which does not allow for a “net benefit” analysis. (*County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1577, 1580.) As the Court of Appeal has aptly observed, “There may be environmental costs to an environmentally beneficial project, which must be considered and assessed.” (*California Farm Bureau Federation v. California Wildlife Conservation Board*, *supra*, 143 Cal.App.4th at p. 186.) Ignoring such costs by dismissing them out of hand, without any actual analysis of pertinent facts, is not permitted by CEQA.

The potential for significant environmental impacts here is not academic and is more than borne out by the limited record that does exist. For instance, while the agenda report downplays the potential impacts of power outages on all-electric homes, the Town has a web page specifically set up for potential PG&E outages.<sup>1</sup> That page specifically encourages Town residents to “[c]onsider alternate power generation choices,” the only examples of which are mentioned are backup generators. The

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<sup>1</sup> <https://www.townofwindsor.com/1175/PGE-PSPS>.



web site then links to a PG&E document on backup generators,<sup>2</sup> as well as a PG&E page on generator safety.<sup>3</sup> For those residents whose entire home is run on electricity, the need for a backup generator is even more vital. And what of those who rely on electric cars? Blackouts are not limited to the summer, for instance, and where electricity is the only source for home heating in the winter months, a blackout can have serious health consequences, particularly for the elderly or chronically ill. And what of the additional impacts arising from generator use? Or even backup battery use, should such prove practicable? The record is entirely silent on these questions.

Similarly, the proposed ordinance itself and the discussion in the agenda report are lacking in detail or meaningful analysis. For instance, it is somewhat perplexing that the Town would tout the necessity of the ordinance in proposed Article 1, which discusses the impacts of climate change on a broad level, while the agenda report downplays the scope of the ordinance's impacts. If the level of increased electricity usage is so slight, then so is the concordant decrease in natural gas usage. In that case, why is the ordinance so essential? Why does the agenda report downplay the risk of fire from electrical facilities, which are known to have caused the most lethal wildfire in California history less than a year ago? On what basis does the Town assume it will only construct 150 or fewer units of low-rise residential housing per year? How does the Town's floating solar project account for increased electricity demand in the winter? In short, the discussion in the agenda report is cursory, relies on unsubstantiated assumptions, and ignores evidence of actual impacts the ordinance may cause.

This is not the only deficiency in the discussion in the agenda report. To invoke a categorical exemption means that there must be substantial evidence that the activity proposed fits within the reasonable scope of the language of the exemption. To fall within the Class 8 exemption, the activity (here, adoption of the ordinance) must be one taken by "regulatory agencies, as authorized by state or local ordinance...." Regulatory agencies are political divisions of the state, such as counties and state agencies. It is not at all clear that the Town qualifies as such. Along the same lines, to fall within the scope of the Class 8 exemption, the action to ensure environmental protection must be taken in a context "where the regulatory process involves procedures for the protection of the environment." Many of the state regulatory agencies traditionally thought of as such have certified regulatory programs which are exempt from normal CEQA procedural requirements because the Secretary for Resources has found they meet statutory criteria whereby they protect the environment in a manner equivalent to CEQA without following the CEQA process. The Town does not have, and has certainly not followed here, any

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<sup>2</sup> [https://www.townofwindsor.com/DocumentCenter/View/22898/FINAL\\_Backup-Generation-Fact-Sheet\\_20190531](https://www.townofwindsor.com/DocumentCenter/View/22898/FINAL_Backup-Generation-Fact-Sheet_20190531)

<sup>3</sup> [https://www.pge.com/en\\_US/safety/electrical-safety/electric-generator-safety/electric-generator-safety.page](https://www.pge.com/en_US/safety/electrical-safety/electric-generator-safety/electric-generator-safety.page)

regulatory process that includes procedures for the protection of the environment. To the contrary, it has skipped the usual state-mandated process typically applicable to discretionary city actions by improperly claiming an exemption from CEQA and the requirement to do an initial study of the broad area of potential impact areas listed in Appendix G. Thus, under the plain language of the Class 8 exemption, it does not apply here.

Even if the ordinance were subject to a categorical exemption, it is clear that the unusual circumstances exception would apply, rendering the exemption inapplicable. (See Guidelines, § 15300.2, subd. (c).) Accordingly, substantial evidence supports a finding that the project presents unusual circumstances giving rise to the impacts discussed here, in our prior letter, and in other comments and correspondence to the Town. These unusual circumstances include, but are not limited to, the following: PG&E's express planned electricity service interruptions and/or blackouts that will potentially last for days in this and other Sonoma County areas, creating very serious health and safety problems if power is actually out that long and not resumed from a non-grid source; the jurisdiction and cumulative study area jurisdictions are in very high fire danger areas, increasing both the likelihood and seriousness of electricity blackouts; there are well-known serious traffic problems on Highway 101 making even longer commutes to Santa Rosa from northern cities by displaced homebuyers and renters who want a choice other than all-electric more environmentally harmful. Accordingly, even assuming *arguendo* the categorical exemption applies, there is more than a fair argument that the adoption of the ordinance may have significant adverse environmental effects due to unusual circumstances which require actual analysis in a legally adequate initial study pursuant to CEQA.

This leads to another deficiency in the agenda report's CEQA discussion. What of cumulative impacts? (See Guidelines, § 15300.2, subd. (b).) If other jurisdictions in Sonoma County or Northern California more broadly enact similar ordinances, the increase in the demand for electricity will be potentially much greater than that from the Town's alone, and so would the related impacts. What of increased generator usage? The impacts of battery purchases, which require the mining of elements such as lithium that comes with its own set of environmental problems?

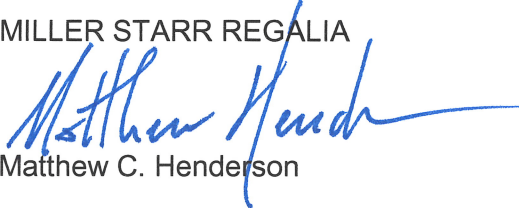
In conclusion, I want to emphasize that climate change is real, and the goal of reducing greenhouse gas emissions is a laudable one. However, the law of unintended consequences applies to even the best-intended legislation. In the words of economist Thomas Sowell: "There are no solutions. There are only trade-offs." Without meaningful environmental review under CEQA, neither the Town nor the public is in a position to understand what trade-offs the ordinance may entail. A half-baked "net benefit" "analysis" is legally insufficient. Accordingly, an environmental impact report must be prepared and certified before the Town may lawfully adopt the ordinance.

Kenneth MacNab  
September 18, 2019  
Page 5

Thank you for your and the Town's attention to this matter. Please do not hesitate to contact me should you have any questions or concerns about the foregoing.

Very truly yours,

MILLER STARR REGALIA



Matthew C. Henderson

MCH:dlf

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