

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, July 17, 2024 9:00 a.m.
Courtroom 17 – Hon. Bradford DeMeo
3035 Cleveland Avenue, Santa Rosa**

PLEASE NOTE: In accordance with the Order of the Presiding Judge, a party or representative of a party may appear in Department 17 in person or remotely by Zoom, a web conferencing platform. Whether a party or their representative will be appearing in person or by Zoom must be part of the notification given to the Court and other parties as stated below.

CourtCall is not permitted for this calendar.

If the tentative ruling is accepted, no appearance is necessary via Zoom unless otherwise indicated.

TO JOIN ZOOM ONLINE:

D17 – Law & Motion

Meeting ID: 161 126 4123

Passcode: 062178

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The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, **YOU MUST NOTIFY** Judge DeMeo’s Judicial Assistant by telephone at **(707) 521-6725**, and all other opposing parties of your intent to appear, and **whether that appearance is in person or via Zoom, by 4:00 p.m. the court day immediately preceding the day of the hearing.**

1. SCV-273272, ROP WMCC LLC v. Town of Windsor

TENTATIVE RULING (AS TO CEQA):

The Petition is DENIED with respect to the claims based on a violation of the California Environmental Quality Act.

Facts

Petitioners, ROP WMCC LLC and Resident Owned Parks, Inc. (“Petitioners”) challenge the decision of Respondents Town of Windsor (“Town”) and Town Council of the Town of Windsor (“Council”) to adopt Ordinance No. 2023-373 (the “Ordinance”), which caps the rent for mobile home parks within the Town’s jurisdiction. They seek a writ of mandate directing Respondents to set aside the Ordinance due to the failure to comply with the California Environmental Quality Act (“CEQA”); inquire into the validity of the Ordinance for lack of jurisdiction, acting in excess of jurisdiction, and abuse of discretion; set aside the Ordinance based on a deprivation of fundamental vested rights pursuant to the United States Constitution and California Constitution; set aside the Ordinance based on equitable estoppel; set aside the Ordinance based on lack of fair hearing; and related claims. They also seek a monetary award, injunctive and declaratory relief, and an award of attorneys’ fees and costs.

The History and Adoption of the Ordinance

Prior to Respondents enacting the Ordinance, the Town originally adopted a mobile home rent stabilization ordinance, Ordinance No. 92-25 (the “1992 Ordinance”) on October 28, 1992. AR 92.

Eventually, on February 1, 2023, the Council held the second reading of the Ordinance and adopted it. AR 550.

CEQA Claims

In the portion of Petitioners’ allegations and arguments relating to CEQA, they contend that Respondents improperly adopted the Ordinance on February 1, 2023, with a determination that it was exempt from CEQA pursuant to Guideline 15061(b)(3).

Overall Application of CEQA

An EIR is required for a project which substantial evidence indicates may have a significant effect on the environment. Guidelines for the Implementation of CEQA (“Guidelines”), 14 California Code of Regulations (“CCR”) section 15063(b) (hereinafter, the court shall cite to Guidelines simply by stating “Guideline” and the section number); Public Resources Code (“PRC”) sections 21100, 21151. EIRs are, in the words of the California Supreme Court, “the heart of CEQA.” *Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 392 (*Laurel Heights I*).

An agency must prepare, cause to be prepared, or certify completion of, an EIR when for a project which “may have a significant effect on the environment.” See, e.g., PRC sections PRC section 21068, 21100(a), 21151(a); Guideline 15382. As a result, CEQA requires review of a project’s impacts on the environment, not the reverse, and in other words, CEQA is generally not concerned with impacts on the project. *California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, at 386 (*CBAI*).

CEQA is accordingly concerned with whether an agency action may cause physical effects on the environment, whether direct or indirect. PRC 21080, setting forth the basic standards for determining whether an action implicates CEQA, explains that where an agency is not exempt from CEQA, an agency must prepare an EIR where there is “substantial evidence” in the record “that the project may have a significant effect on the environment.” PRC 21080(c). It also provides the definition of “substantial evidence” at subdivision (e), stating at (e)(2) that “substantial evidence” does *not* include “argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or *evidence of social or economic impacts that do not contribute to or are not caused by, physical impacts on the environment.*” Emphasis added. Guideline 15064 also sets forth the basic standards for determining whether an

action implicates CEQA, stating that this depends on whether an action may lead to significant effects on the environment. Subdivision (e) also states, with emphasis added,

Economic and social changes resulting from a project *shall not be treated as significant effects on the environment*. Economic or social changes may be used, however, to determine that a physical change shall be regarded as a significant effect on the environment. Where a physical change is caused by economic or social effects of a project, the physical change may be regarded as a significant effect in the same manner as any other physical change resulting from the project. Alternatively, economic and social effects of a physical change may be used to determine that the physical change is a significant effect on the environment. If the physical change causes adverse economic or social effects on people, those adverse effects may be used as a factor in determining whether the physical change is significant. For example, if a project would cause overcrowding of a public facility and the overcrowding causes an adverse effect on people, the overcrowding would be regarded as a significant effect.

Guideline 15384 likewise states that “evidence of *social or economic impacts which do not contribute to or are not caused by physical impacts on the environment* does not constitute substantial evidence.” Emphasis added. Guideline 15358 further defines “effect” and states, in full and with emphasis added,

“Effects” and “impacts” as used in these guidelines are synonymous.

(a) Effects include:

(1) *Direct or primary effects* which are caused by the project and occur at the same time and place.

(2) *Indirect or secondary effects* which are caused by the project and *are later in time or farther removed in distance, but are still reasonably foreseeable*. Indirect or secondary effects *may include* growth-inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water and other natural systems, including ecosystems.

(b) Effects analyzed under CEQA *must be related to a physical change*.

Guideline 15131 discusses social and economic impacts and it notes that while an EIR may include discussion of economic or social information, “[e]conomic or social effects of a project shall not be treated as significant effects on the environment,” unless there is a demonstrated “chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes.” In that case, the “intermediate economic or social changes need not be analyzed in any detail greater than necessary to trace the chain of cause and effect. The focus of the analysis shall be on the physical changes.”

The court in *Hecton v. People of the State of California* (1976) 58 Cal.App.3d 653, at 656, stated that CEQA is “not designed to protect against the particular risk of loss claimed here—decline in commercial value of property adjacent to a public project. Rather the acts are intended to ensure consideration of qualitative environmental factors as well as quantitative economics in proposed actions affecting the environment.”

Accordingly, the court in *Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, at 1019-1022, rejected petitioners' argument that allowing a large chain bookstore in an approved shopping center would result in economic and social impacts by threatening the business of local bookstores, causing related problems. The court explained,

Plaintiff's argument is based solely upon speculation and unsubstantiated opinion. If accepted, plaintiff's position would stand CEQA on its head. CEQA and its implementing guidelines make it clear that social and economic effects are not to be considered a significant environment effect and need be considered only to the extent they are relevant to an anticipated physical change in the environment or, on the basis of substantial evidence, are reasonably likely to result in physical change to the environment. Plaintiff's argument is that, because it is arguably possible that in some instances the establishment of a retail business may have social or economic effects, and because it is arguably possible that in some instances social or economic effects can cause physical changes in the environment, social and economic effects must be addressed in an EIR as a matter of law. We reject such an argument as flatly inconsistent with CEQA and its implementing guidelines.

Basic Principles Applicable to Review of Agency Decisions Under CEQA

The burden of investigation rests with the government and not the public. *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1378-1379. The court in *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, at 1202, finding that a city failed to consider an issue, ruled that the city could not rely on information to make good the gap in its analysis where the record did not show that the information had ever been available to the public. Similarly, as the court explained in *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, at 311, an "agency should not be allowed to hide behind its own failure to gather relevant data.... CEQA places the burden of environmental investigation on government rather than the public." See also *Gentry, supra* (quoting *Sundstrom*).

At the same time, in judicial review agency actions are presumed to comply with applicable law unless the petitioner presents proof to the contrary. Evid. Code section 664; *Foster v. Civil Service Commission of Los Angeles County* (1983) 142 Cal.App.3d 444, 453. The petitioner in a CEQA action thus has the burden of demonstrating that there was a violation of CEQA. *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App.4th 729, 740.

Under CEQA, a court may only issue a writ for any abuse of discretion, including making a finding without substantial evidence, if the error was *prejudicial*. PRC section 21005; *Chaparral Greens v. City of Chula Vista* (1996) 50 Cal.App.4th 1134, 1143. When substantial evidence does support a decision, but there is no prejudicial abuse of discretion, the court must defer to the agency's substantive conclusions and uphold the determination. *Chaparral Greens, supra*; see PRC 21168, 21168.5, *Laurel Heights I, supra* 47 Cal.3d 392, fn.5.

An "error is prejudicial 'if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.'" *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, at 721-722, quoting *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, at 712.

Exhaustion of Administrative Remedies

Respondents argue that Petitioners failed to exhaust administrative remedies with respect to the claim that Respondents violated CEQA by finding the Ordinance to be exempt. Brief in Opposition (“Oppo”) 20-23. Petitioners acknowledge that they did not raise any specific CEQA violations, never expressly discussed CEQA or claimed a violation of CEQA in any way, and never presented any challenge to the decision that the action was exempt from CEQA, but counter with two basic arguments. Trial Brief (“TB”) 14:28-15:4, 15:10-15, 16:3-6; Reply Brief (“Reply”) 5:5-28. First, in their opening Trial Brief, Petitioners claim that they are excused from compliance. TB 14:28-15:4, 15:10-15, 16:3-6; Reply 5:27-28. They assert that they are excused from complying with the exhaustion requirement because Respondents did not give prior notice of the grounds for the CEQA exemption and, upon approving the Ordinance, did not publish a Notice of Exemption (“NOE”). TB 14:28-15:4, 15:10-16:6. Second, in their Reply, they also contend that although they never mentioned CEQA or expressly challenged the exemption determination in any way, they nevertheless raised objections implicating CEQA by asserting that the Ordinance would result in reduced services and facility maintenance, and that these are environmental impacts. Reply 5: 9-26.

According to PRC section 21177, “[a] person shall not maintain an action or proceeding unless that person objected to the approval of the project orally or in writing during the public comment period provided by this division or prior to the close of the public hearing on the project before the filing of the notice of determination.” This does not, however, bar an association or organization formed after approval from raising a challenge which one of its constituent members had raised, directly or by agreeing with or supporting another’s comments. PRC section 21177(c). Moreover, someone may file a legal challenge based on an issue as long as “any person” raised that issue during the review process. PRC section 21177(a); see *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 267-268. It also does not apply to any grounds of which the agency did not give required notice and for which there was no hearing or opportunity to be heard. PRC section 21177(e).

PRC section 21177(e) states, in full, “[t]his section does not apply to any alleged grounds for noncompliance with this division for which there was no public hearing or other opportunity for members of the public to raise those objections orally or in writing before the approval of the project, or if the public agency failed to give the notice required by law.”

Accordingly, while a petitioner challenging an administrative decision ordinarily must exhaust administrative remedies in the underlying proceedings and may only raise an argument in court which had been raised in the underlying proceedings, this does not apply where the issue was unknown prior to the final determination so that no member of the public had notice and an opportunity to raise the issue. *Attard v. Board of Supervisors of Contra Costa County* (2017) 14 Cal.App.5th 1066, 1083. As explained in *Attard*, “[w]hen a litigant suspects bias on the part of a member of an administrative hearing body, the issue must be raised in the first instance at the hearing.”

A party challenging decision under CEQA cannot, to exhaust administrative remedies, rely merely on “general objections” or “unelaborated comments.” *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 535; *Coalition for Student Action v. City of Fullerton* (1984) 153 Cal.App.3d 1194, 1197. However, “[l]ess specificity is required to preserve an issue for appeal in an administrative proceeding than in a judicial proceeding....” *Citizens Association for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 163.

However, section 21177 does not require exhaustion of administrative remedies in the absence of CEQA comment period or notice of a CEQA determination, or a public hearing

before a notice of determination. It states that the issues need to be raised “during the *public comment period provided by this division* or prior to the close of the public hearing on the project before the filing of the *notice of determination.*” Emphasis added.

The Supreme Court in *Tomlinson v. County of Alameda* (2012) 54 Cal.4th 281, held that the petitioner needed to exhaust administrative remedies prior to raising its challenge to a determination that a project was exempt from CEQA, clarifying a prior dispute over this requirement. It found that in the case before it, the agency had held public hearings and allowed for public comment and objections prior to making the exemption determination, giving the public a chance to be heard on, and raise objections to, such a decision. The court added, however, that in instances where the agency has not given notice of, and allowed for public hearings and comments regarding, an exemption determination, then exhaustion of administrative remedies is not required. It explained that the case before it was distinguishable from *Azusa Land Reclamation Co., Inc. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165 on this very basis because in *Azusa*, the agency adopted an order finding the project exempt after having conducted a “regularly scheduled public meeting,” but without ever disclosing prior to, or at, a public hearing that it was contemplating finding the project to be exempt. *Azusa*, 1187-1188. Accordingly, in *Azusa*, the issue of CEQA exemption was never itself raised in the context of a public hearing where the public had an opportunity to comment, object, and be heard on the issue.

In support of their argument that Petitioners failed to exhaust administrative remedies, Respondents provide several citations to the record which they claim reflect the notice to the public regarding the Ordinance meetings and CEQA determination, as well as comments from the public which fail to address CEQA or the exemption determination. Oppo 22:3-12, 23:9-18. Respondents cite to AR 113, 157, 248-249, and 537, among others, for the Council meetings on the Ordinance. They also cite to AR 149 and 240 as showing Petitioners attending and speaking at two of the meetings, and AR 297-301 and 599-600 for Petitioners’ two letters to the Council outlining their objections. They cite specifically to AR 162, 253, and 542 for notice of the reliance on the common-sense exemption from CEQA. Petitioners provide no citations to the record whatsoever regarding the CEQA discussion, with respect to either the exhaustion issue or the substantive analysis. See, e.g., TB 6-8, 14-19; Reply 1-3, 5-6.

The agenda for the Council meeting of November 2, 2022, is at AR 110-114, the report on the Ordinance for that meeting is at AR 115-117, written correspondence is at AR 118-140, additional information and correspondence for the meeting are at AR 141-146, and the minutes are at AR 147. The report states, at AR 117, that they determined that the Ordinance “is not subject to review under... (CEQA).”

AR 153-237 is the agenda for the Council meeting of December 7, 2022, plus the report on the Ordinance, correspondence, and other documents, followed by the minutes. The report on the Ordinance states at AR 162 that the action “is exempt from...[CEQA] under CEQA Guidelines Section 15061(b)(3) and 15378 in that there is no possibility that the implementation of this action will have significant effects on the environment, and no further environmental review is required.”

The agenda, report on the Ordinance, correspondence, attachments, and minutes for the Council meeting of December 21, 2022, are found at AR 244-534. The report, at AR 253, repeats the full exemption statement from the meeting of December 7, 2022, as quoted above.

The agenda, report on the Ordinance, and minutes for the Council meeting of February 1, 2023, are found at AR 535-556. At AR 542, the report once again repeats the full statement from the December 7, 2022, meeting that the decision is exempt from CEQA.

All four of the above Council meetings were regular meetings, noticed and open to the public, with the Ordinance presented, discussed, and considered, and with members of the public submitting written comments and also appearing and orally submitting comments on the Ordinance at the meetings. AR 110-111, 113, 118-149 (November 2, 2022, meeting); AR 153, 155-157, 173-228, 237, 239-240 (December 7, 2022 meeting); 244-245, 248-249, 250-251 528, 532 (December 21, 2022 meeting); AR 535-537, 549-550 (February 1, 2023 meeting).

The Ordinance itself states that the Council expressly finds that it is exempt from CEQA. AR 166, 258, 546. In this regard, it states,

WHEREAS, The Town Council hereby finds the approval of this Ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§2100 *et seq.*, “CEQA,” and 14 Cal.Code Reg. §§ 15000 *et seq.*, “CEQA Guidelines”) under Section 15061(b)(3) of the CEQA Guidelines. This is an emergency response measure aimed at capping rent increases in mobile home parks. No new development will result from the proposed action. No impact on the physical environment will result.

It included this language in each version presented in the record for each of the meetings starting with the meeting of December 7, 2022. AR 166, 258, 546. The Ordinance as adopted, and set forth in the record at AR 10-15, likewise includes the same language. AR 13.

The report on the Ordinance for the meeting of December 21, 2022, notes that at the prior meeting, the staff had made recommendations based in part on public requests but then recommended a continuance of the decision in order to allow time to consider the most recent, late, public correspondence on the Ordinance which had been received that day. The Council thus continued the decision in order to consider that last correspondence. AR 250-251. The minutes for the meeting of December 7, 2022, state that the Council decided at the hearing to continue the decision on the Ordinance to December 21, 2022, based on the additional correspondence received late that afternoon. AR 240.

Petitioners sent two letters to the Council outlining their objections to the Ordinance at the Council. AR 297-301, 599-600. The first one Petitioners sent, and Respondents received, in the afternoon of December 7, 2022, and is among the correspondence which had been received late that day and which lead Respondents to continue the decision to December 21, 2022, in order to consider the correspondence. It was included with the items for, and considered at, the meeting of December 21, 2022. The second was sent on December 21, 2022, and was included with the items for, and considered at, the meeting of February 1, 2023.

The first letter, at AR 297-301, discusses Petitioners’ rental rates and increases pursuant to a 2008 Settlement Agreement (the “Agreement”). See also AR 582-586 (duplicate copy in the record). Petitioners in this letter claim that the Agreement has “significantly curtailed” the ability to implement rent increases, they have complied with the Agreement, and “[f]ailing to acknowledge the history of the Park and its tradition of minor rent increases over its history flies in the face of public policy.” AR 298-299. They object to the Ordinance on the following bases: the Agreement is sufficient regulation of rent increases; the Ordinance will interfere with their vested property rights; the Ordinance creates a “risk [of] smothering the life out of the Park” because Petitioner have relied on the Agreement and thus lost the ability to obtain higher profits

already; the Ordinance conflicts with the Agreement, which requires the owners to perform various tasks such as maintenance, beautification, and assistance of very low-income residents which they will be less likely to be able to do with the Ordinance's restrictions; and they have been behind the fair market value for 14 years. AR 300-301. With respect to the claim that the Ordinance will impair their ability to perform tasks, they assert that this may result in dilapidated conditions in their mobile home park and underfunding for senior low-income units. At no point does it, in any manner, mention CEQA, environmental impacts, the need for environmental review, or the exemption determination.

In their second letter, at AR 599-600, Petitioners state that they "are again writing to request... that appropriate consideration be granted for the unique legal constraints presented to the Park. Specifically, that the Park is bound by a longstanding arbitration order which governs the Park's rental conditions." AR 599. They state that "we would like to reiterate our letter dated December 7, 2022," they do not support the Ordinance, they object to the change in the cap, they want Respondents to acknowledge their circumstances, and they request an "explicit exception" to the rent components which will allow the residents to continue to enjoy the benefits of the [Agreement] which was negotiated in good faith more than fourteen years ago." AR 599-600. It says nothing more and therefore again does not in any manner mention CEQA, environmental impacts, the need for environmental review, or the exemption determination.

As Respondents note, the record contains, at AR 149 and 240, that Petitioners attended and spoke at two of the meetings. The record includes no indication of what they said.

The court has found one additional e-mail from Petitioners in the record at AR 731-733. This is merely a brief statement that Petitioners are interested in cooperating with the Town in providing affordable housing and setting forth their reluctance to provide financial or proprietary information. It otherwise includes only an effort to set up a telephone call.

As Respondents argue, the record clearly demonstrates that the public was notified, at the latest by the meeting of December 7, 2022, that Respondents were expressly finding the Ordinance to be exempt based on the common-sense exemption. This was repeated at both of the two subsequent meetings, including the final meeting where Respondents actually made the final decision adopting the Ordinance. For all three of these meetings, the exemption finding was made expressly clear in both the published report on the Ordinance for each meeting and in the very language of the Ordinance itself, as detailed above. Moreover, before this, at the meeting of November 2022, Respondents already at least gave some indication that they were finding that CEQA did not apply. Although that statement was vague and insufficient, it demonstrates that Respondents had already given some notice then that they were considering the Ordinance exempt from CEQA. They simply made it expressly clear starting with the subsequent meeting. At no point do Petitioners claim, much less demonstrate, that this information and these documents were not disclosed to the public and the record clearly demonstrates that they were, and that the public was, aware of the documents, the Ordinance terms, and the meetings. The facts that members of the public, including Petitioners, submitted written comments, and appeared at the meetings to make oral comments, regarding the substance of the Ordinance demonstrates this. Moreover, at no point in the record as far as the court has been able to ascertain is there any comment indicating a lack of disclosure or notice to the public, or any other indicia of such lack of notice. Accordingly, Petitioners are unequivocally incorrect in their assertion that there was no sufficient notice of the exemption determination which would relieve them of the obligation to exhaust administrative remedies on this point. However, at no point did Petitioners, or anyone else as far as this court can determine ever discuss CEQA, claim

that CEQA applied, claim that Respondents violated CEQA, or in any way mention, much less challenge, the exemption determination.

Petitioners now claim that they did in effect raise CEQA issues in the underlying proceedings. They base this on their statements to Respondents that adopting the Ordinance would impair their ability to perform tasks, they assert that this may result in dilapidated conditions in their mobile home park and underfunding for senior low-income units. As noted above, the record demonstrates that they did, at last in the first letter discussed above, mention this complaint. However, at no point do Petitioners, in any manner, mention CEQA, environmental impacts, the need for environmental review, or the exemption determination. They never mention any of these issues or challenge the CEQA determination in any way, expressly or otherwise. Their claim that reducing their rent revenue may lead to a decline in the services or maintenance they provide does not implicate the effects on the physical environment with which CEQA is concerned. At most they only implicate social and economic impacts. Moreover, they are based solely on speculation, without evidence, and a possible statement of their own choices, not actual impacts of the Ordinance. Finally, the statements in the record about this are so vague, speculative, and facially unrelated to CEQA in any way that there is no hint in the record that they were in any way raising a CEQA concern by these statements.

Petitioners also note that Respondents never issued a Notice of Exemption (“NOE”) from CEQA, but this is immaterial. The NOE would have been at the end when Respondents made their decision, after public comment was concluded, so it would have had no impact in giving the public notice that Respondents were finding the adoption of the Ordinance to be exempt. Moreover, Guideline 15062 makes it clear that the failure to publish an NOE is not itself a violation of CEQA and instead it triggers the statute of limitations for bringing an action challenging the decision. Guideline 15062(a) states, in pertinent part and with emphasis added, “When a public agency decides that a project is exempt from CEQA... and the public agency approves or determines to carry out the project, the agency *may*, file a notice of exemption. The notice shall be filed, *if at all*, after approval of the project.” Accordingly, Respondents were not required to file the NOE. Subdivision (d) adds, again with emphasis added, “The filing of a Notice of Exemption and the posting on the list of notices start a 35-day statute of limitations period on legal challenges to the agency's decision that the project is exempt from CEQA. *If a Notice of Exemption is not filed*, a 180-day statute of limitations will apply.”

Accordingly, the court finds that Petitioners failed to exhaust their administrative remedies pursuant to the requirements of CEQA and thus may not raise the CEQA challenge here. The court DENIES the petition as to the claim that the decision to adopt the Ordinance violated CEQA.

Substantive Discussion

PRC section 21084 is the statutory authority for exemptions from CEQA and exceptions to those exemptions, which forbid an agency to rely on an exemption if an exception applies.

Guideline 15061 governs “Review for Exemption” from CEQA. Guideline 15061(a) states that a lead agency, upon finding that a project is subject to CEQA, “shall determine whether the project is exempt from CEQA” and subdivision (b) sets forth the types of exemptions. These exemptions set forth in subdivision (b) are (1) by statute; (2) pursuant to a categorical exemption found in Guidelines 15300, et seq.; (3) the “common sense exemption” for projects with a potential for causing a significant effect and which applies “[w]here it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment”; (4) if a public agency will reject it; and (5) pursuant to Article 12.5

of the Guidelines, which governs agricultural and affordable housing and residential infill. Guideline 15061 states, in pertinent part,

(a) Once a lead agency has determined that an activity is a project subject to CEQA, a lead agency shall determine whether the project is exempt from CEQA.

(b) A project is exempt from CEQA if:

...

(3) The activity is covered by the common-sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment.

Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

Subdivision (b)(3) is the “common-sense” exemption. See *Apartment Association of Greater Los Angeles v. City of Los Angeles* (2001) 90 Cal.App.4th 1162, 1171; *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 116-117. The Discussion following the Guideline states that this “provides a short way for agencies to deal with discretionary activities which could arguably be subject to the CEQA process, but which common sense provides should not be subject to the act.”

The common-sense exemption may be used “only in those situations where its absolute and precise language clearly applies.” *Myers v. Board of Supervisors* (1st Dist. 1976) 58 Cal.App.3d 413, 425. Where one can raise a legitimate question of a possible significant impact, the exemption does not apply and, because it requires a finding that such impacts are *impossible*, it requires a factual evaluation based on evidence which shows that it could have no possible significant impact. *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 116-117. The agency thus bears the burden of basing its decision on substantial evidence that shows no such possibility. *Ibid.*

Respondents note that they expressly determined that the Ordinance approval is exempt from CEQA because “No new development will result from the proposed action. No impact on the physical environment will result.” AR 13, 166, 258, 546 (findings as set forth in the Ordinance).

Respondents also correctly note that nothing refers to the Ordinance as a zoning regulation. The Ordinance itself states, “the California Constitution, Article XI, section 7, provides cities with authority to enact ordinances to protect the health, safety, welfare, and morals of the citizens, and zoning regulations are a permissible exercise of this authority. AR 12; see also, e.g., AR 18, 545. Nothing indicates that the Ordinance regulates or changes the use of land in any way; instead, it simply limits the rent which owners of mobile home parks may charge. See, e.g., AR 12-15, 19-21, 159-162, 250-254, 541-542, 546-548.

Petitioners claim that Respondents failed to investigate whether the decision was in fact exempt under the common-sense exemption. This argument is wholly unpersuasive.

First, Petitioners provide no citation to the record, and they offer no explanation for this argument. As noted above, although the agency has the burden of conducting an investigation and analysis into the possible environmental impacts of a project, in judicial review the petitioner bears the burden of demonstrating that the agency’s action does not comply with CEQA. Petitioners have provided neither evidence nor analysis explaining how the adoption of this Ordinance was not exempt from CEQA as Respondents determined, or how the record lacks substantial evidence to support the determination.

Second, Petitioners' reliance on their claims that capping the rent they can charge may cause them to cut back on services are, as explained above, insufficient for demonstrating that adopting the Ordinance was not exempt, or that Respondent's actions violated CEQA. Petitioners' assertions regarding the possible impacts of the rent restrictions are entirely speculative, vague, and unclear. They are also limited to tenuous and vague social or economic impacts with no physical change in the environment. In fact, in the court's view, the statements appear to be nothing more than veiled threat that if their ability to raise rents is curtailed, they will respond by simply providing fewer services in order to protect their profits. This is hardly the sort of impact with which CEQA could possibly be concerned.

Third, as Respondents argue, the Ordinance on its face involves no indication of a possible direct or indirect physical change in the environment. It is not a land-use decision, it makes no change whatsoever to land use, nothing indicates that it will affect development or promote or alter development, growth, activities on the land, or any other similar land-use change. It merely imposes a cap on rent which may be charged at mobile home parks. Petitioners argue that it necessarily implicates CEQA because it is a zoning regulation, but Respondents correctly note that it is not the type of regulation which implicates CEQA merely because it may be a zoning regulation. As the Supreme Court explained in *Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, at 1190, 1193 ("UMMP"), PRC 21080 does not make a zoning ordinance necessarily a project subject to CEQA as a matter of law.

Fourth, Respondents correctly note that they provided an explanation and analysis, however brief, supporting the exemption determination. This states, as noted above, that "No new development will result from the proposed action. No impact on the physical environment will result." AR 13, 166, 258, 546. It is indeed brief, but it demonstrates an analysis based on the evidence consisting of the nature of the Ordinance itself and given that it is based on the inherent language of the Ordinance and its effects, it is facially sufficient. Petitioners point to nothing in the record indicating the contrary.

Finally, as noted above, Respondents were not required to file an NOE. Their failure to do so therefore does not constitute a violation of CEQA.

The court finds that, even if Petitioner had exhausted their administrative remedies, substantively they present no violation of CEQA. The court therefore DENIES the petition as to the CEQA claims on this basis as well.

TENTATIVE RULING (AS TO ALL OTHER CAUSES):

Petitioners, ROP WMCC LLC and Resident Owned Parks, Inc. ("Petitioners") amended petition for writ of administrative mandate and request declaratory and injunctive relief is **DENIED**, as to the First, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth Causes of Action. The Second Cause of Action is addressed in a separate tentative ruling focused only on the CEQA issues raised in the amended petition.

PROCEDURAL HISTORY

Petitioners challenge the Ordinance No. 2023-373 (the "Ordinance") adopted by Respondents Town of Windsor ("Town") and Town Council of the Town of Windsor ("Town Council") on February 1, 2023, after several public Town Council meetings. (AR 550.). The Ordinance caps the rent for mobile home parks within the Town's jurisdiction and its purposed is

to stabilize excessive rent in consideration of mobile home park residents. The predecessor to the Ordinance was adopted on October 28, 1992, for rent control. (Administrative Record [“AR”] 92.) In 2008, the parties participated in an arbitration regarding proposed rent increases at the park after which the parties entered into a settlement agreement. (Amended Petition, ¶¶ 35-39.) Petitioners allege that according to the agreement, they are bound by its terms which detail precisely how rental rates and increases are to be calculated under Paragraph 5 to Exhibit 1 of the agreement. (*Ibid.*)

The Petition seeks a writ of mandate directing Respondents to: (1) rescind, repeal, or set aside the Ordinance; (2) to set aside the Ordinance due to the failure to comply with the California Environmental Quality Act (“CEQA”); (3) inquire into the validity of the Ordinance for lack of jurisdiction, acting in excess of jurisdiction, and abuse of discretion; (4) set aside the Ordinance based on a deprivation of fundamental vested rights pursuant to the United States Constitution and California Constitution; (5) set aside the Ordinance based on equitable estoppel; and (6) set aside the Ordinance based on lack of fair hearing; and related claims.

Petitioners also seek a monetary award, injunctive and declaratory relief, and an award of attorneys’ fees and costs.

ANALYSIS

1. First, Third, Fourth, and Fifth Causes of Action

a. Traditional or Administrative Writ of Mandate

Code of Civil Procedure (“C.C.P.”) section 1094.5 provides for the review by a court sitting without a jury where the writ is issued “for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer.” The inquiry into the validity of a final administration order extends to “whether the respondent has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion.” (C.C.P. § 1094.5(b).)

A writ of traditional mandamus pursuant to C.C.P. section 1085(a) may be issued to “compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station” or to compel “the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded.”

“Abuse of discretion” is established against the respondent if they did not proceed in the manner required by law, if the order or decision is not supported by the findings, or if the findings are not supported by the evidence. (*Ibid.*) “Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence.” (CCP § 1094.5(c).) “In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.” (*Ibid.*)

b. First Cause of Action to Rescind, Repeal, or Set Aside the Ordinance (C.C.P. § 1085)

The Petition seeks to rescind, repeal, or set aside the Ordinance per C.C.P. section 1085 claiming that counsel failed to responsibly research and determine an appropriate restriction on rental increases within mobile home parks. Petitioners argue that the Ordinance are “arbitrary, capricious, or entirely lacking in evidentiary support.”

The Town opposes and argues that that California Courts have consistently upheld the power of municipalities to establish rent control as a valid police power, per *Birkenfeld v. City of*

Berkeley (1976) 17 Cal.3d 129, 165 as well as other cases. The Town's position is that as long as the rent control ordinance enacted serves a legitimate government purpose, permits a landlord to earn a just and reasonable return, and provides for some rental adjustment mechanism, then it is allowable, per *Santa Monica Beach, Ltd. v. Superior Court* (1999) 19 Cal.4th 952, 962-963.

Here, as the Town argues, the Ordinance prevents excessive rents and does not prevent landlords from obtaining a just and reasonable return on their property. The Town argues that Petitioners have not shown that they cannot obtain a just and reasonable return with the Ordinance in place. The Town also points out that there is no requirement that "year long studies" need to be conducted before justifying a modification of its mobile home rent stabilization ordinance. The Town points to the administrative record, which contains evidence of the Town's extensive fact-finding and research efforts, detailed staff reports, and presentations to the Town Council regarding the Ordinance before it was adopted. (AR 0115-0117, 0159-0162, 0250-0254.) During several Town Council meetings, the Town heard testimony from mobile home park owners, including from Petitioners, and from mobile home residents. (AR 0149, 0240, 0532.) Furthermore, the Town communicated with other municipalities and compiled information on their various mobile home rent control ordinances in order to support and form the Ordinance. (AR 0116.)

Based on the foregoing, the Court finds that the Ordinance was supported by a legitimate public purpose as well as extensive evidence and findings prior to its adoption. Petitioners have not provided any authority that supports their argument that the Town was required to conduct years' long studies by experts prior to the Ordinance being adopted.

The Petition is **DENIED** as to the First Cause of Action.

c. Third Cause of Action Regarding Validity of Ordinance (C.C.P § 1094.5)

Petitioners argue that the Ordinance is a decision that requires a fair hearing, evidence to be considered, and discretion in the determination of facts that was vested in an inferior tribunal (namely the Town Council). Petitioners request the Court to inquire into the validity of the Ordinance to determine if there was a fair hearing and whether there was any prejudicial abuse of discretion, because Petitioners are of the position that the Ordinance is lacking in each category required under C.C.P. section 1094.5(b).

As described above, the Town argues that the Ordinance has a legitimate public purpose to prevent excessive rents and does not prevent landlords from obtaining a just and reasonable return on their property. Furthermore, before the Ordinance was adopted, the Town relied on extensive fact-finding and research efforts, detailed staff reports, presentations to the Town Council, several public Town Council meetings during which the Town Council heard testimony from mobile home park owners, including from Petitioners, and from mobile home residents. The Town also considered a compilation of information regarding other similar municipalities and various mobile home rent control ordinances in adopting the Ordinance.

The Town also argues that only governmental decisions which are adjudicative in nature are subject to procedural due process principles, per *San Francisco Tomorrow v. City and County of San Francisco* (2014) 229 Cal.App.4th 498, 526. The Town also distinguishes this matter from the case cited by Petitioners, *Harris v. County of Riverside* (9th Cir. 1990) 904 F.2d 497, by arguing that in *Harris*, an individual property owner might have procedural due process rights when a public agency specifically targets their property as part of a rezoning change and might eliminate that property altogether.

The Court does not find that "abuse of discretion" has been established here against the Town. The Town had a legitimate purpose to adopt the Ordinance and relied on extensive

evidence, including several public Town Council meetings at which Petitioners were heard as well as mobile home residents, prior to the adoption of the Ordinance.

As such, the Petition is **DENIED** as to the Third Cause of Action.

d. Fourth Cause of Action for Deprivation of Rights (42 U.S.C. § 1983)

The Petition argues that the Ordinance deprives them of their due process rights under the United States and California constitutions. Petitioners argue that their vested rights have been deprived without just compensation and without a valid purpose.

The Town makes the same arguments as described above under subsections 1b. and 1c. The Court does not find Petitioners' arguments persuasive that they were deprived of their due process rights and that the alleged deprivation was without a valid purpose. The Ordinance is meant to stabilize mobile home rent in protection of the mobile home residents that reside there, which is a legitimate public purpose as well as within the Town's legal authority. Furthermore, the Town Council had four public meetings during which Petitioners as well as other mobile home park owners and residents were heard.

For these reasons, the Petition is **DENIED** as to the Fourth Cause of Action.

e. Fifth Cause of Action for Equitable Estoppel

Petitioners cite to *Congregation Etz Chaim v. City of Los Angeles* (2004) 371 F.3d 1122 in support of their fifth cause of action to set aside the Ordinance based on equitable estoppel. Petitioners argue that when a property owner incurs substantial expense in reasonable reliance upon some governmental act, the principle of equitable estoppel prohibits a government entity from exercising its regulatory power to prohibit the land use. Petitioners allege that they were induced to rely on the 2008 arbitration that they sustained substantial economic and personal harm by the "sudden, unwarranted adoption of the Ordinance" because they made substantial changes, investments, and long-term financial and other commitments.

The Town argues that Petitioners have failed to allege facts sufficient to support a claim for equitable estoppel. As described by both parties, an equitable estoppel claim has the following elements: (1) the party to be estopped must be apprised of the facts; (2) the party to be estopped must intend that their conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the truth state of facts; and (4) the other party must rely on the conduct to its injury. (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 489.) The Town contends that Petitioners' participation in the 2008 arbitration cannot form the basis of any equitable estoppel claim because no assurance was made by the Town in that process that could be interpreted as a restriction on the Town's future exercise of its legislative power. Additionally, the Town makes note that Petitioners cannot and have not claimed injury from the Town's adoption of the Ordinance, because Petitioners maintain the ability to seek a rent higher than allowed by going through the arbitration process outlined in the Windsor Municipal Code.

Based on the above, the Court does not find that Petitioners' participation in the 2008 arbitration in compliance of the Ordinance sufficiently establishes a basis for Petitioners' equitable estoppel claim because no assurance was made by the Town during the arbitration that it would not seek to exercise its own legislative authority regarding rent control in the future.

Thus, the Petition is **DENIED** as to the Fifth Cause of Action.

2. Declaratory Relief and Judicial Declaration

a. Declaratory Relief

Code of Civil Procedure (“C.C.P.”) section 1060 allows an interest person under a written instrument, not including a will or a trust, to seek a declaration of his or her rights or duties in cases of actual controversy relating to the legal rights and duties of the respective parties.

In order for a party to seek declaratory relief, there must be: 1) an actual controversy about justiciable questions regarding the rights or obligations of a party which 2) involves a proper subject of declaratory relief. (C.C.P. § 1060; *City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 80.) The court may refuse to exercise the power to provide declaratory relief where its declaration or determination is not necessary or proper at the time under all circumstances. (C.C.P. § 1061.)

b. Interference with a Valid Contract

Petitioners allege that the Town is in violation of the Contracts Clause, under Article I, Section 10 of the U.S. Constitution, because the Ordinance “was not targeted at remedying a broad or pervasive social problem.” Petitioners argue that the plain language of the Ordinance is targeted to interfere with private contracts and so is void on its face.

The Town argues that the ordinance does not substantially impair the 2008 agreement. A contractual relationship exists between the Petitioners and mobile home park residents, so the Town argues that the proper test is to determine whether the impairment to this contractual relationship is substantial in that it impairs the contractual bargain, interferes with a party’s reasonable expectations, and prevents the party from safeguarding or reinstating their rights. (*Sveen v. Melin* (2018) 584 U.S. 811, 819.) The Town argues that as it is within its power to take rent-control measures and that it has adopted the Ordinance and its predecessors to stabilize rent, that it is foreseeable to both the mobile home park residents and Petitioners that further regulation may be adopted to modify the restrictions. For that reason, the Town claims that the Ordinance neither interferes with the parties’ reasonable expectations nor prevents the parties from safeguarding or reinstating their rights. According to the Town, Petitioners are still able to follow the rental adjustment process to seek a higher rent.

The Court finds that the Ordinance does not substantially impair the contracts between Petitioners and the mobile home park residents as it does not impair or eliminate the contractual bargain and because the history of regulation by the Town to stabilize and control rent made it foreseeable to Petitioners and the mobile home park residents that further measures could be taken to regulate rent in the future. Thus, the parties’ reasonable expectations were not interfered with and the parties were not prevented from safeguarding or reinstating their rights as they still have an avenue to seek higher rent.

The Petition is **DENIED** as to the Sixth Cause of Action.

c. Violation of Due Process Rights

The Petition alleges that the Town is in violation of Petitioners’ right to due process of law under the 14th amendment to the U.S. Constitution and under 41 U.S.C. section 1983. Petitioners argue that there was a notice and opportunity to be heard needed before the deprivation of their rights.

In opposition, the Town makes similar arguments as described above in subsections 1b.-1d. For the same reasons as stated above, the Court does not find that the Ordinance deprived Petitioners of their due process rights or that the alleged deprivation was without a valid public purpose.

The Petition is **DENIED** as to the Seventh and Eight Causes of Action.

3. Injunctive Relief to Prevent Enforcement of Ordinance

Injunctive Relief

Injunctive relief is a remedy and not, in itself, a cause of action, and a cause of action must exist before injunctive relief may be granted. (*Shell Oil Co. v. Richter* (1942) 52 Cal.App.2d 164, 168.) Injunctive relief is an equitable remedy available to protect the party seeking it or prevent the invasion of a legal right. (*Meridian, Ltd., v. San Francisco* (1939) 13 Cal.2d 424, 447.)

The circumstances in which an injunction may be granted are listed under C.C.P. section 526(a)(1)-(7) lists when an injunction may be granted by the court. For granting injunctive relief, trial courts consider two questions: “1) are the plaintiffs likely to suffer greater injury from a denial of the injunction than the defendants are likely to suffer from its grant; and 2) is there a reasonable probability that the plaintiffs will prevail on the merits.” (*Robbins v. Superior Court* (1985) 38 Cal.3d 199, 206.)

Petitioner’s Request for Injunction to Prevent Enforcement of Ordinance

Petitioner requests injunctive relief as a separate cause of action and the bases is the violation of CEQA, other state law, and the U.S. and California constitutions.

The Court finds that the cause of action for injunctive relief cannot stand independently per *Shell Oil* referenced above, and also that the relief requested should not be granted based on the rulings made on all other causes of actions above and based on the Court’s separate ruling denying the Petition based on the unwarranted CEQA claims.

The Petition is **DENIED** as to the Ninth Cause of Action.

CONCLUSION

The Petition is **DENIED** as to the First, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth causes of action numbers. The Town shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule 3.1312.