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Objection to Reach Code Approval - Part 8 of 10 pdf

Letter to California Energy Commission with attachments re City of Santa Rosa Ordinance No. 2019-019.
Part 8 of 10- .pdf

Additional submitted attachment is included below.

upgrading, and/or maintenance of associated infrastructure (e.g., roads, fuel breaks, power lines), and where such occurs in or near areas of high fire hazard the resulting environmental impacts must also be studied. (See Appendix G, Section XX WILDFIRE [listing potential impacts such as impairment of adopted emergency response and evacuation plans, exacerbation of wildfire risks, and other human safety and environmental risks and impacts].) And, as noted above, the most deadly fire in California history was started not by natural gas facilities, but by electrical lines. Moreover, also as noted above, increased generator use may give rise to its own increased risk of fire.

Similarly, the Staff Report and Study do not analyze whether the existing electrical grid is sufficient to satisfy the demand of all new construction under a 100% electricity standard. Given PG&E's warnings about potential blackouts, the grid's ability to handle this new demand is questionable at best. Moreover, the Staff Report and Study do not sufficiently discuss the sources of the additional electricity required under the proposed reach code, nor the impacts related to those sources. Natural gas powered plants will naturally obviate most if not all of the supposed benefit of gas-free construction. Wind and solar have well-known impacts relating to wildlife, aesthetics, etc.⁵ And hydroelectric power comes with its own suite of impacts as well, including harm to anadromous fish and other species⁶ and the risk of failure and flood (as with the Oroville Dam crisis of 2017). In fact, hydroelectric facilities in California and the west are being removed, making this source of power uncertain for future electricity needs.⁷

- **GHG/Air Quality.** While the cursory four-page April 17 Agenda Report appears to proceed on the assumption that GHGs are the *only* concern and impact at issue, such a facile assumption is clearly incorrect. An all-electric reach code would eliminate gas-powered

⁵ See https://www.ucsusa.org/clean_energy/our-energy-choices/renewable-energy/environmental-impacts-solar-power.html;
https://www.ucsusa.org/clean_energy/our-energy-choices/renewable-energy/environmental-impacts-solar-power.html.

⁶ See <https://www.fs.fed.us/psw/publications/lind/lind6.pdf>;
https://www.researchgate.net/profile/Liba_Pejchar/publication/11779066_A_River_Might_Run_Through_It_Again_Criteria_for_Consideration_of_Dam_Removal_and_Interim_Lessons_From_California/links/004635277e83e0f755000000/A-River-Might-Run-Through-It-Again-Criteria-for-Consideration-of-Dam-Removal-and-Interim-Lessons-From-California.pdf.

⁷ See <http://www.klamathrenewal.org/>.

heaters, stoves, water heaters, built-in outdoor barbeques, gas burning fireplaces, fire pits, and, as noted above, gas-powered backup generators to protect against losses, disruptions and safety problems from blackouts of a fragile and overburdened electrical grid. Alternative fuel sources – such as wood, gasoline or charcoal – exist for many of these amenities, and could be substituted for the cleaner-burning natural gas that the proposal would eliminate, leading to greater GHG emissions and air quality impacts. Such unintended, but clearly reasonably foreseeable, adverse environmental consequences must be fully evaluated under CEQA. (See, e.g., *Rodeo Citizens Association v. County of Contra Costa* (2018) 22 Cal.App.5th 214 [recognizing that to extent captured butane and propane were used to displace use of other fuels such as coal, home heating fuel, fuel oil, diesel, kerosene, gasoline and ethanol, they would also displace GHG emissions otherwise resulting from use of those alternate fuels].) For example, propane barbeques produce only one-third of the GHG emissions of charcoal barbeques (*id.* at p. 226), and natural gas is similarly a much cleaner burning fuel than charcoal, wood or gasoline. Moreover, the increased use of gasoline or propane generators may also give rise to air quality and/or GHG impacts that are completely unanalyzed in the Staff Report.

- **Population and Housing/Human Impacts.** Projects that would displace substantial numbers of people or housing, or render housing unaffordable, may have significant adverse impacts on the environment and human beings that require CEQA analysis and mitigation. (See CEQA Guidelines, Appdx. G, Section XIV.) To the extent an all-electric reach code could, for example, substantially increase the cost of new multi-family apartment dwelling construction and/or retrofitting, it could lead to increased rents, unaffordable housing, and tenant displacement from the same, with resulting adverse human impacts. Alternatively, renters or home buyers may prefer residences with traditional gas appliances and therefore show a greater propensity to move outside of the Town and commute. Tenant displacement, in and of itself, has been recognized as a significant adverse environmental impact subject to CEQA analysis and mitigation. (*Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425 [holding CEQA mitigation measures designed to mitigate tenant displacement impacts of project, contained in a vesting tentative map, were enforceable and did not conflict with Ellis Act].) Public entities possess the power under

existing law “to mitigate adverse impacts on displaced tenants.” (*San Francisco Apartment Assn. v. City and County of San Francisco* (2016) 3 Cal.App.5th 463, 484, citing *Pieri v. City and County of San Francisco* (2006) 137 Cal.App.4th 886, 892; see Gov. Code, § 7060.1.) As explained by the *Lincoln Place* Court of Appeal, “CEQA... is made relevant... by the Ellis Act’s explicit exceptions for a public agency’s power to regulate, among other things,... the mitigation of adverse impacts on persons displaced by reason of the withdrawal of rental accommodations. *Such items are the common focus and byproducts of the CEQA process...*” (*Lincoln Place Tenants Assn., supra*, 155 Cal.App.4th at 451, *emph. added.*) Indeed, the Supreme Court has recently reaffirmed “that CEQA addresses human health and safety” and “that public health and safety are of great importance in the statutory scheme.” (*California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 386, citations omitted.) CEQA’s “express language... requires a finding of a “significant effect on the environment” ([Pub. Resources Code,] § 21083(b)(3)) whenever the “environmental effects of a project will cause substantial effects *on human beings*, either directly or indirectly.” (*Id.* at p. 386, *emphasis in original.*)

- **Land Use/Planning.** Given the foregoing, the Staff Report’s analysis of the consistency of the proposed ordinance with the Town’s General Plan is absurdly abbreviated, consisting of less than two pages and citing a mere five goals and policies out of the more than 250 pages that make up the General Plan.⁸ (Staff Report, pp. 4-5.) While the Town has discretion in interpreting and applying its General Plan, it cannot do so in a way that frustrates the purpose of the General Plan. (*Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342, 378-381.) The analysis in the Staff Report is far too brief to fully address the proposed ordinance’s consistency with the General Plan and its overall purpose. Accordingly, further analysis of this issue is required.

⁸ See https://www.townofwindsor.com/DocumentCenter/View/21498/Final-Town-of-Windsor-2040-General-Plan_2018-06-04.

IV. CONCLUSION

While Mr. Gallaher reserves all rights to submit further comments, arguments, and evidence, it is evident for the reasons set forth above that (1) the Town cannot lawfully make the findings required to enact the proposed reach code ordinance, and (2) a full and robust EIR that complies with CEQA must be prepared and certified before any ordinance adopting an all-electric reach code can be considered by the Town for approval.

Very truly yours,

MILLER STARR REGALIA



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