

Date Aug 25, 2023

Public Hearing/Zoning Section
Los Angeles County Board of Supervisors
Room 383, Kenneth Hahn
Hall of Administration
500 West Temple Street
Los Angeles, California 90012

PROJECT PRJ2022-002590,
NO.: Notice of Exemption filed for Project No. RPPL2023000687, and RPAP2023000718.

APPLICANT: Hecate Grid Humidor Storage 1 LLC

LOCATION: Northeast of the intersection of W. Carson Road and Vincent View Road

Acton, CA

Soledad **Zoned District:**

Related zoning matters:

CUP(s) or VARIANCE No.

Change of Zone Case No.

Other Notice of Exemption filed for Project No. RPPL2023000687 and RPAP2023000718

This is an appeal on the decision of the Regional Planning Commission in the subject case. This form is to be presented in person with a check or money order made payable to the "Board of Supervisors" (check or money order must be presented with personal identification), during regular business hours of 8:00 a.m. to 5:00 p.m. prior to the appeal deadline at the above address. (Appeal fees subject to change). Contact the Zoning Section of the Board of Supervisors for information: (213) 974-1426.

This is to appeal: (Check one)

 The Denial of this request: \$1,104*

 X The Approval of this request: \$1,104*

*Except for Subdivision appeals: \$130.00 of this appeal amount is allocated to the Board of Supervisors' Hearing

Briefly, explain the reason for the appeal (attach additional information if necessary):

On behalf of Save Our Rural Town, I appeal the "Notice of Exemption" ("NOE") filed on August 16, 2023 by the

Department of Regional Planning for the Humidor BESS project. The three grounds for this appeal are:

1) The NOE was filed based on a presumption that the project is eligible for ministerial review; it is not.

2) The NOE asserts the project is eligible for certain categorical exemptions. It is not.

3) The NOE was filed by the County to satisfy County CEQA obligations, but it only addresses the battery storage component of the project and does not address the transmission line component of the project. By filing an NOE for only a portion of the "whole project", County has improperly segmented the project in direct violation of CEQA

Details pertaining to each of the grounds enumerated above are provided in the attached

x *Jacqueline Ayer*
(Signed) Appellant

Jacqueline Ayer

Print Name

2010 West Avenue K, #701

Street Address (for mailing correspondence)

Lancaster, CA 93536

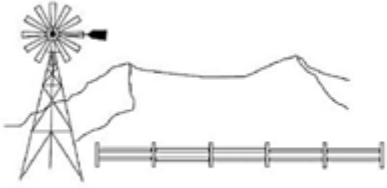
City/Zip

(949) 278-8460

Day Time Telephone Number

SORTActon@gmail.com

E-mail Address



SAVE OUR RURAL TOWN

The following information is offered to supplement Save Our Rural Town’s (“SORT’s”) appeal of the Notice of Exemption (“NOE”) that was filed by the Department of Regional Planning on August 16, 2023 for the Humidor Battery Electric Storage System (“BESS”) Project (specifically, Project No. PRJ2022-002590, RPPL2023000687, and RPAP2023000718) proposed by Hecate Grid Humidor Storage 1 LLC (“Hecate”). This supplement was prepared by Jacqueline Ayer, Director of Save Our Rural Town. Ms. Ayer is a certified environmental engineer and has more than 35 years of environmental engineering experience; for nearly 20 years, Ms. Ayer has actively participated in both adjudicatory and quasi-legislative proceedings involving electrical transmission projects before the California Public Utilities Commission, the Federal Energy Regulatory Commission, the Department of Energy, and the California Energy Commission. This participation has included the submission of extensive expert witness testimony, briefs, and comments regarding the need and efficacy of proposed electrical transmission projects. Accordingly, the comments provided herein constitute “substantial evidence” as that term is defined by the CEQA Statute [California Public Resources Code §21080(e)(1)] and CEQA Guidelines [California Code of Regulations Section 15064(f)(5)].

THE NOE WAS FILED BASED ON A PRESUMPTION THAT THE HUMIDOR BESS PROJECT IS ELIGIBLE FOR MINISTERIAL REVIEW; IT IS NOT.

Regional Planning filed the NOE based on a claim that approval of the Humidor Battery Electric Storage System (“BESS”) project in the M-1 Zone was a ministerial act and therefore exempt from CEQA (citing §21080 (b) of the CEQA Statute and Section 15268 of the CEQA Guidelines). However, and for the reasons set forth below, the County should not have ministerially approved the Humidor BESS project because the Humidor BESS project is not eligible for ministerial review. Because the ministerial approval of the Humidor BESS project was improper, the NOE issued for the Humidor BESS project must be vacated given that it is entirely reliant on an improper ministerial approval. The following sections explain why Regional Planning’s ministerial approval of the Humidor BESS was improper.

BESS Facilities Are Not an Allowed Use in the M-1 Zone.

Regional Planning approved the Humidor BESS on property in Acton that has an M-1 (light industrial) zoning designation (specifically, APN 3056-004-044 and APN 3056-004-058). However, the Los Angeles Zoning Code is prescriptive and it only authorizes specific uses that are identified for each specific zone; uses that are not specifically enumerated for a particular zone are not permitted in that zone. Section 22.22.030(C) of the Code does not identify BESS as an allowed use in the M-1 zone; therefore, BESS facilities are not allowed in the M-1 zone and they cannot be approved in M-1 zones by Regional Planning either via a ministerial review or a discretionary review. By

approving a BESS use that is not allowed by the Zoning Code, Regional Planning exceeded its authority under the Zoning Code.

Regional Planning Improperly Relied on Section 22.234.020 of the Zoning Code to Ministerially Approve the Humidor BESS Project in the M-1 Zone.

SORT understands that the following steps were followed to ministerially approve the Humidor BESS project:

1. On March 21, 2021, Hecate submitted a “Base Application” for a Conditional Use Permit for the Humidor BESS project (RPAP2021003411).
2. On April 27, 2021, Hecate submitted an application for a Conditional Use Permit (PRJ2021-001666 and RPPL2021004498) for the Humidor BESS which included a Site Plan (RPPL2021004479).
3. Regional Planning reviewed the Zoning Code and recognized that BESS facilities are not an allowed use in the M-1 Zone;
4. Regional Planning reviewed the uses that are allowed in the M-1 zone;
5. Regional Planning identified a ministerial use (specifically, an “Electrical Distribution Substation” use) and asserted that the “Electrical Distribution Substation” use is “similar” to the Humidor BESS;
6. On October 18, 2021, the Director of Regional Planning issued “Interpretation Memo No. 2021-03” declaring that BESS uses “shall be considered most similar to Electrical Distribution Substations”. Regional Planning asserts that this is allowed under Section 22.234.020 of the County Code to issue such “Interpretation Memos” and approve uses that are not allowed under the Zoning Code if they have similarities to uses that are allowed under the Zoning Code.
7. Between October, 2021 and April 2023, Hecate submitted various documents and site plans for the Humidor BESS which Regional referred to as PRJ2022-002590, RPPL2023000687, and RPAP2023002413.
8. On August 1, Regional Planning asserted that it had approved the Humidor BESS via a site plan review process by invoking Interpretation Memo No. 2021-03 based on the conclusion that, because “Electrical Distribution Substations” can be approved ministerially in the M-1 zone, the Humidor BESS project could be ministerially approved in the M-1 zone.

The ministerial approval of the Humidor BESS Project hinges entirely on Regional Planning’s belief that Section 22.234.020 of the County Code authorizes the Director to use an “Interpretation Memo” and thereby approve a use that is not allowed by the Zoning Code by identifying an allowed use that has some attributes of the proposed use and equating the proposed use with the allowed use.

Regional Planning’s reliance on Section 22.234.020 is misplaced.

Section 22.234.020 states “When the Director determines that the meaning or applicability of any provision of this Title 22 is subject to interpretation, the Director may issue a written interpretation”. Here, the plain language only authorizes Regional Planning to interpret the “meaning” and “applicability” of Title 22 provisions; it does not authorize Regional Planning to approve uses that are not allowed by the Zoning Code and it certainly does not allow Regional Planning to approve a use that is not allowed simply because it has some attributes of a use that is allowed.

More importantly, the discretionary authority granted to Regional Planning by the Zoning Code to approve uses that are not allowed in the Zoning Code is not boundless; in fact, Regional Planning’s authority to make a “similarity determination” and thereby approve a use that is not allowed in the Zoning Code is expressly restricted (particularly in industrial zones). For instance, Section 22.22.030(D) of the Zoning Code only authorizes Regional Planning to ministerially approve a proposed industrial use that is not allowed by the Zoning Code when it is similar to an allowed use *only* in Zones M-1.5 and M-2; the Zoning Code **does not** authorize Regional Planning to ministerially approve a proposed use in the M-1 zone if it is not allowed the Zoning Code under any circumstance and *even if* it is similar to a use that is allowed in the M-1 zone. The Humidor BESS project is slated for development on M-1 zoned land; therefore, it is subject to M-1 zoning standards set forth in Section 22.22.030 of the Code. As Regional Planning has frequently conceded, BESS facilities are not an allowed use in industrial zones. Furthermore, Section 22.22.030 authorizes Regional Planning to make a similarity determination and thereby approve a (non-allowed) BESS facility only in the M-1.5 and M-2 zones; Regional Planning has no authority to make a similarity determination to approve a (non-allowed) BESS use in the M-1 Zone. Despite this, Regional Planning went ahead and improperly approved the Humidor BESS use on M-1 zoned property anyway.

Plainly stated, when Regional Planning relied on a “similarity determination” to approve the Humidor BESS on M-1 land in Acton, it failed to proceed in the manner required by law and thereby abused its discretion under § 1094.5(b) of the Code of Civil Procedure; accordingly, the Humidor BESS approval must be set aside and the associated NOE must be vacated.

It is a basic tenet of the “Rules of Statutory Construction” that, when an ordinance expressly enumerates specific exceptions to a rule, one cannot infer that other exceptions exist; accordingly, by only authorizing Regional Planning to rely on “similarity determinations” to ministerially approve non-allowed uses in the M-1.5 and M-2 zones, the Zoning Code precludes Regional Planning from using “similarity determinations” to ministerially approve non-listed uses in the M-1 zone. Moreover, Title 22 enumerates only a few limited circumstances in which Regional Planning is authorized to approve a use that is not allowed by the Zoning Code because it is similar to an allowed use; these circumstances are set forth in 22.22.030, 22.26.040, 22.116.020, 22.140.730, 33.140.740, 22.140.750, 22.408.060, and 22.418.040. Except

under these specifically enumerated circumstances, when Regional Planning approves a proposed use that is not allowed in the Zoning Code based on a determination that it has similarities with an allowed use, it fails to proceed in the manner required by law and thereby abuses its discretion.

THE SIMILARITY DETERMINATION PRESENTED IN INTERPRETATION MEMO NO. 2021-03 IS FATALLY FLAWED AND DOES NOT PROPERLY REFLECT THE HUMIDOR BESS PROJECT.

Even if the zoning code allowed Regional Planning to approve the Humidor BESS in the M-1 zone (which it does not), the fact remains that the “Similarity Determination” set forth in “Interpretation Memo No. 2021-03” which declares that “energy storage devices shall be considered most similar to Electrical Distribution Substations” is technically deficient. It also fails to properly consider the scope and extent of the Humidor BESS Project which is a 420 megawatt (“MW”) utility scale battery storage facility on 20+ acres that will be connected to the CAISO-controlled transmission grid via the Vincent transmission substation; it will receive transmission power at 230 kV AC (or “alternating current”), transform it to 34.5 kV DC (or “direct current”) and store it in thousands of onsite battery facilities. When CAISO determines that it is necessary to “dispatch” power from the Humidor Bess, it transforms the stored 34.5 DC power back into 230 kV AC power and injects it the transmission grid. None of the power received, stored, or released by the Humidor BESS is distributed to customers; in fact, distribution systems cannot use either the 230 kV AC power that is delivered to the Humidor BESS or the 34.5 kV DC power that is stored by the Humidor BESS because distribution circuits can only process AC current that is less than 50 kV. Therefore, the Humidor BESS is not connected to any electrical distribution facilities and it does not serve any electrical customers or consumers.

The analysis presented in “Interpretation Memo No. 2021-03” to draw an equivalency between BESS uses and Electrical Distribution Substations that Regional Planning relied upon to justify ministerial approval of the Humidor BESS project is superficial and insubstantial; in fact, it is based solely on the following contentions:

- BESS are more similar to Electrical Distribution Substations.
- BESS devices are similar in size, bulk, and use to Electrical Distribution Substations.

Notably, the Humidor BESS does not comport with either of these contentions.

The Humidor BESS Project Is Not Similar To “Electrical Distribution Substations”.

The Zoning Code defines an “Electrical Distribution Substation” as “A facility that contains an assembly of equipment that is part of a system for the distribution of electric

power, where electric energy is received at a sub-transmission voltage and transformed to a lower voltage for distribution for general consumer use”. Accordingly, for the Humidor BESS to be considered similar to an “Electrical Distribution Substation”, it would have to display at least *some* of the following characteristics:

1. It must contain “an assembly of equipment that is part of a system for the distribution of electric power”; per the definition of “distribution” established by the California Public Utilities Commission (“CPUC”)¹ and the Federal Energy Regulatory Commission (“FERC”)², this means that the Humidor BESS must be part of an electrical distribution system that delivers power to customers at a voltage less than 50 kV to be deemed “similar” to this first characteristic.
2. It must receive electric energy “at a subtransmission voltage”; per the definition of “subtransmission” established by the CPUC, the California Independent System Operator (“CAISO”) and Southern California Edison (“SCE”)³, this means that the Humidor BESS must receive electric energy at a voltage that is between 50 kV and 200 kV. Note: the CPUC defines “transmission voltage” as voltage that is above 200 kV⁴.
3. It must transform the incoming voltage to a distribution voltage “for distribution for general consumer use”; this means that the Humidor BESS must “transform” the voltage it receives down to a voltage of less than 50 kV AC and then distribute it “for general consumer use”.

The Humidor BESS does not exhibit **any** of these characteristics.

¹ The CPUC defines “Distribution” facilities as facilities that operate at under 50 kV [General Order 131-D Section I] <https://docs.cpuc.ca.gov/PUBLISHED/Graphics/589.PDF> .

² The Federal Energy Regulatory Commission (“FERC”) only has jurisdiction over transmission facilities and not over “facilities used in local distribution” [16 U.S. Code § 824(b)(1)] which are defined as local systems that deliver power to customers (DOE “Electricity System Overview” [<https://www.energy.gov/sites/prod/files/2017/02/f34/Appendix--Electricity%20System%20Overview.pdf>] Page A-7).

³ CAISO exclusively uses the term “subtransmission” for systems with operating voltages between 50 kV and 200 kV (The 115 kV Alberhill project lines identified as subtransmission ([<http://www.aiso.com/Documents/091216DecisiononAlberhillSubstationProject-Presentation.pdf>] and the EKWRA Subtransmission Project in the “2010 CAISO Transmission Plan” addresses 66 kV lines – page 221). SCE defines “subtransmission” as 50 kV - 200 kV (<https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M454/K865/454865255.PDF> page 1, footnote 15). CPUC exclusively uses the term “subtransmission” when referring to systems that operate between 50 kV and 200 kV (See the Devers-Mirage 115 kV Subtransmission project [https://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/118975.PDF]).

⁴ Section I of CPUC General Order 131-D defines “Transmission” facilities as facilities that operate at or above 200 kV [<https://docs.cpuc.ca.gov/PUBLISHED/Graphics/589.PDF>]

1. The “assembly of equipment” constituting the Humidor BESS is not “part of a system for the distribution of electric power” because it is not connected to any distribution system; it is only connected to the CAISO-controlled transmission system and is therefore only part of a system for the *transmission* of electric power, not the *distribution* of electric power. As explained above, none of the power received, stored, or generated by the Humidor BESS can ever be used for the “distribution of electric power” because distribution systems only use AC power at less than 50 kV; they cannot use the 34.5 kV DC power that is stored by the Humidor BESS or the 230 kV AC power that is received or generated by the Humidor BESS. Therefore, the Humidor BESS does not comport with the first characteristic of an Electrical Distribution Substation.
2. The Humidor BESS does not receive electricity at a subtransmission voltage (defined as voltages between 50 kV and 300 kV) because it is served by a 230 kV transmission line and will only receive electricity at a 230 kV transmission voltage. Therefore, the Humidor BESS does not comport with the second characteristic of an Electrical Distribution Substation.
3. The Humidor BESS transforms the voltage of the electrical energy that it receives down to 34.5 kV and converts it from AC to DC; the 34.5 kV DC power is not distributed and instead remains onsite where it is stored in battery facilities. The transformed power is not utilized, and can never be utilized for “distribution for general consumer use” because “distribution for general consumer use” requires AC power at less than 50 kV and cannot utilize the 34.5 kV DC power generated by the Humidor BESS. Because the Humidor BESS is configured to specifically ensure that transformed power is never utilized “for general consumer use”, it does not comport with the third characteristic of an Electrical Distribution Substation.

Despite what is asserted in “Interpretation Memo No. 2021-03”, the Humidor BESS is not in any way similar to an Electrical Distribution Substation because it does not display any of the characteristics of an Electrical Distribution Substation. Therefore, “Interpretation Memo No. 2021-03” is inapposite and should never have been relied upon by Regional Planning to approve the Humidor BESS project.

The Humidor BESS is not similar in either size, bulk, or use to Electrical Distribution Substations.

As explained below, the Humidor is not in any way similar in either size, bulk, or use to an Electrical Distribution Substation

The Humidor BESS Is Not Similar In Size To An Electrical Distribution Substation

Electrical Distribution Substations are typically about an acre in size; for instance, according to the “measurement” and “navigation features” of the Regional Planning GIS

System, the distribution substation that serves the entire 100 square mile area of Acton is only 1.19 acres. In contrast, the Humidor BESS project occupies more than 20 acres (according to the “measurement” and “navigation features” of the Regional Planning GIS System). In fact, the 20+ acre size of the Humidor BESS is more akin to Electrical Transmission Substations; for instance, SCE’s 230 kV Laguna Bell transmission substation is 25 acres, and SCE’s 230 kV Lighthipe Transmission Substation is 32 acres. The size of the Humidor BESS is not in any way similar to the size of an Electrical Distribution Substation.

The Humidor BESS Is Not Similar In Bulk To An Electrical Distribution Substation

Electrical Distribution Substations are typically low density uses that have very little “bulk” or structure; correspondingly, the property upon which distribution substations are located typically have large open spaces and few impervious surfaces. For instance, consider the aerial photograph to the right that was taken from the Regional Planning GIS system and depicts the 1.2-acre Electrical Distribution Substation which serves the Community of Acton: as this photograph demonstrates, Electrical Distribution Substations are mostly open space and feature



only low density development profiles. In contrast, the Humidor BESS project will completely cover an area greater than 20 acres with 420 solid structures that look like shipping containers; as indicated in the figure to the left, the Humidor BESS is a bulky, high density development that is covered with impervious structures and has almost no open space. It is an unequivocal fact that the Humidor BESS is not similar in bulk to an Electrical Distribution Substation.

The Humidor BESS Is Not Similar In Use To An Electrical Distribution Substation

As explained above, Electrical Distribution Substations directly serve consumers via low voltage (<50 kV) AC circuits and they receive subtransmission service at voltages between 50 kV and 200 kV. The Humidor BESS does not receive subtransmission service and it does not serve any customers; in fact, the Humidor BESS is specifically configured to not preclude service to consumers because the 34.5 kV DC power that it stores cannot be utilized by consumers (which require 12 kV AC power) and it cannot be carried on distribution circuits. The Humidor BESS is not similar in use to an Electrical Distribution Substation.

These facts clearly demonstrate that the Humidor BESS is not in any way similar in either size, bulk, or use to an Electrical Distribution Substation despite what is asserted in “Interpretation Memo No. 2021-03”. Therefore, “Interpretation Memo No. 2021-03” is inapposite and should never have been relied upon by Regional Planning to approve the Humidor BESS project.

THE HUMIDOR BESS PROJECT IS NOT EXEMPT FROM CEQA

Regional Planning filed the NOE based on the understanding that CEQA does not apply to “Ministerial projects proposed to be carried out or approved by public agencies” (citing § 21080(b)(1) of the CEQA Statute). However, and as discussed above, Regional Planning’s ministerial approval of the Humidor BESS was impermissible under the Zoning Code; therefore, the NOE is not supportable under Government Code 21080(b)(1) and must be vacated.

Regional Planning also claims that the Humidor BESS is exempt from CEQA by relying on Section 15300.1 of the CEQA Guidelines which states “Since ministerial projects are already exempt, categorical exemptions should be applied only where a project is not ministerial under a public agency’s statutes and ordinances”; however, CEQA considers projects to be ministerial and thus exempt only if they involve “little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision” [CEQA Guidelines 15639]. These are not the circumstances presented by the Humidor BESS; in fact, Regional Planning exercised extensive discretion regarding the character and nature of the Humidor BESS and the Director personally adjudged (wrongly) that it warrants ministerial review because it is similar to an Electrical Distribution Substation; this exercise of judgement facially invalidates any claim that approval of the Humidor BESS involved no discretion or judgement. In other words, the Humidor BESS it is not a “ministerial project” that is exempt from CEQA because its approval involved discretionary judgement.

Regional Planning also claims the Humidor BESS is categorically exempt from CEQA and cites “Class 3”, “Class 4”, and “Class 5” exemptions⁵. This claim is insupportable:

- The Class 3 Categorical Exemption applies only to the construction of limited numbers of new, small structures; the total number of structures must be less than 4 and the area must be less than 10,000 square feet. The Humidor BESS does not qualify because it involves more than four hundred structures on more than 20 acres.
- The Class 4 Categorical Exemption applies only to minor alterations to the condition of land (i.e., grading, landscaping, gardening) and minor temporary land uses having negligible effects on the environment. The Humidor BESS does not qualify because it involves permanent and major alterations to the condition of more than 20 acres of land and will significantly affect the environment in terms of aesthetics, wildfire risk, water quality, etc.

⁵ The “Notice of Exemption” filed by Regional Planning on August 16, 2023 identifies these Categorical Exemptions [<https://apps.lavote.net/ceqa> - Filing #: 2023178859].

- The Class 5 Categorical Exemption applies only to projects that consist of minor alterations in land use and which do not result in any changes in land use. The Humidor BESS does not qualify for this exemption because it does not involve a mere “minor alteration” in land use; to the contrary, it completely eliminates all existing land uses (including a community oriented “paintball” recreational facility) and replaces it with a 20-acre industrial battery storage facility.

In short, none of the Categorical Exemptions that Regional Planning asserts are applicable to the Humidor BESS project are in fact legitimate; therefore, Regional Planning’s claim that the Humidor BESS is exempt from CEQA lacks basis and carries no weight.

Finally, Section 15061(b)(2) of the CEQA Guidelines requires that, before claiming that a project is categorically exempt from CEQA, Regional Planning must first consider whether the Categorical Exemption is barred by one or more of the exceptions set forth in Section 15300.2; if it is barred, then the lead agency cannot claim that the project qualifies for any Categorical Exemption. Had Regional Planning staff considered the exceptions to Class 3, Class 4, and Class 5 exemptions that are set forth in Section 15300.2 of the CEQA Guidelines, they would have found that at least three exceptions are applicable:

- The 15300.2(a) Location exception establishes that Class 3, Class 4, and Class 5 projects are not categorically exempt from CEQA if they are located in a particularly sensitive environment and may “impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies”. These are the circumstances presented by the Humidor BESS project which will result in the placement of a high concentration of deflagration-prone battery facilities⁶ in a Very High Fire Hazard Severity Zone of Acton which has been precisely mapped and adopted by CALFIRE⁷. Because it is a mapped fire hazard area, the Community of Acton is a “particularly sensitive environment” and “an environmental resource of hazardous concern” that may be substantially impacted by the explosion-prone battery facilities proposed for the Humidor BESS project. The 15300.2(a) Location exception nullifies Regional Planning’s claim that the Humidor BESS qualifies for any Categorical Exemption.

⁶ Battery storage facilities are prone to explosion and deflagration due to “thermal runaway”. <https://www.spglobal.com/marketintelligence/en/news-insights/latest-newsheadlines/burning-concern-energy-storage-industry-battles-battery-fires-51900636> , <https://www.publicpower.org/periodical/article/recent-california-energy-storage-battery-firedraws-renewed-attention-storage-safety-issues>, <https://www.azfamily.com/2022/04/30/fire-smolders-chandler-battery-storage-facility-nearly-two-weeks-later/>, <https://pv-magazine-usa.com/2022/09/22/fire-at-pges-teslabattery-in-california-is-now-under-control/>, and <https://www.nfpa.org/~media/Files/Code%20or%20topic%20fact%20sheets/ESSFactSheet.pdf>

⁷ See CALFIRE’s Fire Hazard Severity Zone Maps found here: <https://egis.fire.ca.gov/FHSZ/>

- The 15300.2(b) Cumulative Impact exception establishes that all Categorical Exemptions are inapplicable when the cumulative impact of successive projects of the same type in the same place over time is significant. As Regional Planning is aware, at least 3 additional large BESS projects are proposed in the same area of Acton where the Humidor BESS will be located⁸; these projects will result in the construction of more than 2,000 MW of deflagration-prone battery storage facilities in the vicinity of the Vincent substation and they present a cumulatively considerable wildfire risk to the Community of Acton because Acton is a designated Very High Fire Hazard Severity Zone. Moreover, in a motion adopted on June 6, 2023, the Board of Supervisors clearly acknowledged that “the over-concentration of multiple utility-scale battery storage projects within a few communities” is a “significant concern”. The motion specifically identifies Acton as a Community that is facing numerous successive BESS projects and it establishes that this “over-concentration” is of particular concern. The June 6, 2023 demonstrates that the cumulative impacts of successive BESS projects in Acton is significant; therefore, the exception set forth in Section 15300.2(b) of the CEQA Guidelines nullifies Regional Planning’s claim that the Humidor BESS qualifies for any Categorical Exemption.
- The 15300.2(c) Significant Effect exception establishes that “a categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.” The area where the Humidor BESS is proposed has the unusual circumstance of being designated as a Very High Fire Hazard Severity Zone; therefore, the deflagration-prone batteries that will be installed with the Humidor BESS project present a reasonable possibility that the Humidor BESS will have a significant wildfire effect on the environment. The 15300.2(c) Significant Effect exception nullifies Regional Planning’s claim that the Humidor BESS qualifies for any Categorical Exemption.

For all these reasons, Save Our Rural Town disputes Regional Planning’s conclusion that the Humidor BESS is exempt from CEQA.

THE NOE DOES NOT ADDRESS THE “WHOLE PROJECT” BECAUSE IT IGNORES THE HUMIDOR TRANSMISSION LINE AND VIOLATES CEQA.

As Regional Planning is aware, the County is contemplating a proposed franchise ordinance (“Ordinance”) that will authorize Hecate to construct and operate a new 230 kV transmission line to connect the Vincent transmission substation to the Humidor BESS project (as well as connect to Hecate’s proposed “Flea Flicker” and “Maathai” BESS projects). Because the Ordinance is not exempt from CEQA, it should undergo

⁸ The “Flea Flicker”, “Maathai” and “Angeleno” projects are all near the Vincent Substation.

an environmental review⁹ that considers the “whole of the action” which could result in direct or indirect physical changes to the environment. CEQA requires an environmental assessment of the “whole of the action” to prevent an impermissible “piecemeal” review in which a project is chopped into smaller parts that individually undergo minimal or ministerial permit review but which cumulatively pose significant environmental consequences (*Planning & Conservation League v. Castaic Lake Water Agency* [2009] 180 Cal.App.4th 210, 235). “A narrow view of a project could result in the fallacy of division . . . that is, overlooking its cumulative impact by separately focusing on isolated parts of the whole” (*McQueen v. Bd. of Directors* [1988] 202 Cal.App.3d 1136, 1144; *City of Sacramento v. State Water Resources Control Bd.* [1992] 2 Cal.App.4th 960; *Lexington Hills Ass’n v. State* [1988] 200 Cal.App.3d 415; *City of Carmel-by-the-Sea v. Board of Supervisors* [1986] 183 Cal.App.3d 229). CEQA prevents evasive environmental reviews by defining “project” broadly and requiring that environmental considerations not be concealed by separately focusing on isolated parts and overlooking the cumulative effect of the whole of an action. (*Arviv Enterprises v. South Valley Area Planning Com.* [2002] 101 Cal.App.4th 1333, 1345–1351; *Nelson v. County of Kern* [2010] 190 Cal.App.4th 252, 268–270).

Individual project elements are deemed to be parts of the “whole project” under CEQA if they are interdependent and have no “independent utility”. For example, the 230 kV transmission line that Hecate will be authorized to construct when the Ordinance is approved is entirely dependent on the three BESS projects that are proposed by Hecate (Humidor, Flea Flicker, and Maathai); without these Hecate BESS projects, the new Hecate 230 kV transmission line will have nothing to connect to and will serve no purpose. Similarly, the three Hecate BESS Projects are entirely dependent on the new Hecate 230 kV transmission authorized by the Ordinance; without the new Hecate 230 kV transmission line, none of the three proposed Hecate BESS projects will be able to store energy or connect to the transmission grid. Together, these four individual project elements (Hecate’s 230 kV transmission line and Hecate’s Humidor, Flea Flicker, and Maathai BESS facilities) comprise the “whole of the action” that must undergo a collective CEQA review. Instead of recognizing this and preparing a proper CEQA review of the “whole” project, County violated CEQA by improperly segmenting Hecate’s Humidor BESS project from Hecate’s 230 kV transmission line project and issuing an NOE just for the Humidor BESS portion of the project.

Perhaps the County has the impression that CEQA does not apply to the Ordinance and that some entity other than the County (i.e., the CPUC) will conduct a CEQA review of the Hecate transmission line in the future. If that is why the County processed an NOE for the Humidor BESS and ignored the Humidor transmission line, then the County is very much mistaken.

⁹ Public Works claimed the Ordinance is exempt from CEQA but a public protest showed this claim was baseless. [<http://file.lacounty.gov/SDSInter/bos/supdocs/176401.pdf> and <https://file.lacounty.gov/SDSInter/bos/supdocs/177704.pdf>].

The Franchise Ordinance is a “Project” that is Subject to CEQA.

The Ordinance is not merely a document or “agreement” which facilitates no physical changes to the environment. On the very first page of the Ordinance the County expressly grants to Hecate the right to “construct, operate, maintain, renew, repair, change the size of, remove or abandon in place, and use an electrical transmission system consisting of conduits, manholes, vaults, cables, wires, switches..... appliances, and appurtenances necessary and appropriate for one underground 230 kV cable circuit and one overhead 230kV cable circuit, for the purpose of conducting and transmitting electricity”. It is clear from this plain language that what the Ordinance actually effectuates is an authorization by the County to Hecate to construct 230 kV transmission facilities in both overhead and underground configurations. With the Ordinance, County is clearly exercising its discretionary authority to grant Hecate the right to construct and operate new and extensive high voltage transmission facilities in the Community of Acton; these construction activities will unequivocally cause “a direct physical change in the environment” and as such, the Ordinance is a “project” that is subject to CEQA pursuant to §21065 of the CEQA Statute.

Save Our Rural Town further notes that, once the Ordinance is approved, Hecate can immediately apply to the County for ministerial building permits to construct the transmission facilities that the Ordinance authorizes; these ministerial building permits will be peremptorily issued by the County *without CEQA review*. Accordingly, the only opportunity that the County has to meet its CEQA obligations for the Hecate 230 kV transmission line project is to conduct a proper CEQA review *before* the Ordinance is approved. The County has not prepared a CEQA document and has instead introduced the Ordinance for approval *without any CEQA review*; presumably, County has taken these steps because it assumes that the Hecate transmission line will undergo CEQA review after the Ordinance is adopted. Nothing could be further from the truth.

CEQA imposes a burden on lead agencies to consider the environmental consequences of a project at the “earliest possible stage” of any discretionary review process [*Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d]. Thus far, County has failed to meet this burden for the Hecate 230 kV transmission line project. Moreover, approval of the Ordinance constitutes the very last discretionary act that the County will take regarding the Hecate 230 kV transmission line; all subsequent County approvals for this transmission line (such as building permits) will be ministerial and not undergo the CEQA process. In other words, if the County’s CEQA obligations pursuant to Hecate’s 230 kV transmission line are not met *before* the Ordinance is approved, then they will never be met. Accordingly, County’s plan to defer CEQA review of the Hecate 230 kV transmission line project until after the Ordinance is directly violates CEQA.

The County has No Basis to Conclude that the Hecate Transmission Line Will Undergo CEQA Review by the CPUC or Any Other Government Entity.

In the utility industry, the Hecate transmission line is commonly referred to as a “generation tie line” or “gen-tie line” because it is a transmission line that connects a

privately owned electrical generation project to the CAISO-controlled transmission grid. Gen-tie lines which are owned by private (non-public utility) entities are not typically subject to the CPUC's discretionary review process (known as the "Certificate of Public Convenience and Necessity" or "CPCN" process); the CPUC has stated that gen-tie facilities "are typically not the subject of CPCN or PTC applications"¹⁰. Save Our Rural Town understands that gen-tie lines proposed by investor-owned utilities do undergo the CPCN process, but private gen-tie facilities typically do not. CPCN requirements set forth in Section III(A) of the CPUC's General Order 131-D expressly clarify that the obligation to secure a CPCN only applies to "electric public utilities"; unless Hecate is or becomes an "electrical public utility", it is not subject to General Order 131-D.

The manner in which the CPUC considers privately-owned gen-tie lines is clarified in the Final Environmental Impact Report ("EIR") that the CPUC issued for the "ECO Substation Project" proposed by San Diego Gas & Electric ("SDGE")¹¹ which addressed a non-utility gen-tie line and wind energy project that fell under the jurisdiction of San Diego County. The CPUC only addressed the private gen-tie and wind energy projects in the Final EIR because they were deemed to be a component of the "whole action" and thus the CPUC was required by CEQA to consider them. Page A-12 of the Final EIR clarifies that "Pursuant to Article XII of the Constitution of the State of California, the CPUC is charged with the regulation of investor-owned public utilities, including SDG&E. The CPUC is the lead state agency for CEQA compliance in evaluation of SDG&E's proposed ECO Substation Project ... This EIR/EIS will be used by the CPUC, in conjunction with other information developed in the CPUC's formal record, *to act only on SDG&E's application for a PTC to construct and operate the proposed ECO Substation*" (emphasis added). Page A-13 explains that Responsible Agencies like the County of San Diego "could choose to either rely on the CPUC environmental document to meet their CEQA requirements for its discretionary action under CEQA in consideration of issuing two separate major use permits - one for the Tule Wind Project and one for the Gen-Tie Project, because portions of those projects are within the County's jurisdiction". In other words, the CPUC does not review or approve private gen-tie projects *unless they are connected to activities that are proposed by investor-owned utilities*. No aspect of the Hecate transmission line appears to be related to any activity proposed by a public utility; thus, it is unlikely that the Hecate transmission line will undergo review by the CPUC or that the County's CEQA obligations for the Hecate transmission line will be satisfied by others. Save Our Rural Town has confirmed this fact in discussions with staff from the Energy Division of the CPUC.

If the CPUC does somehow wrest jurisdictional authority over the Hecate transmission line from the County and compels Hecate to initiate a CPCN process, then CEQA precludes County from approving the Ordinance until **after** the CPCN process because:

¹⁰ D.06-06-034 [https://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/57298.pdf page 16].

¹¹ https://ia.cpuc.ca.gov/environment/info/dudek/ECOSUB/Final_EIR/A.Introduction_Overview.pdf

- As a “Responsible Agency”, the County must coordinate with the CPUC as the “Lead Agency”; because Lead Agency decisions are binding on Responsible Agencies¹², the County cannot issue discretionary approvals before the CEQA review is complete.
- Because the CPUC’s CPCN process would, in all likelihood, result in a transmission line configuration that differs from what is described in the Ordinance, the Ordinance itself would be rendered entirely invalid the instant that the CPUC issued a CPCN for the Hecate transmission line. For example, it is likely that the CPUC would require the Hecate transmission line to be constructed fully underground to reduce its associated environmental impacts; thus, the Ordinance would directly conflict with the CPUC’s conditions of approval because it improperly authorizes overhead transmission facilities.

For these reasons, the County should not have approved the Humidor BESS and issued an NOE for the Humidor BESS because doing so improperly segmented the Humidor BESS component of the “whole project” from the Humidor transmission line component of the “whole project”. Therefore, the NOE should be vacated.

¹² CEQA Topic Paper by AEP: “Lead Agency, Responsible Agencies, and Trustee Agencies” <https://ceqaportal.org/tp/CEQA%20Lead%20Agency%20Responsible%20Trustee%202020%20Update.pdf> at page 5.